Ombudsman Decision
CIFO Reference Number: 24-000100
Complainant: P
Respondent: Sovereign Pension Services (CI) Limited

The Complainant, who I shall refer to as Mr P, complains, in summary, that Sovereign, in its capacity as Trustee of his pension fund:

- Gave insufficient notice of changes to its bank account and made repeated requests for know your client (KYC) and Common Reporting Standard (CRS) documents that had already been provided.
- Raised their charges by stealth and backdated them 7 years.
- Failed to communicate clearly the potential issues and charges relating to the loan interest and the ability to take a lump sum withdrawal from the pension.
- Changed the terms of a loan taken from the Trust and added clauses that were not in the spirit in which the loan had been agreed.
- Breached the Guernsey Financial Services Commission(GFSC) regulations regarding internal controls and communications and, as regards contributions to the pension fund, failed in their duty to outline the impact of non-payment into the pension scheme.

Background

Mr P transferred the value of his occupational pension into a pension plan known as the S Plan ("the Scheme") in March 2011. The transfer value was £156,600. The Scheme is a qualifying recognised overseas pension scheme (QROPS) administered under a Trust Deed and Rules initially put in place in 2008 and amended in 2012. Sovereign became Trustee of the Scheme on 9 March 2018.

[1] Financial Services Ombudsman (Jersey) Law 2014 Article 16(11) and Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 Section 16(10)

In 2012 the former Trustee agreed to lend Mr P the capital sum of £45,498.25 from the Scheme in accordance with the terms of an agreement executed on 1 November 2012 ("the Loan").

Following an enquiry about the details of any pension lump sum entitlement, Mr P complained that Sovereign had breached the terms of the Loan and later complained that Sovereign has raised its charges by stealth between 2019 and 2020, was claiming an additional sum of £15,000 to repay the Loan and had not provided him with proper notification of the change of bank account details to enable him to make payments to them.

Sovereign did not uphold the complaint and rejected all of the Complainant's allegations, in particular that there was no obligation upon Sovereign to notify the Complainant of a default or to demand repayment of the loan.

Mr P did not accept Sovereign's decision and asked CIFO to look at his complaint.

The Adjudicator said that appropriate correspondence had been sent regarding the changes to the Trust bank account and the updating of the KYC and CRS documentation, that notification of fee increases had been given and clear correspondence had been issued regarding the Scheme generally. She also found that the terms of the Loan and the subsequent amendments were fair and reasonable and that Sovereign had not breached those terms. As such, she recommended that the complaint should not be upheld.

Mr P did not accept the Adjudicator's recommendation and requested a Final Decision. He submitted that Sovereign should have conducted its affairs as follows:

- "*Communicated advance notice that banking details were to be changed to afford members ample time to adjust. (eg by 1 November 2018)*
- *Aligned to the above, a 'specific' up-to-date statement of every member's account should have been provided. Copies of this detail would then have been appended to the member's file.*
- *Case by case reviews providing 'full' disclosure relevant to any individual should have been conducted in the ensuing period i.e. Jan 2019.*

- *Specifically with reference to the QROPs' information relating to the 2017 HMRC recommendations should have been notified by Sovereign. Sovereign as the 'new' trustee should have advised members of these changes and additionally advised affected members to seek additional 'independent Qualified advice' regards relevant ramifications, specific to the individual.*
- *Sovereign's annual statements (as per the example provided by me) do not reflect an 'accurate' picture specifically relating to the loan element. As you can see, there is no reflection of the outstanding sum nor interest charges.*
- *As can be seen from correspondence, I requested information from Sovereign regards the loan since Dec 2018. I am now aware they provided a copy of their internal XL spreadsheet in Dec 2019. Due to its presentation as an attachment of their working formats it being clearly set out in the body of an e-mail, I continued my requests regarding the same point(s)."*

Findings

I have considered all the available evidence and arguments to decide what is, in my opinion, fair and reasonable in the individual circumstances of this complaint. Where necessary or appropriate, I reach my conclusions on the balance of probabilities; that is, what I consider is most likely to have happened, in light of the evidence that is available and the wider surrounding circumstances.

I have first looked at the relevant documents.

Firstly, the original Trust Deed and Rules (relating to the Scheme and the Instrument of Amendment and Restatement of the Scheme that was put in place on 17 February 2012 (the 2012 Amendment) when it was administered by another Trustee. The terms of the 2012 Amendment completely restated the terms of the Trust and, among other things, gave the Trustees the power "*to grant such loan or loans as may be consistent with the Scheme's Tax Status to any Non-UK Tax Resident Member on such terms as the Trustees think fit except that any such loan or loans granted shall be immediately repayable immediately prior to the Non-UK Tax Resident Member becoming resident in the United Kingdom in such a manner that the 'member payment provisions' referred to in Schedule 34, paragraph 2 of the UK Finance Act 2004 (as amended) would apply to that Member on his becoming so resident in the United Kingdom."* As such the Trustee at that

time had the power to grant the Loan to Mr P from the capital held in the Scheme on such terms as the Trustees thought fit.

Secondly, as regards the original Loan agreement, its terms were clear. Interest of 5% was payable quarterly in arrears. The Loan was repayable upon demand, together with any accrued interest, or at the end of 5 years, unless renewed for a further 5 years at the lender's discretion. The renewal being dependent upon Mr P remaining non-UK tax resident and subject to renegotiation in line with prevailing interest rates. The loan continued beyond the initial 5 years, essentially on the same terms but these were not formally renewed or recorded.

On 15 October 2012 Mr P completed a standing order instruction form to pay £132.67 per month to the then Trustee's account commencing 1 December 2012. As the timing of this standing order coincides with the loan this would appear to have been payments against the interest, however it is not clear how this sum was arrived at as 5% per annum would equate to £2,274.36 per annum or £189.53 per month, but should in any event have been paid quarterly under the terms of the Loan.

Thirdly, following Sovereign's appointment as Trustee on 9 March 2018 it sought to formalise the continuation of the Loan in an addendum agreement (the Addendum) issued in 2020, but that was never signed by Mr P. The repayment date was to be the date before Mr P was due to receive the pension benefits under the Scheme and the Addendum recorded the capital due at the same amount, £45,487.25, and accrued interest due up to 31 December 2019 of £6,609.14. It also changed the interest payment dates to annually in arrears and provided for overdue interest to be paid on demand and for punitive interest to be charged at 8% on overdue interest.

<u>Communications re bank account</u>

Following Sovereign's appointment as Trustee a mailshot was sent to all members in May 2018 advising them of the change of Trustee. It referred to earlier correspondence, but Sovereign were unable to provide a copy of that earlier correspondence. It further wrote to Mr P on 1 December 2018 notifying him that it had changed the name of the account into which he was making standing order payments of £132.67 per month and asked him to change the payee name only which reflected the change of the Trustee. It also said that it would be arranging for a new bank account to be utilised and asked that he provide documents to satisfy its KYC and tax

requirements. Sovereign said that once it had those documents it would make a transfer of funds held on his behalf to the new account and provide him with the details so that his Loan payments could continue. Mr P said that the December standing order payment was refunded to him and he wrote to Sovereign 31 December 2018 stating that he was cancelling his standing order and would await details of the new account and that the documents requested would be sent shortly. In March 2019 Mr P asked Sovereign to confirm that it had received his KYC documents which he said had been forwarded by his accountant in February 2019. Sovereign confirmed that it had not. Further on 12 November 2019 Sovereign confirmed what was outstanding to satisfy its regulatory requirements, i.e. source of wealth information and the CRS form, which were provided shortly thereafter.

Sovereign have regulatory obligations as regards KYC and, on the basis of these exchanges, I find that Sovereign acted reasonably as regards their requests for documentation.

I am also of the view that the notification of the change in the account payee name was appropriate and, whilst that notification could have been issued earlier to allow time to make the change before the December payment was made and then refunded, this did not cause Mr P any prejudice or a reason to cancel the standing order. The refunded payment could have been recredited to the Trustee's account at any time thereafter. As such I find that the correspondence issued was clear and reasonable.

Charges

Mr P's complaint that Sovereign attempted to raise rates by stealth refers specifically in relation to the work carried out with regard to the Addendum. In general, CIFO does not consider the level of fees charged by a Trustee as that is a commercial decision. Nevertheless, I have considered whether Sovereign has acted reasonably in notification and application of those fees.

The 2012 Amendment provides that the Trustees shall be entitled to be indemnified out of the Fund in priority to any payment to or in respect of the Members against all liabilities and reasonable expenses incurred by them in the execution of their powers and discretions. Further, they may charge reasonable remuneration for its services in accordance with its published terms and conditions or, in the absence thereof, its usual and proper charges from time to time. Paragraphs 11 and 16 refer.

I have noted that in an email of 20 August 2020 Mr P said "*I note that I have been charged some £8000 for the pleasure of my funds being passed about*." I have looked at the annual statements issued by Sovereign from 2018 to 2022. Those of 2018 and 2019 do not detail the fees charged. However the 2020 statement records Trustee's fees (General Transaction Fees – GTF) of £813.66 and the Ravenscroft Investment Management charge of 0.75% which would have equated to £789.92. The 2021 statement again details Sovereign's fees at £813.66 and the Ravenscroft Investment Management charge at 0.75% equating to £816.71. The 2022 statement details £813.66 as Sovereign's fees and the Ravenscroft Investment Management charge of 0.75% that would have equated to £749.68.

CIFO asked Sovereign about their fees. The fact sheet sent out to members with the mailshot in May 2018 said that all fees would remain as current. Sovereign have confirmed that their fees were charged at £813.66 for each of 2018 and 2019 also. Included within the Trustee Fees (GTF) was a £150 loan administration fee. The GTF was increased to £1,250 per annum in 2023 and Sovereign provided a copy of the notification email that was sent to Mr P. The increased GTF included a one-off fee of £150 for the change of advisor and a one-off fee of £250 for the change of investment applied from 1 January 2023. The last fee levied from 1 January 2024 is a compliance fee of £50 related to Mr P's risk rating of "medium". This is detailed in the updated GTF schedule that was issued to all affected members on 28 November 2023. Sovereign also provided me with details of the charges applied between 2013 and 2018 as follows:

Annual Administration Fees	GBP	750.00
Disbursement: Annual Investment Review Fee	GBP	75.00
Annual Administration Fees	GBP	750.00
Annual Administration Fees	GBP	750.00
Annual Administration Fees	GBP	787.50
Annual Administration Fees for the period 01 January to 31 December 2017	GBP	794.59
Annual Administration Fees for the period 01 January 2018 to 31 December 2018	GBP	813.66

CIFO asked about the small increase in fees between 2017 and 2018 and Sovereign explained that the fees charged by them for 2018 were a pro rata portion of the annual fee of £813.66, for the period April to December 2018

following their appointment. Sovereign told CIFO that the previous Trustee informed Sovereign at the time of transfer that the fees were increased annually in line with the Guernsey Retail Prices Index (GPRI) and as at 2018 stood at £813.66. They also provided evidence of the fees notified to Mr P in 2013 and of the GPRI for 2017. The fees did not then increase until 2023 as set out above.

Taking all of this into account I am satisfied that Sovereign's fees and any increases to them were notified to Mr P Sovereign's fees have not amounted to £8,000 as Mr P claims. No additional fees were charged in respect of the Addendum and therefore I cannot see that any fees have been incurred for "*your funds being passed about*" as characterised by Mr P. Insofar as the level of fees generally are concerned, they do not in any event appear to be excessive or unreasonable in the context of the fee disclosure provided and the broader circumstances of the activities being conducted.

<u>Communications regarding potential issues of the Loan</u>

I have seen that on 4 October 2019 Sovereign emailed Mr P with valuations of the Friends Provident policy (FPI) and the Ravenscroft (investment management) account held within the Scheme. The email gave considerable detail about the suspended funds within the FPI and referred to the Loan and the interest to be added and said "*You will be able to take income from the plan at the age of 55, but the loan plus interest would need to have been fully repaid prior to any income actually being paid to yourself*." There was then an exchange about having a telephone call to discuss the Scheme, but I do not have anything before me to confirm that call took place. Following completion of the KYC enquiries, further email exchanges took place about the Scheme and Sovereign informed Mr P on 16 December that the value of the Scheme was £148,940.19 and that he was entitled to take a 25% lump sum payment at age 55 and thereafter the maximum annual income would be £5,864.52, however, the Loan and interest due would need to be repaid before they could release any payments.

Sovereign further emailed Mr P on 9 December 2019 with valuations of the Friends Provident investments, which held suspended funds, and Ravenscroft policies. Sovereign also referred to the Loan and provided a spreadsheet that gave a detailed breakdown of the Loan, interest and repayments made. As at 31 December 2019 the accrued interest amounted to £9,685.27.

On 14 January 2020 Mr P wrote to Sovereign and said *"I believe there are approx. 9 months of payments outstanding from the Loan I took out against this policy – Pl confirm*". Sovereign responded on 23 January 2020 and said "*the last payment was received 2 November 2018, so there would be 14 payments of £132.67 based on the previous repayments being made. We would, however look to review the loan status to ensure that any repayments that are due to be made are in line with the terms of the loan agreement*" and added "…*due to the suspended assets held with FPI, a closing or transfer of the plan elsewhere would not be possible at this time*."

Sovereign have provided CIFO with an Excel spreadsheet detailing the capital and interest due on the Loan and this was emailed to Mr P on 9 December 2019 following a full audit of the Loan by Sovereign. There was also further correspondence between Sovereign and Mr P regarding the loan calculation in June 2020 when the Addendum was produced and correspondence around Mr P's pension generally took place.

Further, Sovereign provided pension statements annually from 2018 and those issued from 2020, after Sovereign had audited the Loan, included full details of the capital and interest outstanding.

I find that Sovereign provided clear communication regarding the sums outstanding on the Loan. It provided detail of the outstanding payments of interest and provided Mr P with annual statements. Further, there was clear communication about the value of the Scheme, the lump sum and income payments that could be taken, and with regard to the sums outstanding on the Loan which needed to first be repaid. It was also clearly stated that Sovereign were intending to review the Loan.

I have also noted that, as no interest has been paid since, as at 31 December 2023, it amounts to £15,706.59 and continues to accrue.

<u>The Addendum</u>

Mr P complains that clauses within the Addendum are not in the spirit of the Trust Deed, i.e. the 2012 Amendment.

As set out above, the 2012 Amendment says that the Trustees can grant loans on such terms as they think fit. The initial 5-year term of the Loan expired on 31 October 2017 but was not renewed by the former Trustee and the Loan effectively continued on the same provisions as initially

agreed except that, as I have noted above, the interest payments did not match the 5% required and no payments toward accrued interest were made after November 2018. Correspondence took place between Sovereign and Mr P between June and September 2020 regarding the Addendum. Mr P objected to being asked to sign a retrospective agreement, amending the loan terms 7 months after the initial contact. Sovereign explained the need for the Addendum to comply with regulatory requirements and the desire to change the interest payments to annual payments. Further Sovereign invited Mr P to identify any amendments that he wanted to make to the Addendum for consideration. Mr P did not do so but referred to not having been provided with information about the suspended funds and asked to transfer funds out. However, as noted above, these matters had already been referred to in correspondence in 2019.

I note that at that point Mr P was already in breach of the terms of the original Loan agreement as arrears of interest had accrued and Sovereign could have enforced the terms of the Loan, terminated it and demanded repayment of the capital and accrued interest, but it did not do so and had no obligation to do so.

Aside from any regulatory requirement, I find that, in accordance with the provisions of the original Loan, it was entirely appropriate that Sovereign sought to formalise the renewal of the Loan and to take account of the change in circumstances that had occurred – i.e. the non-payment of interest and the proximity of the date when benefits could be taken under the Scheme.

Notwithstanding discretion of the Trustee with regard to the Loan as detailed in the 2012 Amendment, I have nevertheless considered whether the terms of the Addendum are fair and reasonable.

Interest rate – the original Loan agreement said that at renewal, interest would be subject to renegotiation in line with prevailing interest rates. The Bank of England base rate in 2020 was between 0.10 and 0.25. High Street banks were offering personal loans at more than 5%. I have seen that for personal loans of £7,000-15,000 for example, HSBC were offering 6.9% and the maximum APR that could be offered was 22.9%. On that basis 5% was not inherently unreasonable.

The Addendum also provided for a punitive rate of interest of 8% to be paid on any unpaid interest. This is on par with interest that is awarded by

Courts on debt and, indeed, is also in line with the interest that CIFO applies in certain cases. I do not find this rate unreasonable.

As already detailed, Mr P was in arrears with the interest payments under the original Loan, but nevertheless Sovereign extended the Loan and proposed that he pay the 5% interest annually rather than quarterly.

I note that correspondence that passed between Mr P's representative and Sovereign suggested that there had been a breach of contract by Sovereign in not advising Mr P that there had been a default or in providing up-to-date records of the loan. Sovereign were not obliged to inform Mr P of any default - in fact that was the obligation of Mr P - or to act on such default. Mr P cancelled the standing order in 2018 and took no steps to reinstate it once the KYC issue had resolved. Furthermore, Sovereign highlighted the arrears in the Excel spreadsheet provided in December 2019.

Repayment date – this changed to tie-in with the receipt of pension benefits. This was necessary to ensure the Loan and accrued interest were effectively repaid from those benefits and, as such, was reasonable.

Default – under the original Loan, Mr P was required to notify the Trustee of an event of default whereupon he was required to repay the outstanding loan and interest and costs. Under the Addendum, Mr P is required to indemnify the lender against any costs arising from any action taken under the agreement. That of course includes an action to force repayment if it is not made at the due time. That is entirely reasonable in my view and in accordance with loan agreements and the usual costs provisions in court proceedings.

Variation and Waivers – this clearly states that no failure or delay on the lender's part to exercise or enforce any of its rights shall operate as a waiver of those rights, unless specifically agreed in writing. Again, this is a standard provision within such agreements and entirely reasonable.

In summary I find that the terms of the Addendum brought to my attention were fair and reasonable in the circumstances.

GFSC regulations

CIFO is not a regulator. However, in order to determine whether Sovereign have acted reasonably I have considered the terms of The Pension Scheme

and Gratuity Scheme Rules and Guidance, 2021_0.pdf (gfsc.gg). I have not seen anything to suggest that Sovereign did not have appropriate internal controls in place as regards the Scheme. As I have previously outlined, I find that, having examined the correspondence, Sovereign gave clear communication regarding the value of the Scheme, the impact of the fund suspensions, and of the capital and interest due under the Loan. I am further satisfied that the fees charged are fair and reasonable and in accordance with the terms of the 2012 Amendment. As such, I cannot agree that Sovereign failed in any duty referred to in these Regulations.

Insofar as the impact of not contributing to the Scheme, when Mr P joined the Scheme he did so through a Financial Adviser. His application form detailed the investment requirements as "Reserve - for capital growth in the longer term" and the declaration confirmed that Mr P understood "*that the Trustee does not offer legal, investment or tax advice and at all times I must obtain my own legal, investment and tax advice."* As such the Trustee did not have a duty to give any advice on the matter of further contributions.

As regards Mr P's complaint that Sovereign should have advised him in respect of the 2017 HMRC recommendations applicable to QROPS, I cannot conclude that this part of the complaint be upheld for the following reasons:

Sovereign were not the Trustee in 2017;

The regulations to which Mr P refers relate to QROPS requested on or after 9 March 2017 being liable to UK tax in certain circumstances. As mentioned above, Mr P transferred his occupational pension into the Scheme in 2011;

As also mentioned above, the application form contained a declaration that Mr P understood that the Trustee did not give tax advice and he must seek his own independent advice.

I have noted that the Addendum provided "*If at any time the Lender determines that it is or will become unlawful or contrary to any law or directive of any agency or state or become inconsistent with the tax status of the Plan for it to allow the Loan or any part thereof to remain outstanding upon demand the Borrower shall repay part or all of the Loan together with all accrued interest thereon and any other sum then due to the Lender under this Agreement."* It follows that if any change in the UK regulations meant

that the Scheme no longer qualified as a QROPS, Mr P would have been liable to repay the Loan. But no such change occurred.

In all the circumstances and in summary, I agree with the Adjudicator's recommendation and cannot agree that Sovereign have acted inappropriately in the administration of the Scheme or in respect of the Loan advanced thereunder.

Final Decision

My final decision is that I do not uphold this complaint.

Please note there is no appeal against a binding decision, and neither party may begin or continue legal proceedings in respect of the subject matter of a binding decision.

Douglas Melville
Principal Ombudsman and Chief Executive
Date: 21 February 2025