

Ombudsman's Determination

Applicant	Mr E
Scheme	M J Quinn (Integrated Services) SSAS (the Scheme)
Respondents	AJ Bell Limited (AJ Bell) M.J. Quinn Integrated Services Ltd (the Company)

Outcome

1. I do not uphold Mr E's complaint and no further action is required by AJ Bell or the Company.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. This Office has accepted three complaints brought by Mr E against the Respondents:
 - The first concerns the legitimacy of the sale of a commercial property (**the Property**) owned by the Scheme (**Complaint 1**).
 - The second concerns alleged "accounting adjustments" made by the Company relating to pension contributions it was due to make on Mr E's behalf and rent due for occupation of the Property (**Complaint 2**).
 - The third concerns allegedly forged signatures on loan documentation (**Complaint 3**).

Background information, including submissions from the parties

4. Mr E was a director of the Company.
5. On 12 February 2004, the Scheme was established by Trust Deed. Mr E appears to be a member trustee but has recently said that the signature on the Deed is not his.
6. On 14 July 2004, a loan agreement was signed by AJ Bell, the other member trustee and Mr E. Under this agreement, the Scheme borrowed £272,415 in order to fund the purchase of the Property. Mr E disputes that he signed this document.

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7. Later that year, having also transferred other pension arrangements into it, the Scheme purchased the Property, which would then be leased to the Company. Mr E and the other member trustee benefitted from the Property jointly, on a 50/50 basis.
8. On 19 October 2004, a second loan agreement was signed by AJ Bell, Mr E and the other member trustee for £81,798. This was used to bridge the refund of VAT following the purchase of the Property. Mr E disputes that he signed this document.
9. On 27 March 2006, the Property was remortgaged for £362,389 in order to “assist with the refurbishment of the Property.” The loan agreement was signed by AJ Bell, Mr E and the other member trustee. Mr E disputes that he signed this agreement.
10. On 5 June 2006, a fourth loan agreement was signed by Mr E and the other member trustee, for £445,000, with the intention to contribute to the fit out of the Property, which was being undertaken by the Company. Mr E disputes that he signed this document.
11. Mr E says that between 2004 and August 2010, the Company failed to pay the correct level of employer’s contributions into the Scheme. He has suggested that the contribution arrears totalled approximately £100,000 over this period.
12. The Company has said that any periods where employer contributions were not made to the Scheme were a result of contribution holidays agreed by Mr E.
13. Mr E also says that between 2005 and June 2010, rent arrears of approximately £280,000 accrued.
14. On 31 October 2011, Mr E accepted redundancy terms and signed a compromise agreement.
15. I understand that around this time, the Property was put on the market.
16. In August 2012, solicitors, who it appears were acting for the Trustees, proposed the existing lease be surrendered and a new 15 year lease be put in place, with an initial rent of £150,000.
17. AJ Bell responded querying whether an independent valuation had been undertaken to support the £150,000 rent valuation and queried why the new lease was being put in place at that time.
18. The Company’s finance director responded confirming the intention was for there to be a sale and lease back of the Property, and a long term lease would increase its value. He confirmed that the Company would take the necessary steps regarding valuation and the rent would be in line with it, which it was believed would be £120,000 per year.
19. On 12 September 2012, Mr E spoke with the solicitor stating that his view was that if the rent of £150,000 could be confirmed by the valuers, the lease could be agreed on that basis.

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20. On 31 January 2013, AJ Bell wrote to Mr E to set out the current position of the Scheme. It confirmed that an offer for the Property had been received, subject to the new lease being implemented. AJ Bell also confirmed that the other member trustee had submitted a request to transfer, and that this had to be acted on within the statutory deadline of six months. In the absence of sufficient liquidity to fund the transfer, this meant that Mr E could either fund the purchase of the other member trustee's share of the Property or agree for the Property to be sold.
21. On 5 February 2013, Mr E spoke to AJ Bell and said he did not accept the offer on the Property. AJ Bell explained that given the other member trustee's request to transfer, Mr E would need to purchase the other half of the Property, or it would need to be sold to a third party.
22. On 7 February 2013, having considered his position, Mr E agreed to the sale of the Property.
23. In March 2013, due to delays in the sale, the buyer withdrew.
24. In April 2014, a new offer was made on the Property. The Property was reviewed by a surveyor who confirmed the value as £1.1m. On confirmation of the valuation, AJ Bell wrote to Mr E confirming that the valuation was in line with the new offer that had been made. AJ Bell asked Mr E to confirm if he would accept the offer.
25. On 29 April 2014, Mr E responded, proposing an alternative plan that involved retaining the Property until the mortgage was repaid, and the value had, in theory, increased.
26. On 30 April 2014, AJ Bell responded, highlighting that the £1.1m offer was the same as the offer from February 2013, which he had accepted, albeit this time there were no estate agent fees, and therefore the net proceeds would be higher. AJ Bell also explained that the other member trustee wanted to transfer out of the Scheme. If agreement could not be reached, the other member trustee might submit a complaint to this Office or The Pensions Regulator.
27. Later that day, Mr E responded confirming the Property could be sold.
28. On 1 July 2014, Mr E made a further proposal regarding the Property, but this was declined by the other member trustee who still wished to transfer.
29. On 3 September 2014, the sale of the Property completed. For his share of the Property, Mr E received £537,229.36.
30. In August 2016, Mr E requested details of the purchasers of the Property. The purchasers were confirmed as three SIPP arrangements, held by SIPPdeal Trustees Limited (**SIPPdeal**) the corporate trustee. SIPPdeal is a subsidiary of AJ Bell.
31. In late 2016, Mr E raised a complaint with the Respondents about the handling of the Scheme.

Adjudicator's Opinion

32. Mr E's complaint was considered by one of our Adjudicators who concluded that Complaint 2 and Complaint 3 were outside of my jurisdiction, and in relation to Complaint 1, no further action was required by AJ Bell or the Company. The Adjudicator's findings are summarised below:-

- When initially accepting Complaint 2 and 3, they were accepted on a discretionary basis as in December 2013 Mr E had suffered a stroke which he argued had prevented him from pursuing the complaints until April 2016, when he recovered. Whilst the Adjudicator acknowledged the impact this would have had, in his view the three year time limit set out in Regulation 5(3) of The Personal and Occupational Pension Schemes (Pension Ombudsman) Regulations 1996 had already expired by the time Mr E had suffered his stroke. As such, the stroke cannot legitimately be used as a mitigating circumstance as to why the complaint was brought so late.
- In relation to Complaint 2, and the alleged missing contributions, the Adjudicator noted:
 - i. Mr E had signed Trustee Resolutions that showed no contributions being made into the Scheme in 2008 or 2009.
 - ii. His payslips would have reflected any missing contributions.
 - iii. Mr E had emailed the Company on 5 December 2013 saying:

“which brings me to point out that you are well aware that the contributions to all staff pension funds, was continually in arrears, as was all rentals due, a fact easily demonstrated (sic) by letters, on both subjects, and your constant response was, we will accrue all payments due, and settle later.”
- Given this evidence, the Adjudicator considered Mr E ought to have challenged these issues at the time or within three years of the alleged omission. The alleged omissions all occurred prior to September 2010, and as such ought at the latest, to have been brought to this Office by September 2013, three months before Mr E's ill health.
- In relation to the alleged unpaid rent of £280,000 between 2005 and 2009, the Adjudicator noted:
 - i. As a director, Mr E was party to the Company's accounts which show the lease commitments as significantly below the alleged missing rent.
 - ii. As a trustee, it is anticipated that he would have oversight of the Scheme's funding position, and if it was losing £65,000 a year, it ought reasonably to have been identified and acted upon. Mr E signed the trustee resolutions showing the Scheme's performance.

- iii. Mr E has said that his job was a pressurised one, and he did not have access to Board meeting or management information from September 2009, and therefore lost oversight of the rent. But the Adjudicator noted the alleged unpaid rent occurred prior to September 2009, and given his role as a Director and Trustee, there was sufficient information available to him to identify such a significant underpayment.
- Mr E ought to have been aware of the underpayment by October 2010, at the latest, when the 2009/2010 accounts were signed off. This would mean he had until October 2013 to bring the complaint to this Office. Again, this was prior to Mr E's stroke and it is not a reasonable mitigating circumstance for the delay in bringing the complaint to this Office.
 - Complaint 3 involves an allegation that Mr E's signature was forged on the loan agreements that were taken out by the Scheme. However, the Adjudicator was of the view that this was incompatible with what Mr E had said in an email dated 23 April 2013:

“In your email you refer to a “Contribution holiday” but I never agreed to such an arrangement not least as I had been forced to agree a series of loans raised against the pension fund to pay for refurbishment...”
 - In the Adjudicator's view, this showed that Mr E was aware of the loans at the time they were taken out, and indeed that he was “forced to agree” them. The Adjudicator could not see how the signatures were forged, whilst Mr E was also “forced” to agree them.
 - Additionally, the evidence showed that Mr E was aware of the loan agreements in 2011 in correspondence from the Trustee's solicitors, and the Adjudicator could not see why, if he was unaware of the mortgages as he says in his complaint, he did not immediately complain in 2011.
 - Finally, when the complaint was initially brought to this Office, in July 2016, at a point when he was entirely aware of the mortgage, there is no reference to any forgery having taken place. In the context of such a significant allegation, the Adjudicator could not reconcile why this complaint was not made from the outset.
 - The Adjudicator concluded that complaint 3 is outside our jurisdiction as the event complained about happened in June 2006, and the evidence suggested he was aware of being “forced” to do this at the time. The complaint was not submitted to us until July 2016. Given the length of time between the act complained of and referral to this Office it was not reasonable to waive the three year time limit.
 - Whilst the Adjudicator again acknowledged the impact of Mr E's ill health in December 2013, he could not reasonably use that to extend the time limit as it had already expired.

- The remaining complaint, that was in the Office's jurisdiction, is Complaint 1, which concerned the sale of the Property in September 2014. Mr E has said that he was forced to agree the sale against his wishes and in breach of his rights as a beneficiary. It was not in his interests and should not have happened.
 - The Adjudicator acknowledged Mr E's dissatisfaction with the sale but highlighted that the other member had requested a transfer and the Trustees had to act in response to it. The circumstances meant it was not a statutory transfer request, but regardless of that, Mr E as a trustee was required to act in the best financial interests of all the members, and if he did not, he would be breaching his fiduciary duty.
 - It was established that AJ Bell had incorrectly referred to this as a statutory transfer request, however this was mentioned 18 months before the decision to sell and so it was unlikely to have been a determining factor.
 - Mr E had a fiduciary duty to all the members and so could not unreasonably have stopped the transfer. Given the breakdown in relationship between Mr E and the other member trustee, and the other member trustee's desire to make independent investment decisions, the Adjudicator concluded that it would have been unreasonable to have refused the transfer request even if he would personally have preferred to retain the Property. This would have been to disregard the other member trustee's preferences and was a conflict of interest he was required to set aside.
 - Mr E could have purchased the other half of the Property, but this was not viable. The Scheme was therefore required to sell in order to fund the transfer request.
 - The Adjudicator noted that AJ Bell had informed Mr E that his actions could be referred to the Pensions Regulator or this Office, and whilst Mr E says considers that this forced him to sell, the Adjudicator concluded that this was AJ Bell being frank about the other member trustee's potential options. Mr E may have had little choice in the matter, but that did not equate to AJ Bell forcing him to agree to the sale and transfer.
 - The Adjudicator considered Mr E's argument that the Property had been sold to another of AJ Bell's SIPP arrangements, and the suggestion that AJ Bell had made the other clients aware of the Property. However, the Adjudicator took the view that there was no inherent issue if AJ Bell had made another client aware of the Property or that there had been any disadvantage to Mr E. The Property was sold on identical terms to an offer made the previous year and with reduced marketing costs resulting in an increased share for Mr E.
33. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr E for completeness.

Ombudsman's decision

34. Mr E has made representations relating to the conduct of certain board members of the Company and said that, in approximately February 2009, he became aware that his presence at the Company “was becoming a source of inconvenience.” Mr E has tried to find evidence of this but is currently unable to locate a relevant email.
35. Mr E has also referenced an email regarding the movement of the other member trustee’s funds into an account with a firm of solicitors without him being required to sign any documents and without regard to the tax consequences. He says he has raised this concern with all parties but received no substantive reply. He has been unable to locate this email or provide it to this Office.
36. I have considered Mr E’s representations, but I cannot see how they relate to the specific complaints that are being addressed by this determination. There has clearly been a significant breakdown in the relationship between Mr E and the other member trustee/the Company, however my role is to determine the complaints that are within my jurisdiction.
37. Mr E has provided no arguments or evidence that persuade me that Complaints 2 and 3 have been brought within our time limits, and whilst I am sympathetic to his ill health since December 2013, there is strong evidence that he had reason to know he had cause for complaint in excess of three years before his ill health. I cannot justify applying my discretion to accept the complaints where the time limit had expired before any mitigating circumstances occurred. I therefore cannot consider Complaints 2 or 3.
38. In respect of Complaint 1, again, Mr E has provided no further arguments or evidence that relate to the decision to sell the Property. Based on the evidence already provided, I agree with the Adjudicator that AJ Bell has not acted inappropriately when communicating with Mr E in relation to the sale of the Property or forced him to sell it, that was merely the reality of the situation.
39. Therefore, I do not uphold Mr E’s complaint.

Anthony Arter

Pensions Ombudsman
5 February 2019