

## **The complaint**

Mr B has complained to Suffolk Life Pensions Limited, trading as Curtis Banks Pensions, about the time it took to transfer his Self Invested Personal Pension (SIPP) to Hargreaves Lansdown, saying that he's incurred losses through missed investment opportunities. Mr B has also said that Curtis Banks has retained particular illiquid investments, and is charging him fees for their retention as it says the SIPP can't be wound up.

## **What happened**

On 22 December 2020 Mr B requested a transfer of his Curtis Bank SIPP (full in-specie transfer) to Hargreaves Lansdown. This followed Curtis Bank's announcement that it was increasing its fees. Mr B's SIPP consisted of an EQI investment fund, a Barclays Wealth stockbroker investment and cash account.

Curtis Banks received the transfer out request from Hargreaves Lansdown on 14 January 2021 and then contacted both fund managers on 22 January 2021 to ask them for the fund valuation and fund breakdown.

It received the information from EQI almost immediately, and Barclays Wealth provided a valuation on 1 February 2021, in which it said that a wealth manager would need to confirm the status of the funds held.

As no further contact was received, Curtis Banks wrote to Hargreaves Lansdown with the information it currently had. The latter confirmed that it could accept all of the SIPP funds, barring the two with Barclays.

Curtis Banks then conducted a review of the funds to determine whether they could be sold or could be classified as significantly impaired, which would allow other assets to be fully transferred out.

In further communication with Curtis Banks on 15 March 2021, Barclays Wealth explained that it was unable to comment on the status of the assets held (i.e. whether they could be transferred/sold) as they were placed on an "execution only", i.e. non advised or managed, basis.

In emails of 14 and 20 April 2021, Curtis Banks confirmed the amounts which could be transferred out if the funds couldn't be categorised as significantly impaired, or otherwise removed from the SIPP.

Mr B then asked whether he could personally buy the shares from the SIPP and Curtis Banks confirmed the requirements to do so on 3 May 2021.

Mr B replied on the same day to confirm that he wished to proceed with the partial transfer and Curtis Banks replied on 19 May 2021 to say that it needed to retain enough funds to cover five years' SIPP fees as the SIPP couldn't be closed.

On 28 May 2021, Curtis Banks wrote to EQI to instruct the partial transfer, and it received confirmation that this had taken place on 9 July 2021. EQI had explained the delay as being caused by it awaiting confirmation that Hargreaves Lansdown could accept the funds.

Hargreaves Lansdown received payments in respect of the cash held with EQI on 16 July 2021 and 21 July 2021, and then the funds transferred “in specie” on 20 July 2021. Curtis Banks then completed the cash part of the transfer on 28 July 2021.

Curtis Banks confirmed on 29 July 2021 that the transfer of the amount of £51,464 into the SIPP had completed.

Mr B had already by this time submitted a complaint to Curtis Banks about the delays incurred, and the latter initially responded on 24 May 2021, conceding that it had caused some of the delays incurred, and offering Mr B £100 in respect of this.

In response, Mr B said that he’d lost out on investment opportunities as a result of the delay. Curtis Banks replied to say that, having received the details of the trades which Mr B had placed from 9 July 2021 to 14 July 2021 since the transfer to the new SIPP, they would have been placed from 14 May 2021 to 19 May 2021 had there been no delays incurred by Curtis Banks. And in that case, the unit prices would have been less favourable.

It also addressed the matter of the funds still held by Barclays, saying that it had contacted it to request the current status, but it had been told that Mr B would need to contact Barclays directly as Curtis Banks no longer held the necessary authority to receive such information.

Regarding Mr B’s concerns about the invoices he’d been sent for the annual SIPP fees and the transfer out, it said that, as it hadn’t been able to close the SIPP due to the ongoing issues with the funds held by Barclays, it would need to continue to charge the annual fees.

But it did accept that Mr B’s original intention had been to fully close his SIPP and that this had been requested within timescales set out in its mailing issued in December 2020. It therefore said that it would agree to refund the transfer out fee.

Curtis Banks retained £2,460 in Mr B’s SIPP bank account to cover ongoing fees. Dissatisfied with Curtis Banks’ response, Mr B referred the matter to this service.

Curtis Banks confirmed to our investigator that, although the remaining assets within the SIPP were illiquid, they weren’t “impaired” and were available for transfer and reregistration.

It said that it had provided Mr B with his options to obtain a valuation and arrange a transfer into his personal name, but until suitable arrangements were made the SIPP would need to remain open and would be subject to the standard fees. This was, it said, in accordance with the SIPP’s terms and conditions where it hadn’t been possible to execute Mr B’s transfer instruction in full.

One of our investigators assessed the complaint and didn’t think it needed to do anything more to address Mr B’s concerns. He said the following in summary:

- Having looked at the timeline of events submitted by Curtis Banks, along with the supporting evidence about contact between it and the counterparties, he was satisfied that, once Mr B had instructed the transfer, it acted promptly.

- Curtis Banks wasn't responsible for the nearly two month delay in receiving information from Barclays Wealth about the funds it held. And without information about all of the investments held within the SIPP, Curtis Banks was unable to transfer and close the SIPP.
- In the meantime, Curtis Banks had in any case provided information to Hargreaves Lansdown about the EQI funds.
- He acknowledged that the transfer had taken almost six months to complete, but whilst he thought that some of the delay had been caused by Curtis Banks, he didn't think that it should be held accountable for the full delay period.
- He noted that Curtis Banks had undertaken a loss calculation on the basis that the transfer had completed in May, which he thought was fair. But he agreed with Curtis Banks' conclusion that the figures were more favourable in July.
- And he also thought that the £100 redress offered by Curtis Banks was appropriate in the circumstances.
- As to the SIPP charges, he said that the SIPP terms and conditions allowed for Curtis Banks to continue applying them until all the assets had been transferred out.
- He also sympathised with Mr B's position in that he was unable to close the SIPP.
- But he noted that Curtis Banks didn't have confirmation that the investment was impaired and that the documents produced relating to this couldn't be accepted as per HMRC requirements.
- He also noted that Curtis Banks had provided Mr B with details about the option to transfer the SIPP into his own name.

Mr B disagreed, however, saying the following:

- Curtis Banks had no control over the assets held by Barclays, and he'd dispensed with Curtis Banks' services in December 2020.
- Barclays had no permission to tell Curtis Banks what, if any, assets he held in his SIPP, which was now managed by Hargreaves Lansdown.
- It was therefore impossible for Curtis Banks to be able to say whether or not those assets existed.
- The investigator should instruct Curtis Banks to pay the money it retained to his current SIPP provider.
- Curtis Banks had failed to send Mr B a report in 2021.

As agreement wasn't reached on the matter, it was referred to me for review.

At my request, the investigator asked Curtis Banks for more detail about the timeline for its calculation which it said had determined that no financial loss had been suffered due to its delays. And I further asked for more information about the level of fees it's charging Mr B to administer the SIPP.

In response to request for information regarding the timeline for its loss calculation, Curtis Banks said that, following receipt of the transfer out forms, it should have requested valuations for the investments held within two working days, but that it actually took six – which amounted to a four working day delay.

After Barclays first confirmed that the funds were placed on an execution only basis and therefore it couldn't advise of the liquidity status, Curtis Banks said that it should have immediately raised a task for its Technical Team to investigate, but it didn't do so for 22 days.

Once that Technical Team had concluded its investigation on 3 May 2021, and Mr B had confirmed his agreement to the partial transfer on the same day, Curtis Banks said that it should have issued the in-specie instruction the next day – but as it didn't actually issue it until 28 May 2021, there was a further 13 day delay.

As to the matter of the fees, it said that it was charging its usual fees to Mr B, which when due in April 2023, would amount to a total of £558.

I asked the investigator to refer Curtis Banks to other cases in which the annual SIPP fee had been reduced, as the only reason the SIPP was still open was due to the assets not being readily able to be sold.

In response, Curtis Banks said that, in some circumstances, if an asset was impaired it may be able to reduce its fees. But although Mr B's assets were illiquid, they were still able to be transferred or reregistered. The recipient SIPP provider had initially indicated that it could accept the assets, but later advised that it couldn't.

It said that it appreciated Mr B's frustrations, but that it still needed to administer his SIPP and therefore the SIPP fees would be payable as per the plan's terms and conditions.

I issued a provisional decision on the complaint on 9 March 2023, in which I set out my reasons for upholding it. The following is an extract from that decision.

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*With regard firstly to the delays incurred by Curtis Banks and the loss calculation it's undertaken to determine whether Mr B was disadvantaged by those, the actual and notional timelines appear reasonable, and so I don't think there has been any resulting financial disadvantage caused by Curtis Banks' delays.*

*But there remains the matter of Mr B's assets still held with Curtis Banks, for which it is charging him the full annual administration fees.*

*So I've thought carefully about this. Curtis Banks' position appears to be that the assets/investments haven't failed, but are illiquid. So, in theory, Mr B could transfer these funds, albeit he would need to obtain a valuation and it would be at the commercial discretion of the receiving scheme. This, on the face of it, is different to instances where a SIPP is only holding a failed investment and there is no prospect of the consumer being able to remove the asset/close the SIPP.*

*But in practice, it seems to me as if Mr B is in a fairly similar position. Curtis Banks has previously confirmed that, if the assets are impaired, it would cease charging fees, as follows:*

*“The receiving scheme have confirmed that they can’t accept these asset. We will need to get a tech task created to be investigated to see if these are severely impaired meaning the whole account can be transferred out keeping **these assets in the account with no charge**. But if they come back to advise that it is not these can be retained with an ongoing fee.” (my emphasis)*

*My understanding is that the two assets which remain in the SIPP are Water Group Limited and Mapeley Limited. The Barclays valuations have them both at zero, although Mapeley Ltd still has a “book value”. I note that Barclays isn’t charging ongoing fees for holding the assets.*

*With regard to the purchase/transfer of the shares, Curtis Banks said the following:*

*“Yes, this is possible and will be considered as a connected party transaction. So, the client would have to provide us with a qualified third party valuation of that asset.*

*The other thing is, we have not been able to directly contact the company as we hold no contact of them and Barclays are not able to help because it was conducted on execution only. If the client can provide any contact details, we will be able to check with the company if they can process a transfer in order to proceed. Upon further review, the recent statement of the company does not indicate any kind of impairment so we cannot at the moment mark it as LTI. There if really nothing that we can do until we have been able to get in touch with the company itself.”*

*So there appears to be a means of Mr B transferring or purchasing the assets in question, but this isn’t straightforward, and wouldn’t be easy for Mr B to navigate without the assistance of Curtis Banks. And although I accept that, on the face of it, it doesn’t seem unreasonable for Curtis Banks to be charging the SIPP fees, it nevertheless needs to treat Mr B fairly – and in this instance I think this would reasonably mean helping resolve this situation.*

*And I can’t see that any practical help has been offered since 2021. Curtis Banks has said that it can’t do anything without being provided with the companies’ contact details, but I can’t see any real reason as to why it couldn’t obtain these itself.*

*Mr B will be charged a total of £558 in April 2023 for Curtis Banks to administer his SIPP, which contains assets of – according to Barclays - no value, and I assume that similar amounts have been charged in previous years. As I’ve said above, on the basis of the currently known status of these assets, and in line with the terms and conditions of the plan, Curtis Banks is able to charge these fees.*

*But I don’t think Curtis banks is doing enough here in in terms of treating Mr B fairly. The Principles for Businesses (“PRIN”) which are set out in the FCA’s Handbook “are a general statement of the fundamental obligations of firms under the regulatory system” (PRIN 1.1.2G – at the relevant date).*

*In addition, in British Bankers Association, R (on the application of) v The Financial Services Authority & Anon (2011) EWHC 999 (20 April 2011) Ousely J said:*

*“Indeed, it is my view that it would be a breach of statutory duty for the Ombudsman to reach a view on a case without taking the Principles into account in deciding what would be fair and reasonable and what redress to afford. Even if no Principles had been produced by the FSA, the FOS would find it hard to fulfil its particular statutory duty without having regard to the sort of high level principles which find expression in the Principles, whoever formulated them. They are the essence of what is fair and reasonable, subject to the argument about*

*their relationship to specific rules” (para 77).”*

*“...The Principles are best understood as the ever present substrata to which the specific rules are added. The Principles always have to be complied with. The specific rules do not supplant them and cannot be used to contradict them. They are but specific applications of them to the particular requirements they cover. The general notion that the specific rules can exhaust the application of the Principles is inappropriate. It cannot be an error of law for the Principles to augment specific rules” (para 162).*

*I consider Principle 6 to be of particular relevance:*

*“Customer’s interests – A firm must pay due regard to the interests of its customers and treat them fairly.”*

*In September 2009 the FSA published a thematic review report on SIPP’s which stated:*

*“We are very clear that SIPP operators, regardless of whether they provide advice, are bound by Principle 6 of the Principles for Businesses (‘a firm must pay due regard to the interests of its customers and treat them fairly’) insofar as they are obliged to ensure the fair treatment of their customers. COBS 3.2.3(2) states that a member of a pension scheme is a ‘client’ for COBS purposes, and ‘Customer’ in terms of Principle 6 includes clients...”*

*The context that these comments were made in was in relation to the quality of the business that a SIPP operator accepts. That isn’t the focus of Mr B’s complaint, but it’s clear from the regulator’s comments that SIPP operators are obliged to ensure fair treatment of their customers.*

*And in this context, I think Curtis Banks needs to do more to meet the bar of treating Mr B fairly. And I think, as a minimum, that would be as follows – I think to resolve this complaint it should provide to Mr B:*

- *A breakdown of its current understanding of the position with the investments based on up to date actions undertaken to establish this, including trying to contact the companies involved (with demonstrable reasonable efforts) directly to see if there is a way forward.*
- *A clear breakdown of the steps Mr B needs to take/specifically what he would need to provide in order to transfer the shares to him.*

*This should place Mr B in a better informed, and up to date, position as to how he can purchase/transfer the shares, wind his SIPP up, and stop paying what I can well understand him to consider to be wholly unnecessary, frustrating, and costly ongoing fees.”*

In response, Mr B said that he’d been trying to get the unquoted shares registered in his name, and he had written to Curtis Banks on 11 January 2023 to ask it for a transfer price – but he’d received no reply to date.

Both Barclays and the valuation letter he’d sent to Curtis Banks had valued the shares at zero. The valuation letter had been written by a retired banker, but was rejected by Curtis Banks.

Mr B said that he just wanted the matter to be resolved.

Curtis Banks also responded, as follows:

- With regard to my comments relating to its obligation to treat its customer fairly, it didn't think that benchmarking an illiquid asset which could be transferred against an impaired asset was fair in this instance. And if it needed to treat Mr B differently to its other customers who held transferable assets, this also wouldn't be treating its customers fairly.
- It wasn't the case that it hadn't updated Mr B on how to remove or transfer the assets. It attached a secure message thread detailing the contact between Curtis Banks and Mr B between July 2021 October 2022. It said that it provided the required information in both 2021 and 2022, explicitly setting out what was needed. And it had been Mr B's decision as to whether to act upon this.
- This information had been provided to Mr B in the last five months, and it was therefore relevant and up to date. Mr B was fully informed as to how to remove the shares from his SIPP.
- As such, the fees have been properly applied to Mr B's account.

I then issued a further provisional decision on 20 March 2023, which said the following:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*And having done so, it does seem as though Curtis Banks has provided Mr B with the relevant information he needs to transfer his assets. Specifically, as part of the message thread referred to above, Curtis Banks said on 12 August 2021 that the valuation required to transfer the holdings must be carried out by a qualified third party (accountants, auditors, RICS qualified members).*

*It further said that the evidence must be provided on printed company headed paper, be addressed to the SIPP, and confirm that the valuation could be used for the transaction. It must further provide a rationale as to the value given for the holding.*

*I've noted what Mr B has said about providing a valuation from a retired banker, but I don't think that falls within the categories of profession as set out by Curtis Banks, and which it has said isn't a stipulation it has itself imposed, but rather one set out by HMRC.*

*As such, and looking at the rest of the conversation up to October 2022, in which Curtis Banks sought to further clarify the situation with the shares to Mr B, including their dividend paying status and that this would mean that they couldn't have a nil value, I think it's probably done enough in terms of engagement with Mr B – and as it's also said, quite recently - to enable him to transfer the shares and close the SIPP."*

In response, Curtis Banks said it had no further comments to submit.

Mr B disagreed, however, saying that I had concluded that Curtis Banks was right to take seven months to transfer quoted equities to another SIPP manager, causing investment losses of over £25,000, to carry on charging fees of around £550 pa on a SIPP with nil value, and to fail to provide him with any means of fully closing his SIPP.

Mr B also said that there were two factual errors in the provisional decision, one of which was that, in the summary of the complaint, I'd said that it was the illiquid investments which couldn't be wound up, whereas it was in fact the SIPP which couldn't be wound up.

The other was that, on 29 July 2021, the transfer value of the SIPP was around £2m, not £51,464.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Both parties will firstly note that I've amended the summary of the complaint at the beginning of this decision to take account of Mr B's comments above. I've also noted what Mr B has said about the transfer value on 29 July 2021, but in the above background section I refer to the payment of £51,464 which was made on that date. But I don't think either aspect makes a difference to the outcome here.

To then address Mr B's comments, I would confirm that I haven't said that I consider that the delays incurred by Curtis Banks were acceptable - rather I'd noted what it had done to determine whether those delays had caused Mr B a loss. And I considered that to be reasonable. It's calculation determined that Mr B hadn't been caused a loss by the delays.

Further, Mr B will have noted from my previous provisional decision that I'm very much in agreement that Curtis Banks should provide Mr B with a clear indication of what he would need to do to transfer the disputed assets from his SIPP. But having been provided with the message exchanges over the last couple of years, I'm now satisfied that it has already provided this.

I know that Mr B disagrees with Curtis Banks' view of the type of individual or entity which would need to provide the independent valuation, but I don't think it's being unreasonable in setting out the requirements in that regard.

And so it's now up to Mr B as to his next steps towards transferring the assets from his SIPP and then winding it up to avoid further fees.

I know Mr B will find this outcome disappointing, but other than requiring it to assist Mr B in his transfer once he's satisfied the requirements it's set out – as would in any case be expected from a regulated business - I don't think I can fairly or reasonably require Curtis Banks to do anything further here.

### **My final decision**

For the reasons given, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 20 April 2023.

Philip Miller  
**Ombudsman**