

**PENSION SCHEMES ACT 1993, PART X  
DETERMINATION BY THE DEPUTY PENSIONS OMBUDSMAN**

<b>Applicants</b>	Messrs A Timothy, S W Bates & R V Lonsdale ( <b>the Applicants</b> )
<b>Scheme</b>	LV Self Invested Personal Pension ( <b>LV SIPP</b> ) Policy Numbers I4451ATIM, I4716BAT & I4469ALON
<b>Respondent</b>	Liverpool Victoria Friendly Society ( <b>LV=</b> )

**Subject**

The Applicants complain that LV=, the LV SIPP administrator, incurred delays in effecting an in-specie transfer of the LV SIPP property to their Standard Life SIPPs. They are also dissatisfied with the handling of a lease transaction by LV= and their record keeping for the property. As a result, the Applicants assert that they were unable to access their LV SIPP assets whilst the transfer was continuing, incurred additional legal costs and suffered distress and inconvenience.

**The Deputy Pensions Ombudsman's determination and short reasons**

I have looked very carefully at the case and it is my view that the complaint made by the Applicants cannot be upheld because it was essentially their failure to draw up the new lease for Unit One and to explain clearly the organisation changes occurring at the company renting the LV SIPP property which resulted in the considerable delay to the transfer of pension rights from LV= to Standard Life and the additional legal costs incurred.

## DETAILED DETERMINATION

### Material Facts

1. In 2001, Profile Analysis Limited (**PAL**) purchased the business of Targetbase Business Solutions Ltd from Diversified Agency Services (**DAS**).
2. PAL also continued to rent Units Two and Three of a three unit property (located in Middlesbrough) from DAS.
3. The Applicants established their LV SIPPs in 2002/03 and purchased all the units of this property as a mutual asset for the SIPPs. The completed LV SIPP Property Application Form (**the Form**), signed by Messrs Timothy and Lonsdale in August 2002 and Mr Bates in July 2003, showed that PAL (trading as Rocket Science) were the current tenants of all three units of the property and would continue to occupy them once the purchase was completed. It also said that the Applicants' solicitors at the time were Spooner & Co. (c.f. paragraph 4 below for further details).
4. The existing lease between PAL and DAS for Units Two and Three of the property had therefore been "picked up" by the LV SIPPs and N M Pension Trustees Ltd, a LV= company, became the new landlords for the lease. Furthermore, PAL had also taken out a lease for Unit One of the property in 2003 with LV= (on the same terms as the other two units). Spooner & Co drafted the lease which PAL and N M Pension Trustees Ltd both signed.
5. The proportion of the property held by each Applicant was:
 

<u>Name</u>	<u>Percentage</u>
Timothy	76.2%
Bates	17.0%
Lonsdale	6.8%
6. In February 2008, PAL served notice on the lease for Unit One of the property to LV= so that it would come to an end on 15 August 2008. They also informed LV= that the lease for Units Two and Three was to continue and LV= should contact them regarding the rent review for this lease which was also due on 15 August 2008.

7. PAL sold part of their business to Click2, an American company. As part of the sale agreement, PAL agreed to sublet Units Two and Three of the property to Click2. The legal agreement to occupy these units was drawn up by Muckles Solicitors, the Applicants' solicitors at the time and signed by E. Emotion Ltd (Click2) and PAL.
8. LV= received a letter dated 9 June 2008 from Mr G, IT/Operating Director of E. Emotion Ltd on "Rocket Science" headed paper which said that they were intending to continue with their lease on Unit One and would contact them again over the next two weeks with their offer. As a footnote in tiny print, the letter said that Rocket Science was a trading style for E. Emotion Ltd. There is no evidence that Mr G contacted LV= again within the time frame specified.
9. The Applicants say that:
  - having negotiated with Click2 the commercial terms of the lease for Unit One, PAL passed details of the agreement onto LV= so that they could complete the legal work; and
  - LV= sent the completed legal paperwork to Mr G, now Chief Operating Officer of Click2, using PAL instead of Click2 as the company name on the lease by mistake.
10. In September 2008, the Applicants decided to investigate with the assistance of their Independent Financial Adviser (**IFA**), the possibility of transferring their LV SIPP pension rights by completing and returning a Property Information Questionnaire (**PIQ**) to Standard Life.
11. Standard Life provided the Applicants with full details of their outstanding requirements which had to be met before any proposed transfer into a Standard Life SIPP could take place including completion of the relevant application forms and provision of:
  - the current VAT status of the property; and
  - details of the tenant, the seller and their solicitors.

12. Standard Life also notified the Applicants that:
- their standard timescale for the completion of a transfer was between eight and twelve weeks from the date their solicitors, Dickinson Dees, received all the legal documents;
  - the existing lease on the LV SIPP property would have to be reviewed by Dickinson Dees for acceptability and any requisite negotiations would take place with the tenant's solicitors directly; and
  - before they could carry out due diligence on the in-specie property transfer, they required a partial transfer of cash from the LV SIPPs or a cash contribution into the Standard Life SIPPs.
13. The IFA informed Standard Life in December 2008 that:
- PAL were the current tenants for all three units of the property but Unit One was being transferred to Click2;
  - the property was owned by LV= and NM Pension Trustees Ltd; and
  - the solicitors for LV= were D M H Stallard.
14. On 5 February 2009, the IFA asked the Applicants and Standard Life to fill in relevant LV SIPP transfer applications forms and "Receiving Scheme/Policy Declaration" respectively. He also notified Standard Life that he was expecting to receive the completed forms to authorise the transfers "early next week" but asserts that he did not receive them.
15. In May 2009, LV= told PAL that their rent payments were behind by £2,506 and also that:
- if payment was not made soon, they would refer the matter to their solicitors;
  - as far as they were concerned, the lease to Unit One had been recently renewed and was still in the name of PAL which was therefore liable for the debt regardless of who was occupying the property; and
  - if the property was being sub-let, their consent was required but to date, they have not received any correspondence about this.

16. In August 2009, LV= sent the IFA another set of SIPP transfer request forms and “Receiving Scheme/Policy Declaration” forms to be completed by the Applicants and Standard Life respectively. LV= also asked the IFA to send them a copy of the lease which should have been made out Click2 and said that in order for the lease to be renewed to Click2, he should arrange for the enclosed lease pro-forma to be completed and returned along with a valuation provided by a chartered surveyor supporting the proposed rental sum.
17. LV= received the completed transfer forms in August/September 2009 from the IFA.
18. In his letter dated 21 September, Mr Timothy informed LV= that:
- he was the Chief Executive Officer of PAL;
  - PAL was responsible only for the leases covering two of the three units;
  - PAL had been in contact with LV= for over 12 months on this matter but they had still not corrected their records; and
  - the failure of LV= to maintain appropriate and accurate records was unacceptable to him.
19. In his e-mail of 23 September to LV=, Mr Timothy wrote:
- PAL gave notice on Unit One in accordance with its obligation under the lease;
  - Click2 which had purchased the business unit from PAL then made an independent approach to LV= to continue the lease on Unit One.
  - LV=, on behalf of the trustees, had reached an agreement with Click2 as to the rent and term, through one of its senior managers Mr G;
  - for unknown reasons, the lease was issued in the name of PAL and Mr G had signed it;
  - this error was pointed out to LV= but they failed to act in 12 months;
  - despite the error, the rent was paid on behalf of Click2 by PAL;
  - the terms of the original lease had expired which meant that Click2 were now sitting tenants; and

- as Click2 did not have a copy of the lease, LV= should provide them (and PAL) with copies so that they could decide on what action to take next

20. LV= replied to Mr Timothy in an e-mail dated 30 September 2009 as follows:

- the lease which they held on file was between NM Pension Trustees Ltd (the landlord) and PAL (the tenant) with an expiry date of 14 August 2013;
- they received a notice to exercise the break clause in 2008 but this was subsequently revoked so that the lease could be assigned to another company;
- this assignment did not take place, however;
- discussions then took place with regard to a licence to occupy being granted to E. Emotion Ltd (Click2) by PAL;
- they confirmed that they would permit this licence to go ahead and would not interpret this action as a breach of the terms of the lease in September 2008;
- they also confirmed at the time that once the licence was complete they would then become party to a Deed of Variation;
- they then received no further correspondence about this licence and deed;
- they did receive telephone calls from Ms H of PAL informing them that the lease for Unit One should be in the name of Click2 and not PAL;
- they had discussions with the IFA seeking elucidation on who was occupying Unit One;
- it emerged that a lease had been entered into with Click2 but they have never received a copy or been a party to this lease;
- whether the tenants can then commence to occupy the premises is determined by the terms of the lease and whether it has been drawn up inside or outside of the Landlord and Tenant Act 1954; and
- all rental payments have been paid to date and applied under the lease held on file to PAL.

21. Mr Timothy replied as follows:

- he was aware that PAL had the original lease until 2013 and that PAL served notice on Unit One;
- he had no knowledge of the break clause being revoked and asked LV= to provide him with whatever correspondence they had on this matter;
- having served notice on Unit One and vacated it, there was no need for PAL to assign the lease to someone else;
- the licence granted to E. Emotion Ltd (Click2) was for Units Two and Three only;
- Click2 made a written offer to rent/lease Unit One for a period of 12 months; and
- he had seen evidence of the correspondence between LV= and Click2 concerning this rent/lease on Unit One but Click2 have not retained copies because of the considerable time elapsed.

22. Mr G of Click2 sent a letter dated 2 October 2009 to LV= concerning Unit One which said that:

“Last year we have renewed and extended the lease on Unit One for another 12 months (only an interim arrangement) based on the same terms.

I would like to discuss the T & C and what are the longer terms arrangements.

Can you please forward me the Unit One agreement?”

23. LV= subsequently informed Mr Timothy that they did not hold any correspondence relating to Click2 and in their e-mail dated 12 October 2009 wrote:

“...regarding the notice to quit being served and revoked for Unit One, as Ms H (of PAL) had contacted us with the contact e-mail Rocket Science\*...it was assumed that when Rocket Science wrote in to confirm continuance of the lease that this was on behalf of PAL. What led us further to believe that PAL was still in occupation and that the notice to quit was revoked, was the fact that rental payments were still being received from PAL.”

\*Rocket Science was a brand/trading style of PAL. On 1 January 2008, Rocket Science was transferred to a new company called E. Emotion Ltd which was then sold to Click2 in September 2008.

24. LV= also sent Mr G a letter on the same day which said:

“We confirm that NM Pension Trustees Ltd are not party to a lease with Click2 and therefore do not have a copy of the documentation that you have requested.

Please revert to the solicitor who would have acted on your behalf with regards to this matter. We would be obliged if you would then forward us a copy of the said document for our perusal.”

25. In October 2009, LV= received completed “Receiving Scheme/Policy Declaration” forms for Messrs Bates and Lonsdale. The IFA subsequently asked Standard Life to complete one for Mr Timothy.

26. In their letter of 21 October 2009 to Mr Timothy, Dickinson Dees wrote:

- they had been instructed by Standard Life Trustee Company Ltd (**SLTC**) to acquire the leasehold commercial property;
- they aimed to complete the purchase within twelve weeks of receiving full papers (including a draft contract) from the solicitors for LV=; and
- their fee for this transaction would be £2,050 plus VAT (and any relevant disbursements).

27. Ms H informed Mr Timothy in her e-mail of 8 November 2009 that she did not tell LV= that a notice to exercise the break clause for Unit One had been revoked. She said that after informing PAL that the lease should be in the name of Click2 and not PAL, she continued to receive invoices addressed to PAL and decided to pay them because she wanted to avoid any issues with the rent. She also said that:

- it would appear that she had been lied to when LV= told her that Mr G had signed a contract in the name of PAL; and
- she had never re-started the Direct Debit to pay the rent because she was unhappy with the administrative service provided by LV= and so currently paid it by BACS.



28. LV= informed the IFA on 23 November that they had not received the completed transfer application forms. The IFA asked the Applicants to complete them again and LV= received them in December 2009.
29. On 30 November 2009, Mr G of Click2 sent LV= a letter informing them that they would be vacating Unit One as of 31 March 2010.
30. In their e-mail dated 24 February 2010 to Mr Timothy, LV= wrote:

“In 2008 we were in correspondence with...Muckles, regarding a proposed licence to occupy being granted to E. Emotion Ltd by PAL, and that once this licence was completed that we would then become a party to a Deed of Variation.

We received nothing further and assumed therefore that this transaction had not taken place. In the meantime, we received correspondence from PAL exercising their break clause under Unit One. We then received correspondence stating that the occupancy would continue under Unit One. We therefore noted our records that PAL were continuing with the lease and occupancy.

It then came to light that a company called Click 2 were occupying Unit One, that a licence to occupy was completed and Muckles solicitors were asking whether a retrospective Deed of Variation was required. We requested sight of the said licence but to date we have not received this.

We therefore instructed our retained solicitors to establish occupancy.

To re-let the property is the responsibility of the SIPP members in their capacity of Managing Agents. Costs involved ...can be borne by the SIPP.”

31. Mr Timothy replied as follows on 27 February:

“For the absolute sake of clarity, as the only person in PAL authorised to sanction such a transaction I can confirm that this has not happened and PAL has not occupied Unit One since July 2008 when the unit was occupied by Click2. As already explained PAL provides various services to E. Emotion Ltd t/a Click2 who are now owned by a US corporation, one of the services PAL provides is the managing of various financial transactions including paying the rent on Unit One which Click2 then reimbursed from the US.”

32. On 1 March 2010, LV= informed Mr Timothy that they received correspondence from Click2 asking whether they could extend their occupation of Unit One until 30 April 2010 but as they had no contract arrangement with them, suggested that he liaised with Click2 directly.
33. In April 2010, Dickinson Dees said that they had only received partial papers for the property and chased for copies of the remaining title documentation and the occupational leases.
34. In November 2010, D M H Stallard sent an e-mail to LV= about their fees which said:

“This instruction relates to an in-specie transfer of a leasehold interest with associated licence to assign. We originally estimated that our fee would be £750 plus VAT and disbursements as this is our standard fee for an in-specie transfer of freehold property. This estimate presumes that the receiving scheme requires only limited replies to enquiries.

We later increased our fee estimate by £500...being our fee for dealing with the licence to assign. This fee estimate was at the lower end of our agreed for this document. This was because the licence to assign related to an existing instruction and we therefore assumed that the document would be finalised relatively swiftly without difficulty. Our total costs incurred in this matter to date are approximately £4,500 plus VAT...This level of cost has been incurred due to our carrying out a considerable amount of work outside the original scope of our instruction. I set out brief details of this...

The receiving scheme’s solicitors, despite resistance from us, insisted on receiving replies to a substantial number of enquiries...

The leasehold interest held by NM Pensions Trustees Ltd was to be transferred subject to existing leases. We had to deal with detailed enquiries in respect of these and, in addition, there appeared to have been some confusion as to which leases were in place in respect of which unit and there was also some confusion in relation to whom the legal tenant was...we spent a considerable amount of time resolving this aspect of the transaction and to do so, needed to liaise with the member’s solicitor. Not only was this outside our original scope of work but the member’s solicitor was slow to respond which caused further delay in the transaction and further increased costs.

...we provide initial fee estimates for in-specie transfers on the basis that the transfer is of freehold properties. This

instruction involved the transfer of leasehold properties which resulted in additional work and additional enquiries.

All of the above has meant that this matter has been ongoing now for nearly a year. During that time the matter fee earner has changed more than once and this has meant that each new fee earner has needed to familiarise themselves with the file and the draft documentation.

Despite initially estimating £500 plus VAT for dealing with the licence to assign on the basis that the document would be agreed without difficulty, this document did in fact take approximately four months to agree due to your landlord's reluctance to deal with the matter swiftly. We would therefore revise our estimate for this aspect of the transaction to the higher end of our agreed fee, being £750 plus VAT.

Despite the above, I am aware that it will be difficult for you, at this stage of the transaction, to obtain the member's agreement to settle our full costs in this matter. I would therefore suggest a compromise fee of £3,000 plus VAT and disbursements. I consider that this is a reasonable fee for the work involved, especially given that we are likely to incur a further £500 plus VAT in costs to bring the matter to a conclusion. Our suggested compromise fee therefore represents a 40% discount on costs actually incurred in this matter, which I do hope will be acceptable to the member."

35. In an e-mail dated 8 December 2010 to the IFA, LV= informed him that there were two months' rent arrears totalling £8,000 relating to the lease of Units Two and Three and also that Standard Life's solicitors had confirmed that they would not accept a property with rent arrears.

36. In an e-mail dated 10 January 2011 to Mr Timothy, the IFA wrote:

"You will recall that PAL served notice on LV= to terminate PAL's tenancy and that LV= did not action the termination and indeed ignored an approach from the company who subsequently paid rent on the unit until mid-2010. It has transpired that neither Click2 nor LV= accounted for the rates during their tenancy and indeed PAL has continued to pay the rates since their departure. PAL has continued to pay the rates since as the three units are currently invoiced as one amount though identified separately.

PAL should recover the rates from the date it vacated at the rate of £1,000 per month, though in an effort to move the matter forward I am prepared on behalf of PAL to only recover the rates from the time Click 2...moved out and stopped paying rent...I believe it to be mid-2010. In addition, there is some electricity, gas and alarm charges which PAL has

paid on behalf of LV= and the SIPP...It would seem a sensible solution to contra these amounts against any currently outstanding rent..."

37. During 2011, LV= tried to resolve the issues concerning the rent arrears with PAL so that the transfer could be completed. In November, the solicitors for LV= said that they had incurred further costs during the year corresponding with Standard Life and the landlord in an attempt to bring this matter to a conclusion. They therefore now proposed a reasonable fee of £4,000 plus VAT which represented a discount of 30% on costs actually incurred to date.
38. In December 2011, Mr Timothy sent an e-mail to the IFA which said that:
- he had reviewed the legal costs which were as expected apart from a few items such as supervision which he felt should not have been included;
  - his big concern on reading the itemised bill was that the lawyer had not been managed by LV= and "found" work to do which he could charge to the LV SIPPs; and
  - he received two statements from LV= on the same day with valuation dates separated only by two days showing the same transactions costing his LV SIPP more money to produce.
39. In a letter dated 11 January 2012 to the IFA, LV= wrote:
- the current amount of rent arrears was £22,769 as detailed on the attached schedule of rental payments received since January 2009;
  - no rental payments were received in October 2009 and May 2010;
  - payments were consistently made late which continually altered the financial position of the LV SIPPs;
  - the transfer could not take place until the outstanding rental income had been paid unless Standard Life was willing to change its position;
  - in order to resolve the situation, they suggested that PAL provided bank evidence that (i) the payments for October 2009 and May 2010 were credited to the LV SIPP bank account, (ii) the outstanding rent arrears of £22,768 were paid immediately and (iii) the future monthly rental income would be paid on the due date until the point of transfer;

- there was absolutely no reluctance on their part to complete the transfer;
- they worked very hard trying to resolve the rent arrears issue with the tenant and also to deal with a request to offset arrears against costs they incurred in relation to the vacant Unit One which became the landlord's responsibility from June 2010;
- they have not charged for this time consuming work;
- they understood that Mr Lonsdale wished to sell his share of the property to the other members and if the transfer to Standard Life were to include his benefits, all the Applicants had to do was to settle the legal fees and ensure that the rent was paid up to date;
- their solicitors would coordinate completion of the transfer once rent arrears and legal fees have been settled;
- DMH Stallard have already explained the reasons for their increased costs in this matter and supplied him with a breakdown;
- they consider their solicitors' charges to be fair and reasonable;
- Dickinson Dees' legal fees are the responsibility of the receiving scheme and they accept no liability for these;
- in June 2008, they received a letter from Rocket Science stating that they wished to continue their lease of Unit One;
- they incorrectly assumed that Rocket Science was still a trading style of PAL whose lease was not due to expire until 14 August 2008;
- at no time between those dates were they informed of a change in occupancy and PAL continued to pay the rent;
- they were not responsible for negotiating lease terms and did not hold any keys to the premises;
- they did not allow Click2 into occupation of the premises without having signed a lease first and did not received any prior notification of their intention to occupy the property;
- these functions are normally carried out by the SIPP members in their role as property managers;

- they never received a copy of a proposed lease/ licence for Unit One;
  - they did subsequently receive a copy of a completed “Licence to Occupy” for Units Two and Three between PAL and E. Emotion Ltd (Click2); and
  - they did not hinder the completion of the transfer and will not agree to settle the legal fees of either party.
40. In an e-mail dated 19 January 2012 to the IFA, Standard Life wrote:
- they had instructed their solicitors back in October 2009 and completed all their due diligence checks some time ago;
  - the protracted in-specie transfer of the property was still continuing because there was still rent arrears on the property;
  - they would give the Applicants until 2 February 2012 to progress the matter or the transaction would be aborted.
41. Mr Timothy asked the IFA to pay the solicitor’s fees in January.
42. The IFA agreed a 4 March 2012 deadline date for completion of the transfer with Standard Life. He also spoke to LV= and agreed that if the rent of £26,769 (i.e. £22,769 plus February’s payment of £4,000) was paid in the following week, the transfer would take place.
43. Standard Life confirmed to the IFA that they had completed the purchase of the commercial property through the Applicants’ Standard Life SIPP’s on 10 February 2012 and a policy schedule would be available shortly.
44. LV= contacted the IFA on 2 April to inform him that they were now in the position to transfer the cash in the LV SIPP’s for Messrs Timothy, Bates and Lonsdale to their Standard Life SIPP’s because the “in-specie” transfer of the property had been completed. LV= made the payments on 3 and 4 April 2012.

### **Summary of the Applicants’ position**

45. LV= has provided a substandard administrative service for the SIPP property through poor record keeping and rent allocation.
46. PAL had to spend considerable time and effort providing LV= with payment history and account reconciliation to allow them to agree the correct position.

47. The need for PAL to prepare such information has occurred on more than one occasion. PAL withheld rent payments several times in an attempt to force LV= to agree an accurate financial picture of their LV SIPPs.
48. LV= provided little assistance to complete the transfer. Standard Life had to send LV= three sets of transfer forms before they acknowledged the transfer request.
49. They are responsible for negotiating the lease but having done so, they were ignored by LV= which never issued the lease for Unit One to Click2. This has cost the LV SIPPs money and demonstrates the blatant disregard of LV= for their clients.
50. LV=mistakenly believed that PAL had revoked its notice to terminate the lease on Unit One but PAL had never given them any reason to assume that it had. LV= then stopped pursuing the lease with Click2 which allowed them to leave Unit One earlier than they would have been if covered by a lease to the financial detriment of the Applicants.
51. The continually recurring reason why arrears arose was because it proved impossible for LV= to provide an accurate and definitive statement of the rent payable and PAL had felt very insecure paying the rent when there was always a disagreement on what was owed.
52. LV= was only able to provide an accurate rent statement after they complained to them.
53. They have nothing on file concerning Click2 apart from the letter from LV= asking for a copy of their lease and could not therefore respond to their request.
54. LV= had a duty of care towards them but did not give them any help or guidance at any time. Standard Life not only monitors all SIPP transactions financial, legal and administrative but is very proactive in the completion of forms and ensuring that time frames are met.
55. LV= has not provided any evidence to show that it was their responsibility to do anything other than to agree the commercial terms (which they did).
56. As a provider of SIPPs that accepts property investment and charges a management fee, LV= are obligated, as with any other financial services provider, to ensure that the administration and legal aspects are carried out in a compliant, timely and accurate manner.

57. They sought guidance from LV= on how to draft the lease but did not get any help. LV= could have provided them with a copy of an acceptable draft lease for their use. This would not be giving advice but showing a duty of care towards them.
58. LV= also did not inform them at any time of what role they were expected to play in relation to the LV SIPP. They also contend that:

“Time and time again in LV=’s letters and e-mails they have written that “they assumed” rather than they had either received or asked for written instructions or indeed clarification. How is it in this day and age of strict compliance and the requirement for audit trails, can LV= get away with a very lax regime?

When LV= said that there was no lease, why did they not contact Mr Timothy or Mr Lonsdale or Mr Bates? Not having a copy of the lease and then not having a system to flag the fact that they didn’t, is typical of the standards of their administration regime.”

#### **Summary of the position of LV=**

59. They neither accept responsibility for any delay in completing the in-specie transfer nor the allegation that their record keeping has been poor.
60. The main cause of the transfer delay was due to rent arrears and Standard Life not accepting a transfer of the SIPP property until they were paid.
61. PAL had been in arrears with its rental payments since October 2009. They have always made it clear to PAL that no rent was received for October 2009 and May 2010. In their view, PAL’s own records should also show that they never made these payments. Despite this, PAL has continued to dispute and ask for details of the arrears several times.
62. They worked hard to resolve the issues concerning the rent arrears so that the transfer could be completed. Had the arrears and legal fees been settled promptly this complaint could have been avoided.
63. The actual rent demand letters are not invoices requesting payment and are normally only issued for the tenant’s own records once the rent has been paid/where the tenant has not made payment in line with the terms of the lease. The onus is on the tenant to make rental payment. They cannot be held



responsible if it was the tenant's practice to make payment upon receipt of rent demands.

64. They consider the legal fees charged by their solicitors for the work carried out to be fair and reasonable. The solicitors had incurred further costs by corresponding with Standard Life's solicitors and the landlord in an attempt to bring this matter to conclusion and have applied a discount to their fee. In their view, this was a very reasonable compromise.

65. They say that:

“Due to these types of policies being self-invested, NM Pensions are the landlords, but the property is managed 100% by the member/s. Therefore, although we would have needed to see and agree any leases that were drawn up, we were not responsible for the preparation of a new lease, the property manager/member is required to ensure that the relevant, correct lease is in place.

The lease that we initially held on file was between NM Pension Trustees Ltd and PAL which had an expiry date of 14/08/2013. A notice to exercise the break clause was received in 2008 however this was later revoked in order for the lease to be reassigned to another company. Due to data protection and the fact that LV= were not the property managers we could not deal directly with the new company that had expressed an interest in renting the property, this was between the company and the property manager.”

66. They are consequently neither responsible for Click2 occupying the property without having been notified of this nor for a formal lease not being put in place. These functions are normally carried out by the SIPP members in their role as the property managers.

67. It is also the responsibility of the SIPP members to keep them informed of any changes to the tenants of the property and the name of the business.

68. They sent out their transfer forms at the end of January 2009 and again in August 2009. Their records do not indicate that there was an issue with lost documentation between these dates.

## Conclusions

69. The completed Form which the Applicants signed in 2002/03 clearly showed that PAL (trading as Rocket Science), would continue to occupy all three units of the property when it became a mutual asset for their LV SIPPs and also that their solicitors at the time were Spooner & Co.
70. It is also clear from the evidence that when PAL took out a lease for Unit One of the property in 2003, it was the Applicants' solicitors, Spooner & Co., and not LV= who were responsible for drafting the lease for G E Pensions Trustees Ltd and PAL to sign.
71. When the Applicants established the LV SIPPs they would have declared to LV= that they understood that LV= could not provide them with personal financial advice and did not have a duty to ensure suitability of the chosen investments for the LV SIPPs. In my view, if LV= had drawn up the lease, they would have essentially been providing financial advice to the Applicants which they were not allowed to do.
72. I consider that the responsibility of drafting the new lease for Unit One of the property between Click2 and G E Pensions Trustees Ltd in 2008 consequently remained with the Applicants in their capacity as managers of the property (and not LV=).
73. I note that the Applicants say that PAL, having negotiated the commercial terms of the lease for Unit One with Click2, passed details of their agreement to LV= so that they could prepare the new lease. They also say that LV= then used PAL instead of Click2 as the company name on the lease by mistake and sent the completed legal paperwork to Mr G at Click2.
74. There is however no evidence which corroborates their assertions. Moreover, in light of my conclusion above, I consider that the Applicants should have asked their solicitors (and not LV=) in 2008 to draft the new lease on their behalf.
75. In my view, the Applicants should also have clearly explained to LV= how PAL, Rocket Science, E Emotion Ltd and Click2 were interrelated in good time. I have seen no evidence that the Applicants explicitly told LV= that Rocket Science was transferred to a new company called E. Emotion Ltd on 1 January 2008 and subsequently sold to Click2 in September 2008 at the time the changes occurred.

76. If they had done so, LV= would then have been aware of the significant organisational changes occurring at PAL in 2008 and not under the wrong impression that Rocket Science was still the trading name for PAL when Mr G wrote to them on 9 June 2008. Although this letter did show at the bottom in minute print that Rocket Science was now a trading style of E. Emotion Ltd, I consider it somewhat unreasonable however to expect LV= to have spotted this and realise the significance of the change when it appears that they were kept in the dark of what was happening at PAL.
77. I can therefore appreciate why LV= might have mistakenly thought that PAL had rescinded their instructions given in February 2008 to terminate the lease for Unit One of the property on 15 August 2008 on receipt of the letter from Mr G which said that Rocket Science wished to continue with the lease for Unit One.
78. The confusion over which leases were in place for each unit of the property was, in my opinion, also exacerbated by PAL, E Emotion Ltd and Click 2 sharing common staff and PAL paying rent on behalf of Click 2.
79. At the time the Applicants decided to investigate the possibility of transferring their LV SIPP pension rights to Standard Life in September 2008:
- LV= were therefore unaware that PAL had sold part of their business, E. Emotion Ltd to Click2;
  - no lease was in place for Unit One between Click2 and N M Pension Trustees Ltd;
  - there had been discussions over a licence to occupy Units Two and Three being granted to E. Emotion Ltd (Click2) by PAL; and
  - a rent review was being carried out for the lease on Units Two and Three (and Unit One after LV= thought that PAL had rescinded their instruction for the lease on Unit One to be terminated).
80. It was made plain to the Applicants by Standard Life that the lease on the LV SIPP property would have to be reviewed for acceptability by their solicitors Dickinson Dees. In light of the above circumstances, it is not surprising to me that Dickinson Dees and D M H Stallard, the solicitors for Standard Life, had to spend a considerable amount of time sorting out this muddle which, in my view, was mainly caused by the failure of the Applicants to draft the new lease for Unit

One (via their solicitors) and to explain lucidly to LV= the organisational changes occurring at PAL in 2008. The legal fees accrued by the solicitors (after taking into account the significant discounts offered) do not therefore appear unreasonable to me.

81. Standard Life also made it clear to the Applicants that the transfer of the LV SIPP property into their Standard Life SIPPs could not take place if the property had rent arrears. The root cause for the failure of PAL paying rent on time may again, in my view, be attributed to the Applicants' failure to explicitly notify LV= that PAL had sold part of its business, E. Emotion Ltd, to Click2 in September 2008. If they had done so, LV= would not then have sent invoices to Click2 incorrectly addressed to PAL and there would have been no reason for Click2 not to have resumed payment of rent regularly by Direct Debit. The issue over the unpaid debt would then, in my opinion, not have arisen and it would consequently have been unnecessary for PAL to spend considerable time and effort sorting it out with LV= before the property transfer could proceed.
82. In my view the delays incurred in effecting an in-specie transfer of the LV SIPP property (like the additional legal fees incurred) were therefore regrettably caused in the main by the Applicants themselves.
83. Although I sympathise with the Applicants' unfortunate circumstances, it is therefore my opinion that their complaint made against LV= cannot be upheld.

**Jane Irvine**  
Deputy Pensions Ombudsman

8 October 2014