

## Ombudsman's Determination

Applicant	Miss I
Scheme	STM International Pension Plan ( <b>the Plan</b> )
Respondents	London and Colonial Services Limited ( <b>LCS</b> ) Options UK Personal Pensions LLP ( <b>Options</b> )

## Outcome

1. Miss I's complaint against LCS, and Options as the Plan's administrator, is partly upheld, but there is a part of the complaint with which I do not agree. To put matters right for the part of the complaint with which I agree, LCS shall pay Miss I £500 in respect of the significant distress and inconvenience she has experienced as a result of its maladministration.

## Complaint summary

2. Miss I has complained that:-
  - She faced unacceptable delays when she transferred the Plan to a new pension plan (**the New Plan**) with Momentum. The transfer should have taken two months but took more than four months.
  - During the delay, she was unable to manage the Plan effectively. The lack of control over the Plan and the investments was stressful.
  - She was forced to transfer because she was unable to service the Plan.
  - As a result of the delay, she lost approximately £10,000 in investment growth.
  - The worry that LCS had gone out of business, or had taken away her pension fund, caused her further distress.
  - LCS did not provide due care as the pension provider and the scheme trustee. She paid for services she did not receive.
  - Options asked for an in-specie transfer instead of a Deed of Assignment which was the correct way to transfer her pension fund.

## **Background information, including submissions from the parties**

3. The sequence of events is not in dispute, so I have only set out the key points. I acknowledge there were other exchanges of information between all the parties.
4. The Plan was a Self-invested Personal Pension (**SIPP**), provided by LCS. In this Determination, all reference to LCS should be taken as referring to Options also. The Plan was invested in an investment portfolio (**the Investment Portfolio**) managed by RL360. Miss I's adviser under the Plan was Swiss Global Investment (**SGI**).
5. In March 2019, Miss I removed SGI from the Plan, with the intention of appointing Swissential as her new adviser.
6. Pending the appointment of Swissential, Miss I instructed LCS directly regarding the purchase of two new investments in April 2019.
7. Swissential was ultimately unable to agree terms of business with LCS and could not be appointed to the Plan.
8. In August 2019, Miss I decided to transfer the Plan to the New Plan. Miss I has said that the purpose of the transfer was to allow her to appoint Swissential to the New Plan.
9. Miss I has said that the transfer application forms and request for the transfer value were sent to LCS on 20 September 2019. The instructions included the in-specie transfer of the Investment Portfolio, valued in September 2019 at around £480,000, to the New Plan.
10. LCS received the transfer application forms on 14 October 2019, but took no further action until 7 November 2019, when it instructed RL360 to disinvest an amount from the Investment Portfolio to cover its fees under the Plan. It also instructed RL360 to transfer ownership of the Investment Portfolio to the New Plan.
11. In January 2020, Miss I discovered that the in-specie transfer of the Investment Portfolio had not been completed. LCS has said it then became aware that a Deed of Assignment (**the Deed**) was required to conclude the in-specie transfer. The Deed was sent by Momentum to LCS on 30 January 2020 but LCS did not forward it to RL360 until 27 February 2020.
12. Miss I was of the view that she had been forced to transfer the Plan by LCS' failure to agree terms of business with Swissential. Miss I intended to appoint Rathbones as the Discretionary Fund Manager (**the DFM**) to the Investment Portfolio. As a result of LCS' delay in concluding the transfer, she was unable to appoint the DFM and the Investment Portfolio lost out on investment growth which she estimated to be £10,000 for which LCS should compensate her. Miss I was unable to provide evidence of the alleged loss of investment growth as the Investment Portfolio would have been managed on a discretionary basis by the DFM, so there were no specific investment recommendations that would have been executed, had the delay not occurred.

13. LCS accepted that it had taken no action on Miss I's transfer instruction between 14 October 2019 and 7 November 2019 and refunded the transfer administration fee of £155 it had charged the Plan directly to Miss I. It did not agree that any other annual fees should be refunded as they had been charged for services provided and in accordance with the Terms and Conditions and Schedule of Fees agreed when Miss I applied for the Plan.
14. LCS did not accept that it was responsible for the delay in arranging the Deed or completing the in-specie transfer. It had processed Miss I's transfer request and closed the Plan promptly on 18 November 2019. It was not informed that the Deed was required until January 2020. It did not accept that it was responsible for any loss of investment growth as, throughout the transfer process, the Investment Portfolio had not been out of the market and Miss I was not prevented from making changes to it.

### **Adjudicator's first Opinion**

15. Miss I's complaint was considered by one of our Adjudicators (**the Adjudicator**), whose Opinion (**the First Opinion**) was issued on 13 February 2024. In summary, the Adjudicator was of the view that:-
  - 15.1. Miss I was not forced to transfer in order to manage the Plan.
  - 15.2. Miss I did not inform LCS of her intention to appoint Swissential as her new adviser under the Plan.
  - 15.3. There was no evidence that LCS was responsible for the delay between 20 September 2019, when Momentum said it sent the transfer forms, to 14 October 2019, when LCS said it received the transfer forms.
  - 15.4. LCS had delayed acting on the transfer forms from 14 October 2019 to 7 November 2019. The refund of the transfer administration fee of £155 to Miss I was an appropriate remedy.
  - 15.5. LCS was not responsible for the remainder of the delay from November 2019 to March 2020, as it had not been informed that the Deed was required until January 2020.
  - 15.6. The Investment Portfolio remained invested and Miss I was not prevented from making changes to it. LCS was not responsible for the loss of potential investment growth alleged by Miss I.
16. LCS accepted the Adjudicator's First Opinion, but Miss I did not.

### **Additional information and comments from Miss I**

17. In response to the First Opinion, Miss I provided the new information and comments listed in paragraphs 18 to 21 below.

18. On 11 November 2019, LCS advised Momentum that it would sign and return the Deed once its outstanding fees had been settled. Miss I provided details of other occasions on which both Momentum and RL360 had contacted LCS in attempts to obtain the Deed. So, LCS was, and ought to have been, aware of the need for the Deed prior to January 2020.
19. RL360 rejected the Deed LCS sent on 27 February 2020. Momentum questioned why LCS appeared to have sent a deed which was not the version Momentum had sent to it on 30 January 2020. LCS did not answer this question.
20. The Deed was sent again to RL360 on 28 February 2020 and the in-specie transfer was completed on 3 March 2020.
21. Miss I was prevented from managing the Plan during the in-specie transfer delay as it is not possible to manage a closed plan.

### **Additional information from LCS**

22. LCS was given the opportunity to comment on the new information provided by Miss I. The Adjudicator also asked LCS to confirm if the Deed it sent to RL360 on 27 February 2020 was the original version Momentum had sent to it on 30 January 2020. LCS responded, but did not provide a clear answer to this question in any of its responses. I have listed LCS' other responses in paragraphs 23 to 25 below.
23. LCS had written to RL360 on 7 November 2019 to establish its requirements to complete the in-specie transfer of the Investment Portfolio. It received no response but did not follow up.
24. Miss I could have instructed LCS to appoint Rathbones as the DFM under the Plan, pending completion of the in-specie transfer.
25. LCS accepted that it had said on 20 March 2020, in its response to Miss I's complaint, that it had closed the Plan on 18 November 2019. LCS said that it had made this statement in error as it had not closed the Plan on the date stated. LCS was of the view that this misstatement could not have been viewed by Miss I as a barrier to administering her plan between November 2019 and February 2020, as it had not made the statement until March 2020, after the Plan had been transferred. LCS did not tell Miss I that the Plan had been closed at any point during the transfer delay, which is when she alleges the loss of investment growth occurred. So, on this basis, LCS could not be held responsible for the alleged losses.

### **Adjudicator's Second Opinion**

26. In view of the comments made by Miss I and LCS, the Adjudicator issued a second Opinion (**the Second Opinion**) on 12 April 2024, in which he made the following additional findings:-

- 26.1. LCS was aware from November 2019 that the Deed was required but did not take appropriate action to obtain it. LCS did not provide any explanation regarding the further delay relating to the Deed sent to RL360 in February 2020, which Momentum said was not the same Deed it had sent to LCS in January 2020. LCS, and Options on behalf of LCS, were responsible for a series of delays, errors and oversights from October 2019 to March 2020 that amounted to maladministration, as a result of which Miss I had suffered significant distress and inconvenience.
- 26.2. The refund of the transfer administration fee of £155 was not sufficient in relation to the extent of the delay and LCS's failure to explain it. Noting that LCS was uncooperative when The Pensions Ombudsman asked for information about the circumstances around the rejection of the Deed it sent to RL360 in February 2020, the Adjudicator was of the opinion that LCS should award Miss I an additional £500 in respect of her distress and inconvenience.
27. In response to the Second Opinion, on 7 May 2024 Miss I provided evidence that LCS had been made aware of her intention to appoint Swissential as her new adviser under the plan and submitted that, without an adviser, she would not have known what actions to take in relation to the management of the Investment Portfolio. She asked the Adjudicator to review the Second Opinion.
28. The Adjudicator considered Miss I's new evidence but concluded that it did not change his view. He acknowledged that LCS had overlooked Miss I's intention to appoint Swissential as her adviser, but this did not change the outcome of her complaint as it amounted to maladministration which he had already considered should be upheld.
29. The Adjudicator was not persuaded that the absence of an adviser would have had any bearing on the DFM's ability to manage the Investment Portfolio on her behalf.
30. Miss I did not accept the Adjudicator's Second Opinion and the complaint was passed to me to consider. Miss I provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note those of Miss I's additional points that are not already addressed in the Second Opinion.

### **Miss I's additional comments**

31. Miss I is of the view that:-
  - 31.1. The Second Opinion does not hold LCS accountable for its part in the maladministration of the transfer.
  - 31.2. She questions how the Plan could be considered closed when LCS still remained the legal owner of The Investment Portfolio, or how she could effectively manage a closed plan.

- 31.3. LCS resorted to blaming everyone else involved in the transfer for problems relating to the Deed.
- 31.4. She could not have added another third party, the DFM, into an already convoluted situation.
- 31.5. Due to LCS' negligence, the Plan suffered a loss of £30,000, although she is seeking compensation of £10,000.

### **Ombudsman's decision**

32. While I recognise that there are procedures and actions that are necessary in order to progress a transfer, in my view there were avoidable delays in this process, which amounted to maladministration, and LCS should be held accountable. In particular, I note the delay of almost 4 weeks between it receiving the transfer application forms on 14 October 2019, and taking the first steps to action it on 7 November 2019. I agree with the Adjudicator that £500 in addition to the refunded transfer fee of £155 is an appropriate award in the circumstances.
33. Although confusing and unhelpful, LCS' statement regarding closure of the Plan in November 2019, which was made in error, could not have impacted Miss I's view of her ability to manage the Plan prior to completion of the transfer, as the statement about closure was not made until after the transfer had concluded.
34. Similarly, while I understand Miss I's frustration, if she had serious concerns at the time of the transfer about the performance of the Investment Portfolio, she could have asked questions about how those concerns could be addressed or mitigated. Furthermore, as LCS pointed out, the Investment Portfolio was not out of the market in that period and Miss I was not prevented from making changes to it. She could also have appointed DFM (although it is not clear what the outcome, from an investment growth perspective, that would have resulted in)
35. Therefore, in my view, LCS cannot be held responsible for the alleged loss of potential investment growth, for which I in any event note that Miss I was unable to provide any supporting evidence.
36. I partly uphold Miss I's complaint.

### **Directions**

37. Within 28 days of the date of this Determination, LCS shall pay Miss I £500 in respect of the significant distress and inconvenience she has experienced.

CAS-51735-Y2S2

**Dominic Harris**

Pensions Ombudsman

18 June 2024