

Ombudsman's Determination

Applicant	Mr T
Scheme	Self-invested Personal Pension - The Greyfriars Preferred Retirement Account (the SIPP)
Respondent	Hartley Pensions Ltd (Hartley)

Outcome

1. Mr T's complaint is upheld. To put matters right, Hartley shall pay Mr T the difference between the SIPP fees it should have received since taking over the administration of the SIPP and the fees it actually received, together with interest.
2. In addition, Hartley shall pay Mr T £1,000 for the serious distress and inconvenience he has suffered.

Complaint summary

3. Mr T has complained that Hartley charged him excessive fees for administering the SIPP.

Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
5. The SIPP was originally administered by Greyfriars Asset Management LLP (**GAM**).
6. Hartley has provided a copy of GAM's SIPP Fee Schedule. It is unsigned and not dated. It shows that GAM applied the following charges to the SIPP, in addition to other charges which are not relevant to this complaint:-
 - Yearly management fee of £500.
 - Yearly pension drawdown administration fee of £125.
7. In October 2018, Hartley notified Mr T that it had acquired the pension assets of GAM, which included the SIPP. Hartley assured Mr T that this change would not have an impact on the SIPP's investments, the administration of the SIPP, or the fees. The

letter included an information sheet and directed Mr T to Hartley's website for an updated Key Features document.

8. In December 2018, Hartley sent Mr T an invoice for £375, in respect of its half-yearly SIPP administration fee. Mr T has said that he did not receive this invoice.
9. On 8 March 2019, Mr T complained to Hartley that he had not received any income payments from the SIPP, in respect of the period to February 2019. He said he had sent several emails to Hartley to try and resolve the matter and had not received any further communication concerning the SIPP, since Hartley acquired the pension assets of GAM.
10. On 29 March 2019, Hartley wrote to Mr T and informed him that there was an outstanding invoice for £375 from December 2018.
11. On 26 April 2019, Hartley sent an email to Mr T and included a copy of the invoice for December 2018. Hartley explained that the invoice covered the period from June to December 2018. It also said:-
 - When GAM was the administrator of the SIPP the fees shown in the invoices were more than £900 in total, as they included services such as administration, advice and discretionary fund management. Hartley did not provide some of these services, so its invoices had been updated, to ensure that Mr T only paid for the service he received.
 - The yearly administration fee was based on the minimum administration requirements that Hartley had listed in the email. These were: ongoing responsibility as SIPP Administrator; professional responsibility and independent Trustee of the SIPP; routine administration which included carrying out non-reportable transactions, record keeping, general technical and administration queries; preparing and filing the Registered Pension Scheme event report; ongoing negotiations with and reporting to Her Majesty's Revenue and Customs (HMRC); revisions to the Trust Deed and SIPP Rules; facilitating the purchase and sale of assets on behalf of the SIPP; reclaiming tax relief from HMRC on pension contributions.
 - Hartley's fee structure was not based on a 'per activity' basis, or the value of the assets in the SIPP.
 - Mr T's agreement to settle the fees formed part of his application for the SIPP, which he had signed. It confirmed that in return for the services provided by GAM, he agreed that GAM may deduct charges from his SIPP, as outlined in the schedule of fees.
 - Mr T had confirmed that he had read the 'Key Features of Greyfriars SIPP' leaflet and had been notified of the fees involved in setting up and administering the SIPP.

- Mr T received suitable financial advice in connection with the set up and funding of the SIPP. GAM's schedule of fees would have been provided to him during his meeting with the financial adviser. The schedule clearly stated that the fees were taken as a monetary amount and were payable in advance.
12. In response, Mr T highlighted that the invoice included fees in respect of a period that predated Hartley's appointment as Administrator of the SIPP.
 13. On 29 April 2019, Hartley replied to Mr T and said:-
 - Hartley should have worked out the total fees GAM would have charged for the first four months of the period covered by the invoice.
 - The average fee displayed on the invoices was £750 during GAM's administration of the SIPP. So, the monthly fee on a pro-rata basis was £125.
 - During Hartley's administration of the SIPP, the fee charged bi-yearly had amounted to £312.50, which equated to a monthly fee of £52. Consequently, the invoice for December 2018 should have been for a total of £724.80, including VAT. The invoice covered the four-month period that GAM administered the SIPP and the period of two months during which the SIPP was administered by Hartley.
 14. Mr T accepted Hartley's explanation and paid £724.80 in respect of the fees.
 15. In May 2019, Mr T appointed AFH Wealth Management (**AFH**) as the Servicing Agent for the SIPP.
 16. On 27 June 2019, Hartley received a payment of £1,712.48 from the SIPP.
 17. On 30 July 2019, Mr T wrote to Hartley and complained about the payment of £1,712.48 it had received from the SIPP. He said Hartley had received a total of £2,087.48 since taking over the administration of the SIPP. However, at no time had he been informed of a new fee structure or had agreed to those fees. He added that Hartley's website showed that yearly fees would be no more than £400, so there was no justification for these deductions being made from his SIPP.
 18. On 9 August 2019, Hartley acknowledged Mr T's complaint.
 19. On 3 September 2019, Hartley informed Mr T that its investigation of his complaint was ongoing. Hartley said that it anticipated issuing a response within the eight-week period allowed.
 20. Mr T has said that Hartley did not respond to his complaint.
 21. On 21 June 2020, Hartley produced a yearly review of Mr T's SIPP. The review showed that Hartley's fees and charges for administering the SIPP were:-
 - A yearly management fee of 0.5% per year, plus VAT, applied to all funds in the SIPP.

- Investment fund charges, depending on Mr T's investment choices. This was shown as "zero", based on his existing investments.
- Adviser's charges: Hartley was not making any payments to Mr T's financial adviser for arranging the SIPP.

22. On 8 July 2021, Hartley received £1,757.82 from the SIPP.

23. On 17 August 2021, Mr T complained to Hartley about the payment of £1,757.82 that had been deducted from his SIPP. Mr T has said that he did not receive a response from Hartley.

24. On 29 July 2022, Hartley was placed into administration.

25. In his submissions to The Pensions Ombudsman (**TPO**), Mr T said in summary:-

- Following the acquisition of the SIPP by Hartley, he was approached by a company called Insight, who sought to secure his agreement to provide him with financial advice. After discussions, he rejected Insight's offer in February 2019. He did not have any dealings with Insight nor did it provide him with any financial advice in connection with the SIPP.
- In April 2019, he noticed that payments had been made by the SIPP's pension platform, 7im, to Insight each month from November 2018. He instructed 7im to stop making further payments and subsequently received a full refund from Insight.
- The agreed fee structure with GAM covered administration, financial advice, and discretionary fund management. It seemed that Hartley continued to charge him on the same basis as GAM, even though it only administered the SIPP.
- The only correspondence he received from Hartley was monthly payslips. He did not receive any statements or valuations from Hartley at any time. In his view, this shows that Hartley was falling short of its statutory obligations.

26. In its submissions to TPO, Hartley said in summary:-

- Prior to the acquisition of the SIPP by Hartley, GAM charged Mr T 0.5% of the SIPP's value plus VAT. These fees were deducted half-yearly in arrears.
- GAM's fees included full advice and administration. As Hartley was unable to provide advice, Mr T was migrated to Insight. Insight would have provided him with ongoing advice. It would have invoiced Hartley and its fee would have been paid from the fees Hartley received from the SIPP. Hartley accepted that its communication to Mr T regarding Insight was poor.

Adjudicator's Opinion

27. Mr T's complaint was considered by one of our Adjudicators. The Adjudicator concluded that further action was required by Hartley to remedy the financial injustice and the distress and inconvenience he had suffered in connection with this matter.

The Adjudicator's findings are summarised below:-

- The Adjudicator said that following the acquisition of the SIPP's administration from GAM, Hartley should have provided Mr T with information about its fees and charges. GAM's fees covered administration services, as well as financial advice and discretionary fund management. Hartley provided only administration services, so its fees should have reflected this.
- Hartley said that information on its fees was available through Mr T's financial adviser and was also published on its website. The Adjudicator noted that, apart from the unsigned and undated GAM Schedule of SIPP Fees, Hartley had not provided any evidence to show the exact fee structure that had been agreed between Hartley and Mr T.
- The Adjudicator noted that Hartley had failed to inform Mr T that his SIPP had been migrated to Insight or make him aware about how it would pay Insight out of the fees collected from his SIPP. The Adjudicator said Mr T only became aware of this position after he complained to Insight.
- The Adjudicator said that Hartley had not been clear and specific about the fees it charged Mr T for administering the SIPP. Mr T said that Hartley's website showed a yearly fee of no more than £400. However, in its email of 29 April 2019, Hartley said that its fee was £52 per month (approximately £625 per year). However, the amounts Hartley deducted from the SIPP, in July 2019 and July 2021, were significantly higher than £400 or £625.
- On 26 April 2019, Hartley informed Mr T that its fee structure was not based on a 'per activity' basis or the value of the SIPP. However, its yearly review of 21 June 2020 showed that its annual management fee was based on a percentage of the SIPP's value.
- Hartley failed to investigate and respond to the complaints Mr T made on 30 July 2019 and 17 August 2021.
- Hartley's website showed fees for three types of SIPP arrangements, but did not include any fee information in respect of the type of SIPP Mr T held. The administration fees for the three SIPP arrangements were £300, £400, and £900 per year respectively. In the Adjudicator's view, Hartley had not demonstrated that its administration of the SIPP justified a fee of £900. While this was broadly in line with the fee GAM had charged Mr T, that fee covered charges for additional services. As the parties had not provided sufficient evidence to show the correct fee Hartley should have applied to Mr T's SIPP, the Adjudicator considered that the mid-range fee of £400 per year should have been applied by Hartley. He

concluded that Hartley should refund Mr T any excess fees it received for each year it administered the SIPP and pay him interest on these excess fees, calculated at the base rate for the time being quoted by the Bank of England.

- The Adjudicator also concluded that if Hartley had provided Mr T with information on the fees that applied to his SIPP from the outset, and had collected the correct level of fees, Mr T would have had no reason to complain.
- Hartley had failed to respond to two separate complaints Mr T had made concerning his SIPP, even though it was a regulatory requirement to issue a response. The Adjudicator said this would have caused Mr T serious distress and inconvenience. So, Hartley should pay Mr T £1,000, for the serious non-financial injustice he has suffered.

28. Hartley did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. I note that Hartley has not provided any further comments. I agree with the Adjudicator's Opinion and I have made some additional observations below.

Ombudsman's decision

29. Hartley has not provided any contemporaneous evidence to show the exact fees that had been agreed with Mr T for administration-only services in respect of his SIPP. It has also not provided evidence of the information that was available in its website, in respect of the fees applicable to the SIPP, when it took over its administration from GAM.

30. In addition, Hartley did not inform Mr T that it had migrated him to Insight in order to provide him with a financial advice service. Mr T was made aware of this when he discovered that fees were being deducted from his SIPP account and complained to Insight.

31. I also note that Hartley has failed to explain the reason for the deductions that were applied to the SIPP account on 27 June 2019 and 8 July 2021, or respond to Mr T's complaints concerning these deductions.

32. I find that the lack of a fee agreement, the failure to make Mr T aware of Insight and the failure to respond to Mr T's queries regarding the deductions amount to maladministration. This also applies to Hartley's handling of Mr T's complaints. I agree with the reasoning and conclusions reached by the Adjudicator.

33. However, I consider that the interest awarded by the Adjudicator should not reflect the base rate for the time being quoted by the Bank of England. The deductions of 27 June 2019 and 8 July 2021 were made from the SIPP account. So, the interest awarded shall reflect the interest, if any, that the monies deducted would have accrued had they remained in the account.

34. I uphold Mr T's complaint.

Directions

35. Within 28 days of the date of this Determination, Hartley shall:-

- Pay Mr T £1,000, for the serious distress and inconvenience he has suffered.
- Calculate the total fees Hartley should have deducted in respect of the SIPP each year (**the Correct Fees**), on the assumption that Hartley should have received a maximum of £400 per year.
- Calculate the total fees Hartley received in respect of the SIPP (**the Total Fees**).
- If the Total Fees are higher than the Correct Fees, refund Mr T the difference (**the Excess Fees**).
- Pay interest on the Excess Fees, calculated from the date each payment of the fees was collected to the date the Excess Fees are refunded to Mr T. The interest shall be equal to the rate of interest applied to the SIPP's bank account between the dates of collection and the date of the repayment.

Anthony Arter CBE
Deputy Pensions Ombudsman

29 March 2023