DRN-4410430

## The complaint

Ms A complains about the fees she was charged by Curtis Banks Limited ('CBL') in relation to her Self Invested Personal Pension ('SIPP'). She considers that because the transfer to CBL from another SIPP provider was done without her consent, it shouldn't be allowed to charge her the fees that it has.

## What happened

In summary, the background to this complaint is as follows:

- Ms A established a SIPP in 2010 with a business called Montpelier Pension Administration Services Limited ('MPAS') following advice from a firm called Total Wealth Management Limited ('TWM'). The SIPP was established in order to accept transfers from Ms A's previous pension providers and was subsequently used to purchase unregulated investments. And on 19 February 2010 Ms A transferred £28,877 into the MPAS SIPP. And on 10 March 2010 she purchased shares in a property investment from a business called 'Harlequin Properties' ('Harlequin').

- On 6 August 2010, Ms A transferred £28,351.75 into her SIPP. On the same day, she paid for another property investment from Harlequin. Both property investments (the 'investments' or 'property investments') were based abroad and were unregulated. The annual SIPP fee charged by MPAS was £457 plus Value Added Tax ('VAT') bringing the total annual fees to around £540. However, in 2011, MPAS came under the scrutiny of the then regulator, the Financial Services Authority now called the 'Financial Conduct Authority' – I will refer to both bodies as the 'regulator'). MPAS subsequently sold its pensions book to CBL in that year (2011).

- CBL said it wrote to all MPAS SIPP holders at the time of sale. The notice explained that from 13 May 2011, CBL became the Administrator/Trustee for the transferred SIPPs from MPAS. It noted that most things would remain unchanged including the rate of fees. The transfer of Ms A's SIPP account to CBL was completed in November 2011. The opening cash balance at that point was £9,736.47. And she still held the property investments.

- On 22 January 2014 CBL wrote to Ms A in respect of her property investments saying that due to 'various regulatory bodies' becoming involved with the Harlequin business, there was doubts about the true value of the property investments she held. As a result, CBL said it would be placing a nominal value of £1 on both her investments. Other than these property investments, Ms A only held cash in her SIPP bank account.

- In 2016 CBL notified Ms A that her SIPP fees were moving from what she was charged by MPAS to its (CBL's) own fee structure. This meant an increase in yearly fees. The 2017 statement shows Ms A was charged £660 in this year.

- In 2019 Ms A complained to CBL saying she was unhappy with the fees it'd charged her. She told CBL she'd been away from the UK from May 2013 to June 2018 due to

ill health, so she hadn't realised her SIPP had been transferred to CBL. And she also hadn't known about the fee increase which she said had unreasonably depleted her pension funds. Ms A didn't think CBL had any authority to take over her account and/or charge her the fees it had without her consent.

- Ms A said she only found out about the above matters after being sent a letter by a legal firm in around 2014 which she picked up when she returned to the UK. The legal firm represented her in making a compensation claim via the Financial Services Compensation Scheme ('FSCS') against MPAS. And in May 2019 Ms A's claim to the FSCS was accepted and she received £45,535.52 in compensation for the loss she'd suffered.

- In July 2019 Ms A withdrew the remaining cash funds from her CBL SIPP via a flexi-drawdown receiving £1,401.77 tax free cash lump sum and a £3,688.09 pension payment. Ms A was charged £144 and £180 respectively for these withdrawals by CBL. The last annual fee she was charged was on 5 February 2019 for £420.

- Initially, CBL rejected Ms A's complaint. It said the transfer from MPAS was done correctly and with the oversight of the regulator. In terms of the charges, CBL said these had remained the same as the MPAS charging structure up until 2016 and Ms A was properly notified of these charges via her statements. CBL acknowledged the increase in its fees notified in its letter to clients in 2016. However, in February 2018, CBL introduced an 'impaired asset policy'. This meant for years 2018 and 2019, due to the impaired property investments she held, Ms A's SIPP qualified for the CBL lower charging structure under its impaired asset policy.

- Further emails ensued between Ms A and CBL. Amongst other things, Mr A questioned how CBL could set an annual fee when it knew it had acquired her SIPP via the regulator and not MPAS. She also noted that CBL wasn't part of the agreement she had signed with MPAS. And she also said the only asset she had with CBL in 2016 was cash in her SIPP bank account and it (CBL) still increased her fees. Ms A said she considered that: *"This is a criminal act!!!!".*

- In its third final response letter, CBL admitted it made a mistake with Ms A's withdrawal fees which hadn't been charged correctly under its impaired asset fee structure. CBL said it would refund Ms A the standard drawdown fees of £144 and £180 and charge her the single depletion fee of £300 in line with its impaired asset policy fee structure.

- Ms A was unhappy with CBL's responses, so she brought her complaint to the Financial Ombudsman. Our investigator upheld the complaint. He didn't think CBL had done anything incorrectly in terms of the transfer of Ms A's SIPP from MPAS. However, he considered it had charged her unfairly. He said as CBL had identified in January 2014 that both of her property investments were 'significantly impaired', it would have been fair to have lowered her fees at this point.

- CBL agreed to settle the matter in line with the investigator's recommendation, but Ms A disagreed. She had initially said she wanted all of the fees refunded along with £25,000 for the distress this had caused her. She then said she wanted £500,000 for the distress and inconvenience caused to her by CBL's actions. She explained this amount is appropriate because CBL has, in her view, together with TWM defrauded her. Furthermore, she alleges that CBL has produced 'fictitious' bank statements for her SIPP account.

- The matter was passed to me for a decision. CBL confirmed that it had charged Ms A in line with the annual fee structure MPAS it (MPAS) had in place prior to the transfer of its SIPP book to CBL in 2011. But that CBL had increased its fees from 2016 onwards and this is why Ms A was charged more in 2017. CBL explained that when it introduced its impaired fees policy in 2018, Ms A was charged £414 in February 2018 and £420 in the following year.

- CBL said once Ms A withdrew her pension funds in July 2019, she was no longer liable to pay any fees due to the only assets held in her account being impaired assets. CBL said that should these assets in Ms A's SIPP account realise a value in the future, it would have the option to review if any fees should be taken for the period where there was no value. But CBL added that it was unlikely these investments would have any value in the future.

- I asked CBL to confirm whether Ms A was notified of the transfer of her SIPP from MPAS to CBL. CBL was able to provide us with templates of notices showing what would have been sent to clients at the time of the transfer. CBL was not able to provide Ms A's exact letter (with her address on) as the matter had been some time ago so the record no longer existed. However, CBL said that the template letter is what was sent to all recorded clients. And Ms A was one of those clients.

I issued a provisional decision on 19 October 2023. I upheld the decision in part. I agreed that CBL should refund Ms A part of the charges taken from her SIPP. I noted that apart from the impaired assets, Ms A only held cash in her SIPP account. And it seemed unfair to charge higher fees and then increase them when only a year after the increase, CBL introduced a policy to lower fees for SIPPs with impaired assets. However, in respect of what Ms A said about CBL acting fraudulently around the sale of the SIPP business and/or with her adviser, I didn't think there was any evidence to support this. I agreed with the investigator's recommended compensation in that CBL should pay Ms A the difference between what she had actually paid and what she would have paid under the impaired asset policy if this had applied from 2014 onwards. I also thought CBL should pay Ms A £100 for the distress and inconvenience it caused her.

CBL accepted my provisional decision and had nothing further to add. Ms A disagreed. In her response, she referred to the CBL notices I relied on in my provisional decision. In essence, she said there was nothing to show that she had been sent these notices in 2011. She also noted some anomalous features of the notices such as references to her financial adviser, the addresses of the CBL business being potentially incorrect and the notices being unsigned.

In terms of the compensation I'd recommended, Ms A said that she considered, based on the type of awards that the Financial Ombudsman issues, she should be paid £15,057.88 into her pension and £35,500 for the impact of the stress this experience has caused her.

So, given no agreement has been reached, the matter has been passed back to me for a final decision.

**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.

Having done so, I've not changed my mind and I am upholding the complaint in part. Before I explain my reasoning, I understand that Ms A has raised a number of further points in response to my provisional decision. Although I may not mention every point she's raised, I've considered everything Ms A has said but limited my findings to the areas which impact

on the outcome of the case. I'll also mention at this stage that where there's a dispute about what happened I've based my decision on the balance of probabilities.

- Ms A says she wasn't notified of the transfer of her SIPP from MPAS to CBL. But I've seen a copy of two CBL template letters (notices) that it says were sent to MPAS clients at the time of transfer.

- The notice sent in or around May 2011 (the 'May 2011 notice') was headed "**Curtis Banks acquisition of Montpelier Pension Administration Services Ltd"** (bold CBL's emphasis). Amongst other things this notice said: *"We are pleased to inform you that on 13 May 2011 Curtis Banks PLC acquired the assets and clients of Montpelier Pension Administration (MPAS) and as a result have become the operator of your pension arrangements."*

- Similarly, a notice dated 4 July 2011 (the 'July 2011 notice'), gave clients a brief update about the transfer. CBL also noted it had: *"…already written to your financial adviser to inform them of the transfer of the administration to Bristol, so they are fully aware of the position."* This notice like the May 2011 notice, had the contact details of the Managing Director and another employee who was based at the CBL Leicester office.

- Ms A seems to suggest in her response to my provisional decision that because of some of the details (or lack of details) in these notices, they don't seem genuine. And she also seems to suggest this gives more weight to her belief that they were not sent to her. But I think it's likely that these notices were sent to all former MPAS clients directly as well as their financial advisers (if applicable). And from what I can see Ms A lived at the same address as she currently does. She also said she did not move abroad until 2013 and returned in 2018. So, I think it's more likely than not that the notices sent in May and July 2011 from CBL were sent to, and received at, Ms A's recorded address.

- CBL hasn't been able to provide a copy of the notices that were actually addressed to Ms A's but I consider it's reasonable that a copy of Ms A's original letter no longer exists given the passage of time. From what I can see, CBL had Ms A's correct address from the outset which was in the MPAS application form. It has also written to her since that time to the same address where she still resides. So, as I've said, on balance, I'm satisfied CBL sent notices of the transfer to Ms A in 2011. All in all, I consider CBL gave Ms A clear, fair and not misleading information about the change of her SIPP provider and the charges that would apply.

- Further, I don't think CBL needed Ms A's consent for CBL to start charging her in line with the terms it sent to her at the time. These charges were the same as the ones she'd been charged by MPAS. And the sale of the SIPP book was a legitimate sale at a time when MPAS was under the scrutiny of the regulator. So, I don't think there's any evidence, as Ms A claims, that CBL has acted 'fraudulently' in relation to the transfer. I know that Ms A thinks the transfer of the SIPPs to CBL was done via the regulator. But the regulator was overseeing the process. The sale of the SIPP book was carried out between the relevant parties which were MPAS and CBL.

- In terms of the fees, CBL did charge fees which were broadly in line with that charged by MPAS up until 2016. Nonetheless, in January 2014, CBL told Ms A that her property investments had become impaired and were valued at £1 each. Despite this, CBL continued to charge Ms A at its normal fee of £548 and then in 2017 this increased to £660. It was only in 2018 that Ms A was subject to CBL's 'impaired asset

policy' which it introduced in that year (2018). And her fees reduced to just over £400 for February 2018 and February 2019 because her account was switched to the 'Simple SIPP' which had lower fees.

- I accept CBL's argument that it did notify Ms A about the increase in its fees in line with its contractual obligations. And that because Ms A still had cash in her SIPP bank account and the impaired assets, the SIPP was still subject to charges. I also appreciate there is still work to be done even when there are impaired assets in an account and it is generally not the Financial Ombudsman's role to say what a business should charge for its services. But what we can do is decide whether CBL has acted fairly and reasonably in all the circumstances of this case.

- Once CBL became aware the property investments were impaired in 2014, leaving the only valuable asset as the cash in the SIPP bank account, I think it should've considered taking actions which would have helped Ms A lower her fees, such as it did in 2018. It was only a year after it increased its fees in 2017 that it introduced its impaired asset policy. But I can't see any reason why a similar approach could not have been taken sooner in Ms A's case. I don't think it needed an introduction of a 'policy' to act fairly in the way it charged fees for a client in Ms A's situation.

- I accept if Ms A had other assets in the account apart from cash, and the impaired assets were just a proportion of those assets, then the situation may have been different. But this was not the case and I think CBL should've acted sooner to give Ms A the option to switch to a lower charging account. I can't see it did that until 2018. So, I agree with the investigator, that it would be fair and reasonable for CBL to refund Ms A the difference between what she paid from 2014 to 2017, and what she would have paid if she had been able to switch to a lower charging SIPP under its impaired asset policy.

- Another claim Ms A makes is that CBL acted with TWM to 'defraud' her. But the SIPP provider at the time of the purchase of the Harlequin assets was MPAS. So, it's MPAS who would have been the SIPP provider who dealt with her financial adviser (TWM). I also note that Ms A made a successful claim via the FSCS as a result of the failure of MPAS. So, I've seen no evidence to substantiate Ms A's claim that CBL acted with TWM to 'defraud' her, or indeed, that she has been defrauded.

- Ms A also says the SIPP bank account statements are 'fictitious' but, in my view, the bank statements she's provided don't support this. As noted by CBL as part of the transfer of her SIPP, the banking arrangements were also migrated from MPAS's own account with the Bank of Scotland to CBL's own pooled bank account held with Barclays. I think CBL has provided a reasonable and fair explanation of the reasons for the Bank of Scotland account transfer and I can't see any evidence that it (CBL) has provided Ms A with any fictitious bank statements.

I will now address Ms A's further points following my provisional decision.

I've taken on board what Ms A says about the notices. However, I still think it's more likely than not that she was informed of the takeover of her SIPP account in 2011 from MPAS to CBL. So, whilst I've taken into account the anomalous features of the notices she refers to in her latest submissions, I don't think these issues prove, or disprove, that she was notified, in writing, about the transfer of her SIPP account. Ms A hasn't disputed that she was in the UK at her recorded address in 2011. And this is the same address CBL has in its records for her. So, I think it's more likely than not that, along with all other affected clients, she was notified by CBL and possibly, MPAS, of the transfer of her SIPP.

I also don't think Ms A has provided any persuasive evidence of 'fictitious' bank statements as she says. The statements she has sent to us relate to the period when MPAS was still her SIPP provider and I can't see that CBL has done anything incorrectly in this respect.

In terms of the redress Ms A considers the Financial Ombudsman should award her, I don't think the amounts she has quoted are proportionate to the distress and inconvenience caused to her. I consider that she was inconvenienced by having to complain more than once and it did take at least three letters from CBL before it admitted a mistake it had made with one aspect of its charging. And given this was her pension, I can understand the distress these issues would have caused her. But I think £100 is in line with our awards for this level of distress and inconvenience. I also think the financial part of the redress is fair and reasonable for the reasons I've set out above.

**Putting things right**

In order to put things right, Curtis Banks Limited should pay Ms A as follows:

(a) Pay the difference between what Ms A paid in the years 2014 to 2017 in annual fees and what she would have paid if Curtis Banks Limited's 2018 impaired asset policy had applied. I think it would be fair to charge the lower figure of £414 as the amount she would have paid under its impaired asset policy.
(b) Pay the calculation set out in (a) above directly to Ms A, adding 8% simple interest per year to the calculated redress from the day Ms A withdrew her pension funds from her SIPP to the date of the settlement.
(c) Pay Ms A £100 for the distress and inconvenience caused.
(d) Pay all of the redress directly to Ms A.

If HM Revenue & Customs requires Curtis Banks Limited to deduct tax from the interest payment referred to above, it must give Ms A a certificate showing how much tax it's deducted if she asks for one.

**My final decision**

I uphold this complaint and I require Curtis Banks Limited to pay Ms A the redress as set out above under 'Putting things right.'

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 1 December 2023.

Yolande Mcleod
**Ombudsman**