complaint

Mr P has a self-invested personal pension scheme (SIPP) administered by Curtis Banks Limited. That SIPP holds a Harlequin property investment which is worthless and has been since around 2013. Mr P thinks it's unfair and unreasonable for Curtis Banks to charge annual management fees on his SIPP when it has no value.

Mr P thinks Curtis Banks has profited from the mis-selling by the adviser, who recommended the investment and the SIPP, and the original administrator of the SIPP, Montpelier. He thinks Curtis Banks should therefore repay the fees it has charged him.

Mrs P has an almost identical complaint and Mr P made both complaints at the same time. The two complaints are therefore interwoven to a degree.

background

In 2009 Mr and Mrs P were introduced to an adviser by a friend. That adviser normally dealt with mortgages. The adviser said they could invest their pensions with an overseas property investment company called Harlequin. They went to a presentation where they were told the arrangements were backed by HMRC which reassured them.

As the adviser did not deal with pension transfers Mr and Mrs P were introduced to an IFA firm I will refer to as the IFA.

Mr and Mrs P were advised they could pool their pension monies to make an investment with Harlequin. They were advised to set up SIPPs with Montpelier. Montpelier Pension Trustees (MPT) were the trustees of the SIPP and it was administered by Montpelier Pension Administration Services Limited (MPAS). I will generally refer to Montpelier except where it is important to distinguish between MPT and MPAS.

The investments were:

- a £135,000 investment in an off-plan purchase of a property investment at Merricks Beach resort in Barbados. Mr and Mrs P paid a deposit of around £40,000. The balance was payable in stages as the building work progressed. The contract was with Harlequin Property (SVG) Limited.

- a £125,000 investment in an off-plan purchase of a property investment on the Marquis Estate development on St Lucia. Mr and Mrs P paid a deposit again of around £40,000. Again, the balance was to be paid in stages. This contract was with Harlequin Resorts (St Lucia) Limited.

Mr P applied for the SIPP in July 2009 and applied to switch an existing personal pension to it. As part of the SIPP application Mr P signed a declaration that included:

- *"I hereby apply to become a member of the Montpelier Self Invested Personal Pension and if applicable the Montpelier Protected Rights Pension Scheme. I agree to be bound by the Trust Deed and Rules of the Scheme(s), which I have had the opportunity to consider. I understand that these may be amended from time to time."*

- *"In return for the services to be provided by the Scheme Administrator, I agree to pay the charges set out in the Fee Schedule and the Advisers Remuneration Section of this Application Form (section 9), as may be amended from time to time."*

So in the autumn of 2009 Mr and Mrs P had the SIPPs they had been advised to take out and the investments in Harlequin they had been advised to make. Later the investments failed, and Mr and Mrs P have suffered losses. I will set out briefly the different parts that go to make up the overall picture before dealing with the issue about which Mr P complains.

Montpelier – transfer to Curtis Banks

In 2011 Montpellier was being investigated by the regulator. It decided to sell its business and Curtis Banks bought the assets of MPAS – but not the company itself, which continued to exist. Curtis Banks was appointed by the Trustee as the administrator of the Montpelier SIPPs which continued on their existing terms.

Curtis Banks says the regulator was aware of the transfer from Montpelier to it, was keen to see the successful transfer and oversaw the process including an exercise carried out by Curtis Banks to contact clients whose SIPP contained non-standard investments.

In October 2011 Curtis Banks wrote to all clients such as Mr P and Mrs P who had invested in hotel room investments to provide information on the common features and risks associated with this type of investment and suggesting clients seek further advice if what it said did not match up with the client's understanding or if they had any concerns about the suitability of the investment.

The letter included:

> ***"Your Montpelier SIPP – Potential inappropriate assets***
>
> *As part of the transfer of the administration of Montpelier SIPPs to Curtis Banks PLC we have undertaken a review of the investments held within each SIPP, at the request of the Financial Services Authority. As administrator of your SIPP we are not responsible for any investment advice provided by third parties such as your Financial Adviser, and we are not responsible for the work carried out by Montpelier Pension Administration Service Ltd. We will, however, be administering your SIPP going forward and it is in this respect that we have carried out the review.*
>
> *We are therefore writing out to clients who hold assets within their SIPP that may represent a higher level of risk than expected, or involve more unusual investment to ensure they have received appropriate advice and fully understand what is held within their SIPP and the Risks associated with these assets.*
>
> *Your SIPP has been identified as holding one or more such assets and this letter provides information on the nature of this investment, the reasons why it is considered to be higher risk and what action you should take if you have any concerns over whether it is appropriate for you.* ***The purpose of this letter is not to alarm you, but to ensure that you are fully aware of the investments your SIPP is holding.*** *[original emphasis]*
>
> *Depending on your personal circumstances, holding these assts within your SIPP may be appropriate for you if you have received advice and/or fully understand the investments held within your SIPP and the risks associated with these, and consider them appropriate for your needs, then you do not need to take any further action. However, if the information provided in this letter does not match your understanding of the investments held within your SIPP then you should seek further advice from a financial adviser or contact us.*

The particular investments we are writing to you about are overseas hotel rooms, as your SIPP currently contains one or more such investments. There are a number of issues associated with such investments, including the following points:

- *There is a risk that they could breach the rules governing what is allowed within a pension, although HMRC have confirmed in general terms that they are acceptable and this is not considered to be a risk at the present time.*
- *These are generally off-plan investments in hotel rooms which have not been built yet. There are risks with any investment of this nature which relies on building work being completed.*
- *The track record of such investments is limited and it can be difficult to assess how they are likely to perform in practice.*
- *They can lead to a large proportion of your SIPP being concentrated in a single asset, with potential liquidity issues if this asset proves difficult to sell, or significant damage to your pension fund if the investment does not perform.*
- *As the purchase is made in stages, further funds will need to be injected into your pension funds, or borrowing arranged within your SIPP to fund the rest of the payments. If this cannot be done then you will be personally responsible for funding the balance.*

Having said this, we are advised that values of investments have increased significantly, that it should be possible to arrange borrowing to fund the rest of the payments, and that investments can be sold prior to completion. We have not been able to verify this information independently, and you may want to conduct your own enquiries or, if you wish to sell your investment at the present time, investigate whether this can be done. We would be interested in any feedback you receive…"

In April 2013 the FCA announced that it had banned the former managing director of MPAS, Mr Kevin Wells. The FCA said:

"Following investigation the FCA concluded that Wells did not have an adequate understanding of the SIPP operator's regulated activities and corresponding regulatory responsibilities or of his own responsibilities as the managing director of the firm.

Wells led a rapid expansion of the business, away from standard investments, but had not identified or mitigated the risks involved for the MPAS SIPPs and SIPP members as a result of this expansion. By allowing a high proportion of non-standard investments into the MPAS SIPPs without the necessary controls or adequate capital resource, he exposed customers and MPAS itself to a significant level of risk. ..."

Harlequin

Mr and Mrs P invested in two hotel investments with Harlequin. These were off-plan investments, meaning the investment was in a property that had not yet been built. These investments are generally regarded as non-standard investments.

In 2013 the FCA issued an alert about investing with Harlequin and the Serious Fraud Office announced it was launching an investigation into Harlequin. The company itself announced it had difficulties in areas of its operations. And without going into detail, some or all, of its companies have gone into administration or liquidation.

The investments have been valued at a nominal £1 in Mr P and Mrs P's SIPPs since November 2013. Curtis Banks wrote to Mr P about this. It said:

"Montpelier SIPP – Harlequin

We are the current administrators of your SIPP and we are writing in respect of the investment you made into Harlequin within your SIPP funds.

You may be aware that there are concerns over the Harlequin investment and various regulatory bodies have become involved. There is no hard evidence available on the outcome, but we feel there are sufficient doubts as to the true value, to lead us to treat it as potentially significantly impaired.

As administrators we are required to adopt a prudent approach to asset valuations, particularly where these values are being used to support payments from a SIPP. As a result, we are placing a nominal value of £1 on the Harlequin investment for the time being and will be showing this in future SIPP valuations. This is consistent with the approach being taken by other SIPP administrators at the present time.

We would emphasise that we have no evidence to support such a figure or any other figure at the present time and it is to be hoped that the ultimate outcome is more favourable. The approach we are adopting is driven by the need to be prudent in our valuations, it is not a current valuation based on hard evidence.

If you have concerns over your Harlequin investment, you should contact the financial adviser who assisted you in setting up your SIPP and making the investment. The Financial Services Authority has made it clear that financial advisers who acted in this capacity were responsible for advising on all aspects of the transaction, including your investment decision. Please let us know if you need contact details from us for your financial adviser. Please note that we are unable to provide you with any financial advice in relation to your pension arrangement or the investments held within your SIPP as this is not part of our role and so any questions of this nature would need to be addressed to a financial adviser.

Please note that your SIPP was administered by Montpelier Pension Administration Services Ltd (MPAS) at the time that you made the Harlequin investment. We have since taken over the administration from MPAS, but are not responsible for work done prior to our appointment. Please let us now if you require contact details for MPAS.

We will contact you again if further information becomes available."

Both Harlequin Property (SVG) Limited and Harlequin Resorts (St Lucia) Limited went into liquidation in 2017. As I understand it, the work on the developments into which Mr and Mrs P had invested ceased before then. So far as I am aware the properties have not been built.

the IFA

The IFA was a regulated financial adviser firm. It advised Mr P to set up a SIPP with Montpelier, and to transfer his pension to it so he could invest in Harlequin. The IFA ceased trading in 2015.

Mr and Mrs P made claims to the Financial Services Compensation Scheme (FSCS) in respect of the advice they received from the IFA. The FSCS considered that they had been wrongly advised and offered compensation. As the losses suffered exceeded the maximum award payable by the FSCS it paid only £50,000 each to Mr and Mrs P rather than the full amount of the loss it had calculated.

Mr and Mrs P say they made their claims to FSCS with the help of lawyers. As a result of the FSCS limits and legal fees, when they made their complaint to Curtis Banks they were still suffering a loss of around £90,000 between them.

Montpelier has also been declared in default by the FSCS and Mr and Mrs P have also made claims to it in respect of Montpelier's failings. I will say more about that shortly.

the fees charged by Curtis Banks

I now turn the issues Mr P referred to the Financial Ombudsman Service in 2017 following his complaint to Curtis banks in 2016. The compliant is about the fairness of the charges by Curtis Banks on Mr P's SIPP account. As I understand the following charges had been made by to Mr and Mrs P:

	Mr P			Mrs P	
2011	£540	paid		£540	paid
2012	£540	paid		£540	paid
2013	£548.40	paid		£548.40	paid
2014	£548.40	paid		£548.40	paid
2015	£548.40	£469.07 paid using up all the cash balance		£548.40	paid
2016	£660	written off		£660	paid
2017	£660	written off		£660	paid
2018	treated as impaired – no fee			£414	paid
2019	treated as impaired – no fee			£420	paid

In short, the complaint is that Curtis Banks has continued to charge fees to administer a SIPP which has no value. Mr and Mr P think this is unjustified. They think it is unfair and unreasonable.

Further Mr and Mrs P are suspicious of Curtis Banks' motives. They think it bought the business from Montpelier knowing the SIPP contained 'toxic' investments in relation to which Curtis Banks could continue to make charges while not accepting any liability for the 'toxic' state of the SIPP accounts.

Mr and Mrs P think Curtis Banks should have some responsibility for the original mis-selling since it agreed to take over Montpelier's business knowing it to be tainted.

Curtis Banks' position:

Curtis Banks has made a number of points including:

- It is the administrator of Mr and Mrs P's existing SIPPs on their existing terms and conditions. It has replaced MPAS as the administrator. It did not take over MPAS itself. It did not take on the past liabilities of MPAS. Any complaint about MPAS should be made to MPAS.

- Mr and Mrs P were told of the transfer to Curtis Banks and had the opportunity then to transfer their SIPP away to another provider if they wanted to.

- Curtis Banks operated the SIPPs on the existing terms and that meant Mr P remained free to transfer away if he wanted. It levied charges in accordance with the existing arrangement agreed by Mr P. Those charges are on a fixed basis rather than a time costed basis.

- Curtis Banks is involved in much work in relation to a SIPP account even when the main asset in the SIPP is valued at zero.

- Curtis Banks has collected its fees when there is sufficient cash or other assets in the SIPP. When there isn't, it has frozen the collection of further fees.

- It wrote to clients in 2013 to confirm Harlequin assets were impaired and standard annual fees were continuing to accrue. However, the Harlequin assets were still in existence and could not be removed from the SIPP.

- It stopped charging its non-standard investment annual fee.

- Curtis Banks continued to correspond with Harlequin about the status of its assets.

- FSCS announced it would consider claims such as the IFA claims. In 2016 a procedure was put in place by Curtis Banks for SIPPs that had received compensation under which they could close or continue their SIPPs. Mr P did not close his SIPP. It says it chased Mr P a couple of times but sent no further chasers once Mr P had made his complaint.

- It says Mr and Mrs P say they could not get anyone to advise them because of the toxic reputation of Harlequin investments. Curtis Banks say it is not aware of other clients having such problems.

- It wrote and emailed Mrs P seven times about Harlequin SVG and once about Harlequin St Lucia in 2016-2017.

- Since 2018 it has revised its procedures to reduce or stop fees accruing for SIPPs holding only impaired investments. However, if a SIPP holds cash/and or any other non-impaired assets charges are made.

- In 2018 FSCS announced it was willing to take assignments to it of the Harlequin investments. Curtis Banks passed that information on to Mr P. If Mr P had taken up the opportunity to assign the Harlequin investment to the FSCS he could have closed his SIPP.

the investigator's view

One of investigators considered Mr P's complaint. He did not consider that Curtis Banks had any responsibility for the original advice or investment. He did however think that the requirement on Curtis Banks to treat customers fairly meant it ought to have been more flexible on its charges once the Harlequin investments were in effect worthless. He invited Curtis Banks to make an offer to resolve matters, but Curtis Banks remained of the view that it had not acted inappropriately.

the Financial Services Compensation Scheme

Mr P was offered compensation by the FSCS in October 2015 in respect of his claim against the IFA. The FSCS calculated that, as at 23 December 2015, Mr P had suffered a compensatable loss of over £75,000.

The FSCS calculated this figure by first identifying the hypothetical value of Mr P's pension transferred to Montpelier/Curtis Banks. From this figure the FSCS deducted the value of the Harlequin investment (which it said was zero) and the cash balance in the SIPP (almost £500) and added back in Curtis Banks SIPP exit fee (which it said was £600).

I note that by taking account of the value of the SIPP the calculation accounts for the charges paid in the SIPP up to that point (since those charges will have reduced the cash balance). Further, as I understand it, the annual charges are usually collected in August each year meaning that the charge in 2015 will have been deducted from the cash balance in the account by December 2015 when the loss was calculated. The compensation paid was then limited to £50,000.

In January 2019, Mr P was also offered compensation by the FSCS in respect of Montpelier. FSCS said that Montpelier had failed to carry out effective due diligence on the investments into Harlequin. The FSCS said it did not have sufficient evidence to prove that Montpelier failed in its legal and regulatory duties in accepting the transfer of Mr P's existing pensions and so, it said, it could not pay compensation in respect of past or future SIPP charges.

The FSCS paid compensation of around £30,000 in respect of the Montpelier claim.

In principle Mr P has been compensated for charges up and including 2015 and it should only be charges in 2016 onwards that are in issue. However, in practice, because of the limits on FCSC's awards, and the way in which the 2019 redress has been calculated, mean that Mr P has not been fully compensated and it is open to him to say he has not been compensated for what he considers to be unreasonable or unfair charges since the Harlequin investments become worthless in 2013.

I considered Mr P's complaint and issued a provisional decision. I did not think his complaint should be upheld. Curtis Banks agrees. Mr P has received my provisional decision and does not agree with it, but he has not provided any further submissions or any new evidence or arguments.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And my view remains as set out in my provisional decision.

Before setting out my findings I will say something about the scope of Mr P's complaint.

When Mr P referred his complaint to the Financial Ombudsman Service he was unhappy with Curtis Banks in relation to a number of matters, but his complaint was about the fairness of Curtis Banks behaviour since it has taken over the SIPP. Mr P emphasised this point when the investigator asked Mr P about his assignment of rights of action to the FSCS when it paid compensation to him in respect of his claim relating to the IFA. Mr P said the complaint is not made on the basis that he is seeking to recover the difference between what the FSCS paid him and his full loss. Rather he thinks that Curtis Banks has behaved

unreasonably and should repay all the charges it has made so that it does not profit from the mis-selling to him of the SIPP and the Harlequin investment.

Later Mr P told us he was to receive compensation from the FSCS in respect of his Montpelier claim on the basis that Montpelier had failed to carry out adequate due diligence on the investment in Harlequin. Mr P said that this must mean that if Montpelier didn't carry out adequate due diligence Curtis Banks cannot have done so either when it took on Montpelier's business. Mr P thinks it only fair that the Ombudsman should rule harshly against Curtis Banks. And Mr P says:

> *"…we want to be compensated for the anguish, mis-selling and the total unprofessionalism that Curtis Banks has shown for the past eight years.*
>
> *We have been duped by this investment and initially felt embarrassed by our naivety but we now know we were failed by EVERY financial institution we dealt with, at every turn. The regulators have admonished the IFAs and now the pension transfer companies it would seem wholly illogical that Curtis Banks should get away with it."* [original emphasis]

Clearly, Mr P has had a very bad experience. He was given poor advice to transfer a pension to a SIPP to invest in a Harlequin investment. The investment was a high-risk investment for a pension. Investing all the pension fund in it was to take even greater risk. This poor advice needed a SIPP provider that would allow such arrangements within its SIPPs. Montpelier allowed it without making the sort of checks that a SIPP provider should have made.

Both the IFA and the original SIPP administrator have gone out of business and Mr P has made claims to the FSCS in respect of both. A very bad situation should therefore have been put right to some degree. Mr P is however still out of pocket for a number of reasons including the legal fees he incurred in making the first claim as well as all the trouble and upset he has suffered.

I realise that Mr P thinks Curtis Banks has been just as bad as Montpelier and the IFA. I do not however think that's right.

There is a problem - but it was not of Curtis Banks' making. The problem is that Mr P was advised to take out a SIPP which is a rather specialist arrangement. It is a pension and as such it is subject to strict rules. It is not like other financial services products such as a bank account or an insurance policy. In particular it's difficult to end a pension arrangement altogether. It is possible to transfer from one provider to another but not easy to draw the whole thing to an end.

Amongst other things this means that when Montpelier got into difficulties its business would inevitably be transferred to another SIPP administrator so that the SIPPs could continue. In the event it was Curtis Banks that took over. It took over as administrator of the SIPPs and the SIPPs continued on the same terms.

When Mr P applied for the SIPP he agreed to pay the fees for the SIPP. As a self-invested pension it was up to Mr P what type of investment he made (provided it was of a type permitted by HMRC.) So, for example, he could just hold cash in his SIPP, or he could invest in a spread of mainstream investments, or he could put all his money in one high risk investment that loses all its value. But whatever he did within the SIPP, he agreed to pay the fees and if necessary, to add more money to the account in order to pay them.

And Mr P agreed to pay charges on a fixed charge basis, not on, say, the basis of the value of the SIPP. Mr P's adviser should have advised him about this – but his advisers were not good so may have failed to do so. But that does not alter the contractual position. And that is the starting point. Mr P asked for a SIPP and agreed to pay the fees.

However that is not the beginning and the end. Curtis Banks is a regulated business and is subject to High Level Principles in the regulator's rule book, one of which is Principle six: *"A firm must pay due regard to the interests of its customers and treat them fairly."*

In 2007 the then regulator published a guide for its supervisors called "Treating Customers Fairly – Culture". It included the following example of good practice in decision making:

> *"One firm took over the management of a particular fund from another firm. A few years later they identified, due to the volatility in the investments market for this type of fund, that many customers may not have realised the risks associated with this type of investment. The firm decided to contact all customers with investments in this fund to make them aware of the risks and to suggest they seek advice. In this case the firm decided contacting customers was the right approach, even though they could incur substantial costs."*

The point shows a firm that had taken over an existing relationship and did not just rely on the existing state of affairs as a given. The firm in the example examined the position and took some action it thought appropriate despite the existence of a contract to establish and govern its existing relationship.

I am satisfied that Curtis Banks was under an obligation to think about its relationship with its Montpelier SIPP customers and the service it was providing to them and not just rely on the terms of the existing contract.

But having said all that context remains important. Curtis Banks were administering a SIPP so it could not just do whatever it and its clients wanted if, for example, that meant breaching HMRC requirements for SIPPs. Curtis Banks could not, for example, just agree to end the SIPP and give Mr P whatever money he still had left after the Harlequin investment failed.

And if Curtis Banks has to continue to provide the SIPP it is not, in principle, unreasonable for it to continue to make some charge for the SIPP since Curtis Banks is involved in work in relation to Mr P's SIPP even when it only holds a worthless investment.

The question remains – what is fair and reasonable in all the circumstances?

I do not really accept two points that underlie Mr P's complaint:

- First, that Curtis Banks is somehow to blame for the original advice to invest in Harlequin because Montpelier failed to stop that transaction and Curtis Banks now stands it its place. Or it's guilty of making the same mistake when it agreed to take on Montpelier's business.

- Or, second, Curtis Banks cynically seized the opportunity to profit from Montpelier's poor practices as it saw and took the opportunity to take advantage of a captive client bank whose accounts it could 'bleed dry' of all funds.

On the first point, Curtis Banks replaced MPAS as the administrator. It did not take over MPAS's liabilities for its wrongs. MPAS remained responsible for its own acts and omissions in relation to the establishment of the SIPP – and that responsibility was taken over by the

FSCS. Mr P made a claim to the FSCS and it has said MPAS was at fault and has paid compensation to him. While the FSCS did not in the event make good all the loss Mr and Mrs P have suffered, because of the cap on its awards, this does not mean Curtis Banks has a liability to pay the balance of the compensation due in respect of Montpelier's wrong. Curtis Banks is only responsible for its own acts.

When Curtis Banks came to take over from Montpelier the harm had already been done. I cannot see that there was any failure of due diligence on the part of Curtis Banks that could make it responsible for the presence of the Harlequin investments in the SIPPs. And Curtis Banks wrote to Mr P in 2011 about the Harlequin investments and in effect warned him they were high-risk investments and that he should seek advice about them if he had any concerns.

On the second point, I know Mr P thinks this, but I am not aware of any evidence to support the allegation of any unfair motive on the part of Curtis Banks when it took over from Montpelier. And the regulator would not have allowed the transfer to Curtis Banks if it had thought that it had such motives. It was known that Montpelier had many SIPPs with non-standard investments but in relation to Harlequin at least, the investments had not failed when Curtis Banks took over from Montpelier. This is clear from the letter of in 2011 I have quoted above – and that letter is inconsistent with the view that Curtis Banks somehow wanted investors trapped in worthless investments so it could 'bleed them dry'.

I am not aware of any evidence that Curtis Banks has engaged in any kind of predatory or unethical behaviour of the type Mr P suspects. I am not therefore aware of any evidence on which to base the view that it is inequitable for Curtis Banks to levy any charge at all.

It is the case that Curtis Banks has continued to provide the service of administering the SIPP. There is still some work involved in providing that service even if the SIPP has little or no value because an investment has become worthless or impaired. It is also possible an impaired asset, like Harlequin, might involve some additional work – as in this case with additional correspondence about the administration of Harlequin and the proposed assignment of the Harlequin investment to FSCS. Indeed, there was quite a lot of additional work in 2017 for example. So, the levying of some charge does in principle seem reasonable notwithstanding the very frustrating position Mr P is in having a SIPP that is worthless to him in his circumstances – ie his holding a Harlequin investment and no other assets.

So, has Curtis Banks done anything to take into account those particular circumstances – albeit circumstances that are not of its making - or has it just adopted a hard and fast "this is what the contract says" approach?

In October 2011 Curtis Banks wrote to Mr P to suggest he took advice about his investment if he had any concerns. At this time the investment was not thought to have lost its value so I do not think there is a strong case for saying charges should have been reviewed at this stage.

It should be remembered that problems with Harlequin came to light in 2013 but they were not as clear and well defined as, say, the loss on an investment in a single company that goes bust. The nature and extent of the problem was not immediately clear. It was not clear that the investment should be regarded as permanently impaired. This is reflected in Curtis Banks' letter in November 2013 quoted above.

So, although the Harlequin investment was written down to a nominal value in 2013 it was not clear then that the investment was lost for good and that an adjustment to charges might be called for.

I cannot therefore see that Curtis Banks was at fault for not taking immediate action in relation to the charges on Mr P's pension that was invested only in Harlequin with little additional cash reserve.

In 2015 Curtis Banks was told that the FSCS had paid compensation to Mr P. Curtis Banks has made the point that the way in which the FSCS calculates compensation takes into account the charges levied on the SIPP. And now that I have seen a breakdown of the calculations, I do not think Curtis Banks is entirely right on this point. As mentioned above it is not currently clear to me that all the SIPP fees paid have been refunded to Mr P. I also note that that the compensation paid by the FSCS is capped so Mr P did not receive compensation for the full amount of his loss as calculated – or at least not in his first claim.

Curtis Banks wrote to Mr P in July 2016 after the first successful FSCS claim and set out the following options for Mr P:

- Transfer the SIPP to another provider
- Take pension draw down and close the SIPP
- Continue with the SIPP
- Pay any outstanding charges and close the SIPP.

As I understand it Mr P was not happy to sign Curtis Banks' form without advice and could not find an adviser willing to advise him. So the SIPP continued. But it does seem to be the case that Mr P could have closed his SIPP at this stage and not incur any further charges. And that choice has remained open but got overtaken by the making of this complaint.

Curtis Banks' original position in 2016 was to continue to charge fees in accordance with the contract for anyone who did not close their SIPP. That means fees were deducted from any cash balance in the account. In Mr P's case, he no longer had a cash balance and so the fees were charged and requested but not paid – though no action was taken to try to compel Mr P to add more cash to his account in order to pay his charges.

Later in 2018 Curtis Banks took the decision to write off the charges made on accounts that held only impaired assets and no other holding including cash. That means that Mr P's charges have now been written off since 2015/2016.

Curtis Banks has said the following:

> *"Following a period of review from January 2018 Curtis Bank SIPP annual fees will not accrue where the SIPP has no value and holding asset(s) deemed by Curtis Banks as long term impaired. Annual fees will accrue on SIPPs where cash is held, like all other SIPPs administered by Curtis banks.*
>
> *Accrued fees will not systematically be cancelled or removed from SIPPs and Curtis Banks will continue to consider the specific circumstances of each client on a case by case basis."*

This does seem to me to be a reasonable move away from the strict legal or contractual position in the circumstances.

In Mr P's case Curtis Banks has said that the balance of the fee not paid in 2015 and subsequent charges have been written off. This seems to be a pragmatic approach and a reasonable approach to take in relation to Mr P – but one that perhaps went further than strictly necessary given, as I have said, some level of charge would not have been unreasonable.

In 2016 Mr P was given the opportunity to take steps to close the SIPP by Curtis Banks following his first successful claim to FSCS. It is not due to any fault on the part of Curtis Banks that Mr P could not get advice on what steps were in his best interest. But in the circumstances if the SIPP was not closed it does not seem unfair to carry on charging fees.

It is perhaps arguable that Curtis Banks could have reduced the level of the charges down at this point. But Curtis Banks was involved in additional work in relation to the Harlequin investments from around this time.

I do not however need to decide the point in Mr P's case because in the event Mr P has paid charges up to 2015 only and charges since then have been written off. Overall this does not seem unfair. The situation has not been an easy one for either party and while continuing to charge fees at the non-standard investment rate from 2015 might seem unfair to Mr P ultimately those fees have been waivered. And so I do not uphold Mr P's complaint.

my final decision

In all the circumstances I do not uphold Mr P's complaint against Curtis Banks Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 25 December 2020.

Philip Roberts
ombudsman