

The complaint

Mr S complains about several issues in the way Curtis Banks have administered his Self-Invested Personal Pension (SIPP).

What happened

In March 2022, Mr S started the purchase of a commercial property in his SIPP. Mr S already owned a 50% share in the property which he held outside of his SIPP. The remaining 50% was owned by Mr X. Mr S planned for his SIPP to purchase both shares of the property so that it could be held entirely in his SIPP.

There were several parties involved in the purchase of the commercial property. These were;

- Curtis Banks – the operator and trustees of Mr S' SIPP
- The solicitors used by Curtis Banks for the purchase of the commercial property who I will refer to as 'The Solicitors'.
- The property surveyors who I will refer to as 'The Property Surveyors'
- An investment platform within Mr S' SIPP which I am referring to as 'D'.
- The owner of the remaining 50% share of the commercial property who I will refer to as Mr X.

Mr S also held other commercial properties and investments in his SIPP. He says there had been several issues over how Curtis Banks had administered his SIPP.

In June 2022, Mr S contacted our Service to say he wanted to complain about Curtis Banks. He'd raised several complaint points. Regarding his complaints, he wanted Curtis Banks to;

- provide a set of accounts detailing rental receipts and outgoings since 2017;
- give an account of all VAT being paid to HMRC;
- take responsibility for any interest and penalties on late payment of VAT;
- reimburse a service charge of around £25,000 it had erroneously paid;
- use valuations he'd set out in a letter from October 2020 to satisfy the Age 75 test to HMRC;
- reimburse solicitor's costs;
- waive all exit fees and set up costs involved in transferring his SIPP to a new provider.

On 9 June 2022 an Adjudicator at the Service explained to Mr S that we'd be unable to consider these complaint points until he'd complained directly to Curtis Banks, and it had issued its final response letter. Once it had done so, Mr S needed to complete a complaint form and submit it to our Service.

Later, in June 2022, Mr S requested to cancel the purchase of the commercial property as he was considering moving to a new SIPP provider.

Curtis Banks issued a final response to Mr S' initial complaint points on 1 July 2022.

Mr S phoned our Service on 19 July 2022 saying he hadn't had an acknowledgement to the documents he'd previously submitted. Mr S didn't say that a final response had now been issued or that he wanted us to investigate his complaint. Our Investigator sent Mr S a copy of the email from 9 June 2022 explaining that he needed to complete our complaint form and forward us the final responses, or wait until eight weeks had passed without a final response, for us to investigate his complaint. Mr S acknowledged receipt of this email on 20 July 2022.

On 9 August 2022, Mr S instructed Curtis Banks to recommence the purchase of the commercial property. Mr S had instructed D to disinvest £300,000 and move that to the SIPP account in order to make the purchase of Mr X's share of the property, which had been valued at £287,500 in March 2022.

Throughout August and September 2022 there were lots of communications between the parties involved in the purchase of the commercial property. It was proceeding based on Mr X's share being purchased first before Mr S' share would be purchased in a separate transaction. Mr S was also keen to have the funds transferred from D to The Solicitors as soon as possible but Curtis Banks told Mr S that The Solicitors were unable to hold the funds until the transaction was ready to complete. Curtis Banks offered to hold the funds from D in Mr S' client account which he agreed to.

Throughout September and October 2022 there were further communications, and it came to light that there was a possible issue with the plans denoting the boundaries of the property. Curtis Banks sought advice from The Solicitors and ultimately decided that a variation to the plans and leases were required. It instructed The Property Surveyors to assist in the variations.

Mr S was unhappy with Curtis Banks' requirement for new plans and asked for its reasoning. Curtis Banks explained that it thought the leases were in place over land which wasn't owned by Mr S and Mr X. It said it was concerned HMRC would class the rent received for that area of land as an unauthorised payment which could lead to significant tax penalties.

Mr S disagreed with its reasoning, but Curtis Banks didn't change its position. On 31 October 2022, Mr S agreed that the lease could be rectified. Following a discussion between Curtis Banks and The Solicitors, it was agreed on 3 November 2022 it may be more appropriate to have The Property Surveyors visit the property and draft new title plans to ensure they were land registry compliant.

At around the same time, Mr S made a further complaint about the incorrect payment of a service charge. Curtis Banks issued another final response on 16 November 2022 saying they'd refer the matter to their legal team.

Mr S confirmed on 18 November 2022 that he was happy for a valuer to be instructed and that Mr X had requested the lease be varied with a deed of variation.

The Property Surveyors were then instructed on 18 November 2022. The Land Registry

compliant plan was then completed and received by The Solicitors on 7 December 2022. Having reviewed this, The Solicitors confirmed that no further correction work was required, so it could proceed with the purchase.

In early December the transfer of Mr S' funds from D was discussed internally at Curtis Banks as it still hadn't been received into Mr S' client account. The funds were transferred from D to Curtis Banks in mid-December.

On 10 December 2022, Mr S stated that the transaction should proceed on the basis that his share was being purchased first. This then caused some confusion as to whether the purchase of Mr X's share of the property was to happen first, as had been the original plan, or if the purchase of Mr S share was to now go first. The latter meant new documentation needed to be completed.

On 13 December 2022 Curtis Banks asked The Property Surveyors to confirm the valuation of the property was still accurate. The Property Surveyors replied to say the valuation was unlikely to still be accurate as the market had fallen.

Mr S agreed to revert to purchasing Mr X's share first on 24 December 2022.

On 6 January 2023 The Solicitors sent all parties a completion statement expecting the purchase to complete on 13 January 2023. However, despite The Solicitors chasing Curtis Banks for the funds to make the purchase, they weren't received. Curtis Banks later sent the funds to The Solicitors and the property purchase completed on 18 January 2023.

On 19 January 2023 Curtis Banks explained that before Mr S' share could be purchased, a new valuation was required as the previous valuation had expired. Mr S was unhappy with this requirement as he'd only purchased Mr X's share the day before. But he ultimately agreed for The Property Surveyors to provide an updated valuation of the property.

The new valuation was completed and sent to The Solicitors on 6 March 2023 and confirmed the value of Mr S' 50% share had dropped to £245,000, compared to £287,500 in the March 2022 valuation.

On 16 March 2023 Curtis Banks required a rent demand so it could reconcile Mr S' accounts within his SIPP. Mr S replied by both email and letter approximately a week later saying that he'd already given Curtis Banks this information.

Mr S raised a further complaint in early March 2023 which Curtis Banks responded to on 23 March 2023. Its response covered off Mr S' original seven complaint points but said it had replied to these issues on 1 July 2022 and 16 November 2022 and wouldn't be changing its stance.

Curtis Banks say that on 10 April 2023 Mr S sent it all the relevant documentation he had relating to the rental income going back to 2020. It then took it some time to complete the reconciliation and the remaining purchase of Mr S' 50% share completed on 26 May 2023.

Throughout the previous year Mr S had also had another ongoing issue with Curtis Banks in regard to his account with D.

D had requested information from Curtis Banks to fulfil its anti-money laundering requirements. D had decided to freeze Mr S' account as Curtis Banks had failed to provide the information it said it needed.

Mr S raised a further complaint with Curtis Banks regarding not providing D with the

appropriate documentation to meet their anti-money laundering requirements and complete its due diligence. Curtis Banks issued another final response on 25 July 2023 regarding this complaint point. It said it had provided some of the documents required in August 2022, but D had rejected the trustees' authorised signatory list as two of the signatories were no longer employees of Curtis Banks. So, it took time to update the list.

It also said the information required to satisfy D's anti-money laundering requirements went far beyond its normal requirements as D was based abroad. But it said it understood that this lengthy process would have caused Mr S frustration, so offered £200 compensation.

Mr S rejected this offer and contacted our Service on 8 August 2023 with a signed complaint form and asked us to investigate his complaints. However, as Mr S had raised further complaint points, Curtis Banks asked to issue a further response to Mr S' points, which they did on 9 October 2023.

In short, Curtis Banks said it didn't think it had caused any avoidable delays in the purchase of the commercial property. It also said it was still progressing the anti-money laundering requirements with D. And that its position regarding the late payment of VAT, the incomplete age 75 LTA test and the incorrectly paid service charge hadn't changed since their first final response of 1 July 2022.

Mr S has since said the VAT issue has now been resolved and he'd closed his account with D and moved elsewhere.

I sent Mr S and Curtis Banks a provisional decision. In it I said some of Mr S' complaint points had been referred to our Service too late, so I couldn't consider the merits of them. However, some of Mr S' complaint points had been made in time. So, I went on to consider the merits of those points.

I said Curtis Banks' actions in relation to D's anti-money laundering requirements had been reasonable and its offer of £200 in that respect was fair. And it was reasonable for Curtis Banks to require new plans although its communication and delays in moving Mr S' funds had caused frustration and inconvenience.

I also didn't think it was unreasonable for Curtis Banks to want to reconcile Mr S' account before the purchase of his share of the property.

I went on to say that Curtis Banks ought to have insisted on a new valuation before Mr X's share of the property was purchased and said what Curtis Banks must do to put things right.

I've copied the findings from my provisional decision below which form part of my final decision on Mr S' complaint.

My provisional decision

In my provisional decision I said;

"Why I don't think we can look into all of Mr S' complaints"

Mr S raised several different complaints to Curtis Banks and received responses to each of them. I appreciate this will be very disappointing for Mr S but for the same reasons as our investigator I'm minded to say some of Mr S' complaints have been brought to our Service too late. So, we aren't able to look into those aspects of his complaint further. I'll explain why.

We're not able to look into every complaint brought to us. The rules we must follow are set out in the Dispute Resolution (DISP) rules within the Financial Conduct Authority's (FCA) handbook. We are entirely bound by these rules and can't disregard them.

Before we can consider the substance of a complaint brought to us, we first need to be satisfied that the complaint has been brought to us within the timescales set out in DISP.

The relevant rule that applies here is DISP 2.8.2, which says that;

"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

(1) More than six months after the date on which the respondent sent the complainant its final response letter, redress determination or summary resolution communication ...

[...]

Unless:

(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R...was as a result of exceptional circumstances..."

We can only look into complaints made outside of this time period if the business consents to us doing so. In this case Curtis Banks hasn't consented to us looking into things.

Mr S raised a complaint with Curtis Banks in May 2022. His complaint covered the following points;

- Concerns around the VAT payments due to HMRC and whether they'd been paid, or if any late payment fines were due.*
- An erroneous service charge payment of £25,167.23 made on one of the properties.*
- Age 75 lifetime allowance test to be completed using the valuations Mr S had set out in his October 2022 letter.*
- Waiving of fees, and payment of solicitor's costs regarding the transfer of his SIPP to a new provider.*

On 6 June 2022 Mr S made our service aware of the complaint he'd made to Curtis Banks. One of our Adjudicator's emailed Mr S to explain that our Service could not consider Mr S' complaint until he had complained to the business and allowed it eight weeks to send its final response letter. Our Adjudicator went on to say if Mr S did not agree with the final response letter, or more than eight weeks passed, Mr S needed to complete a complaint form and submit his complaint to our Service.

Curtis Banks sent its final response letter to Mr S on 1 July 2022 and explained that if Mr S disagreed with its outcome, he had six months to refer his complaint to our Service. So, Mr S had until 1 January 2023 to refer his complaint.

Mr S called our Service on 19 July 2022 and spoke to an investigator. It's unclear whether at that point Mr S had received Curtis Banks letter as the purpose of Mr S' call was to see if we'd received his letter in June. It was explained that we'd emailed Mr S following his letter

and Mr S provided a new email address for us to forward the previous email on to.

Our investigator sent Mr S the email again explaining the actions he needed to take to refer his complaint to our Service. And Mr S acknowledge receipt of that email on 20 July 2022.

Mr S then didn't contact our Service again until March 2023, more than six months after Curtis Bank's final response letter was sent.

I've considered whether the phone call of 19 July 2022 could be considered as a referral to our service. But in order for the referral to be a valid one we need to be told which business the complaint is against, what the complaint is about, and that Mr S wanted us to investigate it. I've listened to the call Mr S had with our investigator. Mr S didn't say whether he'd received Curtis Banks letter and whether he disagreed with it. And he didn't ask us to investigate things. So, Mr S' phone call on 19 July 2022 wasn't a valid referral to our Service.

As no referral was made to our Service within six months of Curtis Banks final response letter, Mr S referred his complaint too late.

I appreciate Mr S might consider we should still look into his complaint points on the basis that Curtis Banks issued further complaint responses throughout 2022 and 2023 which included fresh referral rights to our Service. But the question I have to consider here is whether in doing so, Curtis Banks effectively withdrew the response it gave in July 2022 because it had reached a materially different outcome having reinvestigated the matter. I don't think that's what happened here.

I can see much of Curtis Bank's later responses refer back to what it had said in July 2022 and its overall position on the points raised remained largely unchanged. Given that, I'm satisfied that it's the July 2022 response to these points that counts for the purposes of considering whether Mr S has brought his complaint in time. And as I've already said, Mr S didn't bring his complaint within six months of the letter of July 2022, so he hasn't brought those complaint points in time.

I should also note that I've seen lots of correspondence between Mr S and Curtis Banks over the period in question. So, I see no exceptional circumstances as to why Mr S was prevented from referring his complaint to our Service sooner.

What I think about the parts of Mr S' complaint that we can help with

Mr S has raised further complaint points which were referred to our service in time. So, I've gone on to consider the merits of those points below.

When considering the merits of Mr S' remaining complaint points I've kept in mind that it's our Service's role to resolve complaints quickly with the least formality. In doing so, I intend to focus on the issues that Mr S has said he disagrees with from the investigator's assessment of his complaint. I've summarised these areas under the headings below.

Failure to provide up to date trustee information to D

In his assessment of Mr S's complaint our investigator explained that the set up of trustees is not something that exists in the country in which D is based, which seems to be what has led to difficulties in Curtis Banks satisfying D's anti-money laundering requirements.

I note that Mr S has now closed his account with D and moved elsewhere but I can appreciate it must have been frustrating and upsetting for Mr S to be unable to have full access to his account for several months. From looking at the correspondence I agree that

Curtis Banks were trying to resolve the issues, and I haven't seen any financial loss caused to Mr S as a result of Curtis Banks actions in this regard. So, I think Curtis Banks offer of £200 fairly recognises the inconvenience caused. Curtis Banks should now pay this £200, if it hasn't done so already.

Was it reasonable for Curtis Banks to demand revised plans?

On 28 September 2022 The Solicitors emailed Curtis Banks to highlight what it described as 'issues' with the occupational leases of the property. The email set out The Solicitors' report on the properties being purchase and noted that one of the units was 'more of a concern'. The Solicitors explained that part of the area included in the lease plans was not owned by the Landlord so it shouldn't have been included in the lease plans.

The Solicitors noted that "the risk to you [Curtis Banks] as the purchaser is lower than it could be, but nevertheless the risk still exists". The Solicitors provided Curtis Banks with two options to mitigate the risks: approaching the tenants to vary the leases; or getting an indemnity from Mr S. However, The Solicitors warned that as Mr S was also intending on selling his 50% share, the indemnity would be extinguished at that point.

There was much correspondence over the need for revised plans for the property between Mr S, Curtis Banks and The Solicitors.

Mr S says that Curtis Banks' request for new plans was "a vexatious attempt to incur delay and additional cost especially legal fees". He also fails to see how rental income could be seen as an unauthorised payment due to the discrepancy in the plans.

However, it's not for me to step into the shoes of the solicitors or property surveyors here and say whether the plans were correct or what risk they posed from a legal or HMRC point of view. My role here is to decide whether Curtis Banks acted fairly when presented with the information they were given by the professionals they employed.

Curtis Banks employed a qualified solicitor to assist and advise them on the purchase of the property. And it's clear that, despite Mr S thinking differently, The Solicitors had some concerns about the lease plans. It stated that although the risk was small, there was still a risk to Curtis Banks if they were to proceed on the original plans. It was for Curtis Banks to decide how much risk, if any, they were willing to tolerate. Our Service wouldn't normally interfere with the legitimate exercise of a business' commercial decision. I think Curtis Banks' decision here not to accept the risk, was a decision it was entitled to make in the interests of its customer, so I can't fairly say they should have acted differently.

Whilst The Solicitors suggested two options for Curtis Banks to resolve the issue, I can see why Curtis Banks chose the first option which was to amend the leases or plans. I say that because it knew Mr S was also selling his own 50% share immediately after. So, the indemnity option held little value.

The need to obtain revised plans led to a delay in the completion of the purchase. But as I'm satisfied it was reasonable for Curtis Banks to require the new plans, I don't think the delay was avoidable. Mr S believes the purchase ought to have gone through in October 2022, but I've looked at the communications and I've seen insufficient evidence that the purchase could have gone through by October 2022 considering the need for revised plans and the discussions that went on around that issue. I'm therefore satisfied that the purchase of the first share of the property wasn't delayed unnecessarily by Curtis Banks' insistence on new plans, and no compensation is due for the delay.

Delays to completion of the first purchase

The purchase funds for Mr X's share of the property came from Mr S' investments held with D. In preparation for the purchase, I've seen that Mr S instructed the disinvestment of £300,000 in August 2022 and was keen to have the money with The Solicitors as soon as possible to ensure the property purchase could be made.

Around August and September 2022 Curtis Banks explained to Mr S that the funds couldn't be held by The Solicitors until the purchase was ready to complete, however they did offer to move the funds into Mr S's client account with Curtis Banks.

Curtis Banks provided its emails around these funds, and it appears there was a fair amount of confusion between various internal departments at Curtis Banks over this request. However, on 8 December 2023 the property team clarified Mr S' request with the dealing team and by mid-December the £300,000 was moved over to his client account with Curtis Banks.

It's disappointing to see that Mr S' initial request was made in August and it took until mid-December for the funds to arrive in his account. I think that took far too long despite Mr S being quite clear in his requests. However, as I said above, I don't think the purchase of the property was ready to conclude any earlier due to the issues with the plans. So, the delay in Mr S' funds arriving at Curtis Banks didn't cause a delay to the purchase of the property.

I've seen that Mr S was unhappy with the length of time his funds were disinvested. But I've seen no evidence it was Curtis Banks who advised Mr S to disinvest the funds when he did. That seems to have been a decision Mr S made himself for which I won't hold Curtis Banks responsible. However, I can see the confusion and delay in the funds moving to the holding account caused by Curtis Banks clearly added to Mr S's inconvenience and upset as to how long things were taking. So, I've considered that when deciding an award for distress and inconvenience below.

On 6 January 2023 The Solicitors sent Mr S and Curtis Banks a completion statement on the basis that the purchase of the property would complete on 13 January. The Solicitors confirmed to Curtis banks where the purchase monies would need to be sent. Mr S agreed to the completion statement the following day.

On 9 January 2023 Curtis Banks asked Mr S if he was happy for the funds to be sent to The Solicitors in preparation for completion on 13 January 2023. Mr S agreed.

However, despite chasers from The Solicitors to Curtis Banks on 12 January 2023 and 13 January 2023, the purchase monies were not received, and the property purchased did not complete as planned on 13 January 2023. Curtis Banks emailed The Solicitors on 17 January 2023 to apologise for the delay in sending the funds, saying there had been "some accounting issues".

Considering the length of time Mr S had waited for the purchase to complete, I can appreciate his disappointment when Curtis Banks hadn't sent the funds to The Solicitors in time. Curtis Banks had confirmation on 9 January 2023 that it could send funds to The Solicitors and I've seen no good reason why that didn't happen. While Curtis Banks claim there were 'accounting issues' its failed to explain what they were or whether it could have taken further steps to ensure Mr S' funds reached The Solicitors in time. So, I'm minded to say this was an avoidable delay that Curtis Banks caused.

For reasons I'll go on to explain, I don't think this delay led to a financial loss as I'll explain why I don't think the purchase would have completed on 18 January 2024 if things went differently. However, I can appreciate this was another example of where Curtis Banks actions increased the inconvenience and upset caused to Mr S which I've considered below.

Reconciliation of accounts

Mr S says Curtis Banks' insistence on reconciling his accounts led to a delay in the purchase of his share of the commercial property. He says this also led to him incurring accountancy fees which he wouldn't have done if the property had completed in October 2022.

For the reasons I've already given, I don't think the purchase could have completed in October 2022.

Mr S says he can't understand why Curtis Banks' didn't demand a reconciliation of account prior to Mr X's share being purchased. But I can see why that might not have been necessary. I say that because with the purchase of Mr X's share, the funds were coming from inside the pension - from Mr S' trading account with D. However, some of the funds for the purchase of Mr S' own share came from the management account of the properties Mr S managed outside of his pension.

Due to the money coming from the management account I think it's likely Curtis Banks felt it needed to robustly ensure the funds had come from rental receipts of the properties held in the SIPP and not from any other source outside of the SIPP - which could be considered as a contribution into Mr S' pension. Any contributions into Mr S's pension would affect the protections he had in place. So, I think it was reasonable for Curtis Banks to attempt to mitigate that risk.

Curtis Banks say the new valuation report was received on 6 March 2023 and sent to Mr S and The Solicitors the following day. They say on 16 March 2023 it asked Mr S for further information it needed to reconcile his accounts.

Emails provided by Mr S suggest that he sent further information to Curtis Banks around April 2023, which satisfied Curtis Banks, and the transfer went ahead in May 2023.

I've seen no persuasive evidence at this point that demonstrates to me the information Curtis Banks had requested was not needed. Nor have I seen any persuasive evidence that Curtis Banks timeline of events was incorrect or delayed due to an error it's made. While Mr S may dispute the level of documentation needed by Curtis Banks to reconcile the accounts, this is again a commercial decision Curtis Banks was entitled to make and was made in the interests of protecting Mr S which I think is reasonable.

Even if there was some evidence of delays on Curtis Banks' side, I'd need to be satisfied that the property transfer could have completed before the end of the tax year in April 2023. Considering the updated valuation wasn't completed until early March and Curtis Banks wanted to reconcile the accounts first, I don't think it's likely the purchase would have completed before the end of the tax year in early April.

Should Curtis Banks' have insisted on a revised valuation?

In order to reach my finding on this point, I think it's important to go over the timeline of events, with a focus on what Curtis Banks knew about the valuation at that time.

Following the issues with the boundary, The Property Surveyors sent Curtis Banks a Land Registry compliant plan on 7 December 2022. Mr S was copied into that email.

In response, on 13 December 2022, Curtis Banks emailed The Property Surveyors to thank them for the plans. Curtis banks attached a valuation report which I've assumed to be the March 2022 valuation – as that's the only valuation available at that time that I'm aware of. It asked The Property Surveyors to, "confirm the attached valuation report remains to be

accurate for the purchase of the above named property". Mr S wasn't copied into this email, The Property Surveyors' response, or any other subsequent emails on this topic in late 2022.

The Property Surveyors responded the same day to say, "due to the increasing economic uncertainties within the UK, there have been changes in the investment market in the past few months which have had an effect on property values. I consider it unlikely that values will have remained the same since March 2022 for the subject property."

This was followed by an acknowledgement from Curtis Banks whereby it said it 'noted' The Property Surveyor's comments that it believed it was unlikely the values remained the same as the previous valuation. Curtis Banks asked The Property Surveyors to confirm what it needed to complete a new valuation report.

The Property Surveyors confirmed it would need to revalue the property and produce a report for a fee of £500 and said that it could do that in early January 2023.

Following this Curtis Banks also telephoned The Solicitors and emailed them. In the email to The Solicitors Curtis Banks said that it was likely the purchase couldn't complete until January and noted that, "given the valuer's comments I would expect that the purchase price may be subject to change".

From the evidence I've seen it was clear to Curtis Banks in December 2022 that the valuation of the property Mr S intended to purchase was likely to be incorrect. And more so, The Property Surveyors had alluded to the fact the value had likely fallen.

During our investigation, Curtis Banks told our investigator that it's a requirement for a valuation of a property to be less than six months old.

So, in December 2022 Curtis Banks were in possession of an outdated valuation which it knew was likely to be wrong and likely over-valued the property. Which is important to satisfy its own rules on property purchases. Its unclear but if Curtis Banks had been treating this purchase as a 'connected party' purchase due to Mr S owning the remaining 50% share, it's likely HMRC rules would have also prevented a sale at anything above a fair market value.

However, I've seen no evidence that Curtis Banks did anything with the information it had on the value to prevent Mr S from purchasing the property at a price which was likely over its market value. It only seems to have stepped in after Mr S bought Mr X's share.

Considering Curtis Banks' duty under the Principles for Businesses, it failed to act in its clients' best interests here and ought to have demanded a revised valuation before purchasing Mr X's share, not the day after. I've therefore thought about what would have happened if Curtis Banks had been acting in Mr S's best interests, and what it needs to do to put things right.

Curtis Banks insisted that a new valuation was needed on 19 January 2022. But I think they ought to have insisted earlier, before Mr X's share was bought. That's because this would have had a bearing on whether or not Curtis Banks would have allowed the purchase to go ahead at the price that had been agreed with the seller. And whether Mr S would have also agreed to pay more than market value for the property. Curtis Banks haven't confirmed their requirements but, I don't think it would have allowed a property asset to be purchased by the SIPP for more than it was valued at. But even if it would, allowing Mr S to do so, wasn't in his best interests and failing to communicate the valuers concerns to Mr S meant he was unable to make an informed decision.

The Property Surveyors had confirmed they weren't available to do the valuation until 'early

January'. Therefore, it's reasonable to say it's likely the property was valued at £490,000 when Mr X's share was bought, as it was when Mr S bought the other 50% from himself a short time later.

It's Mr S' view that as the property had dropped in value by £85,000, he feels Curtis Banks allowed him to pay Mr X £42,500 more than he should have done. Therefore, Mr S feels he should be compensated by that amount. I can see why Mr S may feel that way. However, the difficulty here is that it's now impossible to know what Mr X would have done when faced with the new valuation without the benefit of hindsight.

The evidence I have available to me demonstrates that Mr X was prepared to sell his share of the property when it was valued at £575,000. But I can't automatically conclude that Mr X would have completed the sale at a significantly lower valuation of £490,000.

I've seen evidence that the sale of the property had been considered over several years, and as early as 2019, when the property seemed to also have been valued at £575,000. It's Mr S' testimony that the property wasn't sold at that time due to concerns around the effects of COVID on the market. So, I think it's likely both parties, including Mr X, had an interest in the value of the property at the point it was sold.

What I do know is that Mr X was prepared to sell his share at a valuation of £575,000. Not at £490,000. As the property was being purchased inside of the pension, I would also expect the trustees to consider the market value of the property before deciding whether to allow the purchase to be made. To be able to determine that Mr X would have accepted the lower purchase price, I need to be persuaded that outcome was more likely than the purchase simply not going ahead.

I've not seen persuasive evidence that Mr X was so keen to sell his share of the property that he would do so at any cost. And it's now impossible to get Mr X's testimony without the benefit of hindsight. As Mr X was never presented with the valuation of £490,000, I'm unable to conclude, on balance, that he would have continued with the sale at that lower valuation. For these reasons, I can't fairly say that Mr S' loss should be calculated as if the purchase was made at £490,000.

As I've said above, Curtis Banks ought to have stepped in and demanded a new valuation before the purchase. Had they done so, it's unlikely the purchase would have gone through at £575,000 as I'm satisfied Curtis Banks should have told Mr S it was not in his interests to pay more than the property was worth. So, I think that it's more likely than not that Mr S' SIPP would not have owned Mr X's 50% share of the property that it now does.

The powers given to me in the Financial Services and Markets Act (FSMA) allow me to make an award of what I consider is fair compensation. As I've concluded the purchase ought not to have completed at the purchase price of £575,000, and I can't say on balance, it would have completed at the lower price either, I therefore conclude that fair compensation should be calculated as if the purchase had not been made at all."

The responses to my provisional decision

Curtis Banks said it agreed there was an indication that the sale price may have been at a lower value, so accepted my provisional decision.

Mr S sent a detailed response to my provisional decision. In summary he said;

- The plans – Mr S said there was a right of way over the land in question granted by deed in 1982. And so, the landlord has a right to include it in any tenancy agreement.

He said there was never any risk to Curtis Banks as reported by The Solicitors. And Curtis Banks also lacked the appropriate professional standard by continually raising issues around its legality and the finance act.

Mr S went on to say the leases never required a deed of variation or replacement plans as the existing ones were perfectly adequate and never changed. So, the requirement for new plans from Curtis Banks was wholly irrational and its refusal amounted to blackmail. It was only after a new solicitor took over the case at B that The Solicitors and Curtis Banks deemed the plans unnecessary. And the issues had led to The Solicitors charging fees well above the initial estimates and were excessive.

- Reconciliation of accounts – Mr S maintains that Curtis Banks already had all the information it needed to reconcile his accounts albeit it may have ‘lost’ them. He feels the exercise only sought to delay things and incur additional legal costs. He says there was no relevance to the use of existing funds as no external funds were used in the purchase, only funds already held in the pension.
- Freezing of D’s account – Mr S said Curtis Banks’ submission that the anti-money laundering checks went beyond its usual requirements was just an excuse. He said Curtis Banks had never explained what they were referring to. He went on to say the requirements, for example a certified copy of a passport, were things required for opening any bank account. And Curtis Banks had failed to provide this basic information to allow D to unfreeze his account.
- Principles of compensation – Mr S acknowledged that Mr X was unlikely to have been prepared to sell his share for less than £287,500. However, if the property hadn’t had been purchased Mr S would have had £300,000 to invest in equities instead and his asset wouldn’t have had a drop in value of £42,500. Under the ‘Compulsory Purchase and Compensation Guide 2’ a ‘pre-existing value’ should be used and any subsequent changes in value, rent received, or rental loss should be disregarded. Mr S says his claim for losses of £42,500 should stand. Mr S also said he didn’t understand why the compensation should be paid outside of the pension. His plans to transfer his assets to an investment company based locally next year where there is no tax on dividend withdrawals. So, he doesn’t think a reduction of 20% should be applied.

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.

It’s clear that Mr S has very strong feelings about his complaint, having provided detailed submissions in writing in support of his complaint points, which I can confirm I’ve read and considered in their entirety. However, I trust that Mr S will not take the fact that my findings focus on what I consider to be the central issues as a discourtesy.

The purpose of my assessment is to set out my conclusions and reasons for reaching them.

Neither party has commented again on our jurisdiction over Mr S’ various complaint points. So, for the reasons I explained in my provisional decision, I’ll focus only on those points which fall under our Service’s jurisdiction.

Revised Plans

I’ve reconsidered the communication held on file for the necessity for new plans. While Mr S seems to suggest new plans weren’t deemed necessary because the original plans were ‘perfectly adequate’ I have to disagree. I’ll explain why.

In September 2022 The Solicitors initially highlighted its concerns around the plans to Curtis Banks. Conversations around the plans continued into November 2022 when a new solicitor from the same firm took over.

In an email dated 15 November 2022 the solicitor explained that in order to proceed, a new Land Registry compliant plan would be required from a surveyor. He explained that it wasn't clear where the freehold boundary would sit at a scale of 1:1250 – Land Registry's preferred scale. He explained the reason why a new plan was required was because he needed to ensure Mr W had title to all of the area that was intended to be transferred to Curtis Banks and if any sat outside of the freehold boundary line, then they'd need to reconsider an application for adverse possession. He also said they needed to establish with certainty whether any of the leasehold property fell outside of the freehold. He stated it wasn't clear from the plans whether that was, or wasn't the case.

On 7 December 2022 the surveyor provided the new plan to The Solicitors noting that *"the very latest OS plan plots the rear of the subject buildings in a slightly different outline to those in previous OS versions. You will note the difference if you consider the Title plan to the adjoining pub that you sent over"*.

The Solicitors reviewed the new plan and emailed Mr S and Curtis Banks on 7 December 2022. Of note the solicitor said, *"Having reviewed this, the change in the rear outline of the buildings shows that the land currently occupied matches that which was conveyed in the Conveyance dated 22 August 1980 and also that which was demised to the occupational tenants by the respective leases. I do not therefore think that any correction is required to the extent of the tenant's demise of Unit 3 which means we may now proceed to completion. There is also now no need for any adverse possession claim to be made in respect of any of the area shown edged green on the plan attached to the 1980 Conveyance as the plan now prepared does not include this area."*

So, while the leases themselves were never changed in the end, that was only because The Solicitors were satisfied that the new freehold plan resolved those issues.

The key conclusion I've made, is that Curtis Banks didn't delay things unnecessarily by taking the position it did. It was acting on advice from its solicitors who identified a risk to Curtis Banks. And Curtis Banks made the decision not to go ahead with the purchase until the issues identified by its solicitors were resolved. That was a decision Curtis Banks were entitled to make and I've reached the decision that it acted reasonably in following the recommendations of its solicitor.

The evidence I've seen demonstrates that once the new plan was received and reviewed by The Solicitors on 7 December 2022, they were satisfied there was no longer any risk to Curtis Banks and at that point informed Curtis Banks it could proceed to completion. It appears to me Curtis Banks listened to this advice and looked to complete the purchase after that point.

Mr S is unhappy with the fees involved in resolving this issue. But the fees charged by The Solicitors were outside of Curtis Bank's control.

My role here is to look at the actions of Curtis Banks, not The Solicitors. And as I've said, Curtis Banks was entitled to resolve any perceived issues before accepting this property into a SIPP. I accept that led to higher legal fees than Mr S might have been expecting however, for the reasons I've already given, I don't think Curtis Banks caused any unnecessary fees to be charged.

Reconciliation

I appreciate Mr S still feels that Curtis Banks reconciliation exercise caused delays and costs to him unnecessarily. But for the reasons I've already explained in my provisional decision, Curtis Banks were entitled to check the origins of the funds. More so, it was incumbent on them to do so, as any perceived contribution into the pension could have had significant detriment to Mr S.

Mr S had taken on the role of property manager which meant Curtis Banks didn't have full sight of the accounts Mr S used in that role. So, I don't think it was unreasonable of them to want to be satisfied the accounts were fully reconciled before Mr S made the purchase. In doing so Curtis Banks were acting in Mr S' best interests. The emails Mr S shared with us shows it was only after April 2024 that Mr S satisfied Curtis Banks by providing the information it required in the format it wanted.

I appreciate that may have been inconvenient for Mr S but as the property manager he was obliged to provide the information to satisfy Curtis Banks' checks.

As explained in my provisional decision, I've seen no persuasive evidence that the purchase of Mr S' own share could have completed within the 22/23 tax year. So, I can't reasonably conclude Curtis Banks should reimburse Mr S' accountancy fees for going into the next tax year.

Mr S has mentioned issues he's had with Curtis Banks in March 2024 regarding a query over a sum of £545,437.32 which it couldn't account for. However, those communications are outside of the scope of this complaint which is intended to resolve the complaint Mr S brought to our Service in August 2023. Any further issues Mr S has had with Curtis Banks will first need to be raised with them.

Freezing of D's account

In his response to my provisional decision Mr S maintained that Curtis Banks ought to have been able to fulfil D's anti-money laundering checks and hadn't explained why it couldn't.

Curtis Banks sent Mr S an email on 12 June 2023 explaining that what D was asking for wasn't in line with the setup of the corporate trustee arrangement. It explained that D was asking for personal information of the trustee directors which is not a requirement in UK law and some of the directors weren't happy to provide so much personal information to a third party. D was based abroad so it didn't recognise the corporate trustee setup used in the UK even though Curtis Banks had provided all of the necessary paperwork.

Curtis Banks went on to say it'd explained all of that to D several times and had sought advice from its legal team who were continuing to work on resolving the issue.

I therefore can't agree with Mr S that Curtis Banks didn't explain things. Curtis Banks gave a clear explanation in its email as to why things were held up. I appreciate the frustration Mr S felt at the time, but it does seem to me the request from D went beyond what Curtis Banks could have reasonably expected.

While Mr S' account was 'frozen', D still allowed Mr S to disinvest and transfer the £300,000 required for the first purchase of the property. And, in the end, Mr S moved to a new investment platform as the issues couldn't be resolved in a timely manner.

Curtis Banks offered £200 to reflect the inconvenience caused to Mr S. As I've explained, I don't think Curtis Banks acted unreasonably in trying to resolve the issues with Mr S' account with D. But it wasn't always proactive in updating Mr S with its progress. For that reason, I think the £200 it offered fairly reflects the upset and inconvenience caused by

Curtis Banks' actions in this regard.

Compensation

In his submission Mr S accepts that Mr X *'was not prepared to sell below £575,000'* and it was *'most unlikely that [Mr X] would have been prepared to proceed at £245,000 given his response in 2019 to a reduction in value as he was holding out for £287,500'*.

I therefore remain satisfied that fair compensation should be calculated as if the property purchase had never happened at all, Mr S had retained the £287,500 and invested it instead.

Mr S feels that any change in the value, or rent received, or rental loss through operation of the break clauses should be disregarded in any calculation. However, I disagree. I'll explain why.

When something goes wrong, my role here is to try and put Mr S broadly back into the position he would have been in had the error not occurred. The methodology I've set out below applies that principle.

My conclusion agrees with Mr S that, had Curtis Banks required a new valuation then Mr X was unlikely to have sold his share of the property to Mr S. However, the position Mr S now finds himself in is that he does own that property in his SIPP and he has received benefit from it in terms of rental income and any gains in its value. I cannot now change that position. But what I seek to do is compare Mr S' current position with a notional position as if he'd retained the funds he used to purchase the property and invested them instead.

In my view the fairest way to do that is to look at the current value of the asset Mr S now has. That's decided by obtaining the current value of the property, plus any rent that's been received and any investment returns on that rent. That figure can then be compared with a notional value as if Mr S invested the £287,500 instead. Using a historical value or disregarding the rental income received wouldn't be a fair measure of the position Mr S is now in, which may be better, or worse, than if he'd invested the funds instead.

I'm therefore satisfied the redress methodology below fairly assesses whether Mr S has suffered a loss due to Curtis Banks error.

Mr S has also questioned the notional reduction for tax. This element is included because sometimes it isn't possible to pay compensation into a pension especially where the customer has protections in place, as Mr S does. That's because HMRC treat compensation payments into a pension as a third-party contribution which would impact the protections Mr S has in place.

We use a notional rate of tax because the funds are held in a pension and so, in order to have the benefit of those funds outside the pension, it's likely income tax will be paid on those funds when they are eventually taken as income.

I've selected a rate of 20% as I'm satisfied that income draw from a pension in Mr S' home country is likely to be taxed at 20%. Mr S' assets already exceed those to which he would be entitled to tax free cash and so I think it's likely any additional funds into his pension would be taxed at this rate if he took it as income in the future. I've not seen persuasive evidence that Mr S would be able to withdraw all of his funds from his pension without incurring tax, so I'm satisfied that's the fair thing to do.

Putting things right

My intention is to put Mr S, as close as possible, into the position he'd have been but for Curtis Banks' actions. In this case that means putting Mr S into the position he would have been in had the property purchase not completed on 18 January 2023.

That means calculating the difference between the 'actual value' of the relevant part of Mr S's pension now, compared to the 'fair value' of the relevant part had the funds been invested instead. The relevant part of the pension under consideration is the purchase price paid for Mr X's 50% share of the property.

I've considered whether it's likely the conveyancing fees would have been different had the purchase not completed, however as the issue around the valuation would have only been found at the end of the process, I think any difference in fees charged by The Solicitors would be negligible. Therefore, the comparison is to be made with the purchase price only and no deductions for Solicitors fees are required.

What must Curtis Banks do?

To compensate Mr S fairly, Curtis Banks must:

- Obtain the current value of the share of the commercial property that was purchased from Mr X by the SIPP in January 2023. The cost of this valuation should be born by Curtis Banks.

- The actual value is the current valuation of the property (at above step), plus net rental income received by the SIPP, with the fair value (as set out below). If the actual value is greater than the fair value, no compensation is payable.

If the fair value is greater than the actual value there is a loss and compensation is payable.

- Curtis Banks should also add any interest set out below to the compensation payable.

- If there is a loss, Curtis Banks should pay that amount direct to Mr S. But had it been possible to pay into the plan, it would have 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 the relevant tax authority, so Mr S won't be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using Mr S' actual or expected marginal rate of tax at his selected retirement age.

- It's reasonable to assume that as Mr S is resident in a country with a flat rate of tax of 20%, the reduction would equal 20%.

Income tax may be payable on any interest paid. If Curtis Banks deducts income tax from the interest, it should tell Mr S how much has been taken off. Curtis Banks should give Mr S a tax deduction certificate in respect of interest if Mr S asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
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50% share of the commercial property plus rental income received to date	Still exists	FTSE UK Private Investors Income Total Return Index	18 January 2023	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 60 days of the business receiving the complainant's acceptance)
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Actual value

This means the current value of 50% of the commercial property in addition to any net rental income received for that 50% share. It is also fair for Curtis Banks to factor in investment returns on the rental income payments in the SIPP from the date received to the 'end date' in line with the same index used to calculate the fair value.

Fair value

This is what the investment of £287,500 would have been worth at the end date had it produced a return using the benchmark above.

Why is this benchmark suitable?

I've chosen this method of compensation because:

- Mr S wanted Capital growth and was willing to accept some investment risk.
- The FTSE UK Private Investors Income Total Return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr S' circumstances.

Curtis Bank's actions have clearly had an impact on Mr S causing him significant inconvenience and upset. In all the circumstances of this complaint where the errors have caused significant upset and effort on Mr S' behalf to sort out I think Curtis Banks should pay Mr S £500 for the distress and inconvenience caused.

In addition to the above, Curtis Banks have already offered to pay £200 for the distress and inconvenience caused in relating to D's anti-money laundering requirements. Curtis Banks should now pay the £200, if it hasn't done so already.

My final decision

My final decision is that I partially uphold this complaint. Curtis Banks must now put things right as I've set out above.

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

reject my decision before 13 January 2025.

Timothy Wilkes
Ombudsman