

The complaint

Mr C complains there were delays on the part of Curtis Banks Limited (Curtis Banks) in completing a property purchase by Mr C's SIPP (self invested personal pension). Mr C also complains that Curtis Banks delayed in submitting a Lifetime Allowance (LTA) declaration and which he says showed an incorrect property valuation.

What happened

I issued a provisional decision on 28 May 2024. I've repeated what I said about what had happened and my provisional findings.

'We've been provided with a very large number of documents and communications going back several years. I'm only going to set out very briefly the background to Mr C's complaint.'

Mr C has a SIPP with St James's Place Wealth Management Limited (SJP). The SIPP is administered by Curtis Banks. Mr C's SIPP now holds two commercial properties – two units in the same industrial estate. Unit 5 was acquired by Mr C's SIPP in 2015. Unit 1 was purchased by the SIPP in early 2022. Mr C's complaint is about the time taken to complete that purchase.

Mr C owns three companies which I'll refer to as Company A, Company B and Company C. Company A owned Unit 1 which Mr C's SIPP would be buying. Unit 5 was occupied by Company B who'd taken out borrowing totalling about £400,000 between 2015 and 2022. The plan was for Mr C's SIPP to purchase Unit 1 for around £400,000. The SIPP would require a loan and a lender had been found. The proceeds of sale would then be paid by Company A to Company B so that the latter could repay its borrowing which I understand was with the same lender who'd be lending the SIPP the money for the purchase of Unit 1.

The purchase of Unit 1 was completed on 3 February 2022.

Mr C turned 75 in May 2022. At that time a LTA test at age 75 was undertaken (the LTA charge was removed from 6 April 2023 and the LTA from 6 April 2024). Mr C was required to complete a declaration and a valuation of the SIPP, which included the two commercial properties, was needed.

Curtis Banks wrote to Mr C on 15 November 2022 enclosing a valuation report for the SIPP as at Mr C's 75th birthday and saying that he'd used up a further 48.26% of the then standard LTA which had generated a LTA tax charge of £26,964 which would be settled from the SIPP and paid to HMRC. An Age 75 LTA test fee would also be deducted.

I've seen HMRC's Notice of Accounting for Tax Return Interest dated 13 December 2022. It says an interest charge (£392.44) has been raised because a tax charge that was due to be paid by 14 August 2022 wasn't paid in full until 9 December 2022.

Through his IFA (independent financial adviser) Mr C complained to Curtis Banks in early 2023 that the purchase of Unit 1 had taken from 2015 to early 2022 – over six years – to complete. And it was only when the purchase had been completed, on 3 February 2022, that

borrowing could be cleared, by which time interest of around £100,000 had accrued.

Curtis Banks issued a final response to Mr C's complaint on 14 February 2023. Curtis Banks used a start date for the purchase of 3 May 2017. Curtis Banks accepted they'd delayed in a couple of instances: Curtis Banks had received a copy of the environmental report on 11 August 2020 but hadn't forwarded it to the solicitors until 13 September 2020; Curtis Banks had received confirmation from Mr C to proceed with a valuation on 23 June 2021 but hadn't confirmed that to the valuer until 7 July 2021. For those service failings, administration fees of £1,140 had been refunded. Curtis Banks didn't agree they were responsible for interest payments to the lender. They'd relied on third parties, including solicitors, to meet their obligations when undertaking a property purchase of behalf of the SIPP trustees and so Curtis Banks couldn't and hadn't guaranteed a completion date.

The final response letter didn't deal with Mr C's further complaint about how the then LTA test at age 75 was undertaken. Mr C said the LTA valuation wasn't completed on or around his 75th birthday in May 2022. He'd requested a new valuation in September 2022 following refurbishments to the properties, 90% of which had been completed between June and September 2022 (that is after May 2022). Curtis Banks had included the increased valuation in the LTA test and instructed the valuer to provide a copy of the valuation with a date of May 2022 and so the LTA declaration was inaccurate. The higher valuation meant he breached the then LTA and had to pay a LTA charge of £26,964 to HMRC.

Mr C referred his complaint to this service. We asked Curtis Banks for their comments. Curtis Banks referred to the SIPP terms and conditions and set out details as to how the purchase of Unit 1 had progressed. While Mr C's frustration as to the time taken for the purchase to complete was understood, Curtis Banks said that a commercial property purchase into a SIPP can be a complicated and lengthy process. Although Curtis Banks accepted they'd caused some delays, they didn't agree they were responsible for interest owed to the lender and maintained the redress offered was fair and reasonable for the delays caused with the purchase.

Curtis Banks also dealt with Mr C's other complaint about the LTA. His 75th birthday was in May 2022 and on 31 May 2022 Curtis Banks sent Mr C's IFA a copy of the LTA declaration form for Mr C to sign and return. On 1 August 2022 Curtis Banks contacted Mr C's IFA (by secure message) asking him to liaise with Mr C and return the declaration as a matter of urgency. And on 2 August 2022 Curtis Banks emailed the IFA saying, if the declaration wasn't received, Curtis Banks would have no choice but to assume Mr C had no remaining LTA and complete the LTA test on that basis. Curtis Banks gave Mr C's IFA seven days to provide the LTA declaration and sent a further secure message. The IFA returned the signed declaration on 2 August 2022.

A valuation of the property was also required. On 8 June 2022 Mr C's IFA asked Curtis Banks to arrange for updated valuations of both Unit 1 and Unit 5 to see what the new rental amounts would be. Curtis Banks gave initial instructions by email to the valuer on 14 June 2022 and requested a fee quotation. The valuer provided that on 16 June 2022 and Curtis Banks forwarded it to Mr C's IFA for approval. Curtis Banks also said a valuation for the LTA test at age 75 was required. Mr C confirmed on 20 June 2022 that he was happy for the valuer to go ahead. On 21 June 2022 Curtis Banks asked the valuer to proceed.

The valuer didn't get back to Curtis Banks promptly, despite Curtis Banks chasing. And there were difficulties in the valuer getting access. And, when Curtis Banks received the valuation, it didn't reflect the market value of the property as it stood as at the date of Mr C's 75th birthday in May 2022. Curtis Banks asked the valuer, on 12 October 2022, to confirm the market values as at that date. Curtis Banks chased the valuer on 19 October 2022. On 24 October 2022 the valuer apologised and confirmed the valuation could be amended. Curtis

Banks replied the next day, noting the significant increase in the market values since the last valuation and asking for clarification. Curtis Banks chased for a reply on 2 November 2022 before emailing the valuer on 4 November 2022, saying the most recently issued valuation reports and side letters had been disregarded. The valuer emailed on 8 November 2022 enclosing a valuation report. Again it showed the valuation date as at the date of the report. Curtis Banks emailed the same day pointing that out. On 9 November 2022 the valuer sent a valuation report as at May 2022 and confirmed the market value remained the same.

Curtis Banks wrote to Mr C on 15 November 2022 as I've set out above. Curtis Banks also attempted to pay the excess charge of £26,964 to HMRC on 15 November 2022. But, due to issues with Curtis Banks' system, the payment failed. Payment was made on 12 January 2023. Although Curtis Banks accepts that took some time, it didn't have any impact on Mr C. Curtis Banks also said it hadn't failed to submit Mr C's LTA declaration for his 75th birthday, nor did Curtis Banks falsify the valuation. It was carried out by a RICS (Royal Institute of Chartered Surveyors) valuer, instructed as per Mr C's IFA's instructions. The time taken for the valuation to be provided wasn't ideal but wasn't Curtis Banks' fault.

One of our investigators considered Mr C's complaint. She issued her view on 11 February 2024. She didn't uphold either aspect of the complaint for the reasons she set out.

Mr C didn't accept the investigator's view. She considered Mr C's comments which related to the valuation of the property. She said Curtis Banks had requested the correct date for the valuation – Mr C's 75th birthday which was the date for the LTA test. And, if the valuer, who wasn't within our jurisdiction, had any reservations about providing a backdated valuation, he was free to decline.

Mr C maintained that the date of the valuation had been altered and the valuer had no knowledge of the value as at May 2022. Mr C had requested a valuation following completion of upgrades to the properties in late August 2022. Curtis Banks had taken no action on the LTA valuation until they'd seen a copy of the September 2022 valuation and they'd then asked the valuer to forward a copy with an altered date. Curtis Banks had made no effort to have the property valued at the correct time and they'd subsequently charged the SIPP with the fine for late submission. And the incorrect valuation meant the LTA declaration was wrong and Mr C incurred a tax charge of £26,964. Mr C said Curtis Banks hadn't asked for any information about the upgrades.

As agreement couldn't be reached the complaint was referred to me. We asked Curtis Banks for some further details about the valuation which had been obtained in 2022 and used for the LTA test.

What I've provisionally 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.

As I understand it, because the purchase of the property, Unit 1, was delayed, Company B was unable to repay borrowing which meant interest payments continued to be due. Mr C says the delay cost £100,000 in interest payments.

Unfortunately, and as we've explained to Mr C, that's not something we can consider as part of his complaint. That's because interest on the borrowing is a financial liability for Mr C's company. Any claim that interest is higher than it should've been because the borrowing was outstanding for longer than anticipated, is a potential financial loss for Mr C's company, rather than Mr C personally. Even if we upheld Mr C's complaint about the time taken to complete the purchase of Unit 1, we couldn't make an award in respect of the interest

Company B (which is a separate legal entity from Mr C) has had to pay.

And, although we can sometimes consider a complaint from a company, to be an eligible complainant the company must meet the definition of a micro enterprise or a small business – see DISP (Dispute Resolution) 2.7.3R. Even if that's the case the company will also need to have one or more of the relevant relationships with the respondent as set out in DISP 2.7.6R and which I can't see that Company B does. But, in the event we did receive a complaint from Company B, we'd look properly then at whether we could investigate it.

As things stand, I'm only considering Mr C's complaint made in his personal capacity as a consumer and arising out of his relationship with Curtis Banks as a beneficiary of a personal pension scheme (his SIPP) which is administered by Curtis Banks.

Mr C's position is that the purchase of Unit 1 should've been completed by the end of September 2015. Instead it wasn't completed until 3 February 2022, over six and a half years later. At first sight that would appear to be an inordinate and excessive amount of time. So I do understand why Mr C considers the purchase should've been completed earlier.

But all I'm considering is Curtis Banks' part in the matter and if Curtis Banks was responsible for delays. Purchasing a property, especially a commercial property to be held in a SIPP, isn't straightforward and here multiple parties were involved. The situation was complex as there were connected parties – one of Mr C's companies was the seller and occupier of the property, his SIPP already held another commercial property which was occupied by another of Mr C's companies and there were arrears of rent owed on Unit 5 to the SIPP. The purchase of Unit 1 also involved borrowing so the lender's requirements needed to be met too. I take into account that, as Mr C's SIPP was purchasing the property, Curtis Banks would be expected to drive the purchase. But Curtis Banks had little or no control over the various other parties involved.

Mr C's relationship with Curtis Banks as the operator and administrator of his SJP SIPP is governed by the SIPP terms and conditions and the other documents referred to (key features document; schedule of fees; investment and client details form; trust deed and rules for the SIPP). Section 11 of the SIPP terms and conditions – Investments in Property – is particularly pertinent and includes the following provisions (the relevant parts of which I've paraphrased):

11.1 Property acquisition: on receipt of the fully completed property form giving details of the property and how the proposed purchase or transfer is to be funded, including details of any co-investors and the member's choice of third party professionals, Curtis Banks will begin the process of evaluating its allowability within the SIPP and, if appropriate, begin acquiring the property.

The investor and any co-investor cannot commit Curtis Banks to a date of exchange or completion of the acquisition. These dates will be determined by Curtis Banks. Curtis Banks will not be liable for any losses or liabilities arising as a result of a failure to meet a timeframe determined by any investor.

Curtis Banks will only exchange contracts or agree to the exchange of contracts if an acceptable report on title is received confirming, amongst other things, that the appropriate search results are satisfactory; including that there are no known environmental issues highlighted within the environmental report at the time of acquisition. Confirmation is also required that a tenancy agreement is in place for each tenant occupying the property with terms acceptable to Curtis Banks.

11.4 Third party professionals: Curtis Banks must instruct the third party professional as Curtis Banks will be the third party professional's client. Curtis Banks cannot guarantee the

service of third party professionals. If Curtis Banks or the investor is dissatisfied with the service provided, Curtis Banks may make a claim or complaint as appropriate.

11.5 Property management – properties owned by Curtis Banks. Curtis Banks will be responsible for the activities set out which include (11.5d) arranging valuations of the property in accordance with Section 11.9 and (11.5g) managing building works in accordance with Section 11.8.

11.6 Occupation of the property: Curtis Banks will be the landlord under the tenancy agreement. The investor agrees to notify Curtis Banks if a tenant is a connected party and the tenancy agreement and activities relating to it must be carried out on an 'arm's length' transaction basis.

11.8 Developing property: Building works may only be undertaken with Curtis Banks' prior written agreement and subject to the requirements as set out. Curtis Banks requires that any proposed building works must maintain or add capital and/or rental value to the property. A valuer will be required to advise Curtis Banks of and document the new rental value which, if applicable, must take effect immediately on completion.

11.9 Valuations: A valuation shall be in accordance with RICS Valuation – Professional Standards (the 'Red Book') and Curtis Banks must be the party instructing the valuer to ensure Curtis Banks' requirements are met. A current capital market value and/or reinstatement valuation of the property will be required including before Curtis Banks acquires a property (11.9a); where there are building works at the property (11.9d) and when the investor reaches age 75 (11.9g). And a current rental valuation of the property will be required when (and amongst other things) there are building works at the property (11.9d from the second list set out).

Further and more generally there's an obligation on Curtis Banks (it would be an implied term of the contract) that Curtis Banks will act with reasonable skill and care in discharging its obligations under the contract. Curtis Banks is also bound by the regulator's rules which include the Principles for Businesses (PRIN). These include Principle 2 (Skill, care and diligence) which says a firm must conduct its business with due skill, care and diligence. And Principle 6 (Customers' interests) which says a firm must pay due regard to the interests of its customers and treat them fairly.

I've looked first at the time taken to complete the purchase of the property. The investigator set out in her view a very detailed timeline. I'm not going to repeat all she said here. And I'm not going to comment on each and every stage of the process, just what I see as key.

Mr C has said he expected the property purchase to have been completed by the end of September 2015. I've seen that there were discussions around how the purchase was to be funded. But, even if there'd been some informal negotiations round about that time and which might've included Curtis Banks, I don't think, as far as Curtis Banks was concerned, that the proposed purchase can be said to have 'kicked off' until (and in accordance with Section 11.1) Curtis Banks received the correct fully completed property form, details of how the purchase was to be funded and which solicitor Mr C wanted to be instructed. Curtis Banks had those details on 7 June 2017. Once the solicitors had confirmed they were happy to act, the purchase process started, which was around mid August 2017.

If the purchase didn't get underway until then that accounts for about two years of the delay Mr C has pointed to (from September 2015) and which I don't see could've been Curtis Bank's responsibility. But it still took another four and a half years for the purchase to be completed, which is still a very considerable time.

I haven't seen anything to suggest that the purchase got off to other than what might be termed a normal start, with the usual searches and enquiries being made. But it seems a significant delay then arose because a response to enquiries raised by Curtis Banks' solicitor with the seller's solicitor wasn't received promptly. In January 2018 Curtis Banks' solicitor had confirmed that enquiries had been raised. But, despite chasing, it wasn't until the end of August 2018 that Curtis Banks' solicitor was able to confirm a response had been received. And, during the same period, Curtis Banks were in discussions with Mr C's IFA about the need to clear existing arrears on the commercial property (Unit 5) already held in the SIPP.

In October 2018 Curtis Banks' solicitors wrote to the seller's solicitor confirming the information that was still required, which included an up to date valuation for the property which, because borrowing was involved, the lender was required to undertake. It wasn't until October 2019 that approval for the valuation was obtained from Mr C's IFA which enabled the valuer to be instructed. The fee for the valuation was agreed and settled by Mr C (in December 2019) and the valuer instructed. But it seems there were then difficulties in getting access to the property (I think Mr C was away) and the valuer wasn't able to undertake the valuation until 18 March 2020 with the lender's agreement in principle to lend given on 13 May 2020.

There were then issues as to whether the lender had received the necessary documentation and the lender required an updated environmental search which was done in August 2020. The results weren't entirely satisfactory which led to further discussions before Curtis Banks agreed, in October 2020, to proceed with environmental insurance. Loan documentation was sent to Curtis Banks in November 2020 for signature which Curtis Banks sent to Mr C's IFA who confirmed in mid December 2020 that Mr C was happy with the terms of the loan.

At about the same time, Curtis Banks' solicitors updated Curtis Banks saying further information was outstanding from the seller's solicitors. By 23 February 2021, when the solicitors updated Curtis Banks again, the position remained that there were matters outstanding in relation to the purchase of Unit 1 and the lease for Unit 5. Curtis Banks got back to the solicitors on 5 March 2021, which Curtis Banks says wasn't acceptable and should've been sooner.

Looking at what happened after that, it seems there were delays on the part of the valuer who didn't, despite chasing, revert until June 2021. During September, October and November 2021 the remaining points to enable the purchase to be completed were dealt with and during December 2021 there was liaison with the lender as to the availability of funds and the necessary documentation. The lender confirmed the monies were available on 20 January 2022 and completion took place on 3 February 2022.

All in all and from what I've seen I don't think Curtis Banks were responsible for the fact that the purchase took so long to complete. Curtis Banks has accepted that there were some instances where they delayed matters and has offered compensation by way of a refund of fees. I think what's been offered is fair and reasonable.

Turning now to the complaint about the LTA charge, Curtis Banks has said, and I agree, that they weren't required to get the LTA declaration signed and the valuation undertaken exactly on Mr C's 75th birthday. But, as the investigator pointed out, HMRC's guidance says, if a tax charge arises between 1 April and 30 June (which was potentially the case here as Mr C's 75th birthday was in May 2022), the return should be filed by 14 August. And the interest penalty of £392.44 reflects that – it's for interest accrued between 14 August 2022 and 9 December 2022. I'd expect Curtis Banks, as the SIPP administrator, to be aware of any deadlines and to act accordingly.

Curtis Banks wrote to Mr C on 31 May 2022 about the LTA test at age 75 and enclosing the

declaration form. The letter said, if the SIPP held a property, Curtis Banks would need to appoint a valuer to obtain an up to date market valuation. Curtis Banks also wrote to Mr C's IFA on the same date, enclosing a copy of what had been sent to Mr C. So, within a few weeks of Mr C's 75th birthday, Curtis Banks had started the process to undertake the LTA test and file the necessary declaration with HMRC. I think there should've been, in theory at least, sufficient time to do that by 14 August 2022.

Curtis Banks says the declaration wasn't returned promptly by Mr C's IFA. Which meant that, at the beginning of August 2022, Curtis Banks got in contact with the IFA and asked for the declaration to be returned immediately and which it was. But it seems the IFA may not have received Curtis Banks' letter of 31 May 2022 – the copy I've seen is marked 'Return to Sender'. If the letter was returned, I think Curtis Banks should've remedied that by sending it again, perhaps by email, and seeking confirmation that it had been received.

Further, and even if there was no issue about the letter having been received, I'd have expected Curtis Banks, if a response wasn't received reasonably promptly, to have chased it up. As I've said, there was a deadline – 14 August 2022. I've not seen anything to show Curtis Banks was aware of that. Curtis Banks doesn't appear to have chased things up before 1 August 2022 with Mr C's IFA or direct with Mr C. Given the deadline I don't think Curtis Banks should've left it for two months before prompting Mr C's IFA for the signed declaration.

Fortunately, once Curtis Banks got in contact with the IFA in early August 2022, he was able to deal with the matter quickly and get the declaration returned. But that wasn't the only requirement – a valuation of the properties was needed too. Curtis Banks had already put that in hand – Curtis Banks had sent initial instructions to the valuer and asking for a fee quote by email on 14 June 2022.

Mr C says a valuation had only been sought because his IFA had asked Curtis Banks to arrange for an updated valuation of both Unit 1 and Unit 5 to see what the new rental amounts would be. Curtis Banks agrees Mr C's IFA did ask – the IFA's email of 8 June 2022 – that a valuation for rental purposes be obtained. But it's clear, from Curtis Banks' email of 14 June 2022 to the valuer, that Curtis Banks was aware that a valuation at Mr C's 75th birthday was required – Curtis Banks asked the valuer for a quote for advising on the market value of the property as it stood on that date. The valuer provided a fee quotation on 16 June 2022 which Curtis Banks forwarded to Mr C's IFA for approval and saying that a valuation for the LTA test at age 75 was also required. So I don't agree with Mr C that Curtis Banks was unaware that a valuation was required as at Mr C's 75th birthday and didn't take any steps to obtain one.

Curtis Banks instructed the valuer to proceed on 21 June 2022, Mr C having confirmed his agreement to the fee. But the valuation wasn't provided promptly. Curtis Banks says it chased the valuer. I've seen an email from Curtis Banks on 12 July 2022 to the valuer. There may have been others. And, as things actually happened, there were difficulties in arranging access to the properties and queries as to the date of the valuation and why the market values had increased so much arose. But, given the deadline I've mentioned (14 August 2022), I'd have expected Curtis Banks to take what steps they could to ensure the valuation was done in sufficient time to meet that deadline.

I'm not sure exactly when the valuation was provided to Curtis Banks. The valuer emailed Curtis Banks on 2 September 2022 (a Friday), seeking an alternative contact number and saying they were looking to arrange access for the Monday (5 September 2022). Curtis Banks emailed Mr C's IFA on 6 September 2022, asking if there was another contact number. The IFA replied the same day with alternative contact details which Curtis Banks provided to the valuer on the same day. But I think by then the inspection of the property had

already taken place – I think the valuer gained access on 5 September 2022 as planned. If that's right then the valuation report must have been provided to Curtis Banks after that date although I'm unsure exactly when that was.

And, when the valuation was eventually received, there were further delays as there were queries about the date of the valuation and if it reflected, as Curtis Banks had instructed, the value as at May 2022. Curtis Banks also queried the increases in the market values. From what I've seen, it took from 12 October 2022 until 10 November 2022 for an acceptable valuation to be received.

Curtis Banks might say, and I accept, that they weren't responsible for delays on the part of third party professionals. But, in my view, and in its dealings with the valuer, Curtis Banks should've been working throughout to a deadline of 14 August 2022. Curtis Banks instructed the valuer to proceed on 21 June 2022. I don't think it's unreasonable to say that Curtis Banks should've been more proactive and taken steps to ensure the valuation was to hand within, say, three weeks, so by about mid July 2022. That would've left sufficient time to have sorted out, on an urgent basis, any queries and with a view to filing the declaration and paying any LTA charge by 14 August 2022.

Against the background that I'm not satisfied that Curtis Banks was aware of the deadline and took sufficient steps to ensure it was met, I think Curtis Banks should be responsible for the interest penalty imposed by HMRC of £392.44 and which Mr C says was deducted from his SIPP. I assume that payment came out of the SIPP bank account so Curtis Banks will need to refund it together with interest (if any) that would've been paid had that money remained in the SIPP bank account.

I note Curtis Banks also encountered problems in attempting to pay the excess charge of £26,964 to HMRC on 15 November 2022. Due to issues with Curtis Banks' system, the payment failed and wasn't made in full until 12 January 2023. Curtis Banks accepts it took some time to be rectified but says it didn't have any impact on Mr C. But, from what I've seen, it did – the interest penalty was for the period from 14 August 2022 until 9 December 2022. Presumably if the payment had been successful on 15 November 2022 then the interest charge would've been less. But given I've said Curtis Banks should refund the interest anyway, nothing turns on that. I'd just add that, as I've said, the payment wasn't fully made until 12 January 2023. So, if there was any further charge for that additional delay (although from what I've seen there wasn't) Curtis Banks will need to refund that too.

In addition to the delay, Mr C has raised a further issue with the valuation – that is whether it accurately reflects the value of the properties as at May 2022. Mr C says improvements had been carried out after then and were taken into account when the properties were inspected and valued in September 2022 and so the values were overstated. This is an important point for Mr C – he incurred a LTA excess charge of £26,964 which would've been less (or zero) if the property values had been lower.

Curtis Bank's position is that it instructed the valuer to give a valuation for the properties as at Mr C's 75th birthday in May 2022 which was, in the end, what the valuer (a RICS qualified surveyor) provided and Curtis Banks was entitled to rely on that. Here Curtis Banks points to Section 11.4 of the SIPP terms and conditions which deals with third party professionals. It says Curtis Banks will instruct the third party professional and Curtis Banks cannot guarantee the service of third party professionals.

I understand that but, and as I've indicated to Curtis Banks, I don't think it's the end of the matter. Where a professional, such as a RICS registered valuer, is instructed, care should be taken to ensure that the instructions given are accurate and all material information is included. Curtis Banks had an implied duty, in carrying out its duties as the SIPP operator

and administrator, to act with reasonable skill and care. I don't think Mr C's dissatisfaction rests with the service provided by the valuer but more with the instructions or information given to the valuer by Curtis Banks.

RICS valuers are required to follow specific guidelines to come to an independent and accurate reflection of a property's value. That's an evidence based opinion taking into account various factors, including market conditions and sales of comparable properties, location, tenure, compliance with planning and building regulations, accommodation offered and the condition of the property. A physical inspection of the property will usually be undertaken. Mr C's point is, if the physical condition of the properties in September 2022 was better than it was in May 2022, then the market value at the earlier date may have been lower.

Curtis Banks has said that it was unaware of any works being carried out to the property. I note that Section 11.8 of the SIPP terms and conditions says building works must only be undertaken with Curtis Banks' prior written agreement and subject to the requirements set out. As far as I can see, building works aren't defined. I'm unsure if whatever modifications were undertaken would've qualified as building works as such. Mr C's IFA refers, in his email of 8 June 2022 (requesting that a valuation for rental purposes be obtained), to both Unit 1 and 5 having 'been tidied up a lot'. That might suggest any modifications were relatively minor and such that might not have met the description of building works and so didn't fall in Section 11.8. If, on the other hand, the works undertaken were more substantial, there might've been some responsibility on Mr C to notify Curtis Banks that he was undertaking works to the property and seek consent.

But, in any event, whether or not the improvements counted as building work or not, Mr C would've been aware that a valuation for LTA purposes at his 75th birthday was required. And, from what I've seen, he'd have been aware that the properties were being inspected on 5 September 2022 – I say that because it would seem that the arrangements for access were made via Mr C himself. So it might've occurred to him that, if the condition of the properties had changed since May 2022, it would be helpful to point that out to the valuer when he attended to inspect the properties. But it seems that Mr C's focus may have been more on the rental valuations.

As far as Curtis Banks is concerned, if Curtis Banks was unaware there might be a difference between the condition of the properties in March 2022 and September 2022, I don't see Curtis Banks could've instructed the valuer accordingly. As I've said, the IFA's email just refers to the properties having been tidied up which I don't think, on its own, would've suggested that works which might potentially affect the value of the properties had been undertaken. So I don't think that email ought to have prompted Curtis Banks to make further enquiries.

But, although I don't think Curtis Banks' initial instructions in June 2022 were deficient on the basis that Curtis Banks failed to point out to the valuer any change in the condition of the properties, there are other issues.

First, it's unclear, when the valuation was requested in June 2022 what, if any, works had been commenced or undertaken – Mr C has referred to works being done in August 2022. If the valuation had been chased up and obtained promptly as I've said should've been the case, there may have been less of an issue as to any changes to the condition of the properties. As it was, the property wasn't inspected until September 2022 by which time the works had been completed.

Further, and in any event, once Mr C had made Curtis Banks aware that the condition of the properties had changed between May and September 2022 and he was concerned that

might impact on the values, I think Curtis Banks should've realised there might be an issue. As I've said, the matter was important as Mr C was over the then LTA which resulted in a very substantial excess LTA charge. I don't think his concerns about why the values might have changed (upwards) between May 2022 and September 2022 were unreasonable. As I've said, the physical condition of a property is a factor to be taken into account in giving a valuation. Instead Curtis Banks' position, which it has maintained, was that they were entitled to rely on the valuation they'd obtained. I don't think that's entirely fair. In my view, Curtis Banks should've found out exactly what improvements or modifications had been undertaken between May and September 2022 and sought the valuer's opinion as to whether those would've affected the market value as the properties stood in May 2022.

I recognise that going back to the valuer would've taken more time. I've said that Curtis Banks should've ensured the valuation was provided promptly – by say, mid July 2022. If the valuation had been completed by then and been shared with Mr C and he'd pointed out that work had been undertaken since May 2022, there'd still have been time to iron out with the valuer any issues about if such works had impacted on the value. I think it would've been relatively straightforward, if Mr C supplied details of the works undertaken, for the valuer to give an opinion as to the impact, if any, on the market values.

To sum up, I think there was a delay on Curtis Banks' part in obtaining Mr C's LTA declaration. That wouldn't have mattered given that it was to hand by early August 2022 anyway but the valuation hadn't by then been obtained. There were delays on the valuer's part but that was coupled with a failure by Curtis Banks to chase things up and work to a deadline of 14 August 2022. I don't agree that Curtis Banks falsified the valuation. It was provided by a RICS professional who gave his opinion of the market values as at May 2022. Curtis Banks was initially unaware of any works undertaken and which might go beyond 'tidying up'. But there were shortcomings on Curtis Banks' part once they became aware there was an issue about the condition of the properties in September 2022 having been improved since May 2022. Acting fairly and reasonably and in Mr C's best interests, Curtis Banks should've taken steps to check that out with the valuer.'

Mr C provided a letter from the valuer. It set out that the most recent valuation report dated 7 October 2022 had apparently been requested on 21 June 2022 but that hadn't been received. Curtis Banks chased it up on 27 July 2022. Unfortunately, due to holiday commitments, the inspection couldn't be carried out until 5 September 2022. The valuation report was issued to Curtis Banks on 7 October 2022. On 12 October 2022 confirmation was requested as to whether the market value would've been the same as at May 2022. The property hadn't been inspected then and Curtis Banks hadn't informed the valuer that was prior to the refurbishment works carried out which were observed when the property was inspected on 5 September 2022 and taken into account in the valuation report dated 7 October 2022. The valuer said, in providing advice, it was assumed the property would consist of the same status, condition wise, between May and September 2022. However, that appeared not to have been the case as Unit 1 underwent a significant refurbishment during that time. We shared the letter with Curtis Banks.

I've summarised Curtis Banks main comments and why it didn't accept my provisional decision:

- Although the letter enclosing the benefit request form was returned it had also been sent via the secure messaging portal which shows Mr C's IFA read it the same day (31 May 2022). Curtis Banks weren't responsible for a third party's delay but agreed they could've been more proactive. Their procedures for chasing things up had since been reviewed and changed to provide a better and more proactive service. In any event, I'd said the delay (in relation to the form) hadn't impacted the overall time taken as the valuation hadn't been completed anyway.

- About the property valuation and the interest charge, Curtis Banks reiterated that they couldn't be responsible for third parties but again accepted they'd not been proactive and hadn't chased the valuer between 20 June and 12 July 2022. Two weekly chasers would now be sent as a minimum.
- But even if they'd chased more that didn't mean the valuer would've definitely acted in a timely manner. Curtis Banks could've aimed to get the valuation within three weeks but that was hypothetical and depended on the third party. So Curtis Banks shouldn't take full responsibility for the delays and the resulting impact. Curtis Banks agreed to pay the majority (74%) of the interest charge to compensate for the delay following 15 November 2022. But, as they weren't solely responsible for the delays prior to this, it wouldn't be fair to refund the balance of £101.33
- I'd said, once Curtis Banks had been made aware of Mr C's concerns about the impact of works done on the valuation, Curtis Banks should've acted to put this right. Curtis Banks accepted there'd been a complaint handling failure – Mr C had mentioned it as an additional concern in his email on 14 January 2023 but the point had been missed. In that email Mr C had said he'd requested a new valuation following refurbishments in September 2022. Curtis Banks said it had no record of that request.
- Potential building works had been mentioned in 2021 during the acquisition of Unit 1. A fact sheet for Developing Property was included in the completion documentation, setting out, amongst other things, that appropriate planning permission must be in place, Curtis Banks' requirements must be satisfied and their prior approval obtained. Curtis Banks should've been contacted if Mr C decided to go ahead with any works prior to proceeding.
- Although building works aren't defined, whatever was done was substantial enough for Mr C to be concerned about the value of the property. It wasn't reasonable to assume he didn't know whether the works would need to be declared to Curtis Banks before proceeding. If there was any uncertainty that should've been checked first. The property guide and SIPP terms and conditions – sent to Mr C when his SIPP was opened and which he'd signed to say he'd read and understood – also outline what's required for any building works. Curtis Banks can't be held responsible for not acting on information which hasn't been provided.
- Curtis Banks did receive a secure message on 7 October 2022 from Mr C's IFA, saying '*after some repairs and improvements to the SIPP property, this was revalued a couple of weeks ago by the valuer*', and adding that Mr C needed to see the valuation as he wanted to withdraw whatever tax free cash was still available to him. Curtis Banks accepted that should've raised some questions over what had been done. But the message was marked as a valuation chaser.
- But, ultimately, it was Mr C's responsibility to make Curtis Banks aware of any works prior to going ahead and as explained in multiple documents Mr C received. Curtis Banks missed opportunities to highlight a potential problem but it was and remains Mr C's responsibility to ensure Curtis Banks was made aware and its procedure correctly followed. If Mr C had made Curtis Banks aware at the time of the intended building works and followed the process, Curtis Banks would've known to inform the valuer of exactly what works had been carried out. As that didn't happen it wasn't appropriate for Curtis Banks to compensate Mr C for any loss that's been caused.
- However Curtis Banks was now contacting Mr C to find out what works had been done and to see if any action could be taken retrospectively regarding the impact on the SIPP.

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.

In my provisional decision I considered the time taken to complete the purchase of Unit 1. All in all, and despite the fact that the purchase took what would appear to be a very long time, I was unable to say that Curtis Banks was responsible over and above the instances where they'd accepted they'd delayed and had offered compensation.

Neither party has offered any further comments on this aspect of the matter and so my views are unchanged.

The issue remaining is the LTA excess charge. I note what Curtis Banks has said about the benefit request form. I accept Mr C's IFA received it the same day via secure message even if the hard copy sent by post didn't reach him. But Curtis Banks agrees they should've been more proactive in chasing it up. As I said in my provisional decision, Curtis Banks seemed to be unaware that there was a deadline of 14 August 2022. Fortunately, when Mr C's IFA was asked for the form, he was able to deal with it very quickly. But, that said, any delay here didn't impact overall given that the valuation was required anyway.

Curtis Banks has met a large part of the late interest charge. But it doesn't think it should be responsible for the balance because there were delays on the part of the valuer. I said, in my provisional decision, that Curtis Banks might say they weren't responsible for delays on the part of third party professionals. And I can see the argument that there's no guarantee, even if Curtis Banks had chased up the valuation, it would've been provided earlier.

Sometimes, where we have a complaint which involves delay by other parties (over whom we have no jurisdiction), we'll factor in the time actually taken by the other party and on the basis that they'd have always taken the same amount of time. But that won't always be the appropriate approach to take.

Here Curtis Banks accepts they should've been more proactive. That's from the perspective that, as a matter of good administration, they should've sent more regular chasers. I agree but there's the other issue too – that Curtis Banks didn't seem to be aware there was any urgency or deadline. So, throughout its dealings with the valuer, Curtis Banks wasn't working towards a deadline of 14 August 2022.

By the time the instructions to the valuer were confirmed, on 21 June 2022, over five weeks of the thirteen or so week period had expired. Curtis Banks could've put the valuation in hand earlier. Perhaps when Mr C actually reached age 75 or at the same time as Curtis Banks sent the form to Mr C and his IFA for completion and return (31 May 2022). And, when the valuer was instructed (21 June 2022), it wasn't on the basis that the valuation was fairly urgent. And, as Curtis Banks themselves accept, when the valuation wasn't received promptly, there was then a failure to chase it up. According to the valuer, the instruction sent on 21 June 2022 wasn't received. That only came to light on 27 July 2022 when Curtis Banks chased things up and by when some further five weeks had elapsed. Due to holiday commitments, the valuer couldn't then carry out an inspection until 5 September 2022. By then, the deadline had already been passed by getting on for a month.

Although I accept there's no guarantee, I don't think, on balance, it's unreasonable to say, had Curtis Banks been aware of the deadline and, from the outset, worked towards it, the valuation would've been to hand earlier and in time to avoid any late payment interest charge. In the circumstances I maintain that it isn't unfair or unreasonable to say Curtis Banks should meet in full the late interest penalty.

The main issue is about the valuation itself and whether, when it was finalised in November 2022, it properly reflected the value of the properties held in the SIPP as at May 2022. That

depends on whether in the interim, that is, by the time the valuer inspected the properties in September 2022, the physical condition (and I think we are talking here about Unit 1) had improved, such that would've impacted on the value with the result that the correct value in May 2022 would've been lower.

The value of the commercial properties held in Mr C's SIPP as at May 2022 is a matter of fact and professional opinion. As it's now clear there's a dispute about the valuation, Curtis Banks is now taking what steps they can to see if anything can be done retrospectively, including contacting Mr C for details of what work was carried out. Mr C has told us that he's gathered some invoices for work done between June and September 2022 which we can share with Curtis Banks.

I presume Curtis Banks will then approach the valuer for a professional opinion as to whether what was done did impact on the value and such that the May 2022 valuation of Unit 1 would've been lower. If the answer to that is negative then that's an end to the matter and the LTA excess charge has been correctly calculated on the basis of the correct value of the SIPP at Mr C's 75th birthday and he hasn't paid more than he should've done.

But, if the correct May 2022 valuation would've been lower, then Mr C's LTA excess charge was higher than it should've been. If that can't now be resolved with HMRC, the issue is whether Curtis Banks should meet the higher charge. In my provisional decision I said, for the reasons I set out, that Curtis Banks was responsible. Curtis Banks, although accepting that, at times, their service fell below the standard Mr C was entitled to expect, didn't agree.

I've considered very carefully all Curtis Banks has said. The main focus is on Mr C's responsibilities when undertaking building works. I don't disagree with most of what Curtis Banks says. I didn't mean to suggest in my provisional decision that, because it wasn't clear exactly what was meant by building works, Mr C may have been unaware of his responsibilities. It's clear the onus is on Mr C to notify Curtis Banks in advance of undertaking any development or building works and obtain Curtis Banks' permission and comply with any requirements Curtis Banks may have. I agree Mr C should've known that.

It seems that, during the time when Unit 1 was being acquired, there was some mention of building works being undertaken. I agree, if Mr C decided to go ahead once the purchase was complete, it was up to him to tell Curtis Banks that. It wasn't for Curtis Banks to follow up any earlier indication given that, at some stage, Mr C might want to carry out building works. But, although Mr C may have had plans, those may not have come to fruition. And, although some work was done, that doesn't automatically mean it could properly be described as building works and so giving rise to an obligation on Mr C's part to notify Curtis Banks.

As I said building works isn't defined, so there's some ambiguity. I think Curtis Banks accepts that some work undertaken won't come within that term. Curtis Banks says Mr C's view was that whatever work was done was apparently substantial enough to impact on the value. But Mr C may have been mistaken about that. I don't think that must mean that whatever was done would've met the description of building works and as that term would ordinarily and naturally be understood.

What's been done has been described as tidying up, repairs, improvements or refurbishments. I think tidying up suggests that whatever was done would fall short of what would ordinarily be understood as building works. I think the latter would usually suggest more extensive alterations or additions to the property, perhaps those requiring planning or building regulations approval. And repairs are, on the face of it at least, different too. Repairing involves corrective action for something that's been damaged or has for some

other reason stopped working or isn't working properly, rather than an upgrade, although that might sometimes be undertaken at the same time.

Other terms such as improvements or refurbishments are less clear and might denote building works. Mr C, in his email of 14 January 2023, refers to the completion of refurbishments/improvements. And the letter from the valuer dated 10 June 2024 refers to Unit 1 having undergone significant refurbishment. I agree that that might suggest work which might be substantial enough to properly be described as building works. But, without further details, I can't say I'm satisfied that what might properly be described as building works did take place. I think, even when it's established exactly what work was done, there might still be arguments about if it (or all of it) constituted building works or not.

All in all the position isn't clear. So I don't think it would be fair to approach the matter on the basis that Mr C must have been in breach of the SIPP terms and conditions. And which seems to be Curtis Banks' main argument – that Mr C is to blame for what happened because he was in breach of his obligation to notify Curtis Banks about building works and, if he'd have done that, Curtis Banks would've been aware of the work and so could've instructed the valuer accordingly.

But, all that said, and as I recognised in my provisional decision, if Curtis Banks didn't know that any work had been done to the properties (or one of them), Curtis Banks couldn't have pointed that out to the valuer and asked him to take that into account when valuing the property as at May 2022.

It's unclear exactly what work was undertaken and when. But, if the valuation had been instructed and carried out promptly and nearer to Mr C's 75th birthday, it may be that some or all of the works wouldn't have been done by the time the property was inspected. So there'd be no issue about the physical condition of the property being any different. And, any work in progress when the property was inspected may have been evident and such that would've prompted the valuer to ask about.

As to when, as things actually happened, Curtis Banks should've found out about the work, I've said that Mr C's IFA's email of 8 June 2022 (which refers to the properties having been 'tidied up a lot') wasn't sufficient to alert Curtis Banks to the possibility that work had been undertaken such as might've impacted on the value of the properties. But Curtis Banks accepts they should've followed up on the secure message from Mr C's IFA on 7 October 2022 which was marked as a valuation chaser. But there was a reference to repairs and improvements having been undertaken and the property having been revalued after then. I think Curtis Banks accepts they should've followed up on that and asked what had been done.

At that stage, Curtis Banks hadn't received the final valuation. Although it was issued on the same date, 7 October 2022, queries then arose as to whether it reflected the property values as at May 2022. So Curtis Banks had to go back to the valuer anyway. Curtis Banks could've also got further details from Mr C/his IFA about the repairs and improvements mentioned and then flagged those up to the valuer as not having been in place in May 2022. And, depending on whether it seemed that building works had been undertaken, Curtis Banks could've reminded Mr C that he needed to comply with Curtis Banks' requirements. But the value of the property is a matter of fact and record and, in my view, if there was any dispute, that should've been highlighted anyway and regardless of any perceived breach on Mr C's part. As I've said the issue was important – it was required for the LTA check at age 75 and Mr C's excess LTA charge, based on the value of his SIPP, which included the two commercial properties, was substantial.

A further opportunity was also missed when Mr C submitted his complaint. In his email of 14 January 2023, Mr C put the matter on the basis that Curtis Banks had failed to instruct the valuer and had then adopted the valuation produced as a result of Mr C's request for an updated valuation. As I've said, I've seen that Curtis Banks contacted the valuer initially on 14 June 2022 and confirmed the instruction on 21 June 2022 (although it appears the valuer didn't receive it). So I don't agree with Mr C that Curtis Banks failed to instruct the valuer. But it seems that, by September 2022 (the work to Unit 1 having been completed), Mr C wanted an updated valuation anyway. I haven't seen anything to suggest he (or his IFA) made that request via Curtis Banks. So I'd assume any request was made direct to the valuers. And who were already undertaking a valuation in accordance with the request from Curtis Banks.

But it was clear from Mr C's email of 14 January 2023 that he was also unhappy that the valuation took into account the refurbishments/improvements made, 90% of which he said had been completed between June 2022 and September 2022 and so before the applicable valuation date. At that stage the LTA tax charge had only recently been paid – HMRC's Notice of Accounting for Tax Return Interest dated 13 December 2022 indicates it was only paid on 9 December 2022. So, if there'd been an error as regards the valuation, it may have been easier to try to sort it out then. As things stand, it's now some eighteen months after the event which may make things more difficult.

So, and to sum up:

- It's not unreasonable to say, if Curtis Banks had worked towards a deadline of mid August 2022, the valuation would've been completed before then and in time so as to file the LTA return and avoid any interest penalty. In the circumstances, I think it's fair that Curtis Banks meet the full amount of the interest charged and not just the proportion they've accepted responsibility for.
- And, if Curtis Banks had instructed the valuer earlier and/or chased the valuation up, the issue about work done may not have arisen – because, and depending on exactly what was done and when, no (or no substantial) work would've been done by the time the property was inspected. Or work may have been in progress and so prompted queries about what had been done and when.
- Even if it's wrong to rely on that, as things actually happened, Curtis Banks missed two opportunities to clarify the position regarding work done to the property, the first of which was before the valuer's report had been finalised. Although querying things would've added to the time taken, that would've been preferable to submitting a return based on the wrong valuation and on which Mr C's excess LTA charge was calculated. And another chance to look into things for Mr C was missed in early 2023 when his complaint was made.

Putting things right

I've set out below what Curtis Banks needs to do to put matters right for Mr C. It follows what I said in my provisional decision.

Curtis Banks will need to revisit things with the valuer. Curtis Banks should ask Mr C to provide details of work undertaken for each unit between his 75th birthday and 5 September 2022 and any evidence in support (such as invoices for work undertaken, photos etc) which Curtis Banks should put to the valuer for their professional opinion as to whether the property values as at May 2022 would've been different to those previously confirmed. If not then Mr C hasn't suffered any loss and so no compensation is payable – aside from refunding the balance of the late interest charge plus interest, if any.

As I've noted above, Mr C has some invoices which will be provided to Curtis Banks.

Curtis Banks has told us that they are revisiting the valuation and, if there's a discrepancy, they'll try to sort things out retrospectively so the position for Mr C's SIPP is corrected. In that event, Curtis Banks should ensure that Mr C's SIPP is adjusted in line with what I've set out below.

Trying to resolve things may take some time. Curtis Banks needs to first sort out with the valuer whether the May 2022 valuation would've been impacted. And, if so, Curtis Banks will presumably then need to approach HMRC. So I haven't said by what date things need to be resolved. But I'd ask Curtis Banks to use their best endeavours to come to a prompt conclusion for Mr C.

But, if it's not possible to resolve things retrospectively, Curtis Banks will need to pay Mr C appropriate compensation based on what the lower excess LTA charge would've been.

Curtis Banks will also need to pay a return to compensate Mr C for the growth that money would've achieved if it hadn't been deducted from his SIPP fund to meet the LTA excess charge. For ease I'd suggest a benchmark should be used, based on Mr C's attitude to risk.

On the assumption he's a medium risk investor then the FTSE UK Private Investors Total Return index would be suitable. It would apply from the date the LTA charge was deducted from Mr C's SIPP to the date of settlement.

Any compensation should be paid into Mr C's SIPP to increase its value by the amount of the compensation. The amount paid should allow for the effect of charges and any available tax relief. Compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If Curtis Banks is unable to pay the compensation into Mr C's SIPP, Curtis Banks should pay that amount direct to him. But had it been possible to pay into the SIPP, it would've provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr C won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr C's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume that he's likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr C would've been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

Details of the loss assessment should be provided to Mr C.

Curtis Banks should refund the balance of the late interest of £392.44 charge to Mr C's SIPP together with any interest that would've been paid on that sum.

My final decision

I uphold the complaint in part. Curtis Banks Limited must redress Mr C as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 26 July 2024.

Lesley Stead
Ombudsman

