

Ombudsman's Determination

Applicant	Mr V
Scheme	The Optimum International Pension Plan Pension Scheme (the Scheme)
Respondent	Optimum Capital

Outcome

1. Mr V's complaint is upheld and to put matters right Optimum Capital shall:-
 - Within 21 days of the date of this Determination:
 - provide Mr V with a transfer value and the paperwork it requires him to complete to take the transfer. The transfer value shall be calculated on the basis that the pension relief at source (**RAS**) claim (£9,991.93) was paid by HMRC and held in the Scheme on 1 June 2013. Simple interest at the base rate quoted by the reference banks from then to date of transfer should be added to the RAS sum.
 - Pay Mr V £1,000 for distress and inconvenience caused.
 - Within 14 days of receiving back the necessary completed paperwork, pay the transfer value to Mr V's chosen registered pension scheme.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr V's complaint is that:-
 - He was not informed by Optimum Capital at the time that he joined the Scheme that it had issues with HMRC over the payment of RAS claims.
 - Optimum Capital has failed to successfully process a claim for his RAS on the single pension contribution of £40,000 that he made in October 2012.
 - Optimum Capital has not complied with his request for transfer paperwork.

Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the key points in my Opinion. I acknowledge there were many other exchanges of information between all the parties.
5. Mr V is represented by his independent financial adviser (IFA).
6. In February 2012 Mr V completed an application to join the Scheme. At that time Mr V appears to have intended to make a 'one-off' single contribution of £30,000 on 1 March 2012. But subsequently he chose not to proceed with it. Instead, in October 2012, he made a single contribution of £40,000 (£39,967.72 after the deduction of bank charges) for a gross pension contribution of just under £50,000 (including £9991.93 RAS) for the 2012/13 tax year.
7. On several occasions from the end of January to early April 2013, Mr V chased Mr G at Optimum Capital regarding the RAS claim.
8. On 4 April 2013 Mr G emailed Mr V,

"You need to sign a new HMRC pension compliance form to be able to get you [sic] tax refund."
9. The same day Mr V requested a copy of the form so he could review it. Mr G replied that the document was being reviewed and double checked by the scheme administrator. Mr G sent the new application to Mr V on 11 April 2013, which Mr V duly signed.
10. In July 2013, Mr V requested an update on the RAS claim. Mr G said the Scheme's rules required amending to be able to finalise his tax refund with HMRC. Mr G said he would chase Optimum Capital's pension lawyer for the document.
11. After Mr V chased the matter again, Mr G notified Mr V on 17 July 2013, that the amending pension rules had now been received and that the new application would be sent to HMRC, who would be asked when the RAS would be paid.
12. The next month Mr V requested an update. Mr G replied that HMRC required further information. Mr G asked Mr V for a copy of his SWIFT transfer and/or bank statement showing the transfer to the Scheme, which Mr V duly provided.
13. Mr V further chased the matter in October and November 2013. In November 2013, he asked Mr G what was the reason for the delay and was the Scheme facing any problems that he was not aware of. Mr G replied that he would ask the scheme administrator for the reasons for the delay and said he did not think there was any problem with the Scheme.
14. To date HMRC has not accepted a RAS claim for Mr V.

15. This is a historical issue. In October 2009 and April 2010, HMRC had meetings with Optimum Capital regarding deficient RAS claims and concerns over the membership of the Plan and the Scheme.
16. In February 2014, HMRC agreed to further consider RAS claims submitted for years after 2008/09 and said if it had been aware, in April 2010, that Optimum Capital was continuing to accept member contributions it would have instructed it to stop until both the membership criteria had been resolved and an acceptable RAS application was in place.
17. In September 2017, HMRC wrote to Optimum Capital about outstanding RAS claims for the Scheme. Concerning applications that had been submitted prior to Mr V's, it said its view was that these did not meet the requirements as set out in the Registered Pension Schemes Relief at Source (RAS) Regulations (Statutory Instrument 2005/3448). Concerning the application for Mr V, it noted that it had not been verified by an external auditor (as required for RAS claims covering periods up to and inclusive of tax year 2012/13) and therefore it was invalid. It said that if Optimum Capital wished to continue with the matter it should submit a new annual claim audited by external auditors. To date this does not appear to have been done.
18. On 26 May 2016, Mr V's IFA requested transfer paperwork for Mr V. The IFA chased the matter in July and August 2016, and in January 2017. To date it has not been provided by Optimum Capital, despite Irwin Mitchell informing Mr V's IFA in July 2016 and in June 2017, that its client was happy to effect a transfer of Mr V's funds to an alternative pension scheme.

Mr V's position as presented by his IFA

19. Mr V's IFA says:-
 - Mr V's main purpose in making the pension contribution was for RAS and to invest in a broad spectrum of assets.
 - Mr V's one and only investment with the Scheme was made in November 2012, a £30,000 equity stake in Trip Atelier Ltd. A company founded by his wife. The Company was dissolved in March 2015 and £9,695 of the investment was recovered.
 - Following the 2012 investment it was Mr V's intention to invest all the remaining funds once the tax refund was received from HMRC. But he became uncomfortable about using the Scheme for further investments after Optimum Capital failed to recover the tax refund from HMRC. He started to doubt the validity of the Scheme and preferred to leave funds in cash to avoid additional issues.
 - Mr G and Optimum Capital misrepresented the Scheme to Mr V. There was no mention of the Scheme's ongoing RAS issues with HMRC when the application

forms were completed; or subsequently in various email exchanges with Mr V regarding the ongoing RAS claim.

- If Mr V had been informed at the time he would not have paid monies into the Scheme. Instead he would have paid the £40,000, for a gross pension contribution of £50,000, into his HSBC pension plan.
- To resolve the matter Mr V wants:-
 - The transfer of all his existing funds in the Scheme to his @SIPP Limited Plan
 - The reimbursement of all set up fees (£2,500) and annual fees deducted from his funds (£2,310) in the Scheme.
 - The payment of his RAS claim, which will not be paid by HMRC due to Optimum Capital using application forms for the Scheme which do not meet the requirements for a RAS claim to be made.
 - Investment growth on £40,000 plus £10,000 that would have been achieved in his HSBC plan.
 - The payment of £1,000 for distress and inconvenience caused and to meet his IFA's costs of £3,885.

Optimum Capital's position as represented by Irwin Mitchell

20. Irwin Mitchell says:-

- Mr V has submitted no evidence of misrepresentation and provided no legal basis for the assertion that Mr G is personally liable in addition to Optimum Capital.
- The predominant purpose for which Mr V contributed to the Scheme was so that he could invest in Trip Atelier Limited (a company that subsequently dissolved in March 2015), which would not have been an option had he made the contribution to his HSBC pension plan. His claim for "lost growth" seems somewhat spurious as he is merely seeking recompense in respect of his own poor investment choices.
- Optimum Capital has instructed it to undertake a review of the RAS documentation for Mr V and to try to progress a successful claim for the RAS.
- Optimum Capital accepts that it is unacceptable from Mr V's point of view that he has yet to receive the RAS he claims in respect of his contribution to the Scheme, but is hopeful that a successful claim for RAS can still be made for him as the form does not appear to be defective.

- Optimum Capital strongly refutes that it would not allow Mr V to transfer. It appears Mr V only wanted to pursue a transfer on the basis set out in his claim, accepting no responsibility for his own investment choices.
- The reimbursement of the set-up fee and annual charges would put Mr V in a position of betterment. Further had the RAS been applied to the Scheme then the annual charges may well have been greater than those actually levied.

Adjudicator's Opinion

21. Mr V's complaint was considered by one of our Adjudicators who concluded that further action was required by Optimum Capital. The Adjudicator's findings are summarised briefly below:-

- Optimum Capital should have informed Mr V of the RAS issue. However, it appeared that Mr V's investment in Trip Atelier Ltd could not have been made via his HSBC pension plan. While Mr V may have been able to make that investment via another scheme the subsequent return on the investment would have been the same.
- As Mr V chose how his contribution was invested Optimum Capital is not liable for the performance of the investment.
- Optimum Capital's deficient RAS claim amounts to maladministration.
- Mr V's financial loss resulting from this is what £9,991.93 would now be worth if it had been held in the Scheme say two months after the end of tax year 2012/13, on the basis of the estimated time that it would have taken HMRC to pay it into the Scheme if the original RAS claim had not been deficient.
- Mr V has a statutory right, under the Pension Schemes Act 1993, to take a cash equivalent to another registered pension scheme. Optimum Capital's failure to provide transfer paperwork amounts to maladministration.
- Concerning Mr V's claim for IFA costs of £3,885. It was Mr V's decision to engage his IFA in this matter. He could equally have opted to use the Pensions Advisory Service, which is free. Optimum Capital is not liable to cover this sum.
- The whole matter has caused Mr V significant distress and inconvenience. Optimum Capital should pay Mr V £1,000 in respect of this.

22. Mr V accepted the Opinion. No comments have been submitted by Irwin Mitchell LLP. I agree with the Adjudicator's Opinion.

Ombudsman's decision

23. For completeness I consider it necessary that the matter be formally determined.

24. I uphold Mr V's complaint.

Directions

25. To put matters right Optimum Capital shall:-

- Within 21 days of the date of the Determination:
 - provide Mr V with a transfer value and the paperwork it requires him to complete to take the transfer. The transfer value shall be calculated on the basis that the pension relief at source (**RAS**) claim (£9,991.93) had been paid by HMRC and was held in the Scheme on 1 June 2013. Simple interest at the base rate quoted by the reference banks from then to date of transfer should be added to the RAS sum.
 - Pay Mr V £1,000 for the significant distress and inconvenience that he has suffered.
- Within 14 days of receiving the necessary completed paperwork, pay the transfer value to Mr V's chosen registered pension scheme.

Anthony Arter

Pensions Ombudsman
5 June 2018