

Ombudsman's Determination

Applicant	Mr Bishop
Scheme	LV= Pension Plan (the Plan)
Respondent	LV= Pension Trustee Limited (the Trustee)

Outcome

1. I do not uphold Mr Bishop'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. Mr Bishop's complaint is against the Trustee in that it refunded his pension contributions without his consent after failing to write to his correct address. Mr Bishop contends that he should have had an opportunity to transfer the funds if he wanted to. He refuses to repay the refunded pension contributions in order to arrange a pension transfer to another scheme.

Background information, including submissions from the parties

4. Mr Bishop was a member of the Plan from 9 May 2011 to 13 September 2012. He was a member of the Defined Contributions (DC) section of the Plan and the options related to Non-Qualified members, are in the DC section of the Scheme rules:

"1. Leaving the Scheme- options for non-qualified members.

In this Rule:

Contribution Refund means, in relation to a Non-Qualified Member, a sum representing the aggregate of:

(a) his employee contributions; and

(b) where transfer credits have been provided for him under the Scheme by virtue of a transfer payment accepted under the Trust Deed, his employee contributions to the transferring scheme, so far as they:

- (i) relate to the transfer payment; and
- (ii) do not, in aggregate, exceed the amount of the transfer payment.

Employee contributions means, in relation to a Non-Qualified Member, contributions made to the Scheme by or on behalf of him on his own account, but does not include:

(a) a transfer payment by virtue of which transfer credits have been provided for him under the Scheme;

(b) any pension credit (within the meaning of section 124(1) of the Pensions Act 1995) or amount paid to the Scheme which is attributable (directly or indirectly) to a pension credit; or

(c) Notional Contributions

1.2 A Non-Qualified Member who meets the applicable statutory requirements, and whose Active Membership ends before Normal Pension Age, is entitled to a Contribution Refund or a Cash Transfer Sum.

1.3 The Trustees will, within such period after the end of the Non-Qualified Member's Active Membership as they decide, notify him of his rights under sub-Rule 9.2 and how he may exercise them and provide information, as required by section 101AC of the Pension Schemes Act 1993. The Trustees will allow him a period after that notification in which to exercise those rights. If he does not exercise them in such manner and by such date as the Trustees have allowed or dies before then, the Trustees will pay a Contribution Refund subject to sub-Rules 9.4 and 9.5."

- 5. Under the Pensions Act 1993, see attached in Appendix, where a member leaves pensionable service before completing 2 years in the scheme, legislation requires that the member is given the option of a refund of their own contributions.
- 6. After Mr Bishop left his employment, the Trustee wrote to him several times to the addresses, both held on its system and found through the Department for Work and Pensions tracing services. The Trustee also left two voicemail messages for Mr Bishop in October and December 2013, on the mobile number that they had for him, however no response was received.
- 7. Due to the Trustee not receiving a decision from Mr Bishop, it issued a refund of his contributions to him in October 2014, in accordance with the Plan rules and legislation.

PO-10927

8. On 13 June 2015, the Trustee sent an email to Mr Bishop explaining what his options were and said:

“You have the option to receive a refund of the contributions you arranged through My Choice, or to transfer the value of your account into a new arrangement within 6 months of leaving- for example, your new employer’s scheme if it can accept the transfer”.

9. On 8 July 2015, Mr Bishop contacted the Pensions Advisory Services (TPAS) and subsequently brought the complaint to the Pensions Ombudsman on 10 November 2015.

10. TPAS has established that Mr Bishop has been in an automatic enrolment workplace pension and that a transfer option is generally available for a limited period of 3 to 6 months. So, if Mr Bishop did not have a new company or personal pension to transfer into during that limited period; the option lapses and he may be given the alternative of a refund of his own pension contributions.

11. On 4 August 2015, the Trustee sent a response to Mr Bishop, under the internal dispute resolution (IDRP) stage 1, that said:

“My investigations leave me in no doubt that an administrative error caused Friends Life (the Scheme administrator) to write to your previous addresses. The timeline of events show how this led to an automatic refund being issued despite attempts that were made to trace your correct address, in accordance with the Scheme Rules and Friends Life’s internal processes...To put you in the position you would have been in had the administrative error not occurred I now offer you the same options as if you were being contacted for the first time on leaving the Plan...As you have already received a contribution refund, the only alternative to the current situation is if you wish to transfer to another registered pension scheme”.

12. Mr Bishop appealed against the IDRP stage 1 decision and invoked stage 2. On 4 November 2015, the Trustee sent Mr Bishop a response that upheld the previous decision but added:

“Should you choose option (b), i.e. a transfer of your fund to another provider, you will be required to repay to the Plan the contributions which were refunded to you by Friends Life and then select a registered pension scheme to receive a transfer of your full pension account”.

13. On 4 February 2016, this office received a formal response from the Trustee informing that there is nothing further to add in respect of this complaint.

Adjudicator's Opinion

14. Mr Bishop'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 has admitted to an administrative error on its part, so there is no dispute that a problem has occurred.
- The Adjudicator understood that Mr Bishop does not wish to repay his contribution in order to reinstate his pension account and make a transfer to another scheme. However, Mr Bishop must repay the contributions if he wants to make a transfer to another pension scheme. The Trustee is prepared to allow a transfer once the contributions have been returned. In Adjudicator's opinion, asking the Trustee to pay his contributions, would unduly enrich Mr Bishop because not only will he benefit from a transfer he would do so having retained the refunded contributions.
- The Adjudicator was satisfied that the Trustee followed the rules correctly and that Mr Bishop is not entitled to keep his refund as well as transferring his Plan benefit to another scheme. This is because his pensionable service was less than 2 years.
- Under the rules, there must be a reasonable period of time allowed, after notifying a member of their options once they have left the Plan, that a contributions refund is paid automatically to the member. This period of time is not specified. However, the Trustee allowed for a period of 6 months to contact Mr Bishop which the Adjudicator believed was reasonable.
- It was the Adjudicator's view that the Trustee's offer is reasonable as it would put Mr Bishop in the correct position had the administrative error not occurred. It has also apologised to Mr Bishop for the error caused.
- It was therefore the Adjudicator's opinion that the complaint should not be upheld.

15. Mr Bishop did not accept the Adjudicator's Opinion but has not made any further submissions. The complaint was passed to me to consider.

Ombudsman's decision

16. I agree with the Adjudicator's Opinion. The Trustee has confirmed that is unable to refund Mr Bishop employer's contributions and has offered him two options: he could either keep his refunded contributions; or repay them so that the Trustee can reinstate his pension account. Mr Bishop can then transfer his pension to another scheme of his choice. In conclusion, I do not consider the refusal to refund Mr Bishop's employer's contributions amounts to maladministration on the part of the Trustee.

PO-10927

17. Under the Plan rules and pension legislation, Mr Bishop has been offered the correct options taking account the fact that his pensionable service was under 2 years. The obligations placed on employers with regard to refunding contributions is a matter strictly governed by legislation, and not one that I am able to influence or exercise discretion over. Therefore, there are no justifiable grounds for me to find that the Trustee's decision was unreasonable.
18. Therefore, I do not uphold Mr Bishop's complaint.

Anthony Arter

Pensions Ombudsman
4 August 2017

Appendix

101AA Scope of Chapter 5

(1) This Chapter applies to any member of an occupational pension scheme to which Chapter 1 applies (see section 69(3)) if-

(a) his pensionable service terminates before he attains normal pension age, and

(b) on the date on which his pensionable service terminates-

(i) the three month condition is satisfied, but

(ii) he does not have relevant accrued rights to benefit under the scheme.

(2) For the purposes of subsection (1), the three month condition is that the period of the member's pensionable service under the scheme, taken together with-

(a) any previous period of his pensionable service under the scheme, and

(b) any period throughout which he was employed in linked qualifying service under another scheme,

amounts to at least three months.

101 AB Right to cash transfer sum and contribution refund

(1) On the termination of his pensionable service, a member of an occupational pension scheme acquires a right to whichever one he elects of the following options-

(a) a cash transfer sum;

(b) a contribution refund.

(2) Subsection (1) is subject to the following provisions of this Chapter.

PO-10927

(3) In this Chapter "cash transfer sum" means, in relation to a member of an occupational pension scheme, the cash equivalent, at the date on which his pensionable service terminates, of the benefits mentioned in section 101AA(4)(b).

(4) In this Chapter, "contribution refund" means, in relation to a member of an occupational pension scheme, a sum representing the aggregate of-

(a) the member's employee contributions to the scheme, and

(b) where transfer credits have been allowed to the member under the scheme by virtue of a payment ("the transfer payment") made by the trustees or managers of another occupational pension scheme, the member's employee contributions to that other scheme, so far as they-

(i) relate to the transfer payment, and

(ii) do not, in aggregate, exceed the amount of the transfer payment.

(5) In subsection (4), "employee contributions" means, in relation to a member of an occupational pension scheme, contributions made to the scheme by or on behalf of the member on his own account, but does not include-

(a) a transfer payment by virtue of which transfer credits have been allowed to the member under the scheme, or

(b) any pension credit or amount paid to the scheme which is attributable (directly or indirectly) to a pension credit...

(2) The trustees or managers may within a reasonable period beginning with-

(a) the reply date, or

(b) if a later date has been allowed as mentioned in subsection (1), that later date, pay the contribution refund to the member.

(3) When the trustees or managers have paid the contribution refund to the member-

(a) they are discharged from any obligation in respect of any rights (including conditional rights) of, or in respect of, the member to relevant benefits under the applicable rules, and

PO-10927

(b) if they are required under the applicable rules, or determine in accordance with those rules, to make any payment ("the refund payment") by way of refund to or in respect of the member of, or in respect of-

(i) the contributions, or any payment, mentioned in section 101AB(4), or