

Ombudsman's Determination

Applicant	Mr H
Scheme	The Green Retirement Pension Plan Series 3 (the Plan)
Respondent	Mr Mark Harris, as the former trustee of the Plan

Outcome

1. Mr H's complaint is upheld, and to put matters right Mr Harris should provide a full response to the questions raised by Mr H's representative regarding his operation of the Plan, and pay Mr H £2,000 to reflect the distress and inconvenience caused to him by Mr Harris's maladministration.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr H complains that Mr Harris failed to respond properly to his enquiries about the Plan, leaving Mr H unable to plan for his future and exercise his transfer rights.

Background information, including submissions from the parties

4. In accordance with a written request from Mr H, a transfer payment of £62,638.05 was made from his Scottish Widows personal pension scheme to the Plan on 2 November 2012. Mr H's investment decision form, dated 19 October 2012, had instructed the trustees of the Plan to invest 70% of the transfer payment in "Brazilian Teak supplied by Global Forestry Investments Ltd", and 30% in "FSA regulated investments".
5. In June 2015 Mr Harris, who was then the sole trustee of the Plan, sent Mr H's solicitors, at their request, copies of the handbook for the Plan and Mr H's investment decision form.
6. On 20 November 2015 Mr H's solicitors emailed Mr Harris to ask for details of the Plan's current funds and transfer values, current investments, confirmation whether Mr H could switch funds, a projection of estimated benefits, current charges and historical contributions. They also asked for a copy of the Plan's trust deed and rules and a postal address for corresponding with Mr Harris. The email writer commented that he was writing to Mr Harris because:

“I have had sight of the Member’s handbook dated May 2012 (“the Handbook”). I note that the Trustees of the Plan were “Mark Harris” and “Alexandra Chambers”. I understand that Alexandra Chambers was a firm of which you were a director, but that Alexandra Chambers was dissolved on 4 August 2015.”

7. On 4 December 2015 Mr Harris emailed to Mr H’s solicitors most of the answers that Mr H required. Mr Harris said that he would be able to send an unsigned electronic copy of the trust deed and rules “at the beginning of next week”, and would prefer to communicate by email.
8. Later that day, Mr H’s solicitors asked Mr Harris some supplementary queries about the Plan charges and investments, and clarified that they would like to see a copy of the signed trust deed and rules of the Plan. They reiterated that they wanted to know Mr Harris’s postal address as well as his email address. Mr Harris acknowledged these requests.
9. Mr H’s solicitors emailed reminders to Mr Harris on 9 and 21 December 2015. On 22 December 2015 Mr Harris responded as follows:

“I have replied to your last request for information, I think a week last Wednesday. I sent an email with the trust [deed] and rules attached. As I had not heard back from you I did not realise you had not received it. I will resend it as soon as possible.”
10. Later that day, Mr Harris said he would resend the documents under cover of separate emails in case the email attachment was too large.
11. On 23 December 2015 Mr Harris apologised for not responding as he had promised, saying that he had to stay in London the previous night: “I’m leaving shortly so will send as soon as I can.”
12. When Mr H’s solicitors emailed a reminder to Mr Harris on 5 January 2016, he replied:

“I’m sorry, I did send it again. I did ask for confirmation you had received it, and was giving you until the close of play today to get up to speed with your correspondence after the Christmas break.”
13. Despite Mr H’s solicitors emailing another reminder to Mr Harris on 8 January 2016 there was no further communication from Mr Harris.
14. Mr H then contacted us.

15. Our request to Mr Harris for a formal response to the complaint was dated 22 January 2016 and was sent to him at an address that had featured in our correspondence on a similar complaint involving Mr Harris. Mr Harris did not reply to our letter, or to our reminder of 7 April 2016.

Adjudicator's Opinion

16. Mr H's complaint was considered by one of our Adjudicators, who concluded that further action was required by the trustees of the Plan. The Adjudicator's findings are summarised briefly below:-
 - The trustees of the Plan had failed to respond to queries raised by Mr H's solicitors, and to provide a copy of the signed trust deed and rules of the Plan. This was in breach of the statutory regulations relating to the disclosure of information, and constituted maladministration, which had caused Mr H significant distress.
 - We had investigated and determined similar cases involving the Plan and a pension scheme administration company operated by Mr Harris (for example, PO-7428 Owen and PO-8129 Middleton). Those determinations are available on our website (www.pensions-ombudsman.org.uk). We upheld those complaints and there was no significant difference in Mr H's complaint which would warrant a different outcome here.
 - We had not seen a formal request from Mr H to transfer from the Plan, but it might be that in the circumstances he would wish to do so. The Plan handbook suggests that Mr H might have a contractual right to transfer but, in any event, he could not be deprived of a statutory right to transfer under section 94 of the Pension Schemes Act 1993 (**the Act**). To qualify as an application for the purpose of the six months' time limit in section 99 of the Act, such a request would need to require the trustees of the Plan to use the transfer value to acquire credits in an occupational or personal pension scheme, the trustees or managers of which are able and willing to accept payment. Should Mr H make a valid request in this way, the trustees of the Plan would be obliged to deal with it in accordance with his statutory rights.
 - In conclusion, Mr H's complaint should be upheld because the trustees of the Plan had failed to respond properly to Mr H's representative's requests for Plan information and documentation. This constituted maladministration, which had caused Mr H significant distress.
17. In January 2017 a copy of the Adjudicator's Opinion was sent to Mr Harris's last known address, but he did not reply. We were then informed by Mr H's representative that a company known as Green Pension Trustees Limited (**GPT**) had been appointed as trustee of the Plan in 2016 in place of Mr Harris, and had recently sent a "member update" to Mr H which set out amongst other matters his investments and charges payable. Having verified that this information from GPT was correct, we sent a copy of the Adjudicator's Opinion to GPT and asked for its comments.

PO-11278

18. In its response, GPT accepted the findings of the Adjudicator's Opinion with one major exception, namely that the respondent should be named as Mr Harris, not "the Trustees of the Plan", because all the acts and omissions that Mr H had complained about were committed by Mr Harris during his trusteeship of the Plan, not by GPT. Mr H has confirmed that he is happy for this change to be made as his complaint is about Mr Harris, not GPT.
19. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key point made by GPT for completeness.

Ombudsman's decision

20. I accept the point made by GPT that Mr H's complaint should not be addressed to "the Trustees of the Plan" because Mr Harris is no longer the trustee of the Plan, and the acts and omissions that Mr H has complained about were committed by Mr Harris while he was the trustee of the Plan. It would be unreasonable for me to make a finding against "the Trustees of the Plan" because that would effectively be a finding against GPT which assumed the role of trustee of the Plan more recently. Furthermore, any financial penalty imposed against GPT would prejudice the other members of the Plan, because the assets held by GPT are held for the purposes of the Plan.
21. However, it is appropriate for me to make a finding against Mr Harris in his capacity as the former trustee of the Plan. My office sent several communications to Mr Harris's last known address, including a copy of the Adjudicator's Opinion, but he never responded. Therefore I consider that Mr Harris has already had ample opportunity to put his side of the case, but he has failed to do so. I do not consider it necessary for one of our Adjudicators to issue another Opinion before I can make a determination on this case.
22. If Mr H is interested in exercising a valid right to transfer out of the Plan or has any queries about the Plan that have not already been answered, he will need to contact GPT as the current trustee of the Plan.
23. Therefore, I uphold Mr H's complaint against Mr Harris as former trustee of the Plan.

Directions

24. To put matters right, Mr Harris shall:
 - within 28 days of the date of this determination, provide a full answer to Mr H's solicitors' questions of December 2015 regarding his operation of the Plan, where necessary liaising with the new trustee of the Plan to provide up to date details; and

PO-11278

- within 28 days of the date of this determination, pay Mr H £2,000 to reflect the very significant distress and inconvenience caused to Mr H by Mr Harris's maladministration.

Anthony Arter

Pensions Ombudsman
28 March 2017