

Ombudsman's Determination

Applicant	Mr T
Scheme	The Carey Pension Scheme
Respondents	Carey Pensions UK LLP (Carey Pensions)

Outcome

1. I do not uphold Mr T's complaint and no further action is required by Carey Pensions.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr T has complained that Carey Pensions provided incorrect information in connection with a court case. He says the Court was led to believe that his pension scheme could be sold and realise £7,600.

Background information, including submissions from the parties

Background

4. The Carey Pension Scheme is a self-invested personal pension plan (**SIPP**) administered by Carey Pensions. Mr T is a member.
5. On 29 April 2016, Carey Pensions wrote to a financial investigator at Blackpool Police Station in response to a request for information about Mr T's pension scheme. It provided the following information:
 - The current scheme fund value was £73,538.53.
 - There was £100 in the scheme bank account.
 - £85,000 had been invested in Australian farmland which was tied up for eight years. This was valued at £42,500 because it was illiquid.
 - £61,500 had been invested in storage units which could be sold on the open market. An approximate value of £30,750 had been placed on this investment because there had been few successful sales. Units had been sold at auction

for a third of the original purchase price and one had been sold through an estate agent at 50% of the original purchase price.

- Mr T was below the minimum age to access his pension. Access to his pension would attract heavy tax penalties. If it was to service a request for access before age 55, the transaction would be considered an unauthorised payment which it would be obliged to report to HMRC. Tax charges amounting to 70% of the fund value would be triggered. It was not aware if the charges applied in the case of a confiscation order.

6. The financial investigator completed a "Schedule of available or realisable assets" for the Court. In the section relating to Mr T's pension scheme, the investigator entered the figure of £7,600. In a "Statement of information relevant in accordance with section 16(3) of the Proceeds of Crime Act 2002", the investigator said Carey Pensions had confirmed it held Mr T's pension scheme. She said it had provided a comprehensive summary of investments, including monies in Australia which were currently irretrievable. The investigator noted Mr T's other investment was in storage units with an approximate realisable value of between £20,000 and £30,000 because of the difficulties of selling them. She said Mr T was below the "minimum age" and there would be tax penalties and other charges for early redemption amounting to 70% of the realisable value of the units. The investigator said she estimated the realisable value of Mr T's pension scheme to be £25,000 less 70% in fees and charges, leaving approximately £7,500. To this, she added the £100 held in the pension scheme bank account.
7. A confiscation order for the sum of £7,628.23 was made against Mr T on 7 June 2016.
8. Carey Pensions wrote to Mr T, on 20 June 2016, in response to his request to sell his storage units. It included a warning in its letter that Mr T was below the minimum age to take his pension benefits and the transaction would be classed as an unauthorised payment and subject to a 70% tax charge. Carey Pensions said Mr T could sell his units through an estate agent or at auction or it could instruct the storage unit company to sell them. It explained the storage unit company would deduct 5% of the sale price to cover marketing costs, solicitors' fees would be around £400 plus VAT, and its property sale fee was £500 plus VAT. Carey Pensions said it was finding that units were selling for around 20-40% of the initial purchase price at auction. It said, if Mr T went to auction, a reserve price of around £12,300 - £24,600 would be placed on the units. It also said there would be auction or estate agency fees, solicitors' fees and its own fees to pay.
9. In response to an instruction from Mr T, Carey Pensions wrote to him, on 29 June 2016, confirming it had asked the storage unit company to market his units for sale. It said this could take some time and, as Mr T was under tight time constraints, it reminded him he could auction his units. Carey Pensions said it had asked an auction company which had sold storage units for other members to provide its terms and conditions and a guide price for Mr T's units. The guide price quoted was between

£5,000 and £10,000, with a reserve of £5,000. Carey Pensions went on to say there was no guarantee that Mr T's units would sell at auction or that they would realise the £6,000 he was aiming for. It also reminded Mr T that there would be fees to pay, including its own fee of £500 plus VAT. It also said it was not permitted to provide Mr T with any advice on the sale of his units or any other matter relating to his SIPP.

10. Carey Pensions also referred to the unauthorised payment charge. It provided an example of how the charge and fees might apply. It said, if Mr T were to realise £5,000 for his units, he would receive £1,080 (£5,000 less fees of £2,400 and a 55% tax charge); if he were to realise £10,000, he would receive £3,420 (£10,000 less £2,400 in fees and a 55% tax charge).
11. Mr T's units were sold at auction, in August 2016, for £5,000. Carey Pensions wrote to him, on 19 August 2016, informing him that, once fees had been deducted, the amount on his account would be £2,612.73. It said its fees for making payment to Mr T would be £570 (including VAT). Carey Pensions said the amount which would be sent to Mr T would be £919.23 after deduction of the tax charge.

Mr T's position

12. The key points from Mr T's submissions are summarised below:-
 - Carey Pensions gave advice to the Court which led it to believe his pension could be sold and realise £7,600. Acting on this advice, the Court made an order requiring him to sell his pension.
 - It was only after the order was made that Carey Pensions started to warn him that £7,600 might not be achieved.
 - Carey Pensions took more in the way of fees than was returned to him. It should either refund its fees or make up the difference between the actual return and its predicted return (£7,600).
 - At the time Carey Pensions was corresponding with the Court, he was in prison and it was difficult for him to contact anyone. He had no access to any advice. His wife tried to speak to his solicitors but they were unhelpful.
 - He had limited time in which to pay the Court and faced a penalty of additional time in prison if he failed to do so. He had to borrow the money from a family member and has only been able to repay £1,000 so far.
 - He is now worried about the rest of his investment with Carey Pensions and does not understand the valuation sent to him.
13. Having been provided with an opinion by one of our Adjudicators, Mr T made the following further points:-
 - Carey Pensions took £63,000 of his money and turned it into £9,000. He is fully aware that financial institutions cover themselves by saying investments

can go down as well as up. However, the level at which his investment was reduced is beyond anything a reasonable person would consider normal or acceptable.

Carey Pensions' position

14. In its final response to Mr T's complaint and subsequent correspondence, Carey Pensions made the following points:-

- Its fees were applied to Mr T's pension scheme in accordance with the Terms and Conditions, and Fee Schedule agreed between them. Mr T had signed this to confirm he had read it and had agreed to it in his SIPP application form.
- It had disclosed and explained its fees to Mr T at regular intervals since his SIPP had been established.
- Mr T had been sent a copy of the Terms and Conditions, and a SIPP Key Features document in July 2013.
- It had provided a breakdown of its fees on receipt of his transfer in 2011.
- Mr T had signed a Member Declaration to confirm he had read and fully understood what was involved in making investments, including the associated costs.
- It had provided assistance in relation to his instruction to sell his storage units. It had made him aware of the fees and tax charge associated with this transaction.
- It had reduced its annual administration fee to £300 plus VAT from 2015 and its annual property administration fee of £180 had not been deducted since 2014 as a gesture of goodwill.
- It considered its fees to be reasonable and that it should be reimbursed for the work it carried out.
- It was not permitted to provide advice and had not provided any advice in connection with the sale of Mr T's storage units. It is an execution only SIPP provider.
- As requested, it had provided options for the early sale of Mr T's storage units before his 55th birthday. It had made it clear there would be onerous tax implications.
- Mr T's choices were his own and out of its control. The outcome of the auction was also out of its hands.

Adjudicator's Opinion

15. Mr T's complaint was considered by one of our Adjudicators who concluded that no further was required by Carey Pensions. The Adjudicator's findings are summarised briefly below:-

- It was unfortunate that Mr T found himself in the position of having to realise assets from his SIPP before his 55th birthday. As a result of this, his funds were subject to a tax charge of 55%. This charge, together with auctioneer's fees, solicitors' fees and administration fees charged by Carey Pensions reduced his £5,000 sale return to £919.23.
- Mr T is of the view that his situation stems from information provided to the Court by Carey Pensions. He believes Carey Pensions misled the Court into thinking he would be able to realise more from the sale of pension scheme assets than he would actually be able to. The key document is Carey Pensions' letter of 29 April 2016. In this letter, Carey Pensions valued Mr T's storage units at £30,750. This appears to have been on the basis that 50% of the original sale price had been achieved by another member selling through an estate agent. It did also say that units had been sold at auction for a third of the original purchase price. The financial investigator calculated a sum of £7,600 from the information provided by Carey Pensions; this figure was not supplied directly by Carey Pensions.
- In order to uphold Mr T's complaint, it would have to be possible to find that there had been maladministration on the part of Carey Pensions which had resulted in injustice to him. No such maladministration on the part of Carey Pensions was identified. The information provided for the Court was not incorrect inasmuch as the valuation of Mr T's storage units was based on past experience of selling such units. This was not an unreasonable approach to take. However, past experience is no guarantee of future return. Carey Pensions had made it clear that the units were likely to sell at very much less than the original purchase price and that there would be an onerous tax charge. This information was correct and was as much as Carey Pensions were in a position to provide at that time.
- The fact that Mr T's units sold for less than the value suggested by Carey Pensions is not evidence that its figures were incorrect. It is simply the case that the units failed to achieve the hoped for value at auction which is an inherent risk in such a transaction. Mr T's point that he was forced to sell these units was accepted but this was not of Carey Pensions' making. The evidence did not support a finding of maladministration on the part of Carey Pensions.

16. Mr T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr T provided his 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 Mr T for completeness.

Ombudsman's decision

17. Mr T takes the view that it was carelessness on the part of Carey Pensions which resulted in the reduction in the value of his investments. The reason Mr T did not realise as much as he had hoped from the sale of his storage units was because of the timing of the sale. He was selling the units at a time when they were not realising their purchase value and he incurred an unauthorised payment charge because he was below the minimum age to access his pension. This was not of Carey Pensions' doing.
18. Mr T found himself in the position of having to sell his units because he required the funds to pay the Court. This situation was of his own making and nothing to do with Carey Pensions.
19. Carey Pensions was required to apply the unauthorised payments charge, and to deduct the auctioneer's and solicitor's fees. It was also entitled to deduct a fee for the work it carried out for Mr T.
20. Therefore, I do not uphold Mr T's complaint.

Anthony Arter

Pensions Ombudsman

9 June 2017