

Ombudsman's Determination

Applicant	Mr T
Scheme	The Aviva Self Invested Personal Pension Plan (the Plan) and the Aviva Commercial Property Investment provided by Curtis Banks (the Sub-Plan)
Respondent	Suffolk Life Annuities trading as Curtis Banks (CB)

Outcome

1. Mr T's complaint against CB is partly upheld. To put matters right, CB shall pay Mr T £1,000 in recognition of the serious distress and inconvenience he has experienced as a result of its maladministration.

Complaint summary

2. Mr T complained that:-
 - 2.1. CB was responsible for the disconnection of the electricity supply (**the Supply**) to the commercial property investment (**the Property**) held by the Sub-Plan. As a result of the disconnection of the Supply, the shutters to the Property could not be operated and potential tenants and buyers were lost because they were unable to view the Property.
 - 2.2. The Sub-Plan lost potential rental income for the period while the Property was without power. Mr T estimated this loss to be £18,632 based on an annual rental valuation of £80,000.
 - 2.3. He experienced years of continuous problems with CB and was left with no option but to sell the Property and move his pension away from them. The assets of the Plan have been transferred to Mattioli Woods plc and Mr T argues that CB should reimburse him for the transfer costs of £1,074.

Background information, including submissions from the parties

3. 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.

4. Mr T was a member of the Plan, a self-invested personal pension (**SIPP**) which invested in the Property via the Sub-Plan.
5. In April 2017, the Property was leased, following a period of vacancy, to a new Tenant (**the Tenant**), who then became responsible for the Supply.
6. CB received an invoice for the Supply, billed up to the date when the Tenant became responsible for it. Mr T was of the view that the amount billed was too high for a vacant property. CB disputed the amount billed, but the dispute was not resolved before the electricity supplier, Extra Energy (**EE**), went into financial administration. Scottish and Southern Energy (**SSE**) was then appointed to supply EE's former customers.
7. The Tenant went into financial administration in July 2018.
8. On 30 October 2018, SSE contacted the Insolvency Practitioner (**the IP**) for the Tenant in administration to ascertain who was responsible for the Supply. The IP informed SSE that the Tenant was in financial administration and the keys had been returned to CB.
9. On 1 November 2018, the IP informed SSE that it could not, as a financial administrator, disclaim the lease for the Property and that CB had refused an informal surrender of the lease.
10. On 6 November 2018, SSE sent a "notice of imminent disconnection of electricity" letter to the Property. In summary, the letter said that SSE had been notified that the Tenant was no longer responsible for the Supply and, unless someone took responsibility for it, the Supply would be disconnected without further notice, possibly by way of forced entry to the Property.
11. On 7 November 2018, CB informed SSE that it had not agreed to an informal surrender of the lease and was not accepting responsibility for the Supply. SSE indicated that it may have to visit the Property and the Supply might be disconnected. CB indicated it was "happy with this". CB then emailed the IP to say that, as the lease had not been terminated, the Tenant, or the IP acting as the Tenant, remained responsible for the Supply. CB asked the IP to contact SSE directly.
12. Mr T said he was not made aware of any of the communications in October 2018 or November 2018.
13. The Tenant was liquidated on 24 April 2019.
14. On 19 November 2019, Mr T contacted CB to inform it that the Property had been accessed and the electricity fuses had been removed.
15. On 20 November 2019, CB contacted SSE to accept responsibility for the Supply and to arrange its reconnection.
16. Mr T contacted CB by email on 21 November 2019 to report that the Property had been damaged when gaining access to disconnect the Supply. He complained that

CB had not yet set up an account for reconnection of the Supply and this needed to be done so that viewing of the Property could recommence. He further complained that CB had failed to pass on to him critical communications about the Supply. He asked for CB's future communications with SSE to be copied to him. CB contacted SSE to set up the account and informed Mr T it had done so.

17. Mr T subsequently followed up with CB:-
 - 17.1. By email and telephone on 25 November 2019, leading to CB asking SSE to escalate the reconnection of the Supply.
 - 17.2. By email on 3 December 2019, by telephone on 4 December 2019 and by telephone on 5 December 2019, seeking an update. He did not receive any reply.
18. On 6 December 2019, SSE contacted CB to inform it that a credit check was required to open an account for the Supply. Once the check had been done, it would update CB.
19. On 9 December 2019, CB contacted SSE to check on progress and sent an update to Mr T.
20. On 11 December 2019, Mr T asked CB to instruct SSE to add his name to the SSE account so that he could deal with the reconnection himself. CB complied with his request.
21. On 17 December 2019, Mr T complained to SSE that he was losing around £8,000 per month because the Supply had not been reconnected.
22. On 18 December 2019, Mr T sought an update from CB, without response.
23. On 19 December 2019, Mr T informed CB that SSE had been trying to contact it. CB telephoned SSE which said it was ready to arrange reconnection of the Supply. CB asked SSE to arrange the reconnection directly with Mr T, but SSE said it would require a letter of authority to do so, from CB. CB noted that SSE had already been instructed, on 11 December 2019, to add Mr T to the account, but provided the letter of authority nevertheless.
24. On 20 December 2019, SSE provided CB with account details for payment of the reconnection fee of £94.80. SSE did not receive payment and contacted CB again by telephone on 23 December 2019, initially unsuccessfully by telephone, then by email. It asked CB to respond by the end of the day, as the person dealing with Mr T's case would be on leave thereafter, but CB did not do so.
25. CB contacted SSE on 24 December 2019 asking for an invoice for the reconnection charge. SSE emailed an invoice to CB on 30 December 2019 and said it would watch for receipt of payment so that immediate action could be taken to reconnect the Supply. SSE had not received payment for the reconnection fee by 2 January 2020,

so it contacted CB again. On 3 January 2020, CB informed SSE that payment had been made by BACS and should be received by 6 January 2020.

26. SSE received the payment for the reconnection fee on 6 January 2020 and it was agreed that Mr T would attend the reconnection appointment. Mr T expressed his dissatisfaction that CB had not acted with due urgency regarding the reconnection of the Supply and that both he and SSE struggled to get CB to return their telephone calls. He said that any action taken by CB always seemed to be prompted by contact from him. He asked for, and received, a log of all CB's previous contacts with SSE regarding the Supply.
27. On 9 January 2020, Mr T contacted both CB and SSE to obtain an update. He also noted, from the log of contacts he received from CB, that CB had emailed the IP in November 2018 regarding responsibility for the Supply, and asked how CB had followed up on its message.
28. On 10 January 2020, CB emailed Mr T to respond to some of his questions. CB was of the view that it had kept in constant contact with SSE regarding reconnection of the Supply but it had not mentioned Mr T's alleged losses to SSE as it feared this would slow down the reconnection.
29. On 13 January 2020, Mr T contacted SSE directly for an update on the reconnection of the Supply. Then, on 14 January 2020, he emailed CB to draw attention to its failure to respond to many contacts from him, to ask for an explanation of why it initially allowed the Supply to be disconnected and to ask why his name had not yet been added to the account for the Supply. As he received no response, he emailed again on 16 January 2020 and made a follow up telephone call which failed as the number appeared to him to have been disabled. He emailed CB again on 17 January 2020 chasing a response to his messages and informing CB that he intended to instal a temporary electricity generator at the Property.
30. Mr T emailed CB again on 28 January 2020, not having received any response to his message of 13 January 2020 or the previous messages to which it referred. Mr T also said that SSE had not heard from CB. CB responded with a short reply outlining when Mr T could bring his complaint to TPO. Mr T queried the complaint timing but heard nothing further from CB. On 4 February 2020, Mr T emailed CB again as he had not received a response. Then, on 12 February 2020, Mr T confirmed to CB that he had received a standard complaint acknowledgement letter from it.
31. On 13 February 2020, CB emailed Mr T to say the information about complaining to TPO was in its letter of 9 December 2019. CB was pleased that the Supply had been restored last month.
32. On 14 February 2020, Heads of Terms for sale of the Property were drawn up.
33. On 18 February 2020, in Mr T's emailed response to CB, he said the Supply was reconnected on 7 February 2020, not "last month" as it had said. CB had not responded regarding why he had not been added to the SSE account and did not

respond to him when he needed to decide if he should instal a temporary electricity generator. He asked for Insurance details for the Property as it had been hit by a car.

Mr T's position

34. Mr T was of the view that:-

- 34.1. CB had failed to act on SSE's warning that the Supply was going to be disconnected and failed to pass the information on to him. The Supply was ultimately disconnected and CB made little effort to arrange its reconnection. Over the period of disconnection from 14 November 2019 to 7 February 2020, potential tenants or buyers were lost as the Property could not be viewed and potential rental income of £18,632 was lost.
- 34.2. CB left him with no choice but to instal a temporary electricity generator so he holds CB responsible for the damage caused during installation.
- 34.3. CB failed to respond to, or act on, numerous communications from him and he was forced to intervene in communications with SSE.
- 34.4. CB's performance forced him to sell the Property and move the value of the Plan to Mattioli Woods, so CB should reimburse him for the costs of setting up the Mattioli Woods plan.

CB's position

35. CB accepted that there were occasions when it did not respond to Mr T and that its service had not been up to its desired standard and, in recognition of its shortcoming, it refunded £100 of the Property Management charge to the Sub-Plan. It did not accept that it was the cause of the Supply being disconnected or that it was responsible for the losses and costs claimed by Mr T.

Adjudicator's Opinion

36. Mr T's complaint was considered by one of our Adjudicators who was of the opinion that further action was required by CB on part, but not all, of the complaint. The Adjudicator's findings and opinion are summarised below:-

- 36.1. After CB was informed that the Tenant had entered financial administration, it ought to have followed up to clarify the situation. It did not do so and was consequently unaware when it should have taken responsibility on liquidation of the Tenant in April 2019. CB knew that SSE intended to disconnect the Supply if it was unable to establish who was responsible for it. CB failed to take responsibility for the Supply when it should have done and was therefore responsible for its disconnection. This amounted to maladministration by CB.
- 36.2. CB could not be held responsible for the loss of prospective rental income. No terms had been agreed to lease the Property and it could not be said

with certainty that terms would have been agreed, when they might have come into effect or what the terms might have been.

- 36.3. CB's communication with Mr T was poor and its lack of effort in arranging the reconnection of the Supply resulted in significant input being required from Mr T. Although CB's performance in relation to the Supply and reconnection of the Supply was not satisfactory, there was no evidence that it did not perform the other functions covered by the Sub-Plan's administration charge. CB's partial refund of £100 of the Sub-Plan's property administration charge was appropriate.
- 36.4. CB was not responsible for damage to the Property. SSE was aware that CB held the keys to the Property and could have sought the keys for entry to the Property to disconnect the Supply. Nor was CB responsible for the damage caused during the installation of the generator. Mr T chose the installer for the temporary electricity generator. The Adjudicator was not qualified to say if the installation could have been performed by another installer without causing damage to the Property.
- 36.5. Although it was understandable that Mr T believed it was in his best interests to transfer to another pension provider, this neither meant that he was forced to transfer nor that Mattioli Woods should be the company to receive his transfer. CB was not responsible for the costs of establishing a new pension plan with Mattioli Woods.
- 36.6. CB should award Mr T £1,000 in relation to the serious distress and inconvenience he experienced as a result of its maladministration
37. CB accepted the Adjudicator's Opinion, but Mr T did not, and the complaint was passed to me to consider. Mr T provided his further and extensive comments which are summarised in paragraphs 38 to 40 below.

Loss of income

38. Mr T asserts that the Property was essentially disinvested when it became unusable and that CB acknowledged that "the building being inaccessible created the loss of potential tenants." As soon as the Property was accessible, there were multiple offers to buy and the deal was completed immediately.

Loss of faith

39. Mr T had, in the past, experienced many problems with CB and dealing with CB's continuous and repeated problems was making him ill. Mr T listed other examples of his poor experience with CB over previous years. As he had a complete loss of faith in CB, he disagreed with the Adjudicator's view that he was not forced to transfer to Mattioli Woods.

Distress / Inconvenience

40. Mr T is of the view that the Adjudicator misread the level of distress and anger the disconnection of the Supply has caused him. The duration of the stress was many months during which he was required to commit hundreds of hours of effort, calls and emails to resolve it. He also had to make countless journeys to the Property to meet tradesmen and various other people.
41. I have considered Mr T's comments, but they do not change the outcome. I agree with the Adjudicator's Opinion and address Mr T's comments in paragraphs 42 to 52 below.

Ombudsman's decision

Loss of income

42. I am not persuaded by Mr T's assertion that the Property was essentially disinvested when it became unusable due to the loss of the Supply. The Property remained an asset with a value that would have continued to appreciate or depreciate in line with commercial property market conditions. The Property's value may have become temporarily illiquid due to the inability to facilitate viewing for potential tenants or buyers, but this did not render it worthless as an asset of the Sub-Plan.
43. Mr T has quoted part of CB's final complaint response to him, dated 22 April 2020. The complete sentence reads:
- "I do understand the concern and the frustration that having no power has caused, this will have affected the building security systems, including the shutters, which in turn made the building inaccessible and created the loss of potential tenants."
44. While the sentence in CB's letter is ambiguous due to its poor construction, I find that, when taken in the context of the complete sentence, CB has paraphrased Mr T's concerns and has understood them, rather than necessarily having agreed with them.

Loss of faith

45. While Mr T's submissions very clearly communicate his frustration with the poor service he has received from CB, I do not agree that he has been forced to transfer to a new pension plan with Mattioli Woods. Force would imply that Mr T had no choice in the matter, whereas the choice was his to make, both with regard to whether to transfer and where to transfer.
46. I fully acknowledge that, if Mr T had no faith that CB's service to him would ever improve, then it may not have been in his best interests to remain with CB, but this does not equate to a forced transfer. If Mr T was of the view that CB should pay the costs of transferring to Mattioli Woods, this is something he should have sought to

agree with CB in advance of proceeding with the transfer. I can see no grounds for finding that CB should reimburse Mr T for the transfer costs he incurred.

Distress and inconvenience

47. The Adjudicator was of the opinion that Mr T's complaint of maladministration should be upheld and that a higher award was merited, on the basis of serious maladministration. Mr T did not agree with the Adjudicator's assessment of severity and, in his further comments, introduced more information about historical problems with CB.

48. The terms of the Adjudicator's investigation were outlined in TPO's jurisdiction letter dated 4 December 2020, as:

"Your complaint, about [the Sub-Plan], is that [CB] caused/provided delays, incorrect information and poor customer service in relation to the electric supply at a property held within [the Sub-Plan]. This has caused various losses, including but not limited to loss of rental income, fees and charges and distress and inconvenience."

49. While Mr T made reference, in his application to TPO, to years of problems with CB, he did not go into specific detail. The Adjudicator has taken Mr T's reference to the previous problems as contextual information as to why his patience with CB has been exhausted on this occasion, rather than an intention to include these additional problems in his application. Indeed, Mr T's email of 21 November 2019 to CB acknowledged that the historical problems were the subject of a separate complaint, when he said:

"I already have an open complaint with Suffolk Life for events but a few months ago which has been acknowledged but not been finalised yet despite being months old and its more of the same "diabolical service" and I have a complete lack of faith in all and everything that Suffolk Life do and Im (sic) simply fed up with horrendous levels of service."

50. I am satisfied that the Adjudicator has correctly understood that Mr T's complaint is specifically about CB's administration of the Property in relation to the disconnection of the Supply and that the historical matters, for which Mr T has now provided further information, are part of a separate complaint that does not form part of the complaint that has been passed to me.

51. I am further satisfied that the Adjudicator has given due consideration to Mr T's expression of his historical experience in providing context for his complaint.

52. It would not be appropriate, at this point, to seek to introduce new complaints to Mr T's submission. Nevertheless, it should be understood that the additional complaints, even if they had been included in Mr T's complaint, would not have meant the appropriate award would have been any higher. The Adjudicator's assessment was that Mr T has experienced serious distress and inconvenience. From the

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additional information Mr T has now provided, the issues raised appear to be less serious in nature and consequence than the complaint before me, so would not have raised the seriousness of the maladministration sufficiently to meet the threshold for a higher award.

Summary of Ombudsman's decision

53. Therefore, I partly uphold Mr T's complaint.

Directions

54. Within 21 days of the date of this Determination, CB shall pay Mr T £1,000 in recognition of the serious distress and inconvenience he has experienced as a result of its maladministration.

Camilla Barry

Deputy Pensions Ombudsman
6 January 2025