DRN-5587350

The complaint

Mr F is unhappy that Westerby Trustee Services Limited ('Westerby') continued to take its annual loan administration fees from his self-invested personal pension ('SIPP'), after a loan investment held within his SIPP defaulted in May 2019.

What happened

After receiving advice from an adviser, in 2013 Mr F opened a SIPP with Westerby and transferred existing pensions into it totalling around £165,000. His Westerby SIPP monies were used to make various investments, including a £50,000 loan investment to 'Mr C' in May 2014 with a five-year investment term.

The evidence is that, after the loan's investment term ended in May 2019, Mr C did not repay the loan and so the loan has been in default since then. Mr F says Mr C was declared bankrupt in 2021 and his loan investment lost.

In January 2023, Mr F complained to Westerby about its 'maladministration'. He thought Westerby should never have allowed the loan investment into his SIPP and had made errors at the end of the investment term in 2019. And he was unhappy that Westerby had continued to charge him its loan administration fee for this investment after it defaulted.

In response, Westerby said Mr F's complaint had been brought too late under the relevant time limit rules, and it wouldn't uphold his complaint anyway.

Unhappy, Mr F referred his complaint about Westerby to our Service. I issued a jurisdiction decision in which I said Mr F's complaint point about Westerby's role in his loan investment had been brought too late under the relevant time limit rules for our Service to be able to consider its merits.

However, the jurisdiction decision also said that Mr F was also unhappy with Westerby's fees, and the crux of that complaint point was that he'd been charged its loan administration fees after the loan defaulted. And that these fees were charged less than six years before Mr F complained about them, so his complaint point about these particular fees had been brought in time and could be considered by our Service. So for clarity, this is the complaint point that's being addressed in this decision.

Mr F has provided us with a great deal of comments and evidence. I've carefully considered all of this, but here I'll only set out what I think is relevant to this complaint about its loan administration fees. These can be summarised as:

- Westerby shouldn't have charged loan administration fees after his loan investment went into default.

- Westerby had taken high fees from him just for providing annual statements.

- He was still awaiting repayment from Mr C's liquidators, who were keeping him informed; he'd not asked Westerby to keep him informed but it was getting involved because it wanted more money from his SIPP. He didn't want anything to do with Westerby.

- Westerby had used an out of date email address for him in more recent communication about transferring out of his SIPP.

Westerby's submissions to our Service include copies of the annual fee schedules it sent to Mr F at the relevant times. Broadly, Westerby's position regarding the loan administration fees it charged Mr F after his investment defaulted in May 2019 is that:

- The adviser would've told Mr F about Westerby's fees during the advice process - if not, he should complain to the adviser. Regardless, Westerby sent Mr F its fee schedule and fee invoices each year.

- An annual fee is still chargeable where a SIPP provider needs to look into how to get a return of funds. Westerby undertook significant such work for Mr F, including with various insolvency practitioners, and these were extraordinary works. Its fees were justified given the ongoing monitoring of Mr C's bankruptcy and reporting it had carried out for Mr F. It could have charged its time cost (of £100 to £300 per hour) for these works, but this would've been far more expensive for Mr F, so it continued to charge him a flat fee.

- Westerby's fees also covered the regulatory work it had to do as a SIPP operator for this investment of Mr F's.

- Westerby continues to manage distressed investments until it's certain they've been completely wound up. To illustrate the type of work it had undertaken for Mr F, Westerby said it had provided Mr F with details and a voting form regarding Mr C's Individual Voluntary Arrangement in 2021, submitted a Proof of Debt Claim form for Mr F, and received updates from the firm handling Mr C's bankruptcy over the years.

- However, Westerby hadn't received any updates since August 2023 from the firm handling Mr C's bankruptcy. So Westerby offered to refund Mr F its annual loan administration fee of £250 plus VAT for both 2023 and 2024 - a total of £500 plus VAT.

- Mr F's SIPP currently held the distressed loan investment, plus other assets. His SIPP can't be closed unless another SIPP provider accepted the loan investment or Mr F bought it from his SIPP. Mr F could partially transfer to another SIPP provider, but the loan investment would remain in his Westerby SIPP until Mr C's bankruptcy concluded and any returns were made - and there could still be a return. To close Mr F's loan investment on its systems and move him to its SOLO SIPP (its lowest annual administration fee), Westerby needed Mr C's bankruptcy process to completed and Mr F's agreement that he still required a SIPP rather than an alternative pension product. Mr F should seek regulated independent financial advice about his options.

I issued a provisional decision on the merits of Mr F's complaint point about the fees Westerby charged him after his loan investment defaulted. I said I didn't think Westerby had acted unfairly or unreasonably in charging him fees between 2019 and 2023 for the annual administration of a non-standard assets SIPP and for the annual administration of a loan. But Westerby had itself chosen to offer a refund of annual loan administration fee Mr F paid in 2023 and in 2024, and I thought that offer was fair and reasonable in the circumstances.

Mr F accepted Westerby's refund offer and asked when it would be paid. But he maintained that Westerby made errors regarding his loan investment and so was responsible for the financial loss to his SIPP. He thought Westerby had no right to keep his SIPP open or be involved in his affairs. He wanted to close his SIPP and end his dealings with Westerby as soon as possible, and thought I should instruct Westerby to do so. And he asked how his financial adviser could access the assets in his SIPP.

Despite being provided with the opportunity, Westerby didn't provide any response to the provisional decision.

I am now in a position to make my decision on the merits of Mr F's complaint point about the fees Westerby charged him after his loan investment defaulted in May 2019.

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.

I appreciate Mr F still feels very strongly that Westerby made errors regarding his loan investment. But I must be clear that in this complaint I am only considering Mr F's complaint point about the fees Westerby charged him after his loan investment defaulted – the jurisdiction decision that was previously issued explained why our Service could not consider Westerby's role in his loan investment.

When considering what's fair and reasonable, I've taken into account relevant law and regulations; regulator's rules, guidance and codes of practice; and what I consider to have been good industry practice at the time.

Relevant considerations

When considering what's fair and reasonable in this complaint I consider the Financial Conduct Authority (FCA) Principles for Business to be of particular relevance.

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)."*
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> *"…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 SIPPs 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. The complaint point that I am considering here relates instead to the fees Westerby charged Mr F after his loan investment defaulted in May 2019, but I think these comments are still relevant in this instance because it's clear from the regulator's comments that SIPP operators were obliged to ensure fair treatment of their customers.

I've carefully considered Westerby's obligation to treat its customers (and specifically Mr F) fairly when deciding what is fair and reasonable in the circumstances of this complaint, in which Mr F thinks Westerby cannot justify the fees it continues to charge him in terms of the management it needed to carry out after his loan investment defaulted, and that its fees are high.

The original 2013 SIPP application form completed in relation to Mr F contained a declaration which drew Mr F's attention to a number of important points. One of these was that he agreed to pay the fees and charges set out in Westerby's SIPP Fee Schedule in return for its services. The declaration was signed by Mr F, so he was aware there would be charges and understood that they would be applied according to the SIPP Fee Schedule.

I can see that between 2019 and 2023, Westerby updated its SIPP Fee Schedule in July of each of those years and sent the updated Schedule to its members. From the evidence Westerby has provided, it seems to have emailed these to Mr F. I'm mindful that Mr F has more recently told us that Westerby may have been using an email address for him that has been 'obsolete' for a number of years. So it's not clear whether the email address these updated SIPP Fee Schedules were sent to at those times was a valid one for him. But nonetheless, the copies of the updated SIPP Fee Schedules and their covering letters I've been provided with show these were also made available on Westerby's website at those times. And Mr F appears to have received the copies of the annual fee invoices Westerby posted to him, as he's provided some of these to us. So I think Westerby took reasonable steps to make its fee information available to Mr F between 2019 and 2023.

I've considered what Westerby actually charged Mr F between May 2019 and 2023. I can see that in September or October of the years 2019, 2020, 2021, 2022 and 2023, Westerby collected fees for 'annual administration of non-standard assets SIPP' and 'loan annual administration' from his SIPP.

I've looked carefully at Westerby's SIPP Fee Schedules for the corresponding years. These confirmed the costs of all the relevant services and administrative tasks for the SIPP, including the fees for the annual administration of a non-standard assets SIPP and for the

annual administration of a loan – these are the ones that are applicable in Mr F's circumstances. Each fee was set out clearly.

I've also compared these SIPP Fee Schedules to what Westerby actually charged Mr F in the specified years, and I'm satisfied these align. And I've not seen any evidence to suggest that Westerby said these fees would be amended or reduced or suspended simply because an investment was in default.

The annual administration fee was applied to Mr F's SIPP in respect of Westerby's overall management of the plan, regardless of the funds that the money is invested in. It's important to note that Mr F's SIPP doesn't just hold the defaulted loan investment; the 'Valuation of Investments' dated November 2023 shows that Mr F's SIPP also holds an investment portfolio. Further, Mr F holding a defaulted investment within his SIPP does involve administrative work on Westerby's part. And Westerby has detailed some of the work it has carried out in this regard, as set out earlier.

Taking everything into account, I'm still not persuaded that Westerby has acted unfairly or unreasonably in charging Mr F fees between 2019 and 2023 for the annual administration of a non-standard assets SIPP and for the annual administration of a loan. For completeness, based on my experience, I think the fees Westerby charged Mr F at these times were broadly in line with what I've seen from other providers - but even if that observation is incorrect, I think Westerby applied these charges in the way it said it would.

However, I note Westerby has itself offered to refund Mr F the annual loan administration fee he paid in 2023 and 2024 – so a total of £500 plus VAT. This is because Westerby says that since August 2023 it hasn't received any updates from the firm handling Mr C's bankruptcy. This refund is something that Westerby can itself chose to offer, and I think its offer of this refund is fair and reasonable under the circumstances. Mr F accepts this offer and has asked when it will be paid. So I think it's helpful to explain that if Mr F chooses to accept this final decision, then our Service will notify Westerby of his acceptance and I'd expect Westerby to then contact Mr F in good time about this payment.

Finally, I acknowledge Mr F's strength of feeling about wanting nothing further to do with Westerby, and he wants me to instruct it to close his SIPP. But as I've explained, in this decision I am only considering Mr F's complaint point about the fees Westerby charged him after his loan investment defaulted, and I don't think Westerby has acted unfairly or unreasonably in that matter. So I can't agree that it should simply close Mr F's SIPP.

Westerby has set out the options for Mr F's SIPP and suggests he seek regulated financial advice before taking any further action in respect of it. Deciding what to do with a pension can be a complex matter and it is, of course, open to Mr F to seek advice on this. Mr F has asked how his financial adviser can access the assets within his Westerby SIPP, but this would be a matter for Mr F and/or his financial adviser to discuss with Westerby.

My final decision

For the reasons given, I uphold this complaint and say that Westerby Trustee Services Limited should pay Mr F the £500 plus VAT refund of fees it has itself already offered to pay him, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 25 June 2025.

Ailsa Wiltshire
Ombudsman