

complaint

Mr R has complained about the service he received from I.P.M. SIPP Administration (IPM) who he considers haven't been transparent in their dealings with his pension scheme. Mr R says IPM made unjustified payments to third parties and failed to invest a refund issued by cheque for £2,433 by HMRC.

background

Mr R was a director of his own company and had a company pension scheme – a small self administered scheme (SSAS). Mr R was both the beneficiary and the principal trustee. One of the assets of the scheme was a commercial building that Mr R's company was the tenant of.

In 2015 Mr R was making plans to wind up his company. He wanted to make sure his pension arrangements were separated out from the company. His financial adviser recommended that he transfer the assets from the SSAS to a self invested personal pension (SIPP) with IPM. By doing this he could simplify the administration of the scheme, but still keep the property as one of the scheme assets. The adviser was to manage the additional pension assets within a General Investment Account (GIA).

The application for the new SIPP and supporting paperwork was sent to IPM in June 2015 with the instruction that all assets were to be transferred from the SSAS to the IPM SIPP. The ownership of the property leasehold was to be transferred 'in-specie' thereby avoiding the need for a sale and purchase to complete.

The transfer of the non property assets was relatively straightforward but the transfer of the property didn't complete until 29 September 2016. There were many additional external complicating factors that slowed the progress down, not least the fact that the freehold changed hands twice during the transfer period.

Mr R's company had gone into liquidation on 26 August 2016 but still had a sublease agreement in place for the property until 30 June 2017. Once the transfer of the property had taken place, IPM, as the trustees of the SIPP, became the legal owners of the leasehold property and responsible for its upkeep and ensuring that it was being managed in the best interests of the SIPP.

The company vacated the property in November 2016 and an agent was appointed to find a new tenant to take over the sublease. As the current holder of the sublease (the company) was now in liquidation, the SIPP then took over the payment of all bills due on the property.

A potential new tenant to take over the sublease was found in July 2017 and the agent was appointed as property manager going forward. A service agreement was agreed between the agent and Mr R and signed by IPM.

There were a number of lease amendments required and some building work to be carried out before the new tenants were happy to sign the sublease. Once again, the cost for these and the ongoing property upkeep was charged to the SIPP. The new sublease completed on 12 December 2017 and the agent commenced collecting the rent and making payment over to the SIPP as per the property management agreement.

In the meantime, a cheque had arrived (but wasn't passed to IPM until later) dated 15 March 2017 from HMRC for £2,433. HMRC said it was a VAT refund due in respect of overpaid VAT from the SSAS. Mr R asked that this was paid directly to him but HMRC would only pay it to the SSAS (which had now been wound up) or the SIPP. Mr R asked whether the SIPP could accept it. IPM agreed it could, so long as the payee was amended to show the trustees of the IPM SIPP and HMRC confirmed exactly what the refund was in respect of so that IPM could then treat it as they would a dividend payment.

On 13 November 2017 Mr R, via his financial adviser, asked that the cheque be returned to HMRC and that the details be provided to allow the cheque to be paid into his SIPP account. IPM responded the next day giving their requirements for accepting the cheque into the SIPP.

The SIPP bank account was changed to a different bank at the beginning of 2018. This caused problems for Mr R as he felt that the 'live' online view of the account didn't tally with the statements he received and so he wasn't sure which one could be trusted to be correct. Correspondence continued between Mr R, his adviser and IPM around the bank account, the property charges and management fees, and the VAT refund cheque.

Mr R complained to IPM in June 2018 as he felt that ever since they had taken over the running of the SIPP things had been going wrong. More specifically he was concerned that IPM had been paying money out of his pension which they shouldn't have been. He was also unhappy that their systems made it difficult for him to understand exactly what money was in his pension and what was being paid out and that the bank account information was not correct as far as he could see and didn't tally with his annual statements. He felt IPM were unhelpful and incompetent, as evidenced by the fact that the VAT refund cheque had still not been paid into his SIPP.

IPM responded to the complaint on 11 July 2018. IPM said they were satisfied they hadn't failed in their duties and so they wouldn't be upholding the complaint.

Mr R wasn't satisfied with IPM's response and referred his complaint to us.

It was investigated by one of our adjudicators. She issued her initial view on 21 December 2018. In summary she concluded that IPM had acted fairly in their dealings with Mr R, generally responding quickly to questions and requests for information. She acknowledged the property within the SIPP had caused some problems but she didn't believe the difficulties with transferring the property from Mr R's SASS to his new SIPP was down to IPM as their role wasn't to advise or act as a project manager for the transfer. Our adjudicator also concluded that IPM had acted appropriately in accordance with their role as scheme trustees/administrators when paying bills from the SIPP that were rightly due.

But the adjudicator didn't think IPM had dealt with the VAT refund cheque as they should have done. She said that IPM had initially understood the VAT refund was to be settled outside the SIPP. But on 13 November 2017 Mr R's adviser asked what IPM would need for the cheque to be paid into the SIPP. IPM set out its requirements. And so IPM was then aware that the intention was to pay the cheque into the SIPP. But IPM hadn't then taken further steps to bring that about. The adjudicator thought it should have been possible to cash the cheque by 1 February 2018. She said IPM should pay compensation to reflect the loss Mr R had suffered as a result of that money not having been invested from that date. She also said IPM should pay Mr R £100 for the distress and inconvenience he'd suffered.

IPM didn't agree with what the adjudicator had said about the delay in the banking of the refund cheque. IPM said it related to a return by the transferring scheme (Mr R's SSAS) and Mr R had completed the VAT returns for that scheme. IPM said it needed information about those returns which HMRC wouldn't have provided as they related to a different company or pension scheme. IPM said it had told Mr R what information it needed and responsibility for providing that promptly rested with him. Further it seems there was a discrepancy between the rental accounts and the VAT returns submitted by the transferring scheme. IPM said it couldn't simply bank the cheque without determining if it was correctly payable.

Mr R also made some further comments. In particular he said there were discrepancies in the on line spreadsheets. He gave examples and said that confusing explanations had been given. Amongst other things he said IPM had paid a disputed invoice for ground maintenance without consulting him and when he'd told IPM that they needed to access paperwork held by the liquidator or company accountants for proof that the invoice had been paid. Rates had also been overpaid due to an error on IPM's part and for which it had apologised. The managing agents fees had also been overpaid as there'd been a mistake in the VAT element of the invoice.

The adjudicator made some further enquiries with IPM before issuing a second view on 15 March 2019. She said IPM had said, although they knew about the VAT refund cheque in 2017, they weren't in receipt of the cheque until 26 February 2018. IPM had been advised by HMRC in a letter dated 9 August 2018 that the cheque was a refund in respect of VAT returns made by the previous scheme for March 2016 and June 2016. HMRC had made automatic deductions based on the amounts it assumed would be due but nil returns had subsequently been submitted and so the VAT was being refunded. But that didn't match what IPM had been told by the SSAS administrators and which suggested the nil returns had been submitted in error. IPM couldn't pay the cheque into the SIPP as it could be an unauthorised contribution. IPM had written to Mr R on 20 August 2018 asking for further information which hadn't been received.

In the light of that further information the adjudicator now didn't think IPM had done anything wrong or was responsible for the cheque not having been paid into the SIPP.

The adjudicator said she'd queried with IPM what Mr R had said about two statements showing different information. IPM had said the incorrect statement was produced manually from data entered by IPM. They had noted an error in the data entered as the sum of £87.58 had been rounded up to £87.60 which had led to the discrepancy. IPM confirmed that they had noticed and corrected this error in October 2018, so the records were now correct. The adjudicator said she was satisfied this was a clerical error rather than any failing in IPM's administration systems. She also thought the actual bank statements were correct.

About the outstanding invoices she said IPM, as the legal owners (as SIPP trustees) of the (leasehold) property, had a legal duty to ensure any outstanding bills were paid and that the SIPP wasn't potentially liable for recovery proceedings. If evidence was found to show the invoices weren't in fact due a refund could be requested.

There was a dispute about the property management invoices. Mr R felt there was an element of 'double-charging' of commission on the VAT element of the rent. It had been corrected since Mr R had pointed it out. IPM had said that they don't double check the invoices other than to see that the fee charged was 8%.

The adjudicator said that the agreement for the property management was made between Mr R and the agent without input from IPM, although IPM had signed the engagement letter. But fees were deducted from the rental payments and a net amount paid to the SIPP. IPM didn't have any control over how much was deducted so any error would only ever be corrected after the event.

The adjudicator maintained that IPM had acted properly and where errors had occurred they'd been quickly rectified. She no longer thought IPM should pay redress for investment loss in connection with the VAT refund cheque. But she said she understood why Mr R felt that, at times, he was 'fighting an uphill battle'. She thought there'd been a breakdown in communications on more than one occasion which had left Mr R feeling that ongoing issues weren't being dealt with and he'd be out of pocket. IPM had offered a meeting to discuss any ongoing issues which the adjudicator thought might be useful. She maintained IPM should pay Mr R £100 for the trouble and upset he'd experienced.

IPM accepted the adjudicator's findings. Mr R remained unhappy. He was still concerned about the on line bank statements which he said were spreadsheets inputted manually and which showed incorrect withdrawals and deposits. He was disappointed with the award of £100 which he didn't feel fairly reflected the time he'd spent in highlighting discrepancies in the administration of his pension and for which he'd not received any apology.

The adjudicator responded. She agreed that the format of the bank statements and account statements was very similar and so was confusing. She was satisfied the bank statements were correct but the account summary was manually produced and that's where an error had been made. She agreed IPM should have apologised and explained. But she maintained the award for distress and inconvenience was in line with our usual approach.

Mr R reiterated that the statements didn't add up and that IPM had agreed that it had made an error. He also said that HMRC had to issue several cheques as IPM held onto them and they'd expired. He also mentioned incorrect or disputed invoices and he said he'd had similar problems more recently.

The complaint has now been referred to me to decide. I'm sorry it's taken longer than we'd have liked to reach this stage of our process.

my findings

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

Mr R also made a separate complaint about his financial adviser which has been dealt with under separate reference. I'm only dealing here with his complaint about IPM.

IPM was the administrator of Mr R's SIPP. What I'm looking at is whether IPM has administered Mr R's SIPP properly and if the service provided by IPM has been of a reasonable standard. Having done so I'm satisfied on both counts. I agree with the findings the adjudicator reached and with the reasons she gave.

As the adjudicator noted, there's a vast amount of correspondence between Mr R, his adviser, other parties and IPM. I'm not going to comment on everything but I've concentrated on the main issues as well as forming an overall impression of how things went. I've given some examples to support my conclusions.

I can see that the transfer of the property was problematic. An in specie transfer of a commercial property is often complex and time consuming. Here the situation was complicated by the fact that Mr R's company had ceased trading and a new tenant for the property had to be found. That took some time and when a prospective tenant was found IPM had to liaise with a large number of parties - Mr R, his adviser, the property agent, the solicitors instructed by IPM and for the prospective tenants as well as various contractors. A considerable amount of documentation had to be agreed and completed..

Overall I think IPM dealt with Mr R's queries promptly and fully. For example, Mr R raised a number of queries (initially to his adviser) on 31 July 2017 about the new sublease checklist. IPM responded the following day, noted by Mr R's adviser as a '*swift and comprehensive reply from IPM*'. But Mr R didn't agree and felt the response was somewhat '*vague*'. But IPM dealt with Mr R's follow up queries promptly.

IPM had to chase up Mr R to agree the draft sublease. I can see that by then Mr R was beginning to feel somewhat 'side lined'. I tend to agree with what the adjudicator said about Mr R's position having changed – the property had been an asset of his SSAS and Mr R was the principal trustee. Transferring it to the SIPP meant that IPM were the trustees and so many of the decisions fell to IPM. And, as his company was no longer the tenant of the property, the property itself wasn't under Mr R's direct control. So I can understand why Mr R may have felt somewhat excluded and that he had no option but to agree to whatever IPM suggested.

But overall I think it was clear that IPM was trying to act in Mr R's best interests. That included getting the new tenancy agreed and the tenants in the property as quickly as possible. And I think IPM did try to make it clear, at times at least, that they wanted to work with Mr R. I think IPM tried to progress the matter as quickly as possible. I can't see any evidence of delay on IPM's part. IPM seems to have reacted promptly to queries and requests for information and generally tried to ensure the new lease completed as quickly as possible. For example, I note that IPM asked the agent to chase up the lack of response from the prospective tenants' solicitor to the requested changes to the lease agreement which I think evidences that IPM was proactive.

I don't think IPM paid money which it shouldn't have done. Mr R queried the payment of rates and utility bills and whether IPM was legally able to make such payments. IPM did explain the position: The lease hadn't completed in early September 2017 as originally planned and before the next rates payment fell due. As the tenants weren't in the property IPM as the owner of the property was responsible for meeting all the property costs, including those required in connection with the new sublease, such as the electrical and asbestos reports. I note Mr R considered the latter was poor value for money. But I don't think that was IPM's fault. Nor were the issues that arose about how the asbestos had been removed and disposed of.

The SIPP was also responsible for utility bills due after Mr R's company left the property and before it was re let. I agree it was prudent to arrange for the bills to be sent to the managing agent for checking before submitting to IPM for payment. I note, when a large electricity bill was received, IPM asked the agent to query it as a matter of urgency.

Mr R was also concerned that IPM had taken its own fees first. IPM explained that the charge of £825 related to its annual administration and VAT fees, both payable in advance and that no charge would be made in respect of the new lease until it completed or aborted.

I can understand Mr R's concern about the amount of payments being paid out of his SIPP fund. I can see that he may have felt he had no control over the expenditure and he may have felt that he hadn't been consulted. But I'm satisfied that IPM acted legally and appropriately in discharging the various accounts that fell due. IPM did generally seek confirmation from Mr R, via his adviser, before discharging accounts. There was a debt recovery agent's letter about an unpaid electricity account (£188.51 including the £50 recovery fee) which I don't think IPM had much choice other than to pay, even if Mr R did want to dispute the amount later.

Mr R did query the managing agents fee which IPM raised promptly with the managing agent. It seems that Mr R had agreed a 10% letting fee with the agent – 8% was the management fee. There was an extra charge for advertising which Mr R said he hadn't agreed. Mr R queried if IPM had signed off that fee. IPM replied to some other points but had to be prompted to deal with the specific query. But Mr R subsequently said that the invoice could be paid. I don't think any omission on IPM's part to deal immediately with the query about the agent's fee is significant overall or evidence that IPM failed in their duties.

There was also an issue with the VAT refund. I understand that has yet to be resolved. Both Mr R and IPM would like this matter settled. I'd assume that the cheque has now expired so a new one will be required. But I can't say that IPM is responsible for the delay in the refund being paid into Mr R's SIPP, if indeed that can happen. If IPM isn't happy about paying crediting the VAT refund to Mr R's SIPP then I'm not going to say that IPM must do that.

First, it appears that IPM has requested information from Mr R which hasn't been forthcoming. I'd suggest that Mr R provides the information that IPM has requested and which will hopefully result on IPM being happy to accept the refund. Secondly, I'm not sure to what extent it would be fair to hold IPM responsible for what might be termed 'legacy' matters connected to Mr R's company. I think that applies to some of the other issues too, such as disputed invoices relating to Mr R's company.

Mr R has also expressed concern about discrepancies when accessing his scheme bank account on line and the annual statements. The adjudicator agreed that confusion had arisen because of the similar format of the bank and account statements. But there's nothing to indicate that Mr R has suffered any financial loss. Mr R did identify an error which IPM corrected. I can understand Mr R's annoyance if no apology was forthcoming.

But I don't think there's anything to justify a higher award. Mr R may have spent time reconciling the statements. And my view might have been different if, as a result, he'd identified multiple errors. There were some errors but, given that the circumstances weren't straightforward, I don't think a higher award is justified. Awards for time spent are perhaps more modest than Mr R might expect. The award was initially suggested because the adjudicator thought IPM hadn't handled the VAT refund cheque properly. The award I'm making reflects the fact that some errors were made by IPM. I consider them to be of a relatively minor nature although I recognise Mr R is unlikely to agree.

my decision

I uphold Mr R's complaint but only in part. I.P.M. SIPP Administration Limited must pay him £100 for the distress and inconvenience suffered as a result of the shortcomings identified above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 7 November 2020.

Lesley Stead
ombudsman