

Ombudsman's Determination

Applicant	Mr S
Scheme	Eleven Property Pension Scheme (the Scheme)
Respondents	Brambles Administration Limited (Brambles), Eleven Property Limited (EPL)

Outcome

1. Mr S' complaint against Brambles and EPL is partly upheld.
2. To put matters right Brambles shall pay Mr S £500 for the significant distress and inconvenience it has caused him, and EPL shall pay £1,500 in respect of the severe distress and inconvenience suffered by Mr S.

Complaint summary

3. Mr S' complaint against Brambles and EPL is that he is the victim of a pension scam, and they have not actioned his request to return the pension funds he invested in the Scheme, and also that they should compensate him accordingly.

Background information, including submissions from the parties

4. The Scheme is a defined contribution arrangement. It was registered as an occupational pension scheme by HM Revenue & Customs (**HMRC**) on 23 April 2012. One person, Mr M, was appointed as the first trustee of the Scheme. On 25 June 2012, another person, Mr K, was appointed as trustee in place of Mr M. The original administrator of the Scheme was Commerce Resources Ltd (trading as Pension Administration Resources). Mr M was its company director. The Scheme has over 50 members.
5. Mr S said that in early 2013 he received a text message from Pension Administration Resources, offering to pay him 25% of the value of his deferred pension with Friends Life if he agreed to transfer the balance of his pension fund to the Scheme, to be invested in storage units. Mr S also received promotional material from Strongbox Self Storage Ltd (**Strongbox**). The literature said that an investment return of as much as 8% per year could be achieved over five years, and he would be able to sell the storage units after that time and make a profit.

6. Mr S said that he was desperate for money at that time, so he decided to take up the offer. He completed application forms to join the Scheme and transfer his Friends Life pension benefits to the Scheme. He sent the completed forms to Friends Life on 28 March 2013. Mr S said that he did not receive a copy of the Pensions Regulator's leaflet titled "Pension liberation fraud" as part of his transfer pack (the scorpion warning).
7. Friends Life made a transfer payment of £22,639 to Pension Administration Resources on 18 April 2013, which was received by the Scheme on 23 April 2013.
8. Mr S said that on 1 May 2013 he received a letter from Hill Dickinson (solicitors acting for the trustee and Pension Administration Resources) explaining that he would be granted long leases on three storage units by Samarian Holdings Ltd, the freeholder.
9. On 7 May 2013, Mr S signed a "member-directed investment form" to invest in three storage units. Mr S agreed on the form that £19,525 of his transfer payment should be used to purchase 250-year leases on the storage units; the balance of his transfer payment (£3,114 after allowing for ground rents, service charges and legal fees) would be "set aside to cover additional costs such as annual scheme administration fees". The form also stated:

"Prior to the purchase, I will have personally acquired units E4, D10 & D11 and therefore my pension fund will purchase the storage units from me personally... I acknowledge that the value of my pension will be reflected in the performance of the above storage units and that the investment may be tied up for several years if I am unable to find a buyer for the units. I can confirm that I have received no financial advice or investment guidance from the trustees of the scheme. I accept that it is my own responsibility to seek guidance from a suitably qualified professional such as a financial adviser as to whether this investment is suitable to my future needs."
10. Later that month, leases and deeds of covenant for the three storage units were executed. The leases showed that Mr S paid a total of £14,770. Mr S and Mr M also signed Land Registry forms to transfer ownership of the storage units from Mr S to Mr M "as Trustee of the Eleven Property Pension Scheme". The purchase price was stated on those forms (and on the member-directed investment form) to be £3,750 for unit E4, £7,500 for unit D10 and £7,500 for unit D11. Hill Dickinson carried out the conveyancing.
11. On 9 May 2013, Mr S' bank account received a payment of £3,815 from Hill Dickinson, acting on behalf of Pension Administration Resources.
12. On 26 June 2014, Brambles Administration Ltd (**Brambles**) was appointed as the Scheme administrator in place of Pension Administration Resources. Mr S was informed of Brambles' appointment in an undated letter which enclosed his annual benefit statement for the year ending 5 April 2014. This showed his investment of £19,525 in storage units and a cash balance of £114 held in the Scheme. The

statement also recorded, under the heading “Transactions”, that administration fees of £3,000 had been deducted to cover a period of six years. The statement did not refer to any rental income being received.

13. Brambles sent broadly similar annual benefit statements to Mr S in subsequent years, continuing to show a total value of £19,639, but the “Transactions” sections were left blank.
14. Mr S wrote to Hill Dickinson on 1 September 2014 to complain that it had not answered his earlier requests for copies of the documents regarding his storage unit investments. On 5 September 2014, Hill Dickinson sent Mr S copies of the leases and contracts for the storage units, with literature about Strongbox.
15. Pension Administration Resources was dissolved in 2016.
16. By a deed dated 14 July 2016, EPL was appointed as trustee of the Scheme in place of Mr K. One month earlier, Mr K had replaced Mr M as the director of EPL.
17. On 24 March 2017, Mr S asked Brambles what would need to be done to release his pension funds. Brambles replied that his pension fund was invested in Strongbox, so that investment would need to be sold for him to take his benefits. Brambles said it would make some enquiries as to whether there was any interested buyer.
18. On 31 August 2017, Mr S asked Brambles to help him access his funds as soon as possible. Brambles replied the next day that it was not aware of any current interest in purchasing the storage units. It said it would continue to make enquiries and update him if anything changed.
19. On 29 January 2018, HMRC informed Mr S that under s.208 of the Finance Act 2004 he owed tax of £1,811 because he had received an unauthorised payment of £4,527 (equal to 20% of the transfer payment made to the Scheme).
20. When Mr S contacted Brambles on 12 March 2018, Brambles responded that it was unaware of any interest from any third parties in purchasing his storage units.
21. Mr S then contacted Hill Dickinson again. When Brambles was informed of this, it emailed Mr S on 9 May 2018 to say that Hill Dickinson could not provide information to him about selling the storage units, so he should send all further queries to Brambles.
22. On 17 May 2018, Brambles informed Mr S that a number of members of schemes administered by Brambles had received letters from HMRC imposing tax charges. Brambles recommended that Mr S should take independent financial advice about this. Brambles said that while it could not give him advice, in its opinion the payment that he had received was a scheme administration member payment, permitted under s.171(3)(b) of the Finance Act 2004.
23. Mr S contacted Hill Dickinson for more information on 18 May and 5 June 2018. In reply, Hill Dickinson sent Mr S copies of the Land Registry documents, contracts and

supporting paperwork for the three storage units. Hill Dickinson explained that it had been instructed by Pension Administration Resources and the Scheme trustees on the acquisition of the storage units.

24. On 25 June 2018, Mr S asked Brambles how much rental income had been generated on his investment, as Strongbox's promotional material had referred to growth of 8% per year. Mr S also queried why the storage units had been transferred to Mr M as Scheme trustee in 2015. Mr S said that as he was over age 55 he wanted to take 25% of his pension scheme investment as a tax-free lump sum and the balance as a taxable lump sum.
25. Brambles replied, on 3 July 2018, that it could not comment on the investment returns quoted in Strongbox's promotional material. Brambles confirmed that Mr S had sold the storage units to the trustee of the Scheme, who held the assets on his behalf. Brambles explained that annual fees of £3,000 had been taken by the previous administrator to cover a period of six years.
26. On 4 July 2018, Mr S complained to Brambles that he had been induced to transfer to the Scheme because of a 25% pay-out, which he had found out later was unlawful, and promises of receiving an 8% yearly return. He said he had been told that he could sell the storage units after five years. He considered that the arrangement was a scam.
27. On 6 July 2018, Brambles replied that, although it was in continual contact with Strongbox, it was not responsible for Strongbox's promotional material, and neither Brambles nor the Scheme trustee were authorised to give advice. Brambles believed that any payment that Mr S had received from the Scheme was authorised as a scheme administration member payment. Brambles said it would continue to try to find a buyer for the storage units, and Brambles and the trustee would always act in the best interests of the members "and will do all they can to establish any returns due in respect of income from the units and to attempt to source a buyer for the units".
28. On 10 July 2018, Hill Dickinson told Mr S that it had been involved only in the conveyancing of the storage units: it had been instructed by Pension Administration Resources and Mr M as the trustee of the Scheme at the relevant time. It was Hill Dickinson's understanding that Mr S' transfer payment to the Scheme had been used to finance his acquisition of the leasehold interests in the three storage units: Mr S had received a payment of £1,545 in respect of storage unit D10 and the same amount for storage unit D11, and £725 in respect of storage unit E4.
29. On 7 August 2018, Brambles sent Mr S a copy of his transfer paperwork. Brambles said that it did not "sell the transaction" to him or offer him any advice.
30. Mr S said that in September 2018 Hill Dickinson paid him £1,000 for the injustice and inconvenience that it had caused him.

31. On 7 September 2018, Mr S complained to Brambles that the Scheme was a pension liberation scam. He said Brambles had failed to provide information he had asked for about his investment and had failed to release his pension funds. He also said that Mr M had a conflict of interest as he had been a director of Pension Administration Resources as well as a former trustee of the Scheme. Mr S said he was annoyed that he was being asked to pay tax on the payment he received via Hill Dickinson. He asked Brambles to pay him an amount equal to a substantial part of his transfer amount, to reach an amicable financial settlement.
32. In its reply, Brambles said that it would update Mr S when it had any relevant information. It sent Mr S photos of the relevant storage units, as requested. Brambles said it would continue to seek a third-party buyer for the storage units. Brambles also said that a chartered surveyor would be instructed to value the site, and Brambles' attempts at sourcing a third-party buyer "for the shares" would continue.
33. Mr S complained, on 25 September 2018, that the storage units photographed had not been labelled to prove his ownership. He also pointed out that he was entitled to receive his pension benefits from age 55. Brambles confirmed that the photos were of his three storage units. Brambles also explained that the Scheme rules had not been updated to allow members to take advantage of so-called pension freedoms, so he should take independent financial advice, which Brambles could not provide. Brambles apologised for having referred to "shares" instead of "storage units".
34. On 15 October 2018, Brambles sent Mr S further photos, with Mr S' three storage units clearly labelled. Brambles denied there had been any fraud by Brambles, the Scheme or any related parties.
35. On 20 November 2018, Brambles told Mr S that Brambles (and the Scheme trustee) could not confirm to HMRC that there was no tax liability on the payment he had received.
36. On 4 December 2018, Mr S asked Brambles to provide an email address for Mr M as he had a formal complaint against the Scheme. Brambles replied that Mr M was no longer involved with the Scheme, so any complaints about the Scheme should be addressed directly to Brambles. Brambles clarified that it was the Scheme administrator, and that EPL was the Scheme's current trustee.
37. On 5 December 2018, Mr S made formal complaints against both Brambles and EPL under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). Mr S said in his letters that he had been relying on the sale proceeds of the storage units to help fund his business, but he was being "fobbed off" whenever he asked questions. He was annoyed that he had not been informed previously of the change of Scheme trusteeship, and he believed he had been scammed.
38. On 30 January 2019, Mr S asked Brambles to refund £114, the amount being held in cash in the Scheme. He also asked for interest to be added.

39. On 31 January 2019, Brambles sent Mr S a copy of the Scheme rules, as requested, and said it had already answered all his queries.
40. On 6 February 2019, Mr S emailed Brambles to reiterate his view that the Scheme was a scam. He said he had found out that Mr M had been sent to prison in 2016, having been convicted of illegally importing cigarettes and avoiding excise duty. Mr S said he was concerned that the storage units might have been used for criminal purposes. Mr S said he had also found out that Mr K had a criminal record for violence. Mr S suggested that Brambles should pay him £11,000 to settle his complaints.
41. On 16 February 2019, Mr S contacted Strongbox for further information. Strongbox explained that it was a management company which acted on behalf of the leaseholders of the storage units, and he should contact Brambles which represented the leaseholders.
42. On 11 March 2019, Brambles told Mr S that it had received a call from Merseyside Police about his complaint, but Brambles did not consider it to be a police matter. Brambles said it would provide a final response to his complaints; if he was still not satisfied after that, he could contact us.
43. On 12 March 2019, Mr S asked Brambles for more information about the storage units. He again asked for the £114 cash sum to be refunded to him.
44. In response to Mr S' complaints, on 22 March 2019, Mr H (writing on behalf of both Brambles and EPL) asked Mr S to provide a copy of the text about the investment opportunity that he had received in 2013. Brambles provided copies of the transfer documents that Mr S signed in 2013, and said that:
 - the storage units, which had been purchased from Mr S, had not yet produced any investment returns, but his money had not gone missing;
 - the payment he had received from Hill Dickinson was not an incentive to join the Scheme;
 - Brambles could not give Mr S any financial advice, but believed that the payment was a scheme administration member payment, as permitted under s.171 of the Finance Act 2004;
 - Hill Dickinson was responsible for the delay that had arisen between 2013 and 2015 in filing the property transfers, but that did not affect the ownership of the storage units;
 - the application form signed by Mr S made clear that annual fees of £500 plus VAT would be payable;
 - the storage units were currently held in the name of Mr M as former trustee, but EPL was taking steps to correct the position;

- if Mr S thought that Mr M had a conflict of interest, he should tell the Pensions Regulator;
 - the storage units would need to be sold in order for Mr S to take his benefits or transfer to another arrangement; the Scheme had a number of contacts who were making enquiries about any interest in purchasing the storage units;
 - the Scheme's current account did not pay interest; and
 - Brambles did not agree that Mr S had been the victim of a scam.
45. On 25 March 2019, Brambles explained to Mr S that the cash sum of £114 was not Mr S' own money as it formed part of his pension fund held by the Scheme trustee.
46. When Mr S complained to my Office, he said that he had "stupidly and blindly" accepted the offer from Pension Administration Resources in 2013. He also said that:
- "At the time, I was struggling to afford the household bills, so the £3,815 which Pension Administration Resources was offering me as an incentive to join the scheme seemed very welcome... I have since learned that the £3,815 incentive that they released from my frozen pension was an unauthorised pension release and that I have to pay tax on this. I was not told to take any financial advice and so stupidly did not do so at the time. I am now older and wiser!"
47. Mr S complained to Brambles, on 15 April 2019, that he could not be expected to have retained a text message that he had received in 2013 on his old phone. Mr S repeated his concerns that the storage units were still held in Mr M's name, not EPL's, and had not earned any rental income. Mr S asked for proof that the storage units were being marketed for sale. He said that he did not trust Brambles, Mr M or EPL. Mr S also complained that he had not received his annual statement in 2019.
48. Mr H provided a response to my Office on 12 August 2019, writing on behalf of both Brambles and EPL and asking for all further queries to be directed to Brambles. Mr H said that his email to Mr S on 22 March 2019 had answered all Mr S' complaints. Mr H said that Brambles did not know what more it could do to prove that the storage units it had labelled and photographed were those owned by the Scheme for Mr S.
49. On 17 January 2020, Mr S told my Office that he would be appealing against HMRC's tax charge; he was now aware that the payment he had received in May 2013 had come out of the transfer payment that the Scheme had received from Friends Life, and that he was the victim of a scam. He subsequently sent my Office further information about various individuals connected to Strongbox and other companies involved in the matter, which was in his view indicative of a widescale sophisticated scam, with several criminal aspects. Mr S added that his financial problems had recently increased, having lost his home and his business.
50. My Office asked Brambles for further information. Brambles replied that attempts to find a buyer for the three storage units had been conducted by "word of mouth",

through networking contacts, but not in writing. There was no record of a chartered surveyor being instructed to value the storage units, and at present there were insufficient funds to pay for one. Brambles said that the storage units had generated some rental income, but that was offset against administration costs.

51. Brambles said that the payment of £3,815 to Mr S represented the net proceeds of the sale of the storage units to the Scheme trustee, a sale to which Mr S had agreed. Brambles explained that the sum of £114 held in cash needed to be retained in the Scheme to meet future Scheme administration costs, which would normally become payable from 2020. As a gesture of goodwill, Brambles said the Scheme's future administration fees would be waived if they exceeded the amount of cash available in the Scheme.

Adjudicator's Opinion

52. Mr S' complaint was considered by one of my Office's Adjudicators, who concluded that further action was required by Brambles and EPL. The Adjudicator's findings are summarised below:-

- Mr S had made complaints about a number of companies and individuals, and he had identified links between many of them. However, the complaint he had submitted to my Office was against Brambles and EPL, so I can only make findings in respect of those two companies. Investigation of criminality on the part of several individuals named by Mr S, who were not directors of Brambles or EPL, falls outside the scope of my jurisdiction.
- Mr S admitted that he had made an unwise decision to accept the offer from Pension Administration Resources to receive an immediate lump sum if he transferred the rest of his pension fund to the Scheme to purchase storage units. Mr S said he was now older and wiser. He understood that a scheme payment to a member under the age of 55 was likely to be treated by HMRC as an unauthorised payment, which would be taxable. Whether s.171 of the Finance Act 2004, cited by Brambles, would enable him to overturn the tax charge was, in the Adjudicator's view, essentially a matter between Mr S and HMRC.
- The Scheme was allowed to invest in real property, and that included storage units. Whether that form of investment would provide a good annual rate of return in practice would depend on the extent to which the storage units could be let out and the operating costs and charges. In this case it appeared that the rental income had been minimal (no details had been supplied by Brambles) and it had effectively been swallowed up by administration fees.
- Mr S had agreed that annual fees of £500 would be deducted for the first six years, so he could not object to the payment of those fees. It was his choice to make that form of investment on those terms.

- A significant problem with investing in storage units was that they did not provide the necessary liquidity when benefits needed to be drawn from the Scheme: the storage units could not be sold unless and until a willing buyer could be found.
- Mr S' application form stated:

"I accept that it is my own responsibility to seek guidance from a suitably qualified professional such as a financial adviser as to whether this investment is suitable to my future needs."
- Unfortunately, Mr S made his investment decision in 2013 without first taking advice from a regulated professional adviser. It was not the responsibility of the Scheme administrator or the Scheme trustee at that time to give him advice.
- Brambles was not appointed as Scheme administrator until 2014, and EPL was not appointed as trustee until 2016, so the Adjudicator considered that those companies could not be held responsible for the transfer and investment decisions that Mr S made in 2013, and for any financial loss arising.
- It was unfortunate for Mr S that Pension Administration Resources had been dissolved, so he could not pursue a claim against the company that gave him a financial inducement to enter into the arrangement.
- While the Adjudicator sympathised with Mr S' financial plight, he did not believe that I would uphold Mr S' substantive complaint, namely that all or a significant part of the transfer payment to the Scheme should be reinstated or refunded to Mr S.
- The Adjudicator also considered whether the service that Mr S had received from Brambles and EPL fell short of the standard required. In practice, Mr S' correspondence had been with Brambles, not EPL. In 2017, Mr S asked Brambles to assist him in selling the storage units as he wanted to draw his benefits in 2018. Those storage units were owned by the Scheme trustee, so Mr S could not sell them himself: he only held the leasehold. Brambles had told Mr S on several occasions since 2017 that it was looking for potential buyers, but none could be found.
- Brambles had also corresponded with my Office on behalf of EPL. It was surprising that EPL had not wanted to set out its own position. Brambles had recently explained that the attempts to sell the storage units were by "word of mouth". Brambles had not been able to provide any documentary evidence to support its position that it had been trying to sell the storage units. This led the Adjudicator to doubt whether any serious attempt had been made by Brambles or EPL to find a buyer, particularly as Brambles had not disclosed any correspondence with EPL about Mr S' request.
- Mr S' annual benefit statements referred to the acquisition of the storage units, valuing them at the 2013 sale price of £19,525. No property revaluation had

been carried out since then, which was unusual. No rental income had been reported in the Scheme accounts. Brambles told the Adjudicator that there was some rental income, but it had been swallowed up by administration charges. That was not clear from reading the benefit statements.

- In the Adjudicator's view, these discrepancies and omissions suggested that there had been poor administration by both Brambles and EPL, amounting to maladministration. It was clear from his correspondence with my Office that Mr S had suffered distress and inconvenience because of that maladministration. In accordance with my published tariff of awards for distress and inconvenience, the Adjudicator considered that the appropriate award would be £1,000.
- It was the Adjudicator's opinion that this complaint should be partly upheld against Brambles and EPL, because they had provided an inadequate level of service to Mr S between September 2017, when Brambles was first put on notice that he wished to sell his storage units, and July 2019, when Mr S brought his complaint to my Office. To put matters right, it was the Adjudicator's view that, within 21 days of finalising his Opinion, Brambles and EPL should each pay Mr S £500 for the significant distress and inconvenience they had each caused him.

53. Mr S and Brambles did not accept the Adjudicator's Opinion, and EPL did not respond. The complaint was passed to me to consider. Mr S and Brambles provided their further comments which do not change the outcome. I agree with the Adjudicator's Opinion except in respect of the amount of the award for distress and inconvenience. I note the additional points raised by Mr S and Brambles.

54. Mr S said that:

- he had been the victim of a pension liberation scam involving several companies and individuals; he wanted my Office to make findings about all the parties he had identified as being involved in the scam, not just Brambles and EPL;
- some details in the Adjudicator's Opinion were incorrect: in particular, he did not buy the storage units and then sell them to the Scheme; he was only a leaseholder, and Samarian Holdings Ltd remained the freeholder;
- the statement in his member-directed investment form that he would personally acquire the storage units before selling them to the Scheme gave an incorrect description of the arrangement that was carried out, as he had only acquired the leasehold interest;
- the prices for his leases were £5,900 for unit D10, £5,900 for unit D11 and £2,970 for unit E4, but higher prices (£7,500, £7,500 and £3,750 respectively) were shown in the Strongbox literature and on the member-directed investment form; he produced a diagram to show how the transfer payment had been applied, and concluded that the figures had been manipulated to generate a net balance of £3,815, the payment that he had received;

- it was more than a coincidence that Pension Administration Resources and EPL had been incorporated on the same day;
- he had received conflicting information about whether any death benefits would be payable; and
- the proposed total award of £1,000 was insulting.

55. Brambles said that:

- it did not want Mr H or any other individuals to be identified because of personal abuse received from Mr S and his wife;
- Brambles had a client relationship with EPL; it was not acting as EPL's agent;
- Brambles had no business or client relationship with Mr S, so a court would not be able to make an order against it;
- it had tried to find a buyer for the storage units by word of mouth, but it had no control over EPL's ownership;
- as well as issuing annual statements to Mr S, Brambles had sent him many emails to answer his questions, so it was unfair to suggest that Brambles had not been proactive;
- a difficult situation had arisen as a result of Mr S' own actions before Brambles was appointed as Scheme administrator; and
- any rental income had been received by Strongbox and not passed on to the Scheme as it had been swallowed up by administration costs, but not Scheme costs.

Ombudsman's decision

56. It seems clear from the correspondence and documentation received that Mr S was the victim of a pension liberation scam in 2013. The so-called loan that induced Mr S to transfer from Friends Life to the Scheme, and to invest in storage units, was paid out of his transferred funds and therefore is being treated by HMRC as an unauthorised payment which is taxable (unless HMRC agrees with the assertion that it is a scheme administration member payment, or another exemption is applicable).
57. There is some inconsistency between the manner in which the arrangement was originally explained to Mr S and the manner in which the arrangement has been documented, for example, whether Mr S would hold the freehold title in respect of the three storage units or only the leasehold, and the value ascribed to each storage unit at different times.

58. Despite the optimistic tone of Strongbox's promotional literature, which made the proposal attractive to Mr S, it appears that no rental income has been received by the Scheme.
59. In February 2013, the Pensions Regulator issued a leaflet on pension liberation scams, featuring a scorpion on the cover (**the scorpion warning**). This set out various "red flags" for scheme providers and members to be aware of when considering transfer payments. Mr S said he did not receive a copy of the scorpion warning before the transfer payment was made. In this case I do not consider that omission to be material, because Mr S made clear that he had been in a difficult financial situation in 2013 and proceeded with the transfer in order to obtain an immediate lump sum payment, as offered by Pension Administration Resources and paid via Hill Dickinson. I do not think, on the balance of probabilities, Mr S would have withdrawn his transfer request if he had read the scorpion warning.
60. It is clear from the tone of Mr S' correspondence with Brambles and my Office, and quite understandable, that he is very frustrated and angry that, despite having attained age 55, he cannot access his pension funds. He is also concerned that no benefits might become payable on his death.
61. As is usual, the Scheme rules provide for death benefits to be paid by the Trustees on the death of a member (Rule 20). But in order for the Scheme to pay any benefits, whether on Mr S' retirement or on his death, the storage units will firstly need to be sold to generate cash, and that will require finding a willing buyer.
62. My Office accepted the complaint against two companies, Brambles as Scheme administrator and EPL as Scheme trustee. Brambles was appointed as administrator in 2014 and EPL was appointed as trustee in 2016. Neither company was involved in the transfer arrangements made in 2013. These dates are critical, because Brambles and EPL cannot be held responsible for any losses arising from those earlier transfer arrangements. This means that I do not need to delve deeper into the manner in which the arrangement was set up and documented in 2013, the freehold and leasehold ownership arrangements and the roles and culpability of the various other parties that have been named by Mr S.
63. With regard firstly to Brambles, as Scheme administrator it has no control over the actions and omissions of the Scheme trustee. Brambles has never owned the storage units. However, under my statutory jurisdiction, I am entitled to make an award against Brambles for non-financial injustice if I find that its conduct amounts to maladministration.
64. Brambles said it made word of mouth efforts to find a buyer for the storage units. That means there is no documentary trail. Brambles also said it had a client relationship with EPL, so it is surprising that Brambles cannot disclose any correspondence with EPL about Mr S' wishes to draw benefits from the Scheme, and the need to sell the storage units. Indeed, Brambles has not disclosed any of its correspondence with EPL.

65. Brambles pointed out that it had responded to queries from Mr S on many occasions. I accept that Brambles has not ignored Mr S' many questions. However, some of Brambles' emails contained misleading information. For example, in September 2018 Brambles referred to selling shares instead of storage units. That was incorrect. Brambles also said that a surveyor would be instructed, giving Mr S some hope that the storage units could be sold. But Brambles said recently that no surveyor had been instructed, and no explanation for that decision had been given to Mr S.
66. In 2019, it took Brambles nearly two months to answer a simple question, namely why the cash balance of £114 held in the Scheme could not be paid to Mr S. That was too long.
67. I note that Brambles has also been slow in responding to some enquiries from my Office, and appears more concerned with protecting anonymity, as it has not put the writer's name on recent emails.
68. In my view, Brambles' acts and omissions since 2017 collectively constitute maladministration, and these have caused Mr S significant distress and inconvenience. An appropriate award for Mr S would be £500.
69. Mr S would like me to make findings against Mr H personally. It would not be appropriate for me to do so, because Brambles is a corporate entity, with legal personality distinct from that of its director, Mr H, and he has not been acting in a personal capacity.
70. I now turn to EPL. This company was appointed as Scheme trustee in July 2016, but Mr S was unaware of its appointment until Brambles told him on 4 December 2018. Scheme members need to know who is operating their pension arrangement, so I would have expected EPL to inform the Scheme members when it became trustee.
71. EPL has failed to communicate with Mr S, even though he addressed a lengthy letter of complaint to it on 5 December 2018. EPL has effectively chosen to hide behind Brambles, as it has relied on Brambles to provide answers to Mr S on its behalf. Mr S' annual benefit statements were sent in the name of Brambles, not EPL. EPL has not sent my Office its own response to the complaint, as Brambles responded on behalf of EPL as well as itself. Nor has EPL provided any comments of its own on the Opinion, even though Brambles has said that the Opinion has been shared with EPL.
72. As trustee, EPL is entitled to delegate such matters to Brambles as it considers appropriate, including communications with Scheme members. However, no written evidence of any agreement to delegate all its communications to Brambles has been provided by EPL or Brambles.
73. It may be that EPL has been performing an active role behind the scenes, for example making attempts to find a buyer for the storage units, but EPL has shown no evidence of that. There is also no evidence that EPL has discussed with Strongbox the level of rental income received and the charges being offset, which Brambles said were sufficient to swallow up all the rental income received.

74. Although EPL's role as trustee appears to be very unsatisfactory, my statutory jurisdiction does not include the power to change the trusteeship of a pension scheme. The Pensions Regulator does have that power, so Mr S should contact the Pensions Regulator if he wishes to pursue that possibility.
75. I consider that EPL's inaction in this matter, since its appointment as Scheme trustee in 2016 amounts to maladministration, which has caused Mr S serious distress and inconvenience, and that an award of £1,500 is an appropriate amount in this case as it has not responded directly in respect of the investigation of Mr S' complaint; instead Brambles has stated that it is responding on behalf of itself and the Trustee. In my view, given the seriousness of the complaint, it is not appropriate for EPL, as trustee, to fail to respond itself directly.
76. Mr S would like me to make findings against Mr M or Mr K personally, or both of them. It would not be appropriate for me to do that, because EPL is a corporate entity, with legal personality distinct from that of its director (Mr K). Furthermore, Mr M ceased to be the trustee of the Scheme in 2012, and that was before Mr S became a member.
77. I partly uphold Mr S' complaint. In assessing the amount of the awards to be made against Brambles and EPL, I have taken into account that Brambles has said it will waive the Scheme administration fees (currently £500 p.a. plus VAT) otherwise payable by Mr S, while there are insufficient liquid funds to pay for them in Mr S' account. Over several years that will be a valuable concession. Mr S will be able to submit another complaint to my Office if either Brambles or EPL renege on that promise in future.
78. Mr S considered the amount of the proposed award to be insulting. I should emphasise that it is a nominal award for distress and inconvenience, it is not intended to relate directly to the amount of any financial loss that may have been incurred. However, I have increased the award in respect of EPL given the apparent lack of any engagement with Mr S and also my Office in order to try and address the situation in which Mr S finds himself, and alleviate the considerable distress suffered by Mr S.

Directions

79. Within 14 days of the date of this Determination, Brambles shall pay Mr S £500 and EPL shall pay Mr S £1,500 in respect of the distress and inconvenience that they have each caused him.

Anthony Arter

Pensions Ombudsman
23 September 2020