

Ombudsman's Determination

Applicant	Ms N
Scheme	BNLA (Citibank) Unit Linked Executive Pension Plan (the Plan)
Respondent	"K" Ltd

Complaint Summary

Ms N has complained that K Ltd unreasonably delayed the transfer of her pension benefits, which were held in a policy (**the Policy**) under the Plan. Ms N said the delay caused her an investment loss and prevented her from drawing from her benefits at the age of 55.

Summary of the Ombudsman's Determination and reasons

The complaint is upheld because K Ltd has not presented any legal basis on which it was able to deny the transfer of Ms N's benefits, nor has it given a reasonable explanation for the delay.

Detailed Determination

Material facts

1. The sequence of events is not in dispute, so I have only set out the main points. I acknowledge that there were other exchanges of information between the parties.
2. The Plan is an executive pension plan. K Ltd is the trustee of the Plan and was the legal owner of the Policy. Mr N is the director of K Ltd and is also Ms N's ex-husband. Ms N had at one point been the company secretary of K Ltd and is recorded by Companies House as having resigned from this position on 14 March 2003.
3. The Policy was administered by Sun Life Financial of Canada (**SLFoC**).
4. On 2 November 2018, K Ltd telephoned SLFoC regarding concerns that Ms N was trying to access funds in the Policy. K Ltd's intention was to establish who had legal entitlement to these funds.
5. On 10 November 2018, SLFoC wrote to K Ltd. SLFoC explained that although K Ltd had paid into the Policy on Ms N's behalf, the benefits were intended for Ms N.

SLFoC added that if Ms N wished to access the funds, Mr N would need to sign the relevant forms, on behalf of K Ltd, as he was the director of the company that acted as trustee of the Plan.

6. On 18 February 2019, SLFoC received a request, via the Origo system, to transfer Ms N's benefits.
7. On 20 February 2019, SLFoC wrote to K Ltd. It confirmed that Ms N had made a transfer request. It asked K Ltd to provide authority for the transfer to proceed.
8. On the same day, SLFoC wrote to Ms N. It explained that an authorised signatory for K Ltd would need to sign the relevant section of the transfer form. Once completed, it could proceed with the transfer of her benefits.
9. As at 22 February 2019, the transfer value for the Policy was £32,481.91. This was confirmed by SLFoC.
10. On 1 March 2019, Horne Engall & Freeman LLP (**HE&F**), solicitors acting for K Ltd, wrote to Ms N. It said that K Ltd did not agree to the transfer of Ms N's benefits in the Policy. It added that if she made any further attempts to transfer these benefits, K Ltd would apply for a 'freezing' injunction and the matter may be reported to the police.
11. On 20 March 2019, SLFoC wrote to Ms N. It said that her transfer had not gone ahead, because it was awaiting the necessary authority from K Ltd. It could not proceed until this was received. SLFoC explained that K Ltd was the employer when the Policy was taken out and it also acted as trustee. Ms N was the beneficial owner of the Policy and K Ltd was the legal owner.
12. On 8 April 2019, HE&F wrote to SLFoC. HE&F enclosed a copy of a Court Order, dated 17 February 2005, between Mr N and Ms N (**the 2005 Court Order**). HE&F asserted that the provisions of the 2005 Court Order meant that Ms N had no claim to the Policy.
13. On 17 April 2019, SLFoC wrote to HE&F. SLFoC explained that although K Ltd was the legal owner of the Policy, it had a duty as trustee to provide pension benefits to Ms N. SLFoC confirmed that the Policy would not fall under any pension sharing arrangement for Mr N and Ms N's divorce.
14. On 20 May 2019, HE&F wrote to SLFoC. HE&F enclosed information in relation to what was referred to as Ms N's dismissal, on 7 March 2003, from her former position with K Ltd. HE&F asserted that due to the nature of Ms N's alleged dismissal, she was not entitled to the benefits in the Policy. It referred to a 'Product Particulars' document for the Plan (**the Product Particulars**) which included the statement:

“The Member is entitled to the benefit of all contributions into the Plan (whether his own or on his behalf by the Employer) in the form of a pension. Contributions cannot be refunded to, or taken away from the Member, unless dismissed for fraud or misconduct.”

15. On 8 July 2019, SLFoC wrote to HE&F. SLFoC set out its position that there was nothing within the rules of the Plan that enabled K Ltd to withhold Ms N's benefits.
16. Following the referral of the complaint to The Pensions Ombudsman (**TPO**), K Ltd maintained its position that Ms N was not entitled to the benefits in the Policy, due to her alleged dismissal.
17. In a letter dated 28 March 2023 (**the March 2023 Letter**), it was explained to K Ltd's legal representative that the Plan was governed by a Trust Deed and Rules, and in the event of any conflicting statements, the Trust Deed and Rules would override anything within the Product Particulars. Further, under the Pensions Act 1995, it would need to be shown that Ms N owed K Ltd some monetary obligation as a consequence of an alleged criminal, negligent or fraudulent act or omission. It was not sufficient to rely on Ms N's purported dismissal as the reason for refusing to allow the transfer of her benefits. The 2005 Court Order did not cover any claims against K Ltd in respect of the Policy. It was also noted that the 2005 Court Order stated that Ms N had resigned from her position at K Ltd, as opposed to having been dismissed.
18. A follow up letter to the March 2023 Letter was sent to K Ltd's legal representative on 18 May 2023 (**the May 2023 Letter**). Copies of both letters are included in the Appendix.
19. On 13 June 2023, HE&F informed TPO that K Ltd no longer opposed the transfer of Ms N's benefits out of the Policy. Clearly, by now a considerable amount of time had passed since Ms N had made her transfer request.
20. On 30 November 2023, Mr N, on behalf of K Ltd, signed a transfer form for the Policy. This provided the necessary trustee authority for the transfer of Ms N's benefits.
21. On 29 January 2024, SLFoC transferred £44,393.09 to Ms N's Interactive Investor SIPP.
22. On 8 February 2024, Ms N took a lump sum payment of £11,098.27 from her Interactive Investor SIPP.

Summary of Ms N's position

23. She is pursuing the complaint in relation to her alleged financial loss, caused by the delay to the transfer, and the distress and inconvenience she has suffered.
24. In the months following the transfer of her benefits to her Interactive Investor SIPP, and the drawing of her tax-free lump sum, she made a number of share and foreign currency trades. She has submitted details of these investments in support of her claim for redress for her alleged financial loss.

Summary of K Ltd's position

25. It has been offered the opportunity to set out the legal basis on which it took its original position that Ms N was not entitled to the benefits in the Policy. The rationale for this is understood to be linked to Ms N's alleged dismissal from K Ltd. However, no further explanation, or details of legal advice obtained, was submitted for consideration.
26. There has been no explanation provided as to why it took until 30 November 2023 for trustee authority to be provided on behalf of K Ltd, when HE&F had confirmed on 13 June 2023 that K Ltd accepted that the transfer should go ahead.

Preliminary Decision

27. I issued a Preliminary Decision on 17 April 2025. Ms N has accepted the conclusions. K Ltd acknowledged receipt of the decision, but has not provided a substantive response.

Conclusions

28. I find that K Ltd's refusal to authorise the transfer of Ms N's benefits out of the Policy, until November 2023, amounts to maladministration. K Ltd initially relied upon Ms N's alleged dismissal from the company as the reason to withhold its authority to proceed. Other than the Product Particulars, K Ltd provided no basis on which it was able to refuse the transfer. However, the wording in the Product Particulars did not permit K Ltd to do this, for the reasons explained in the March 2023 Letter. K Ltd has since authorised the transfer, without explanation regarding its change of position.
29. K Ltd had a duty as trustee to understand the correct legal position for the transfer of Ms N's benefits. However, K Ltd was aware at least by 2 November 2018 that Ms N intended to access funds in the Policy. I consider this gave K Ltd more than enough time for it to have established the correct legal position by 20 February 2019, the date SLFoC issued notification to K Ltd of Ms N's transfer request. So, there should not have been any further delay. I find that K Ltd shall pay redress to Ms N for any financial injustice she has suffered as a consequence of its maladministration.
30. In general, where redress is proposed for a delayed transfer of benefits, it may be possible to quantify the financial loss by reference to investments and actions that were planned after completion of the transfer. In Ms N's case, I do not consider that this is possible. This is because of the more complex, and less predictable, nature of the investments that were undertaken by Ms N, as well as the significant delay to the transfer of approximately five years. In my view, it is unlikely that Ms N would have followed a similar schedule of investments, shortly after transferring, had the transfer not been unreasonably delayed. Furthermore, there has been no evidence submitted by Ms N of specific investments that were intended to be made around the time the transfer process was initiated in 2019. As a result, I am unable to form a view as to what redress would be appropriate if the transfer happened at that time, and Ms N had invested the sum at the point.

31. As an alternative, Regulation 10 of The Occupational Pension Schemes (Transfer Values) Regulations 1996 (**the 1996 Regulations**) sets out how a scheme member may be compensated if the trustee does not carry out the required actions to administer a transfer of benefits within six months of the 'appropriate date'. I find that this would be a more reasonable approach in the circumstances of Ms N's case.
32. The definition of 'appropriate date' is given in Regulation 1 of the 1996 Regulations and refers to the Pension Schemes Act 1993 (**the 1993 Act**). Relevant extracts of the 1996 Regulations and the 1993 Act are shown in Appendix 3 and Appendix 4 respectively.
33. Ms N was entitled to money purchase benefits in the Policy. So, the appropriate date would be the date on which K Ltd received notification of Ms N's request to transfer. SLFoC first wrote to K Ltd about this matter on 20 February 2019. I consider it would be reasonable to allow two days for this letter to have been received by K Ltd. This means that the appropriate date would be 22 February 2019 (**the Appropriate Date**).
34. The transfer of Ms N's benefits was completed on 29 January 2024 (**the Transfer Date**), well in excess of six months after the Appropriate Date, as specified in the 1996 Regulations. With reference to Regulation 10 (2) of the 1996 Regulations, I find that K Ltd has offered no reasonable excuse for this delay.
35. Regulation 97 (1A) of the 1993 Act establishes that the cash equivalent transfer value should be calculated 'by reference to the date of the application [for the transfer]'. So, I find that the value on the Appropriate Date, £32,481.91 (**the CETV**), is the applicable transfer value, when considering whether Ms N should be paid redress for any financial loss.
36. Regulation 10 (2) of the 1996 Regulations sets out two calculation scenarios and directs that the greater of the two sums shall be paid (if necessary), in the event of a late transfer payment where there was no reasonable excuse.
37. With regard to sub paragraph (a) of Regulation 10 (2), the interest due on the CETV, from the Appropriate Date to the Transfer Date, would be £4,276.13. The interest rate used to calculate this figure was the Bank of England base rate plus 1%. This was applied daily on a simple, as opposed to compound, basis. The sum of the calculated interest amount plus the CETV is £36,758.04.
38. With regard to sub paragraph (b), I find that if the Appropriate Date had been when the transfer was completed, rather than 22 February 2019, the relevant date here would be 29 January 2024. The value of Ms N's benefits on this date was £44,393.09, and this was the amount transferred to her Interactive Investor SIPP. Given that it is higher than the figure calculated in paragraph 36, I find that Ms N has not suffered a financial loss according to the 1996 Regulations. So, she is not due any redress.

39. However, I find that Ms N has suffered distress and inconvenience because of K Ltd's maladministration. Where there has been distress and inconvenience, or non-financial injustice, I must decide whether an award is to be made.
40. The cause of Ms N's distress and inconvenience can be summarised as follows:-
- The transfer of benefits was delayed by approximately five years from the original request, in February 2019. This was despite K Ltd receiving several explanations of the correct position from both SLFoC and TPO.
 - K Ltd did not provide reasonable justification for its assertion that Ms N did not have a right to transfer.
 - At one stage, Ms N was notified of potential police involvement in the matter.
 - Further explanation of the correct legal position was set out in the March and May 2023 Letters, but K Ltd still did not agree to the transfer in accordance with Ms N's statutory rights.
 - Following K Ltd's eventual confirmation, via HE&F on 13 June 2023, that it no longer opposed the transfer, it still took around five and a half months for signed authority to be provided.
41. I find that this amounts to severe distress and inconvenience. K Ltd was afforded several opportunities to correct the situation but chose to delay. This has prevented Ms N from making significant decisions in relation to potential investments, and her retirement finances more generally.
42. I find that an award of £2,000 would be appropriate recognition of the severe distress and inconvenience suffered by Ms N.

Directions

43. Within 28 days of the date of this Determination, K Ltd shall pay £2,000 to Ms N for the distress and inconvenience that she has suffered.

Dominic Harris

Pensions Ombudsman
26 May 2025

Appendix 1 – The March 2023 Letter



case reference 74047
28 March 2023

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

We were last in touch during June 2022 and you shared a copy of the Product Particulars for the "Citibank Life, Plan-For-Executives" now administered by Sun Life Financial of Canada. Subsequent to that correspondence we have considered the case further and this letter explains this. The additional policy that I emailed about on 13 June with Scottish Widows is policy number [REDACTED] and the scheme name Mrs N placed in the proposed transfer paperwork for that is [REDACTED].

The analysis in this letter reflects my informal opinion which may change if you can provide further information in response to my questions. The analysis does not reflect the view of the Ombudsman and that would only be confirmed at the outcome of a formal investigation, which may lead to a published determination. This letter does not constitute advice by the Early Resolution Service of the Pensions Ombudsman on the legal position to your client or [REDACTED] (I am not a lawyer).

Introduction

I want to make sure that:

- (1) I have properly understood your client's position in relation to the legal basis on which it considers the Company (as trustee of the Plan) can decline to agree to Mrs N's request to transfer the pension; and
- (2) your client is aware of and understands the legislation relating to forfeiture or charging of pensions and the Trustee's obligations in relation to transfer payments under UK legislation.

On the documentation I have seen, and information provided by Mrs N and your client, my informal opinion currently is that:

- (1) there is no legal basis on which your client or [REDACTED] Limited (as trustee of the Plan) is able to prevent Mrs N exercising her right to transfer her benefits and if the

Company (on your instruction as director) continues to do so it is potentially acting in breach of the cash equivalent transfer legislation under the Pension Schemes Act 1993 (PSA 93)(see below);

- (2) Your client is not validly able to forfeit or charge Mrs N's benefits given the requirements of sections 91-95 of the Pensions Act 1995 (see below);
- (3) There is nothing in the consent order signed by Mr and Mrs N on their divorce and approved by the court which affects the legal position

I want however to give your client a further opportunity to explain why this is not the case so I can then explain this to Mrs N with a view to resolving the dispute.

Mrs N and your clients respective positions in relation to the complaint or dispute

Mrs N's position, as I understand it, is that she is a member of and is entitled to benefits under the BLNA (CitiBank) Unit Linked Executive Pension Plan (the Plan). The Plan is an executive pension plan (a type of occupational pension scheme) insured with Sun Life. [REDACTED] Limited is both the Trustee and sponsoring employer of the Scheme.

Sun Life have previously confirmed to the Ombudsman that contributions were made to the Plan by [REDACTED] for the benefit of Mrs N. [REDACTED] as trustee of the Plan is the legal owner of the Policy and Mrs N is the beneficial owner of the Policy. Effectively [REDACTED] Limited holds the Policy on trust for Mrs N to provide pension benefits for her on her retirement.

Mrs N contends that she has a right to transfer her benefits under the Plan to an alternative pension arrangements and effectively that [REDACTED]'s refusal to sign the form authorising Sun Life to transfer the value of the policy to an alternative pension arrangement (as requested by Mrs N) has caused her injustice as a consequence of maladministration and/or amounts to breach of law.

In an earlier email of 20 May 2022 you noted, on behalf of your client, however, that Mrs N's entitlement to a pension (and to transfer her benefits) is disputed by Mr N. It is not agreed by Mr N that Mrs N is entitled to a pension at all under the Plan. You contend, on behalf of your client, that [REDACTED], as trustee of the Plan, are entitled to withhold payment of her pension and is not entitled to agree to her request to transfer her pension benefits to another arrangements.

I then contacted you to ask for a copy of the trust deed and rules setting out the basis on which your client was seeking to withhold the pension from Mrs N. Your firm was unable to provide me with a copy of the Trust Deed and Rules governing the Plan. However, in a further email dated 21 June 2022 you provided me with a copy of the product particulars and referred to a highlighted section of the particulars. The highlighted section (which at most can only be a description of the rules) states:

"The Member is entitled to the benefit of all contributions into the Plan (whether his own or on behalf of the Employer) in the form of a pension. Contributions cannot be refunded or taken away from the Member, unless dismissed for fraud or misconduct"

You have therefore supplied indirect evidence that the Plan trust deed and rules (which are the governing documents for the Plan) may contain a forfeiture or charging clause which you do find in some occupational pension schemes. We do not however currently have a copy of the relevant forfeiture or charging rule which do vary from scheme to scheme (some are wider than others).

Please can you confirm that your client definitely does not have a copy of the signed trust deed and rules so that I can look at the wording of any charging or forfeiture clause.

It was also submitted in your earlier letter of 1 March 2019 that the terms of the consent order issued on divorce dated 17th February 2005 meant that Mrs N had no further financial claims and no claims against ██████ Ltd. I will comment further on whether in my opinion the Consent Order does achieve this (see below).

I also understand that Mrs N also has another pension scheme with Scottish Widows and is having similar issues relating to the transfer of her benefits. I have not currently had sight of the rules relating to the Scottish Widows scheme. On the assumption that it is also an executive pension plan set up for Mrs N's benefit a similar analysis is likely to apply to this scheme.

The law relating to forfeiture and charging of pension benefits in occupational pension schemes

It is possible for employers to forfeit or charge benefits of a member of an occupational pension scheme in limited circumstances if:

- (1) first, the occupational pension scheme contains a forfeiture or charging clause; and
- (2) second, forfeiture or charging of benefits is permitted under sections 91-95 of the Pensions Act 1995.

You have provided me with indirect evidence that there may be a forfeiture or charging clause in the scheme documentation as the possibility of forfeiture or charging is referred to in the scheme particulars. However, we do not know how widely it is drafted (see above).

Broadly under section 91 of the Pensions Act 1995 ("PA95") it is only possible to exercise a charge against a member's benefits in limited circumstances. These include the following:

- (1) A charge or set-off against, the person in question's entitlement, or right, (except to the extent that it includes transfer credits other than prescribed transfer credits) for the purpose of enabling the employer to obtain the discharge by him of some monetary obligation due to the employer and arising out of a criminal, negligent or fraudulent act or omission by him (section 91(5)(d) PA 95); and

- (2) except in prescribed circumstances a charge or lien on, or set-off against, the person in question's entitlement, or right, for the purpose of discharging some monetary obligation due from the person in question to the scheme and—
- (i) arising out of a criminal, negligent or fraudulent act or omission by him, or
 - (ii).....(section 91(5)(e) PA 95).

Under section 91(6) however where a charge, lien or set-off is exercisable by virtue of subsection (5)(d) , (e) or (f)—

- (a) its amount must not exceed the amount of the monetary obligation in question, or (if less) the value (determined in the prescribed manner) of the person in question's entitlement or accrued right, and
- (b) the person in question must be given a certificate showing the amount of the charge, lien or set-off and its effect on his benefits under the scheme,

and where there is a dispute as to its amount, the charge, lien or set-off must not be exercised unless the obligation in question has become enforceable under an order of a competent court or in consequence of an award of an arbitrator or, in Scotland, an arbiter to be appointed (failing agreement between the parties) by the sheriff."

Similarly, it is generally not possible to forfeit pension benefits under an occupational pension scheme under section 92 of the PA 95 except by reference to the person having incurred some monetary obligation due to the employer and arising out of a criminal, negligent or fraudulent act or omission by the person (section 91(2) PA 95). However, a person's entitlement or right may be forfeited by reason of subsection 92(1) to the extent only that it does not exceed the amount of the monetary obligation in question, or (if less) the value (determined in the prescribed manner) of the person's entitlement or right (section 91(3) PA 95). Moreover, such forfeiture must not take effect where there is a dispute as to the amount of the monetary obligation in question, unless the obligation has become enforceable under an order of a competent court (section 92(3) PA 95).

If you analyse the above provisions it is therefore not enough to demonstrate that, as your client alleges, Mrs N assaulted your client or there was gross misconduct justifying dismissal by ██████ (assuming that his company was Mrs N's employer) you would need to demonstrate that Mrs N owes you some monetary obligation as a consequence of the alleged criminal, negligent or fraudulent act or omission.

Forfeiture or charging would only also be possible if a certificate has been provided to Mrs N setting out the amount of the charge lien or set-off and the effect on her benefits. If the obligation in question is disputed by Mrs N it is not possible for the charge to be exercised without an order of a competent court. If there is no monetary obligation it is not legally possible for ██████ to charge or forfeit any benefits. Moreover, if Mrs N disputes the fact that there is such an obligation or the amount of such obligation it is not possible to charge or forfeit the benefits without the order of a competent court.

If, in the light of the above explanation, you still contend that ██████ has a right to forfeit or charge the pension please can you provide evidence that this is not precluded by section 91 to 95 PA 95. In particular that for the purposes of section 91-95 of the Pensions Act please can you show:

- (1) there is an outstanding monetary obligation to ██████ Limited as employer as a consequence of an alleged criminal negligent or fraudulent act;
- (2) Mrs N has been given a certificate of the alleged monetary obligation as required by the Pensions Act 1995; and
- (3) the amount of the benefits charged or forfeited do not exceed the alleged monetary obligation in question.

In this connection I would observe that unless a claim for compensation was made against Mrs N at the time it is likely, in my opinion, to be time barred under the Limitation Act 1980.

The Consent Order on Divorce

In a letter dated 1 March 2019 your firm wrote to Mrs N (on Mr N's and ██████'s behalf) in connection with her earlier attempt to transfer the Policy. The letter states that:

"My client's instructions are he does not agree to you having the benefit of this policy, which is owned by ██████ Limited, and that until there is an agreement or a Court Order, you must not make any attempts to transfer the funds without my client's consent. If you do, my client will instruct me to apply to the Court for a Freezing injunction and may report the matter to the Police as well"

The letter then goes on to refer to the terms of a court order made on divorce on 17 February 2019 and asks her to clearly set out the legal basis of your claim to the money.

Your firm is effectively contending (without referring to or identifying a specific provision of the Consent order in support of the contention) that under the terms of the consent order dated 17 February 2005 Mrs N agreed that she had no further claims against ██████ Limited. I have been unable to find any provisions in the consent order that would have this legal effect and do not currently understand how you were in a position to make that statement on behalf of your client.

I acknowledge that the Consent order does state at paragraph (b) of the recitals to the Consent order that the terms of the consent order were in full and final satisfaction of all claims for capital and pension sharing orders and or any other nature whatsoever which either may be entitled to bring against the other or the other's estate in any jurisdiction arising in relation to their marriage.

This clause, however, in my opinion does not cover any claims against ██████ only claims against Mr N.

I also acknowledge that the Consent Order goes on to say at paragraph (e) of the Recitals that:

"While the parties agree that neither of them has any legal or equitable interest in the property owned by the other as provided for in the Order"

In my opinion this paragraph does not extend to claims against the Company which in any event is not the beneficial owner of the Policy

I would observe also that the Consent order dated 17 February 2005 states that Mrs N resigned from any position she held in Mr N's business. In my opinion, this is not consistent with the assertion that she resigned and not that she was dismissed for misconduct.

The Consent order makes no earmarking order or pension sharing order in relation to Mrs N's beneficial interest in the Policy which is accordingly unaffected by the terms of the Consent Order.

In my opinion I currently do not see how that the Consent Order precludes Mrs N exercising her right to transfer the proceeds of another Policy.

Please can you expand on why you consider it does and the basis on which your client would be able to apply to court to prevent such a transfer?

The Cash Equivalent Transfer Legislation

Broadly my understanding of the Cash Equivalent Transfer Legislation under the Pension Schemes Act 1993 (PSA 93) is that members of occupational pension schemes will generally have a statutory right to a cash equivalent transfer value. For money purchase members this right is conferred by section 94(2) of PSA 93.

A member of a pension scheme who has acquired a right to take a cash equivalent in may only take it by making an application in writing to the trustees or managers of the scheme requiring them to use the cash equivalent in one of certain specified ways which would include a transfer to another personal pension scheme (section 95(1) and (2) PSA 93) which is able and willing to accept the transfer.

From 30 November 2021 the Company (as trustee of the Plan) must satisfy itself that certain conditions under the Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021 are met. If the transfer is not to a master-trust broadly to meet the Second Condition which must be satisfied to make a transfer the Trustees will have to ask for certain information to verify that certain red and orange flags are not present which indicate for example that the transfer is being made to a scam scheme. In practice Sun Life are likely to have a questionnaire for Mrs N to fill in. These provisions were however not in force when the original application to transfer was made by Mrs N.

Generally, the Trustee must give effect to a valid request for a CETV supplying all required information (unless there is a red flag) within 6 months of it being made in the case of a money purchase scheme (section 99(2)(b) PSA 93). Certain prescribed information has to be provided to the Trustee.

If the payment of a transfer value is without reasonable excuse not made within 6 months of the date of a valid application generally the CETV has to be increased to what it would have been if it had been made or the date the trustees received the application or if this would produce a higher amount interest must be added to the original cash equivalent at one per cent above base rate (see regulation 10 of the Occupational Pension Schemes (Transfer Value) Regulations 1996).

Failure to give effect to a valid request to make a transfer within the permitted time limits amounts to breach of law and may give rise to civil penalties in certain circumstances if the Trustee fails to take reasonable steps to ensure compliance (section 99(7) of the Pension Schemes Act 1993). Penalties can be £1,000 for an individual and up to £10,000 for a company. If the failure by a company is as a result of the neglect or connivance of a director the Pension Regulator can also make the director personally liable for the fines generally of up to £1,000.

Conclusion

Currently, in my opinion, there is no basis in law under which your client or ██████ Limited (as trustee of the Plan) is able to refuse to agree to Mrs N's request to transfer her benefits to an alternative pension arrangement. In addition in my opinion, I cannot see how, even if the trust deed and rules contains a forfeiture clause or charging clause, how Mr N's benefits can have been validly charged or forfeited given the requirements of sections 91-95 of the Pensions Act 1995. Moreover, in my opinion the failure to give effect to Mrs N's request to transfer her benefits potentially may amount to a breach of the cash equivalent requirements of the Pension Schemes Act 1993.

I look forward to receiving your client's confirmation that either:

- (1) it will now instruct Sun Life and Scottish Widows to action Mrs N's transfer requests or
- (2) provide explanation of the legal basis on which the Company (at the instigation of Mr N as director) it is declining to agree to Mrs N's request to a transfer and how this is consistent with the Company's obligations as Trustee of the Plan's obligations under the cash equivalent transfer value legislation and in compliance with sections 91-95 of the Pensions Act 1995.

If your client still considers that there is a valid basis in law under which ██████ (at the instigation of Mr N) can refuse to agree to the transfer the next stage will be for Mrs N's complaint to be determined by the Ombudsman as part of the formal investigation and determination process.

The Ombudsman has power under section 146 of the PSA 93 to determine complaints that Mrs N as a beneficiary of the two plans (or a person claiming to have such an entitlement) has sustained injustice as a consequence of maladministration by trustees, managers, administrators and employers of occupational pension schemes and also determine disputes of law between Mrs N and the trustees or managers and employers of an occupational pension scheme. The Ombudsman's determinations are final and binding on the parties subject to an appeal on a point of law to the High Court.

The Ombudsman has powers to make reasonable awards for non-financial injustice as a consequence of maladministration and also unlimited awards for financial loss sustained by Mrs N as a consequence of maladministration and/or breach of law by a respondent.

I look forward to hearing from you.

Appendix 2 – The May 2023 Letter



case reference 74047

18 May 2023

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Further to my March letter, I had hoped that your client would accept that following the information I provided, in the absence of a valid forfeiture of her benefits in accordance with the rules and having regard to sections 91-95 of the Pensions Act 1995, there is no basis in law for the trustee to withhold its consent his former spouse exercising her statutory right to transfer her pension benefit. Accordingly, I had hoped that the matter could be resolved under the Early Resolution process without the need to refer to the matter to the Pensions Ombudsman for determination.

This letter offers a re-cap of the position.

Ombudsman's powers

Broadly the Ombudsman has power to determine:

1. Complaints made by an actual or potential beneficiary has sustained injustice as a consequence of maladministration by the trustees, managers or employers of personal or occupational pension schemes (section 146(1)(a) Pension Schemes Act 1993 (PSA 93);
2. Disputes of fact and law referred by actual or potential beneficiaries and trustees, managers or employers relating to a personal or occupational pension scheme (section 146(1)(c) PSA 93.

The Ombudsman has wide powers under section 151 of the PSA 93 to direct a respondent to do anything a court could do e.g. to give effect to your client's former spouse's request to transfer benefits and also to make awards generally of up to £2,000 for distress and inconvenience for maladministration causing non-financial injustice. Awards can be higher in exceptional circumstances.

In, my opinion, failing to give effect to a request to give effect to a request to transfer benefits where a member has a valid right to apply for a cash equivalent transfer value is likely to be

found by the Ombudsman to amount to breach of law and also maladministration causing both financial and non-financial injustice.

The Pension Regulator's powers

Moreover, for completeness can I just refer your client to the provisions of the PSA 93 relating to transfers and the trustee's duties when they fail to give effect to a transfer within 6 months of a valid request to make a transfer under the cash equivalent transfer legislation.

My understanding is that broadly they are as follows:

Under section 99(7) of PSA 93 relating to cash equivalent transfer rights

(7) Where the trustees or managers of an occupational pension scheme have not done what is needed to carry out what a member of the scheme requires within six months of the date mentioned in paragraph (a) or (b) of subsection (2)—

(a) they must, except in prescribed cases, notify the Regulatory Authority of that fact within the prescribed period, and

(b) section 10 of the Pensions Act 1995 (power of the Regulatory Authority to impose civil penalties) shall apply to any trustee or manager who has failed to take all such steps as are reasonable to ensure that it was so done.

Under see regulation 20 of The Occupational Pension Schemes (Transfer Values) Regulations 1996 where section 10 of the 1995 Act (civil penalties) applies by virtue of section 93A(6) or section 99(7) of the 1993 Act, the maximum amount for the purposes of section 10(2) of the 1995 Act shall be £1,000 in the case of an individual and £10,000 in any other case.

Under section 166(6) and (7) of PSA 93

(6) Where—

(a) apart from this subsection, a penalty under subsection (4) is recoverable from a body corporate or Scottish partnership by reason of any act or omission of the body or partnership as a trustee of a trust scheme, and

(b) the act or omission was done with the consent or connivance of, or is attributable to any neglect on the part of, any persons mentioned in subsection (7),
such a penalty is recoverable from each of those persons who consented to or connived in the act or omission or to whose neglect the act or omission was attributable.

(7) The persons referred to in subsection (6)(b)—

(a) in relation to a body corporate, are—

(i) any director, manager, secretary, or other similar officer of the body, or a person purporting to act in any such capacity, and

(ii) where the affairs of a body corporate are managed by its members, any member in connection with his functions of management, and

(b) in relation to a Scottish partnership, are the partners.

The regulator also has various powers to remove and replace trustees of occupational pension schemes.

May I also refer you to section 70 of the Pensions Act 1995. My understanding is that section 70 imposes a duty on trustees, employers and professional advisers (subject to legal privilege) and anyone involved in the administration of the scheme to report to the Regulator any breaches of the law in relation to the administration of the scheme which are likely to be of material significance to the exercise of the Regulator's functions.

The Regulator's Code of Practice No1 "Reporting breaches of law" explains the duty to report in more detail and you will note that acting or failing to act in deliberate contravention of the law is likely to be regarded by the Regulator as being of material significance to the Regulator for the purposes of the Code.

Next Steps

I hope very much that we can avoid the need for the Ombudsman to be involved further and the matter can now be resolved.

Please can you either:

1. Confirm that your client will now agree to his former spouse transferring his benefits;
or
2. If you client will not agree to this, set out a valid basis in law under which your client considers that he has a right to withhold consent to the transfer so that I can share the explanation with your client's former spouse.

Appendix 3 – Extracts from The Occupational Pension Schemes (Transfer Values) Regulations 1996

“1 Citation, commencement and interpretation...

(2) In these Regulations, unless the context otherwise requires—

...“appropriate date” has the meaning given to that expression in section 97(3A) of the 1993 Act...

...7C Manner of calculation of initial cash equivalents for money purchase benefits (other than collective money purchase benefits) and cash balance benefits not calculated by reference to final salary

(1) For cash balance benefits in respect of which the available sum is not calculated by reference to final salary and money purchase benefits other than collective money purchase benefits, the initial cash equivalent is to be calculated in accordance with this regulation.

(2) The initial cash equivalent is the realisable value at the date of calculation of any benefits to which the member is entitled.

(3) The trustees must calculate that realisable value—

(a) in accordance with the scheme rules; and

(b) in a manner which is—

(i) approved by the trustees; and

(ii) consistent with Chapter 1 of Part 4ZA of the 1993 Act.

(4) The realisable value must include—

(a) for money purchase benefits, any increases to the benefits resulting from a payment of interest made in accordance with the scheme rules; or

(b) for cash balance benefits—

(i) any interest (including notional interest) which, in accordance with the scheme rules, applies to the available sum in respect of which the benefits are calculated;

(ii) any guarantee which, in accordance with the scheme rules, applies to the available sum in respect of the benefits or to the contributions made by the member or by another person in respect of the member;

(iii) any options the member has which would increase the value of the member's benefits under the scheme (adjusted to reflect the proportion of members the trustees determine are likely to exercise those options); and

(iv) any discretionary benefits which the trustees determine should be taken into account, having regard to any established custom for awarding the benefits and any requirement for consent before they are awarded...

...10 Increases of cash equivalents on late payment

(1) Subject to paragraph (2), if the trustees of a scheme, having received an application under section 95 of the 1993 Act, fail to do what is needed to carry out what the member requires within six months of the appropriate date the member's cash equivalent, as calculated in accordance with regulations 7 to 9, shall be increased by the amount, if any, by which that cash equivalent falls short of what it would have been if the appropriate date had been the date on which the trustees carry out what the member requires.

(2) If the trustees of a scheme, having received an application under section 95 of the 1993 Act, fail without reasonable excuse to do what is needed to carry out what the member requires within six months of the appropriate date the member's cash equivalent, as calculated in accordance with regulations 7 to 9, shall be increased by—

(a) interest on that cash equivalent calculated on a daily basis over the period from the appropriate date to the date on which the trustees carry out what the member requires, at an annual rate of one per cent. above base rate; or, if it is greater,

(b) the amount, if any, by which that cash equivalent falls short of what it would have been if the appropriate date had been the date on which the trustees carry out what the member requires.”

Appendix 4 – Extracts from the Pension Schemes Act 1993

“95 Ways of taking right to cash equivalent

(1) A member of a pension scheme who has acquired a right to take a cash equivalent in accordance with this Chapter may only take it by making an application in writing to the trustees or managers of the scheme requiring them to use the cash equivalent in one of the ways specified below...

...(9) An application to the trustees or managers of the scheme under subsection (1) is to be taken to have been made if it is delivered to them personally, or sent by post in a registered letter or by the recorded delivery service...

...97 Calculation of cash equivalents

(1) Cash equivalents are to be calculated and verified —

(a) in the prescribed manner, and

(b) where a designation has been made under section 97A or 97B, in accordance with regulations under section 97C.

(1A) Where a member applies under section 95 to take a cash equivalent that relates to money purchase benefits, the cash equivalent is to be calculated by reference to the date of the application.

(2) Regulations may provide—

(a) that in calculating cash equivalents that relate to money purchase benefits account shall be taken—

(i) of any surrender, commutation or forfeiture of the whole or part of a member's pension which occurs before the trustees or managers of the scheme of which he is a member do what is needed to comply with what he requires under section 95;

(ii) in a case where subsection (2) of section 96 applies, of the need to deduct an appropriate amount to provide for the liabilities mentioned in subsection (3) of that section;

(aa) for a cash equivalent that relates to any category of benefits to be reduced so as to take account of the extent (if any) to which an entitlement has arisen under the scheme to the present payment of the whole or any part of—

(i) any pension; or

(ii) any benefit in lieu of pension;

and

(b) that in prescribed circumstances a cash equivalent shall be increased or reduced

(3) Without prejudice to the generality of subsection (2), the circumstances that may be specified by virtue of paragraph (b) of that subsection include—

(b) failure by the trustees or managers of the scheme to do what is needed to carry out what a member of the scheme requires within 6 months of the appropriate date; and

(c) the state of the funding of the scheme.

(3ZA) Where, in the case of an application from a member under section 95 that relates to money purchase benefits that are collective money purchase benefits, regulations under section 99(2)(c) provide for a period longer than 6 months, subsection (3)(b) is to be read as if the reference to 6 months were a reference to that longer period.

(3A) For the purposes of subsection (3), the “appropriate date” —

(a) in relation to a cash equivalent that relates to benefits other than money purchase benefits, means the guarantee date for the purposes of the relevant statement of entitlement under section 93A, and

(b) in relation to a cash equivalent that relates to money purchase benefits, means the date on which the trustees or managers receive an application from the member under section 95.”