

## Ombudsman's Determination

Applicant	Ms S
Scheme	Carney Limited Retirement Benefits Scheme ( <b>the Scheme</b> )
Respondents	Mr Ian McPhail, the Trustee of the Carney Limited Retirement Benefits Scheme ( <b>the Trustee</b> ); Pension Matters Associates Ltd ( <b>Pension Matters</b> ); Disruptive Tech Ltd now known as DTL (UK) Limited ( <b>DTL</b> ).

## Outcome

1. Ms S' complaint is upheld and to put matters right the Trustee and DTL should provide a full response to the questions raised by Ms S, and pay her £1,000 each to reflect the significant distress and inconvenience caused to her by their maladministration. If Ms S wishes to exercise her statutory right to a transfer value from the Scheme to a named pension arrangement that is willing to accept it, the Trustee and DTL should pay a transfer value to that arrangement.
2. Pension Matters are no longer in business so I make no finding or directions against it.
3. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

4. Ms S complains that the Trustee, Pensions Matters and DTL have all failed to respond to her enquiries about the Scheme, leaving her unable to plan for her future and exercise her transfer rights.

## Background information, including submissions from the parties

5. Ms S set up a top up Pension Plan with Abbey National in 1997 which was subsequently administered by Royal London. On 10 July 2013 Royal London received a letter from Integra Administration Limited (**Integra**), the then administrators, enclosing a transfer discharge form saying that Ms S wished to transfer her benefits to the Scheme. The discharge form was signed by Ms S and the Trustee of the Scheme.
6. On 29 July 2013 Royal London paid a transfer value of £12,420.13 to the account details provided by Integra.

7. Ms S says she was initially approached by an adviser from a company called Yardstick Marketing (she is not sure who he represented) about a pension review and she was advised to transfer to the Scheme. She understood she would receive a better return for her pension savings. The matter was then handled by Pension Matters Associates Limited (**Pensions Matters**) who arranged for transfer quotations to be obtained from Royal London. Integra subsequently took over and arranged the transfer of her policy with Royal London to the Scheme and investment with DTL. She received limited information on the investment arrangements.
8. Pension Matters was dissolved in April 2016.
9. On reviewing Ms S' complaint this office tried to make contact with the Trustee and DTL but no response was forthcoming. It was established that the Trustee had not made any annual returns to HMRC.

### **Adjudicator's Opinion**

10. Ms S' complaint was considered by one of our Adjudicators who concluded that further action was required by the Trustee and DTL. The Adjudicator's findings are summarised briefly below.
11. Ms S is dyslexic and although she was given some information on the Scheme she did not fully understand this. The sequence of events relating to the transfer of Ms S' benefits with Royal London have some elements of a pension scam as:
  - the original contact at Yardstick Marketing cannot be contacted;
  - the sponsor of the Scheme was Being Real Limited and that company has been dissolved by compulsory strike off;
  - Ms S was never employed by Being Real Limited;
  - the original administration company, Pension Matters was incorporated in March 2012 and dissolved in April 2016;
  - the new administrators Integra were incorporated in May 2013 and dissolved in October 2014; and
  - there is only one Trustee of the Scheme, Mr Ian McPhail, who has singularly failed to keep members informed of changes to the Scheme, such as who to contact for enquiries and to provide regular reports and statements on members' benefits, these are breaches of the Pension Regulator's codes of conduct.
12. DTL did respond to some emails that Ms S sent to them via their website, but simply said that she should contact the Scheme administrator, Pension Matters. This company was dissolved in April 2016, so it is no longer the administrator. However, it is incumbent on DTL, if it is acting as an investment manager, to provide regular

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reports to the Trustee. On the balance of probability the Adjudicator did not think it likely that DTL is fulfilling that requirement.

13. DTL changed its name from Disruptive Tech Limited to DTL (UK) Limited in December 2013 and its listing at Companies House shows the Scheme as a shareholder. The Adjudicator therefore considered that DTL is not only responsible for the investment but also acts as an administrator, as it handles Ms S' account.
14. DTL's website says:

"It is an active investor in a number of exciting technology businesses. The company invests in entrepreneurs who are building companies in market places they truly understand".
15. It has not been possible to obtain any further information on the underlying companies but, on the balance of probabilities, the Adjudicator suspected that the majority of those investments are in unquoted companies and not readily realisable. This would be at variance with the Pensions Regulator's code of practice no 13 entitled: "Governance and administration of occupational trust-based schemes providing money purchase benefits" (the Code), and, in particular, section 107 of the Code.
16. Section 107 of the Code is concerned with the security and liquidity of assets and says:

"The law requires trustee boards to invest scheme assets predominantly in instruments admitted to trading on regulated markets."
17. Ms S is anxious to move her pension savings to a new provider. The Adjudicator was satisfied that the Trustee and DTL have failed to respond to Ms S over a prolonged period of time and provide her with the information she requires. This constitutes maladministration, and she has lost the opportunity to place her funds with a new provider. It has also caused Ms S significant distress and inconvenience.
18. The Adjudicator also considered that Ms S' should not suffer any loss on the value of her investment. Therefore, as Ms S wishes to make a transfer from the Scheme she should be provided with a transfer equivalent which is the better of, either her investment in DTL, or the value of her original investment, with compound interest added from 1 August 2013 to the date of transfer, in line with the base rate quoted by the reference banks from time to time.
19. Mrs S has also experienced a great deal of stress over this matter and she should be compensated for this.
20. Neither the Trustee nor DTL have replied to the Adjudicator's Opinion and the complaint has been passed to me to consider.

## **Ombudsman's decision**

21. I agree with the Adjudicator's Opinion, and as the Trustee and DTL have not responded to the complaint, my decision will be based upon the information and documents provided by Ms S.
22. The Adjudicator's Opinion was sent to the Trustee's last known address by recorded delivery and also by email. Similarly the Adjudicator's Opinion was sent to DTL's registered address in London by recorded delivery. There has been no response from either the Trustee or DTL.
23. Based on the evidence that we have, I agree that maladministration has been established, therefore, I uphold Ms S' complaint and make the following direction.

## **Directions**

24. To put matters right the Trustee and DTL (UK) Limited should within 14 days of the date of this determination:
  - each pay Ms S £1,000 for the very significant distress and inconvenience she has suffered; and
  - provide Ms S with details of the transfer value payable; the transfer value should be the better of her investment in DTL, or the value of her original investment with compound interest added from 1 August 2013 to the date of transfer, in line with the base rate quoted by the reference banks from time to time.

The Trustee and DTL should also pay the transfer value to Ms S' chosen provider within a further 14 days of receiving her signed request form together with the completed documentation from her chosen provider.

**Anthony Arter**

Pensions Ombudsman  
1 September 2017