

## Ombudsman's Determination

Applicant	Mrs D
Scheme	London Quantum Retirement Benefit Scheme ( <b>the Scheme</b> )
Respondent	Dalriada Trustees Limited ( <b>the Trustee</b> )

## Outcome

1. I do not uphold Mrs D's complaint and no further action is required by the Trustee.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mrs D has complained that the Trustee has, at the current time, declined her request to take pension benefits. Additionally she has said that the Trustee has failed to keep her updated.

## Background information, including submissions from the parties

4. On 22 January 2015, Mrs D transferred £52,797.93 of her pension benefits into the Scheme. It appears that Gerrard Associates, a regulated independent financial adviser, was involved in the transfer and received payment for its involvement.
5. Following the transfer into the Scheme Ms D's pension funds were invested in a reforestation fund and a foreign exchange fund, with the remainder held in cash.
6. On 18 June 2015, the Trustee was appointed by The Pension Regulator (**TPR**) to take over the trusteeship of the Scheme. In TPR's announcement it confirmed that the Scheme appeared to have been operated in breach of HMRC rules.
7. On 22 June 2015, the Trustee wrote to all members of the Scheme confirming that it had been appointed as the trustee of the Scheme and explained that, at the present time, no benefits would be paid out. It confirmed:  
  
"If you are expecting to receive a payment, this will **not** come from the Scheme and Dalriada will not be making any payments." [original emphasis]

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8. On 13 July 2015, Mrs D spoke with the Trustee and was informed that she would be unable to take benefits at that time. She followed this with two emails stressing how important it was for her to receive benefits as soon as possible.
9. On 6 August 2015, Mrs D turned 55. On the understanding that she would be able to take pension benefits having reached age 55, she had previously entered into a contract to purchase a property with the intention of using her pension commencement lump sum (**PCLS**). The Trustee responded explaining that, at that time, Mrs D would not be able to take benefits.
10. Over the following months there was significant email correspondence between Mrs D and the Trustee. It continued to decline to pay any benefits to Mrs D on the basis of the complicated and uncertain structure of the Scheme.
11. The contract Mrs D held for the property fell through. Mrs D said she is subject to a penalty of approximately £7,000. In order to pay this she has borrowed money. The lender has been accommodating but now requires the money, and has informed Mrs D that it intends to take the matter to Court in early August 2017 if payment is not made.
12. The Trustee continues to take the stance that it cannot pay any benefits out of the Scheme. It explained that although there were liquid funds available in Mrs D's name, because of the uncertainty of how costs should be apportioned, and the value of the other investments in her name, it could not give an accurate value for Mrs D's benefits as a whole, and therefore could not say what 25% of this would be. In the context of that uncertainty, it would be remiss of the Trustee to pay out to the potential detriment of other members of the Scheme.
13. It has now confirmed that a judgement on the issue of costs has been issued on a similar scheme that it is also the trustee of. The principles in that judgement could be transposed onto the Scheme, however it was not definitive on the issue of apportioning costs and further legal advice was being sought.
14. Notwithstanding that, the value of the investments in Mrs D's name remained uncertain and a further issue had come about as a result of a scheme sanction charge applied by HMRC because of suspected pension liberation. For clarity there is no suggestion that Mrs D was involved in liberating her pension. The Trustee has appealed the scheme sanction charge and is waiting for a response from HMRC.
15. The Trustee attempted to resolve Mrs D's complaint by explaining the reasons why it was unable to pay benefits to her, but she remained dissatisfied and referred the complaint to this Office for review.

## Adjudicator's Opinion

16. Mrs D's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised briefly below:-
- The Trustee had made reasonable efforts to inform Mrs D of the situation with the Scheme as early as it reasonably could, and with regularity since. There was no apparent reason for these updates not to have been received by Mrs D.
  - In addition to the formal regular updates, having reviewed a full history of correspondence prior to the complaint being referred to this Office, the Adjudicator took the view that the Trustee had responded within reasonable timeframes and given adequate reasons why it could not pay benefits to Mrs D.
  - The Adjudicator noted that Mrs D had liquid funds held in cash within the Scheme, and could understand why she thought she ought to be able to take benefits from that part of her pension. However, the Adjudicator considered the Trustee's reasons for not paying benefits and concluded that in the context of those complications it was acting reasonably by declining to pay her any benefits.
  - The reasons for not paying benefits to members of the Scheme at that time were:-
    - The costs incurred by Dalriada in running the Scheme, and the allocation of these costs between members, remained unresolved.
    - Mrs D is invested in an illiquid overseas investment, which may or may not provide a return. The value of this investment needs to be investigated which will incur costs. Because of the difficulty in valuing these assets, the trustee cannot value Mrs D's fund and therefore cannot value the proportion which may be due to her as a lump sum.
    - The Scheme is subject to a HMRC scheme sanction charge. Until this matter is resolved, and Mrs D's liability in respect of it is determined, it would not be appropriate to pay her any benefits.
17. Mrs D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs D provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mrs D for completeness.

## Ombudsman's decision

18. I have the utmost sympathy for the position Mrs D finds herself in. Until the Trustee was appointed she understood she would be able to take benefits at her 55 birthday and purchase a property. The Trustee took over shortly before her birthday and her position has changed significantly because it is unable to pay out any benefits. It is a very unfortunate situation. However, in order for me to be able to uphold Mrs D's

complaint I must be able to identify maladministration that has caused her to suffer a financial loss. Having considered the circumstances I am not persuaded there has been any maladministration by the Trustee.

19. Mrs D maintains that there is cash held in her name that she should be able to access those funds without issue. She considers that this is not part of the pension fund which the Trustee is looking into and should be treated according to her direct mandate. I disagree, Mrs D's pension, including this cash, is held under Trust, and benefits are payable under the Trust rules. Whilst under normal circumstances the Trustee would pay benefits to Mrs D as she has requested, realistically these are not normal circumstances.
20. The Trustee has been appointed to administer the Scheme according to the rules. It has explained its position publicly on its website through a series of announcements and FAQs. These deal explicitly with the reasons why it cannot currently pay benefits; it has been negotiating redemption values for illiquid assets and attempting to arrive at a value for the relevant fund holdings. It has also been seeking necessary clarity about how costs should be allocated across the scheme. I am satisfied that in these circumstances the Trustee has exercised a reasonable and legitimate decision not to pay any benefits out for the time being.
21. Mrs D remains dissatisfied with the Trustee's approach to updating her. The Trustee has said that it is concerned with the growing costs associated with addressing Mrs D's repeated enquiries when there has been no change in the position of the Scheme regarding whether benefits can be paid out. The Trustee states that to date the costs have been spread across the Scheme, but it would be inequitable to continue to do this if the costs associated with handling Mrs D's enquiries alone continue to rise.
22. I agree with the Adjudicator that the Trustee handled Mrs D's enquiries prior to referral to this Office appropriately. There was a significant amount of correspondence and the Trustee responded within reasonable timeframes with attempts to explain its position. Whilst the matter has been considered by this Office the Adjudicator acted as the main conduit of correspondence. Going forwards however, Mrs D will receive communications directly from the Trustee. The Trustee is trying to limit costs by communicating its progress generally. While Mrs D is entitled to request ad hoc updates it does not seem to me that there is anything to be gained by doing so. Any update on the Trustee's position on its ability to pay benefits will no doubt be posted on its website as soon as possible.
23. Whilst Mrs D will be disappointed as it stands, whilst there are such wide ranging uncertainties about how the Scheme should be run it is reasonable for the Trustee to take the stance that it will not pay any benefits for the time being. It is also reasonable for it to manage its member communications to reduce costs which, in the absence of any solvent employer, must be met from scheme funds.

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24. Therefore, I do not uphold Mrs D's complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
23 August 2017