

The complaint

Mrs W has complained to Suffolk Life Pensions Limited ('SLP') about its fees and the costs she has to incur in order to transfer from her Self Invested Personal Pension ('SIPP') due to holding non-tradeable shares. Curtis Bank Limited trades as 'Suffolk Life Pensions Limited' and the latter company is where Mrs W holds her SIPP. For ease of reference, I will refer to 'SLP' throughout this decision.

What happened

Mrs W had a SIPP with a business called European Pensions Management Limited ('EPML'). In 2016, EPML went into Administration and its SIPP book was acquired by SLP.

All former EPML clients received a letter dated 9 November 2016 from SLP in which they were informed, amongst other things, that their respective SIPPs would be transferred across into SLP's 'MasterSIPP' product. SLP said this action was necessary from a regulatory point of view, as there was a requirement to maintain the integrity of existing clients' SIPPs in the event of the failure of their former SIPP operator.

SLP initially had a separate fee structure for MasterSIPP holders who had previously been clients of EPML. SLP did this for relevant clients in order to maintain fees at parity with EPML's own fees. Clients were told that the annual administration fee for the SLP MasterSIPP was normally £545 plus Value Added Tax ('VAT'). But a 'permanent' discount would be applied of £375 to former EPML SIPP holders, meaning they'd be charged an annual administration fee of £170 plus VAT.

In August 2019, SLP wrote to all former EPML clients to inform them that it would be making changes to its product terms and conditions which included its fee structure. SLP explained that from 1 October 2019, from the next anniversary date of the clients' SIPP, the annual fee would increase to £560. SLP said this was due to a general increase in the cost of SIPP operations. SLP said clients who wanted to transfer out to another provider or move to one of its other products that might be more favourable to them, could do so without incurring its normal transfer fees as long as the transfer forms were received within a 90day period..

Mrs W elected to transfer out from SLP to another provider. She held several shareholdings in her SLP MasterSIPP account. In total excluding her cash holdings, she held 14,880 shares in a business I will refer to as 'company A', as well as 2,591 in another business and 5,842 in one other.

SLP received Mrs W's transfer out request in September 2019 and initiated the process. However, it soon became apparent that it wasn't possible to transfer one of Mrs W's shareholdings. The shares in company A weren't accepted by her chosen SIPP provider, as it wasn't prepared to hold them in one of its SIPP's because they were non-trading shares.

Mrs W enquired with SLP whether it was possible to sell, gift or transfer the shares in company A. She noted a relative had been able to gift shares in this company to charity and she wanted to do the same. But SLP said this was not possible without a professional valuation of those shares to establish their true market value. Alternatively, it would accept a

letter from company A confirming that Mrs W would not receive any further returns from her shareholdings. SLP explained this was necessary to meet H M Revenue and Customs ('HMRC') regulations.

Mrs W decided not to obtain a valuation as she considered it was economically unviable. She said that she had received a quote for a valuation by an accountant for £600 plus VAT. And the costs would be more if she were to sell the shares to a 'connected party'. So, she decided to cancel the transfer out and instead opted to stay with SLP and convert her MasterSIPP to SLP's 'Your Future' SIPP. This gave her lower annual administration fee plus an 'unadvised client' fee. Mrs W said this was still more expensive than she'd pay if she were to transfer to her chosen SIPP provider.

Mrs W complained to SLP. She said SLP was making it difficult for her to move to another provider because of the need for a professional valuation. She reasoned that given company A is not trading; is no longer on the relevant foreign exchange; and is under investigation for fraud, its shares clearly had no value. She referred to the relative who'd been able to gift their shares in company A and she couldn't understand why that wasn't possible for her. She was also unhappy about having to stay with SLP and pay its fees. And she felt she was being penalised for holding non-tradable shares.

SLP rejected Mrs W's complaint. Its key reason was that because of HMRC rules, it was not possible to gift or relinquish the shares without a professional valuation, as this could lead to an unauthorised charge if the investment gained value in the future.

Mrs W referred her complaint to the Financial Ombudsman Service ('us' 'we' 'our'). Our investigator initially recommended upholding the complaint but after considering further submissions from SLP, he revised his view. In brief, he said he considered SLP had acted fairly and reasonably towards Mrs W particularly as it had offered her a cheaper alternative product within its SIPP range. So, he didn't think SLP had to do anything further.

Mrs W disagreed reiterating her previous arguments as to why she considered she is being treated unfairly. She asked for an Ombudsman's decision on the matter.

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.

Having considered everything, I am not upholding the complaint. I'll explain why. Before I do so, I understand that Mrs W has raised a number of points during her contact with our Service. I've carefully noted all the representations made by Mrs W, but I won't be addressing every single point she's raised. I've instead concentrated on the issues I think are central to the outcome of her complaint.

As a regulated business, SLP has a duty to treat Mrs W fairly taking into account her current situation. With this in mind, I think the starting point is that once it became clear Mrs W's chosen provider would not accept the non-trading shares, SLP needed to provide her with a clear indication of what she would need to do with her shares so she could go forward with the transfer. Looking at the exchanges of correspondence between SLP and Mrs W, I consider it has done this.

SLP gave Mrs W the option to have the shares removed from her account so as to enable her to transfer out. But in order to do this, it said she required a valuation from a suitably qualified person such as an accountant. Under the terms and conditions of the MasterSIPP account (section 16) it says: *"Where we are required by legislation or other regulations to*

value your SIPP at market value, we will arrange for your SIPP's investments to be so valued. This will include, but is not limited to, the appointment of an appropriately qualified valuer in respect of unquoted investments...The valuer's fees and any other costs associated with the valuation will be payable from your SIPP."

And the regulations that have led to the need for a valuation were explained by SLP to Mrs W as follows: *"In relation to the [company A shares] holding you have, we are unfortunately unable to simply remove or give away investments from your SIPP, as we are bound by HMRC regulations relating to return payments from investments. If we were to remove the investment from the SIPP, and you were then to receive returns, these returns would be classified as unauthorised payments and would be liable for considerable tax penalties."*

So, whilst Mrs W says the costs of a valuation are relatively high compared to her overall SIPP value, if no professional valuation is carried out she could face considerable tax penalties in the future. And therefore, I don't think SLP asking for a valuation is unfair or unreasonable. SLP has said, as set out in its terms above, that the cost of the valuation could be deducted from her SIPP. All in all, I think SLP has acted fairly in this regard.

I also note SLP did give Mrs W an alternative in that it said it would accept a statement from company A confirming there will be no more returns from her shareholdings. I accept this may be difficult given it is a non-trading company. But the option to have a valuation is still possible even if it does come with a cost. I don't think the cost of this would be the obligation of SLP as the SIPP administrator. SLP provides an execution only service and the need for a valuation in situations such as these is clearly set out in its literature and as I've set out above, there is a good reason behind it.

Whilst Mrs W says she knows the shares in company A are of no value because, amongst other things, it is no longer trading and she says it is under investigation for fraud by the relevant authority abroad, SLP has stipulated, in clear terms, what action it requires her to take before it can reach this conclusion. And as it's said, this is to mitigate against Mrs W facing a potential tax penalty in the future.

I should also say that, in theory, Mrs W could transfer her funds without a valuation. However, Mrs W's chosen provider wouldn't accept the shares. It's difficult to say whether another provider would accept these shares but even if they were to do so, it appears that Mrs W wants to move to a specific provider for cost reasons, which I don't think is unreasonable. Nonetheless, unless she takes the steps SLP have recommended to her, which would allow her to relinquish her shares, it seems the other provider will not accept her transfer request. This is its commercial decision and I can't hold SLP responsible for the decision of another business.

Further, the shares that led to this situation were acquired prior to SLP's involvement with the SIPP. And I can't see that it has any responsibility for the impact this asset has had on Mrs W's transfer, as the shares in question were acquired under the administration of the previous SIPP operator, EPML. So, I don't think it would be fair to ask SLP to pay for the cost of the valuation so that a transfer could be undertaken. And I don't think it's unreasonable or unfair for SLP to continue to charge for its service, as there is still work involved in providing a SIPP to Mrs W even if a significant part of the funds held in it have become impaired in some way.

I can see that following the transfer of the EPML SIPPs in 2016, SLP did say to affected clients it would keep the discount it'd applied 'permanently' but then changed its position notifying clients about the increase in fees in August 2019. Under its terms and conditions, this is something it is entitled to do so long as it serves clients with 30 days' notice, which it

did in Mrs W's case. But as SLP has said itself, what it said in 2016 about the discount is unfortunate and I do think it could have managed Mrs W's expectations better in this regard.

However, when SLP did notify Mrs W of the increase in 2019, it gave her a number of options including to move to another one of its products or to another provider without applying its standard transfer fees for a certain period of time. It also had, by that point, applied the discount to her account for three years. So, despite what it had said in 2016, taking everything into account and on balance, I think SLP has acted fairly and reasonably.

Mrs W was still unhappy about staying with SLP despite moving to an account with lower fees. She says these fees were still higher than the fees she would pay if she could transfer out. I appreciate this situation was frustrating for her and was less than ideal given it wasn't what Mrs W wanted. But Mrs W was given clear information about the steps she needed to take if she wished to remove the shares and thereby, allow her to transfer out.

I acknowledge what Mrs W said about a relative being able to remove the shares in the same company from an account they hold. But I can only decide, on the facts before me, whether SLP has acted fairly and reasonably in Mrs W's particular case. And taking everything into account, I consider SLP has done so. I cannot agree with Mrs W that she is being penalised by SLP for holding non-tradeable shares. This situation has arisen because of the company in which she held shares in. And again, it isn't something SLP is responsible for.

I understand that since bringing her complaint to us, the shares have now become tradeable and she was told about this in May 2022. I appreciate she is still unhappy about how long things have taken and the fact the offer to waive the SLP transfer fees has now passed. But as I've noted, the issue of her not being able to transfer out to her chosen provider in 2019 was not the fault of SLP.

For all these reasons, I'm not upholding this complaint.

My final decision

I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 26 October 2023.

Yolande Mcleod
Ombudsman