

The complaint

Mr D's complaint is mainly about the fees applied in his Self-Invested Personal Pension ('SIPP').

The SIPP was set up in 2015. It was provided/administered by Brooklands Trustees Limited ('Brooklands') and it was invested in the Friends Life International Reserve Bond ('FLIRB'). Between 2016 and 2017 Brooklands' SIPP business was sold to IVCM Heritage Trustees Limited/Heritage Pensions ('HP'). Thereafter, HP took over administration of Mr D's Brooklands SIPP. Then, in November 2021, PSG SIPP Limited ('PSG') took over administration of the Brooklands SIPP.

Mr D disputes the fees that have been charged in the SIPP since around 2017. He says they are over £2,000 per year, despite the SIPP's significant loss of value in that year, and that this is greater than the 1% (of the SIPP's value) he agreed with regards to fees. He seeks redress, on these grounds, from PSG, as he believes it has undertaken current and past responsibilities for the SIPP.

What happened

One of our investigators looked into the complaint and concluded that it should not be upheld.

She noted the following – when PSG took over the SIPP it did not undertake past liabilities of the previous administrators; the complaint is against PSG so its scope is limited to the fees PSG has charged since it took over in November 2021; at the time, Mr D was told the change would not impact the SIPP's administration or its fees; the only fee taken by the SIPP providers since 2017 has been the administration fee; £570 (for the year) was taken in May 2021 prior to the administrator change and the same fee was taken in May 2022 by PSG, after the change; PSG applied a higher fee (£684) in May 2023, but it had given 30 days' notice in March 2023 about its updated terms, services and fees, which included the application of VAT to its administration fee; so, the increased fee was the result of applying VAT to the £570 per year fee.

The investigator referred to these findings and concluded that the administration fee for the SIPP had remained the same since 2017 and up to the period in which PSG administered it, that the increase in 2023 was not to the fee itself but instead was the result of the addition of VAT (where the fee had previously been exempted from VAT), and that a 2023 court ruling clarified the HMRC rule that led to the addition of VAT to the fee.

On the wider allegations made by Mr D, the investigator said she could see no evidence that adviser charges were taken by PSG; that PSG has confirmed no advisers have had authority in the SIPP since April 2017; that his query about why he needs a SIPP despite it holding only one investment is one for the adviser that recommended the SIPP to him, not for PSG (who had no involvement in setting up the SIPP); that if he wishes to challenge the investment charges associated with the FLIRB and taken by its provider, that will be a separate matter between him and the provider; and that the same applies, with regards to HP, if he wishes to challenge the SIPP administration fees taken by HP.

Mr D disagreed with this outcome and asked for an Ombudsman's decision. He said PSG should not be able to take over the benefits of the SIPP administration fees without undertaking the associated liabilities too, that he has been overcharged in fees for the past nine years and that he cannot agree that PSG is not responsible to redress that.

The matter was referred to an Ombudsman.

What I've decided – and why

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

Transfers of client product and/or service accounts (such as Mr D's SIPP) between firms, which are initiated by firms (as opposed to those initiated by clients), are not uncommon. In the process of such a transfer the rights (including benefits) and responsibilities (including liabilities) in the original or existing product and/or service account contract need to be actively addressed, and specific legal and contractual considerations arise in this respect.

Each contracting party can potentially assign its rights/benefits in a contract and transfer them on this basis. A firm could also transfer its *ongoing* liabilities (from the point of transfer onwards). However, the transfer of a firm's *past* liabilities, prior to the point of transfer, normally requires *novation*, which is not the same as an assignment.

At the outset, Mr D's rights in the Brooklands SIPP sat in contractual provisions that included obligations/liabilities belonging to Brooklands, as the provider and administrator of the SIPP. He would have been entitled to hold Brooklands responsible for the relevant obligations and liabilities, based on the product/service contract between them which was exclusive to them. When the SIPP administration transfers happened, each new administrator became responsible for the associated liabilities from the point of transfer onwards, but without novation they did not automatically undertake the past liabilities.

In the above context, novation would require consent across the three relevant parties in the transfer – the transferor firm, the transferee firm and the client whose account is being transferred. In other words, the first wilfully agrees to transfer its past liabilities to the second, the second wilfully agrees to accept those past liabilities and the client wilfully agrees that the former's past liabilities (towards him/her) can be passed on to the latter. In the absence of this three-way express consent, novation would not have been properly executed.

In Mr D's case and with regards to PSG, there is no evidence of such three-way express novation consent, or of novation. As the investigator said, the present complaint is against PSG so that defines its scope. It is only about matters related to PSG. I have not seen evidence that past liabilities in the administration of his SIPP were novated to PSG in the manner summarised above, or at all. There is evidence of PSG taking on the administration of the SIPP in 2021 and of its introduction to Mr D in that year, but nothing related to the novation of past liabilities for the SIPP held by HP (or by Brooklands).

The above addresses Mr D's insistence that PSG must be responsible for past liabilities in the SIPP. In the absence of a novation of those liabilities, it is not.

The £570 per year SIPP administration fee was/is a flat fee, unrelated to the SIPP's value. There is evidence of notices about this in the SIPP annual reports that were sent to Mr D by both HP and PSG. I repeat that the scope of the complaint is limited to PSG's undertaking of his SIPP's administration in 2021, and then its responsibilities thereafter. In terms of the

administration fee it inherited from HP, account activity evidence shows that the same £570 annual flat fee was applied by HP to his SIPP earlier in May 2021 before the transfer to PSG in November that year, and it (PSG) then applied that same fee to the SIPP in May 2022.

In other words, the annual administration fee that Mr D paid to HP remained the same annual administration fee he paid to PSG. There is additional support for the application of the £570 figure in the PSG's schedule of fees documents (for 2022 and 2023) which refer to the same figure.

In March 2023 Mr D received and responded to PSG's notice about the changes in terms, including notice about the application of VAT to its fees for UK residents (which applies to him). His response expressed what appears to have been the beginning of his complaint. This then led to the 2023 fees (paid in May 2023) reflecting the addition of VAT to the £570 flat fee, thereby resulting in the £684 that was charged. It is noteworthy that at the outset of Mr D's Brooklands SIPP he was given notice that VAT could be applied to the SIPP's fees in the future. The schedule of fees section of the welcome pack he was sent in May 2015 included the following –

"We expect that our charges should remain exempt from Value Added Tax (VAT) except where specifically noted. However, we reserve the right to charge you VAT in addition to the charges listed where it applies." [my emphasis]

As the investigator said, the decision in a 2023 case – which was *Intelligent Money Ltd v HMRC [2023] UKUT 236* – confirmed that SIPP administration fees were/are not VAT exempt. This was a decision on appeal, and it was handed down in September 2023. PSG applied VAT to the May 2023 SIPP administration charge, before this appeal outcome. However, the first decision in the above case was handed down in May 2022. That decision issued the outcome that SIPP administration fees were/are not VAT exempt. This outcome was appealed against. The 2023 decision dismissed the appeal and affirmed the same outcome. Therefore, it appears that PSG was led by the 2022 decision to apply VAT to the May 2023 charge – and then, the September 2023 appeal decision endorsed that approach.

As such VAT was charged to the SIPP administration fee in 2023 *where it applied*, and the May 2015 notice to Mr D forewarned him that this could happen in the future.

Overall and for the above reasons, I do not find that PSG has overcharged its SIPP administration fees in Mr D's Brooklands SIPP. It does not provide an advisory service to him and there is no evidence that it has applied any advice related fees (for itself or for a third-party) to the SIPP.

With regards to his enquiries about the previous SIPP administrators, the FLIRB (including its fees) and the setting up of the SIPP in the context of the investment to be held within it, I endorse and echo the investigator's comments. The previous SIPP administrators' liabilities have not passed to PSG, so that is a matter outside the scope of the present complaint; his enquiries about the FLIRB and its fees are for its provider to address, not PSG, so that too is outside the complaint's scope; and PSG had nothing to do with the recommendation and/or setting up of the SIPP in 2015.

My final decision

For the reasons given above, I do not uphold Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or

reject my decision before 7 August 2024.

Roy Kuku
Ombudsman