

Ombudsman's Determination

Applicant	Miss Marie Middleton
Scheme	The Green Retirement Pension Plan (the Plan)
Respondent(s)	AC Management & Administration Limited (AC Management) Mark Harris

Complaint Summary

1. Miss Middleton complains that AC Management and Mark Harris have failed to respond to her enquiries about the status and security of her pension, leaving her unable to plan for her future and exercise her transfer rights.

The Ombudsman's determination and reasons

2. My decision is that this complaint should be upheld against AC Management as administrator of the Plan.
3. My reasons are essentially the same as in X's Opinion of 20 October 2015 (**the Opinion**), a copy of which is attached. My additional comments are set out below.
4. Miss Middleton has accepted the Opinion. We received no contact from AC Management, or Mark Harris, in relation to this complaint until very recently when Mr Harris contacted us by email. He said that he was unaware of any complaint by Miss Middleton. He believes his mail may have been withheld after the acrimonious split of a business partnership. He claimed that letters and statements had been sent to Miss Middleton and purported to provide us with copies, however, these have not materialised.
5. Mr Harris also suggested that Miss Middleton's change of address was the reason for her non-receipt of the material he had sent. However, she has moved between two addresses where she lived with family members. So, I am not persuaded that this is a relevant factor. The evidence indicates that the administrator's duties have not been fulfilled.

6. This case is very similar to one we have previously determined involving the AC Management Fixed Retirement Plan, brought by Ms Owen (PO-7428), which is published on our website (www.pensions-ombudsman.org.uk). I see no persuasive reason here to depart from the findings in that case.
7. The registered address for AC Management, as the scheme administrator, was 4 Alexandra Road, Gorseinon, Swansea SA4 4NW. All mail we have sent to that address on this complaint, and others, has been returned marked 'addressee gone away' (so not withheld). It is only recently that we have managed to make sporadic contact with Mr Harris through email and then an alternative postal address in Cowbridge which was belatedly provided.
8. I cannot comment on any split Mr Harris may have had with former partners and the extent to which this may have caused difficulties but it is the responsibility of AC Management as administrator to have an appropriate and available contact address for members (and the taxation or regulatory authorities, for example) to use. It is also the administrator's responsibility to provide members with updates, address changes and fund statements.
9. AC Management's failure to provide Miss Middleton with information on the status and security of her pension constitutes maladministration, which caused Miss Middleton significant distress.
10. I have not seen a formal request from Miss Middleton to transfer from the Plan but it is clear from her complaint form that she wishes to do so. The Scheme Handbook suggests that she may have a contractual right to transfer but, in any event, she cannot be deprived of a statutory right to transfer under Section 94 of the Pension Schemes Act 1993.
11. To qualify as an application for the purpose of the six month time limit in Section 99 of the Act, such a request would need to require the respondents to use the transfer value to acquire credits in an occupational or personal pension scheme the trustees or managers of which were able and willing to accept payment. Should Miss Middleton make a valid request in this way, the respondents are obliged to deal with it in accordance with her statutory rights.
12. I have considered whether the complaint should also be upheld against Mr Harris personally as Trustee. I do not have the trust deed to ascertain the exoneration protections this might provide him but he already has those available under the Trustee Act. And while the evidence provided to me in this case demonstrates maladministration it does not go so far as to meet the onerous requirements to establish personal liability against the trustee.

Directions

13. To put matters right, AC Management are to:

- within 14 days, provide a full answer to Miss Middleton's questions regarding her pension funds, including the current value, and assist her in exercising her statutory rights. Should she seek to exercise her statutory right to transfer then, within 28 days of Miss Middleton requesting a transfer value to a named scheme that is prepared to accept it, they are to pay the transfer value to that arrangement.
- within 28 days, pay Miss Middleton £1,000 to reflect the distress and inconvenience caused to her by their maladministration.



Anthony Arter

Pensions Ombudsman
20 November 2015

I am authorised by the Pensions Ombudsman to give opinions on the merits of cases, including whether or not they can be upheld and, if applicable, what should be done to put matters right. The letter accompanying this document explains what your options are depending on whether or not you accept my opinion; please read it carefully.

Opinion by investigator for the Pensions Ombudsman Service

Applicant	Miss Marie Middleton
Scheme	The Green Retirement Pension Plan
Respondents	AC Management & Administration Limited (AC Management) Mr Mark Harris

Complaint summary

Miss Middleton complains that AC Management and Mark Harris have failed to respond to her enquiries about the status and security of her pension, leaving her unable to plan for her future and exercise her transfer rights.

My opinion

I have looked very carefully at the case and it is my view that this complaint should be upheld against AC Management because, as administrator of the scheme, they have refused to act on Miss Middleton's requests for information and to facilitate a transfer of her benefits.

Background

In late 2012, Miss Middleton transferred her pension fund of £26,606 from Scottish Life to the Green Retirement Plan (Series 3). I have been provided with limited paperwork but I note that there appears to have been involvement from companies called Yardstick Marketing and Pension Matters Associates Limited in arranging the transfer.

A letter from Pension Matters to Miss Middleton dated 17 September 2012 provided confirmation of the current transfer value and an indication that the next steps were: 1) a visit from a professional document signing company to arrange her signature on the relevant paperwork (not specified); and 2) for a fully regulated Independent Financial Adviser to discuss available options and assess suitability for a possible transfer.

I do not know what advice, if any, Miss Middleton took at that time. If she received advice from a *regulated* adviser and considers it to have been incorrect then she may be entitled to complain to the Financial Ombudsman Service. The complaint brought to our service relates to her inability to gain any response from the new pension administrators and trustees.

The Green Retirement Plan (Series 3) Member's Handbook provided to Miss Middleton lists the Trustees of the Plan as Mark Harris and Alexandra Chambers (Lawyers). Any queries or complaints were to be sent to Mr Harris at 4 Alexandra Road, Gorseinon, Swansea SA4 4NW.

Miss Middleton says that she has not received any statements or correspondence about the Plan since then. She contacted the Pension Tracing Service, which advised that the Plan address was AC Management & Administration Ltd, 4 Alexandra Road, Gorseinon, Swansea SA4 4NW; and the Trustees were Mark Harris and Alexandra Chambers, at the same address. Miss Middleton unsuccessfully tried to make contact by post, email and telephone.

When she continued to receive no response, Miss Middleton brought her complaint to our service. She also contacted Action Fraud in January 2015.

My findings

I am satisfied that AC Management and Mark Harris have failed to respond to Miss Middleton regarding the status and security of her pension. This constitutes maladministration, which has caused her significant distress.

We have only very recently received any communication from either respondent - Mr Harris - who indicated that he was unaware of Ms Middleton's complaint. He has referred to a difficulty in receiving mail from his former partners. I have seen no evidence that members, or indeed the relevant authorities, were informed of an alternative address, though, and there was a responsibility to do so in order to fulfil the administrator's duties.

Mr Harris indicated that he had enclosed copies of letters and statements sent to Miss Middleton. However, they were not enclosed and have not been provided despite my further prompting.

Mr Harris also suggested Ms Middleton's recent change of address as the reason for the non-receipt of updates and statements. However, she has only moved back to her former address, where her niece has been throughout the period. And her partner remains at the only other relevant address. I am satisfied that all mail would have been passed to her, so I am not persuaded by Mr Harris' contentions.

We have investigated and determined a similar case brought by Miss Owen against AC Management (PO-7428), which is available on our website (www.pensions-

ombudsman.org.uk). We upheld that complaint and I cannot identify any significant differences in Miss Middleton's complaint which would warrant another outcome here.

I have not seen a formal request from Miss Middleton to transfer from the Plan but it appears from her complaint form that she would wish to do so.

The Scheme Handbook suggests that Miss Middleton may have a contractual right to transfer but, in any event, she cannot be deprived of a statutory right to transfer under Section 94 of the Pension Schemes Act 1993.

To qualify as an application for the purpose of the six month time limit in Section 99 of the Act, such a request would need to require the respondents to use the transfer value to acquire credits in an occupational or personal pension scheme the trustees or managers of which were able and willing to accept payment.

Should Miss Middleton make a valid request in this way, the respondents are obliged to deal with it in accordance with her statutory rights.

The complaint is brought against the administrator and trustee. And they share responsibility for the maladministration in this case. It appears that Mr Harris is presently responsible for fulfilling both roles. I have considered whether a recommendation (and eventual direction if appropriate) can be made against Mr Harris personally, however – as a trustee – he has protections under the Trustee Act. There may be additional exoneration clauses in the trust deed but I cannot assess these as I have not been provided with a copy. However, the test for trustee personal liability is high and the evidence available to me does not meet this standard.

Putting matters right

To put matters right, AC Management are to:

- within 14 days, provide a full answer to Miss Middleton's questions regarding her pension funds, including the current value, and assist her in exercising her statutory rights. Should she seek to exercise her statutory right to transfer then, within 28 days of Miss Middleton requesting a transfer value to a named scheme that is prepared to accept it, they are to pay the transfer value to that arrangement.
- within 28 days, pay Miss Middleton £1,000 to reflect the distress and inconvenience caused to her by their maladministration.

Lawyer
20 October 2015