

Ombudsman's Determination

Applicant	Mr N
Scheme	Alloy Sales Limited Executive Pension Scheme (the Scheme)
Respondents	Mrs L A Goodwin, Mr C I Goodwin, Mr R Goodwin (collectively ' the other Member Trustees ') Embark Group Limited (Embark) trading as Rowanmoor Group plc (Rowanmoor).

Outcome

1. Mr N's complaint is upheld and to put matters right the other Member Trustees and Rowanmoor shall carry out the directions detailed in paragraphs 29 and 30 below.

Complaint summary

2. Mr N has complained that: -
 - Rowanmoor incorrectly calculated his share of the Scheme funds which led to his transfer value being undervalued by £24,839.
 - The other Member Trustees are refusing to authorise a payment of £24,839 to his pension arrangement with Standard Life (the **Standard Life pension**).
3. He says £24,839 should be paid to his Standard Life pension together with interest and that Rowanmoor should compensate him for the distress and inconvenience the matter has caused him.

Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
5. The Scheme is a Small Self-Administered Scheme (**SSAS**).
6. A SSAS is a type of Occupational Pension Scheme with fewer than 12 members, all of whom are trustees and take responsibility (together with any professional trustees appointed through the Scheme's Trust Deed and Rules) for how the scheme operates in accordance with the Scheme's Rules.

7. The Scheme was originally established with Rowanmoor but Rowanmoor was subsequently purchased by Embark. Correspondence continued to be produced under the Rowanmoor trading name and also by Embark. I have referred to both Rowanmoor and Embark as appropriate.
8. The Scheme is governed by a Definitive Trust Deed dated 2 November 2006 (**the Trust Deed**). The Trustees are Rowanmoor in the capacity of Independent Trustee, Mr N and the other Member Trustees.
9. Clause 8 of the Trust Deed deals with Trustee Meetings.

Sub clause 8.3 states:

“The quorum for a meeting of the Trustees shall be the Independent Trustee and a majority of the Member Trustees...”

Sub clause 8.4 states:

“Decisions at Trustee meetings...must be unanimous. If the Trustees cannot reach a unanimous decision on any matter...the matter shall be referred to an expert unanimously appointed by the Trustees whose determination shall be binding on the Trustees. The costs of any such expert shall be an expense of the Scheme...”

10. In March 2017, Mr N decided to retire. He says that by agreement with the other Member Trustees it was decided that he should transfer his share of the fund to a separate provider. In return for a fee of 2% of Mr N's fund value, Rowanmoor agreed to administer the actuarial valuation of the Scheme and to provide Mr N with financial advice.
11. In July 2017, Mr N transferred £579,399 to Standard Life (the **transfer value**). Mr N queried why this was less than the original figure that had been quoted of £587,399. He was told that the sum quoted could differ from the actual value but that it had been checked and was the correct figure.
12. Early in 2018, Mr N had cause to again look at the original transfer value calculation and could see that several errors had been made with the fund split and that it had been incorrectly calculated. He raised these concerns with Rowanmoor.
13. In March 2019, Rowanmoor agreed it had made an error and there was an underpayment of the transfer value, amounting to £24,839. which was due to his Standard Life pension.
14. On 23 August 2019, Rowanmoor wrote to Mr N to say that the minimum fund share still to be transferred to Standard Life was £30,634. It said that it was arranging a meeting with the other Member Trustees to enable the required authority to make the transfer. It added that its actuaries were aware that funds were still retained in the Scheme bank account for Mr N's benefit and that these could not be used by any other member of the Scheme.

15. On 26 November 2019, Embark responded to a complaint apparently raised by the other Member Trustees regarding the administration service provided by Rowanmoor. Embark said that it was upholding the complaint in part because:-
 - It agreed that Rowanmoor had overlooked the certain benefit payments when processing the fund split in July 2017.
 - As a result, Mr N's transfer value had been underpaid by £24,839.00.
 - While this had been caused by Rowanmoor, the remaining members were only entitled to the correct benefits and not to the figures quoted as a result of the mistake.
 - The funds would always have been due to Mr N had the split been produced correctly and it therefore concluded that Rowanmoor should not fund the underpayment.
16. On 30 December 2019, Embark wrote again to the other Member Trustees. Embark said:

“...the funds held for [Mr N] are required to be transferred to his pension arrangement to complete the transaction. As Trustees, it is important that action is taken to ensure that this is completed as soon as possible...”

...As you are aware the bank account is a joint signatory account and the Member Trustees are required to sign the instruction previously issued to effect the transfer.”
17. On 20 January 2020, Embark emailed the other Member Trustees asking for a response to its letter of 30 December 2019.
18. On 28 February 2020, Embark responded to Mr N's complaint regarding the underpayment of the transfer value. Its letter repeated the points made to the other Member Trustees in its letter of 26 November 2019, but said that the other Member Trustees did not agree that the members were only entitled to the correct benefits and not the figures quoted in error and considered that Rowanmoor should fund the underpayment to Mr N.
19. The Pensions Ombudsman (**TPO**) has made several attempts to obtain the other Member Trustees' response to Mr N's complaint: initially writing to Mr C Goodwin at the company's address on 30 December 2019, followed up by email on 20 January 2020. Further letters were sent to Mr C Goodwin on 29 September 2021 and 10 November 2021, and to Mr R Goodwin on 12 January 2022. However, no response has been received. Rowanmoor has advised that it also has received no response from the other Member Trustees on the issue of paying out Mr N's remaining share of transfer value.

Adjudicator's Opinion

20. Mr N's complaint was considered by one of our Adjudicators who concluded that further action was required by Rowanmoor and the other Member Trustees. The Adjudicator's findings are summarised below:-

- The other Member Trustees had failed to provide their response to Mr N's complaint. Their position was therefore taken to be as set out in Embark's letter to Mr N dated 28 February 2020.
- It was agreed and accepted that Rowanmoor had made an error in the valuation and split of the fund and consequently the calculation of Mr N's share, as it had failed to take into account certain benefit payments which had been made. This had resulted in negligent misstatement of Mr N's fund which had been undervalued and, it appeared, some or all of the other members' funds had been overvalued as a result.
- Rowanmoor had recognised its error and had tried to take steps to correct it but seemed to have met with resistance from the other Member Trustees.
- The basic principle for negligent misstatement is that a scheme is not bound to follow incorrect information. A member is only entitled to receive the benefits provided for under the scheme rules, that is those based on correct information accurately reflecting the scheme rules.
- Rowanmoor had said that Mr N's transfer payment had been underpaid by £24,839.00 and there was no reason to doubt its calculation.
- There was no evidence to suggest the other Member Trustees believed that the revised figures were incorrect or that they had deliberately withheld their authority to make the additional payment in order to benefit themselves. The Adjudicator's view was that it is more likely that they believed that Rowanmoor should make good the difference as it was Rowanmoor's error that had resulted in the shortfall.
- Whether that was a reasonable view was not something for the Adjudicator to consider as it was not relevant to Mr N's complaint. Mr N was entitled to the correct benefits and if the other Member Trustees felt that Rowanmoor should meet the cost that was for them to resolve with Rowanmoor and, if necessary, to bring a complaint of their own against Rowanmoor as the Scheme administrator.
- The Adjudicator considered that Mr N was entitled to a larger share of the fund than had been paid to him. It is the Trustees' duty to administer the Scheme for the benefit of the members and, in the Adjudicator's opinion, on the evidence available there was no reason for the other Member Trustees to withhold their authority to make the additional payment.
- Although Embark had eventually accepted Rowanmoor had made an error in its calculations, it took some 12 months, from early 2018 to March 2019, to reach this

conclusion. The Adjudicator considered this delay was unreasonable and amounted to maladministration which would have added to Mr N's distress and inconvenience.

- Not only had the other Member Trustees failed in their duty to ensure Mr N received his correct benefits, but they had also failed to co-operate or engage with TPO's investigation into his complaint against them. In the Adjudicator's view this also amounted to maladministration which would have contributed to Mr N's serious distress and inconvenience.

21. Mr N and Rowanmoor accepted the Adjudicator's Opinion but the other Member Trustees did not respond and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion

Ombudsman's decision

22. It is the Trustees responsibility to ensure that the correct benefits are paid to the members. It is accepted by Rowanmoor that the incorrect sum has been paid in respect of Mr N, and that an additional sum needs to be paid in order for the transfer value to be made good. The other Member Trustees have not responded to the Adjudicator's correspondence, nor to his Opinion, and so it is not clear whether they also accept this position.
23. Clause 8 shows that for the Trustees to make a decision there had to be a quorum which is Rowanmoor, as Independent Trustee, and a majority of the Member Trustees. Furthermore, decisions have to be unanimous.
24. So, Rowanmoor is not able to make the additional payment to Mr N without the agreement of a majority of the Member Trustees.
25. Without a response from the other Member Trustees I have no reason to doubt Rowanmoor's account of its dealings with them, or of the need to pay an additional sum to Mr N. I can only conclude that Rowanmoor has tried to resolve the position but that, for whatever reason, the other Member Trustees have failed to cooperate. This is unacceptable and cannot be allowed to continue.
26. Clause 8 directs that if the Trustees cannot reach a unanimous decision on any matter it shall be referred to an expert unanimously appointed by the Trustees whose determination shall be binding on the Trustees.
27. However, in the absence of any arguments having been provided by the other Member Trustees, in this case I see no justifiable reason for the other Member Trustees to not reach a unanimous decision and I have set out my directions accordingly.
28. I uphold Mr N's complaint.

Directions

29. Within 28 days of the date of this Determination:-

29.1. Rowanmoor shall:

- recalculate the additional sum due to Mr N; and
- pay Mr N £250 for the serious distress and inconvenience its maladministration caused him.

29.2. The Trustees shall pay Mr N £750 for the serious distress and inconvenience its maladministration caused him.

30. Within a further 28 days the other Member Trustees shall, together with Rowanmoor as Independent Trustee, authorise the payment in 28.1 above and Rowanmoor shall then make payment to Mr N's Standard Life pension.

Dominic Harris

Pensions Ombudsman
18 December 2024