

Ombudsman's Determination

Applicant	Mrs Y
Scheme	Curtis Banks Universal SIPP (the SIPP)
Respondent	Curtis Banks Limited (Curtis Banks)

Outcome

1. Mrs Y's complaint is upheld, and to put matters right, Curtis Banks shall pay Mrs Y any additional costs that she incurred due to being required to open a new SIPP and for the late payment of service charges. Curtis Banks shall also pay Mrs Y £500 for the significant distress and inconvenience caused to her.

Complaint summary

2. Mrs Y complained about the following aspects of service that she received from Curtis Banks after the death of her husband:-
 - Curtis Banks waited almost 15 months before chasing her for a response to a letter asking her to send her husband's death certificate, which she had already sent soon after her husband's death.
 - As Curtis Banks would not allow the name of her husband's SIPP to be changed to her name, she was required to transfer the asset in her husband's SIPP, a commercial property (**the Property**), to a new SIPP. This delayed the process of claiming benefits and caused her to incur additional fees.
 - Curtis Banks recorded an incorrect valuation for the Property, and on a number of occasions did not collect on time the Property's regular service charge (**the Service Charge**) from the Property's tenant.
3. Mrs Y wanted to be given an award for the distress and inconvenience Curtis Banks has caused her.

Background information, including submissions from the parties

4. Mr Y was Mrs Y's husband.
5. Mr Y was a member of the SIPP.

6. On 9 April 2017, Mr Y died. Mrs Y was the sole beneficiary of Mr Y's assets in the SIPP.
7. Mrs Y said that in July 2017, she provided Mr Y's death certificate and other documents to Curtis Banks, including an expression of wish form (**the Expression of Wish Form**). Mrs Y said that on 31 July 2017, Curtis Banks acknowledged receipt of the Expression of Wish Form.
8. At around the same time, Mrs Y discussed a new tenant for the Property with Curtis Banks' property team (**the Property Team**). The new tenant (**the Tenant**) started to lease the Property. The Service Charge was paid from the SIPP and should have been recharged to the Tenant for payment.
9. On 17 October 2017, Curtis Banks identified that there was insufficient cash in the SIPP to meet a Value Added Tax (**VAT**) payment in respect of the Property. Curtis Banks agreed that Mrs Y would be contacted about the matter. At the same time, she would be asked for Mr Y's death certificate and will.
10. On 7 November 2017, Curtis Banks wrote to Mrs Y (**the November 2017 Letter**) with the following points:-
 - The SIPP could be used to provide a pension to Mr Y's spouse, to someone who was financially dependent on him or someone he had nominated. The pension could be secured by the purchase of an annuity policy or could be paid directly from the assets of the SIPP under a flexi-access drawdown option. The pension would be tax-free.
 - The Property was valued at £69,724.40 and had an outstanding mortgage of £17,366.01. The total value of the SIPP was £58,128.46.
 - It requested Mr Y's death certificate and will.
 - It enclosed a copy of its "Guidance Note – Benefits Guide" (**the Benefits Guide**).
 - The Benefits Guide stated:

"You have a range of options on what you can do with your pension savings. We recommend you get guidance or advice to help with this decision."

"Benefits on death – the fund will be used to provide one or more of the following: a tax-free lump sum, a pension to a dependant by payment from the fund, an annuity for a dependant, or income payments to Nominees or Successors."
11. From May 2018, the SIPP's fee schedule from its previous provider was replaced with Curtis Banks' fee schedule (**the New Fee Schedule**).

12. On 30 January 2019, Curtis Banks wrote to Mrs Y (**the January 2019 Letter**) and said that she had not responded to the November 2017 Letter. In order to proceed to the next stage of the death benefits claim, it required further information and Mr Y's death certificate. It would then decide how the death benefits would be distributed. In the meantime, she could refer to the Benefits Guide available on its website. Curtis Banks said that there would be additional documentation required before it could settle Mr Y's death benefits.
13. On 5 February 2019, Mrs Y wrote to Curtis Banks with the following points (**the 5 February 2019 Letter**):-
 - She had been shocked to receive the January 2019 Letter, as she believed that Mr Y's death benefits and the transfer of the Property had been dealt with by the Property Team and solicitors in 2017.
 - She enclosed Mr Y's death certificate and a copy of his will. Mrs Y was one of two Executors for Mr Y's will. He had no dependents.
 - The issue had caused her to suffer stress.
14. On 11 February 2019, Curtis Banks asked Mrs Y to arrange for the second Executor to sign the 5 February 2019 Letter, which she did.
15. On 21 February 2019, Curtis Banks wrote to Mrs Y with the following points (**the 21 February 2019 Letter**):-
 - It had designated the SIPP to be used to provide non-taxable death benefits to her.
 - The benefits would be non-taxable until 10 April 2017 [Curtis Banks later corrected this to 2019] (**the non-taxable deadline**). If death benefits were not paid out or transferred to another pension arrangement before this date, the benefits would become taxable.
 - In order to complete the death benefits claim, Mrs Y was asked to:
 - provide two forms of identity; and
 - complete a payment request for a death benefits application form (**the Death Benefits Form**), which would indicate how she wanted to receive the benefits.
 - If she wanted to receive a lump sum and close the SIPP, there would be no additional forms required.
 - If she wanted to transfer the benefits to a beneficiary's flexi-access drawdown pension, she would need to transfer the benefits to her own pension arrangement by completing a form - "Death Benefits – SIPP Pension Transfer Out Form". If she wanted to transfer the benefits to a SIPP with Curtis Banks, she would also need to complete a SIPP application form, which was available on Curtis Banks' website.

- There was a mortgage outstanding of £8,564.07 against the Property. The Property was valued at £69,724.40 as at 1 January 2015. If the valuation of the Property was different, Curtis Banks would require a valuation report. Curtis Banks also requested a copy of the latest mortgage statement.
 - The value of the SIPP was £67,517.96.
16. On 5 March 2019, Curtis Banks confirmed to Mrs Y that the 21 February 2019 Letter should have stated that the non-taxable deadline was 10 April 2019. As Mrs Y had confirmed that the valuation of the Property was incorrect, it asked for a valuation report.
17. On 18 March 2019, Mrs Y wrote to Curtis Banks' Chief Executive Officer with the following points:-
- Curtis Banks' administration had been shambolic.
 - Both before and after Mr Y's death, she had corresponded with Curtis Banks on his behalf.
 - She had not received the SIPP's annual statements for 2016, 2018 and 2019. She was entitled to receive them under requirements of the Financial Conduct Authority.
 - The SIPP's online account stated, "do not correspond". She wanted to know why this was the case.
 - Letters from Curtis Banks in 2015 had shown the Property's valuation as £69,724. She did not know where this valuation had come from, as its purchase price was significantly higher. The online account showed the valuation as £110,000 as at October 2013. She asked for clarification.
 - She asked why the Property Team had not collected the Service Charges since November 2017.
 - She asked why the annual service fee of £790 and the property administration fee of £211 had been increased in May 2018. The property administration fee also changed to £404.73, and there was an additional administration fee of £98.87. These charges together with the uncollected Service Charges had resulted in mortgage payments not being paid, which she had not been informed about.
 - She would not decide how to receive Mr Y's benefits until these issues had been clarified.
 - It was unhelpful to be told about the change in taxable status within 22 days of the deadline. The Property Team had received Mr Y's death certificate more than a year previously, and Curtis Banks then took too long to request the additional information and forms.

18. On 22 March 2019, Curtis Banks wrote to Mrs Y with the following points (**the March 2019 Letter**):-
- It apologised and accepted that there had been some failings, but it did not accept that it had caused a delay to the payment of the death benefits.
 - Its records were updated with “do not correspond” to ensure that no automatically generated letters or emails were sent to Mr Y following his death.
 - It stopped producing annual review packs as the assets in the SIPP were being held for the benefit of Mr Y’s beneficiaries.
 - As it had not received a response to the November 2017 Letter, it wrote to Mrs Y again on 30 January 2019.
 - The Service Charge dated 1 April 2018 had not been recharged to the Tenant. It apologised and said that an invoice would be issued urgently. It asked Mrs Y if there were any other outstanding Service Charge invoices. It noted that the Property’s postcode had changed.
 - It enclosed a copy of the New Fee Schedule.
 - The only valuation of the Property it had on its file was dated 3 October 2013 for £110,000. It did not know the source of the £69,724.40 valuation.
19. On 26 March 2019, Mrs Y emailed Curtis Banks with the following points:-
- She wanted to retain the Property in a SIPP in her name.
 - She asked for four further invoices for the Service Charge to be issued to the Tenant. They were for: 28 February 2018, 6 March 2018, 13 June 2018 and 17 September 2018. There appeared to be no invoices issued since September 2018.
 - She had an email from Curtis Banks dated 29 February 2018 confirming that an invoice would be posted the following day. She alleged that the invoice was not sent.
 - She queried why Curtis Banks did not follow up unpaid invoices with the Tenant.
20. On 27 March 2019, Curtis Banks sent Mrs Y the Death Benefits Form, the Benefits Guide, a letter about Pension Wise, and a Curtis Banks SIPP application form (**the Application Form**). Mrs Y completed and signed the Death Benefits Form and the Application Form.
21. On 28 March 2019, Curtis Banks received the completed Death Benefits Form and the Application Form.

22. On 2 April 2019, Curtis Banks emailed a pension projection illustration to Mrs Y. It said that in order to update the Property's valuation, she would need to complete a new property application form (**the Property Application Form**).
23. On 3 April 2019, Curtis Banks confirmed to Mrs Y that she had met the non-taxable deadline for the death benefits.
24. On 7 April 2019, Mrs Y wrote to the Property Team with the following points:-
 - As she was the beneficiary of the SIPP, and she wanted it transferred to her own name, she asked why she needed to open a new SIPP.
 - She queried why she had been asked what investments she wanted her SIPP to be invested in, when she had only wanted to transfer the Property to it. She also asked why she needed a pension projection illustration, and why she was not told in July 2017 that she needed to open a new SIPP, obtain a valuation for the Property and instruct solicitors, when she was dealing with the Property Team about the Tenant.
 - Curtis Banks had not informed her of the amount of outstanding mortgage. She asked for the current balance. She had received no bank statements for the SIPP since April 2017.
 - Curtis Banks had not collected four Service Charges of £159.52 each from the Tenant. She asked if the amounts were still outstanding.
25. On 8 and 11 April 2019, Curtis Banks contacted Mrs Y and made the following points:-
 - It was not possible to transfer the SIPP into her own name, so she needed to set up her own SIPP. The Property could then be transferred in-specie to her new SIPP. The benefits could not remain in the SIPP as the assets were in the name of the Late Mr Y.
 - She had left the investment details in the Application Form blank, so it contacted her to check that her funds should remain in cash.
 - It always issued a pension projection illustration of projected benefits on receipt of a new Application Form. Her illustration was based on the Property valuation being £200,000, as stated by her in the Application Form.
 - The Property Team was not aware of what was required when processing a death benefit. It apologised for the breakdown in its communications with the benefits team.
 - It did not receive regular mortgage statements, and it only updated its records when a statement was received. It would request the balance of the outstanding mortgage.

- She may not have received a letter notifying her of the New Fee Schedule as it concerned the SIPP. If she had replied to the November 2017 Letter, and the benefits had been transferred to a new SIPP, she would have received a copy of the New Fee Schedule.
 - It had asked the Property Team to re-issue the missing invoices for the Service Charge to the Tenant.
 - Curtis Banks did not chase tenants for outstanding invoices, but it had subsequently updated its process to do so.
26. On 15 April 2019, Mrs Y signed the Property Application Form.
27. During April and May 2019, the following actions took place:-
- Curtis Banks confirmed to Mrs Y that her new SIPP had been set up.
 - Mrs Y confirmed to Curtis Banks that she wanted to retain the Property in her SIPP. She sent the Property Application Form to Curtis Banks, and Curtis Banks confirmed that the Property could be accepted into Mrs Y's SIPP.
 - Curtis Banks informed Mrs Y that the outstanding balance on the mortgage was £2,021.30. Mrs Y instructed Curtis Banks to redeem the outstanding balance of the mortgage.
 - Curtis Banks received a valuation of the Property from Mrs Y's valuer.
 - Curtis Banks instructed Mrs Y's solicitor to draft the Property's transfer document to enable the Property to be transferred to Mrs Y's SIPP.
28. On 3 July 2019, Curtis Banks informed Mrs Y that the Property's transfer document had been signed and received.
29. On 4 July 2019, Curtis Banks asked Mrs Y to authorise payment of the solicitor's invoice.
30. On 8 July 2019, Curtis Banks confirmed to Mrs Y that as the Tenant's rent deposit had not transferred with the Property's title, there would be an additional solicitor's fee of £700 plus VAT. She was asked to accept the solicitor's invoice online.
31. On 9 July 2019, Mrs Y told Curtis Banks that if it had made her aware of the requirement to transfer Mr Y's assets, she would have opened a new SIPP sooner, and the Tenant's rent deposit would have been paid directly into her SIPP. She did not believe that she should pay the solicitor's invoice.
32. On 9 August 2019, the Property was transferred to Mrs Y's SIPP.
33. On 29 August 2019, Mrs Y wrote to Curtis Bank with the following points:-
- She did not have an Independent Financial Adviser and did not know the process or legal requirements following Mr Y's death.

- She should have been informed of the process at the beginning. Despite her stating her concerns, no one at Curtis Banks had taken responsibility to support her from start to finish or taken the time to understand her case when she telephoned.
- She did not understand why Curtis Banks had accepted the Expression of Wish Form for a SIPP that was not in her name.
- Due to grief and assumptions from her discussions with Curtis Banks, she wrongly dismissed the November 2017 Letter. She thought that nothing else was outstanding.
- She had paid solicitor and valuation costs of more than £3,000. This could have been lower if the work had been carried out at the same time as the new lease was agreed with the Tenant.
- Curtis Banks had failed to pay her valuer because it had not linked the SIPP to her SIPP.
- A Curtis Banks representative had said that he would get back to her, but then moved departments, so she had to chase for a response.
- She had been told on two occasions that the transfer of the Property would complete, but then further legal work was required. When she believed that the Property had been transferred to her SIPP, she was then told that it had not been fully completed and needed to go to two further teams to finalise.
- She had experienced months of stress and upset and she had not received a formal apology or explanation.

34. On 12 September 2019, the cash balance was transferred to Mrs Y's SIPP.

35. On 18 October 2019, Curtis Banks wrote to Mrs Y with the following points:-

- It apologised and accepted that there had been delays in completing the transfer of the Property.
- It refunded an in-specie transaction fee of £120 to Mrs Y's SIPP.
- The transfer of the Property had been completed within an expected timeframe for a transaction of this type.
- It had identified that the Tenant's rent deposit also needed to be transferred. It was not clear whether this would need to be formally assigned or not, so was referred to a solicitor. It was agreed that formal assignment was not required, and the transfer proceeded without requiring any further documents.
- The transfer of cash took longer due to delays by the Property Team.

36. Clauses 13.4 and 13.6 of the SIPP's terms and conditions (**T&Cs**) provide that a beneficiary to whom a death benefit lump sum has been awarded on the death of a SIPP member, may, instead of receiving the lump sum, ask to have flexi-access drawdown, and specify that Curtis Banks will make payments directly to the beneficiary's bank account.
37. Following the complaint being referred to The Pensions Ombudsman (**TPO**), Curtis Banks made further submissions that have been summarised below:-
- It did not chase beneficiaries soon after a death notification as it could be insensitive. However, it contacted Mrs Y within the two-year timescale for being able to receive non-taxable benefits.
 - It was standard practice for Curtis Banks to require a beneficiary to open a new SIPP when wanting to retain death benefits in the SIPP. This was to preserve the non-taxable status of the benefits and to ensure that when there were multiple beneficiaries, their benefits were held separately.
 - Benefits paid from Mrs Y's SIPP would be non-taxable. Mrs Y's SIPP was not allowed to receive any other transfers or contributions, as those benefits could be taxable.
 - Mrs Y was currently in the process of transferring her benefits to another pension arrangement.

Adjudicator's Opinion

38. Mrs Y's complaint was considered by one of our Adjudicators who concluded that there was maladministration. The Adjudicator's findings are summarised in paragraphs 39 to 54 below.
39. Mrs Y first sent Mr Y's death certificate and the completed Expression of Wish Form to Curtis Banks in July 2017, and Curtis Banks acknowledged receipt of these documents. At around the same time, Mrs Y had been discussing a lease for a new tenant with the Property Team, and during these discussions she was not asked for any further paperwork in respect of Mr Y's death. Then, in November 2017, Curtis Banks asked Mrs Y, in the November 2017 Letter, for Mr Y's death certificate and will. As she had already sent Mr Y's death certificate, and this had been acknowledged, she believed that the matter had already been dealt with and took no further action.
40. It was not until 30 January 2019, the January 2019 Letter, that Curtis Banks told Mrs Y that further action was required, and the two-year deadline for her to be able receive non-taxable death benefits was 10 April 2019. This put her under time pressure to provide outstanding documents and decide how she wanted to receive the benefits.

41. Mrs Y took no action after receiving the November 2017 Letter, but it had requested a copy of Mr Y's will. The Adjudicator did not see evidence to suggest that Mrs Y sent Mr Y's will to Curtis Banks in July 2017. So, it would have been reasonable for someone in Mrs Y's position to have responded to the November 2017 Letter by at least sending Mr Y's will to Curtis Banks.
42. The Property Team did not liaise with Curtis Banks' benefits team when Mrs Y first sent in Mr Y's death certificate in July 2017, and Curtis Banks apologised for this. Curtis Banks' actions in not liaising between internal teams in July 2017, and then waiting almost 15 months before chasing Mrs Y for further information, amounted to maladministration. After receiving the 5 February 2019 Letter, Curtis Banks acted promptly, and Mrs Y was able to designate her benefits before the deadline.
43. The SIPP was a registered pension scheme (**RPS**) and the benefits that could be taken had to be in accordance with the Finance Act 2004 (**the 2004 Act**) and related regulations. The 2004 Act provides that on the death of a member, an RPS which is not a defined benefit arrangement can provide¹:
 - a dependant's annuity;
 - a dependant's drawdown pension; or
 - a lump sum death benefit.
44. The 2004 Act and related regulations also make provision for transfers after death to another RPS². Sums and assets representing a dependant's flexi-access drawdown pension fund could be transferred to another RPS, but only one that has no other assets and the new arrangement should be treated for the purpose of certain drawdown calculations as if it were the old arrangement.
45. A dependant's drawdown pension if paid from assets designated for drawdown after April 2015 needed to be a flexi-access drawdown pension and the funds designated for this purpose needed to be flexi-access drawdown pension funds.
46. The benefits set out in paragraph 43 were the payments that could be made from a member's SIPP after death, and, other than the lump sum, they could only be paid to a dependant of the deceased member. So, in effect, under the 2004 Act, Mr Y's death benefits could in principle have been provided to Mrs Y directly from the SIPP.
47. Curtis Banks provided a letter and several forms and leaflets in its correspondence with Mrs Y as follows:-
 - The November 2017 Letter indicated that benefits could be paid directly to her from the assets of the SIPP under a flexi-access drawdown option.

¹ S.167 and s.168 and Part 2 of Schedule 28 of the 2004 Act

² S.169 of the 2004 Act

- The Benefits Guide, which appeared to be a guide for members as it covers both member benefits and death benefits. In the death benefits section, there was no mention that a dependant would need to transfer the assets of a deceased member's SIPP to a new SIPP.
- The Death Benefits Form, which Mrs Y was required to complete and choose between a full lump sum or a beneficiary's flexi-access drawdown pension. It also requested bank account details for payment. This suggested that payments were made directly, and there was no mention that a dependant would need to transfer the assets of a deceased member's SIPP to a new SIPP.

On pages eight and nine of the Death Benefits Form, there was summary guidance on pension benefits including information about tax rules and options. Confusingly, these reflected the rules applicable to a member's benefits rather than a dependant's benefits, for instance referencing the availability of a 25% tax-free lump sum and did not provide guidance relevant to death benefits.

- The Application Form, which Mrs Y was required to complete in order to open a new SIPP. This document appeared to be a standard SIPP application form, assuming personal and/or employer contributions would be made, and not one tailored for the transfer of a dependant's flexi-access drawdown funds, which would not be able to hold any other assets or receive further contributions.
- The T&Cs, where clauses 13.4 and 13.6 provided that a beneficiary to whom a death benefit lump sum had been awarded on the death of a SIPP member, may, instead of receiving the lump sum, ask to have flexi-access drawdown. It specified that Curtis Banks would make payments directly to the beneficiary's bank account. There was no mention that a dependant would need to transfer the assets of a deceased member's SIPP to a new SIPP.

48. Having regard to the 2004 Act and the November 2017 Letter, forms and leaflets, it was not clear why Curtis Banks required Mrs Y to open a new SIPP as a condition of implementing a dependant's flexi-access drawdown request. Based on the T&Cs and the Death Benefits Form, a dependant's flexi-access drawdown option appeared to have been available under the SIPP. Furthermore, none of the documents set out in paragraph 47 referred to the need for a transfer to a new SIPP, and the Application Form appeared to be a standard application form not tailored for a transfer of a dependant's flexi-access drawdown fund.

49. The forms and leaflets provided to Mrs Y were consistent with the 2004 Act regime, which allowed the whole of the SIPP to be allocated to a dependant's flexi-access drawdown fund for Mrs Y within the SIPP without the need for a transfer to a new SIPP.

50. Curtis Banks said that its standard practice was to require a beneficiary to open a new SIPP when retaining death benefits in the SIPP. This was to preserve the non-taxable status of the benefits and to ensure that when there were multiple beneficiaries, their benefits were held separately. However, the non-taxable status of the benefits could have been preserved in the SIPP, and Mrs Y was Mr Y's sole beneficiary.
51. Curtis Banks should not have required Mrs Y to transfer the death benefits to a new SIPP, and its actions in requiring her to do so amounted to maladministration. If Mrs Y incurred any additional costs as a result of being required to open a new SIPP and to transfer the Property to it, they should be reimbursed to her by Curtis Banks.
52. It appeared that Curtis Banks' records had an incorrect valuation for the Property, but it was not clear how this came about or that this was caused by maladministration by Curtis Banks.
53. Curtis Banks was late in collecting the Service Charge from the Tenant, and it did not proactively chase the payments. This also amounted to maladministration. Mrs Y did not allege or submit any evidence to suggest that she suffered financial loss from receiving the payments late. However, if the late payments did result in her paying any additional costs, such as interest charges or late mortgage payment fees, they should be reimbursed to her by Curtis Banks.
54. Curtis Banks' actions caused Mrs Y to suffer months of stress and upset at a time when she was dealing with her husband's death. This caused Mrs Y to suffer significant distress and inconvenience, and Curtis Banks should pay Mrs Y £500.
55. Curtis Banks did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider.
56. Curtis Banks' comments are summarised below:-
 - It did not accept that Mrs Y's complaint regarding the Property administration was submitted to TPO within the required six-month deadline set out in the March 2019 Letter.
 - The pension tax manual confirmed the following:

“A beneficiary wishing to take their pension benefits as beneficiary's drawdown pension must designate sums and assets in a money purchase arrangement as being available for drawdown pension. The sums or assets designated for beneficiary's flexi-access drawdown are called 'newly-designated funds'.”

- For death benefits to be treated as authorised, funds must be designated in a pension so that income can be withdrawn. To do this, funds were transferred into a SIPP in the name of the beneficiary in 'newly-designated funds'. A beneficiary wanting to take pension benefits as a beneficiary's drawdown pension must designate sums and assets in a money purchase arrangement as being available for drawdown pension.
- The Benefits Guide did not say that income would be paid from the deceased's SIPP.
- The options in the Death Benefits Form were lump sum or 'beneficiary flexi-access drawdown pension'. The wording indicated the need for a beneficiary SIPP, and there was no indication that funds would remain in the deceased's SIPP. It asked for bank details so income could be paid directly to the beneficiary from their own beneficiary pension. There were no documents that said or implied that these payments would be paid from the deceased's SIPP.
- Clauses 13.4 and 13.6 of the T&Cs were in relation to income payments and did not refer to where the income was paid from.
- A SIPP was for benefits of the named policyholder, who would have taken advice before opening the product. The SIPP's administrator was required to report on certain events, such as a SIPP establishment, and this could only be in the name of the original member. The SIPP would have been set up with all of the original client details and associated history, and those details needed to be retained in accordance with its retention policy. These could not be overwritten in favour of a beneficiary and this would not be an authorised payment of death benefits as the funds would not be known as 'newly-designated funds'.

57. I have considered Curtis Banks' comments, but they do not change the outcome. I agree with the Adjudicator's opinion.

Ombudsman's decision

58. The main part of Mrs Y's complaint is about the designation of funds for a dependant's flexi-access drawdown. For tax purposes, a SIPP may have one or more 'arrangements' that relate to a member. The 'arrangement' in a SIPP is money purchase and defined in Section 152 of the 2004 Act. Funds held in respect of an 'arrangement' can be designated for drawdown by the member or used to buy an annuity. If the member has not yet used or designated the 'arrangement', it is known as 'uncrystallised funds'. The term 'newly-designated funds' relates to the 2015 tax changes that amended the conditions on drawdown in Section 28 of the 2004 Act and replaced designated funds.

59. A SIPP can provide benefits for a member or a dependant on the death of the member, regardless of the age of the dependant. In Mrs Y's case, the issue is whether it was necessary to transfer Mr Y's funds to a new SIPP in Mrs Y's name prior to designating the funds for a dependant's flexi-access drawdown pension.
60. If death benefits are to be paid to one dependant, such as Mrs Y, that one dependant is allowed to designate the funds for a dependant's flexi-access drawdown pension, which can be paid directly from the deceased member's SIPP. The 'newly' in 'newly-designated funds' does not refer to a requirement to set up a new SIPP. It is simply referring to funds being designated for drawdown either for a member or a dependant, or successor or nominee, after April 2015, or if being converted if designated before that date. So, there was no legislative requirement for Curtis Banks to transfer Mr Y's funds to a new SIPP in Mrs Y's name.
61. The section of the pension tax manual Curtis Banks refers to is about a beneficiary's drawdown under a member's 'arrangement' and covers a dependant's flexi-access drawdown pension as well as a nominee or successor's. For Mrs Y, I am only concerned with the dependant's flexi-access drawdown. The main point is that for an income to be a dependant's flexi-access drawdown, which is an authorised payment under the pension death benefit rules under Section 167 of the 2004 Act, it must relate to sums and assets relating to the arrangement of the deceased member under a registered pension scheme such as a SIPP. This does not require a dependant to set up a new SIPP.
62. I note that the Benefits Guide does not say that income would be paid from the deceased's SIPP. But it also does not say that it requires a new SIPP, so this is not helpful in Mrs Y's situation. However, I disagree with Curtis Banks' suggestion that wording in the Death Benefits Form indicates that a new beneficiary SIPP would need to be set up. Indeed, the fact that the Death Benefits Form offers the option of a beneficiary's flexi-access drawdown pension, which Mrs Y opted for, means that benefits would be paid from the member's SIPP after the member's death, not from a new SIPP.
63. So, Curtis Banks should not have required Mrs Y to transfer her husband's death benefits to a new SIPP, and its actions in requiring her to do so amount to maladministration. If Mrs Y incurred any additional costs as a result of being required to open a new SIPP, they should be reimbursed to her by Curtis Banks.
64. In respect of Curtis Banks' assertion that Mrs Y's complaint regarding the Property administration was submitted to TPO outside of the required six-month deadline, this is incorrect. The time limit for which I am allowed to investigate complaints is set out in regulation 5 of the Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996 and is three years from the earliest date on which the applicant knew or ought reasonably to have known of the dispute's occurrence.
65. I agree with the Adjudicator's opinion that Curtis Banks' other administration issues also amount to maladministration.

66. In recognition of the significant distress and inconvenience the maladministration caused Mrs Y, Curtis Banks shall pay Mrs Y £500.
67. I uphold Mrs Y's complaint.

Directions

68. Within 28 days of this Determination, Curtis Banks shall:-
- a) Determine whether Mrs Y incurred any additional costs due to being required to open a new SIPP and to transfer the Property to it, compared with if she had been allowed to access benefits directly from the existing SIPP.
 - b) Determine whether Mrs Y incurred any additional costs due to the late payment of the Service Charges.
 - c) If Mrs Y did incur additional costs in a) or b) above, the total amount should be paid to Mrs Y's SIPP. If Mrs Y has already transferred her SIPP to a new pension arrangement, the amount should be transferred on her behalf to her new provider.
 - d) Pay Mrs Y £500 for the significant distress and inconvenience caused to her.
69. The cost of determining whether Mrs Y incurred any additional costs should be borne by Curtis Banks.

Dominic Harris

Pensions Ombudsman
9 December 2024