

Ombudsman's Determination

Applicant	Mr N
Scheme	FP2 Retirement Plan (the Plan)
Respondents	Fast Pensions Limited (FP), FP Scheme Trustees Limited (the Trustee)

Outcome

1. Mr N's complaint is upheld, and to put matters right FP should answer Mr N's queries about the Plan and assist him in exercising any statutory right to a transfer out of the Plan to a named pension arrangement that is willing to accept it, if he so wishes. FP should also pay Mr N £2,500 to reflect the significant distress and inconvenience caused to him by its maladministration.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N complains that FP and the Trustee have failed to respond to his requests for information about the Plan and whether he can transfer out, and have not sent him a benefit statement since 2015.

Background information, including submissions from the parties

4. In 2013 Mr N required a loan. He obtained one from Blu Funding. As part of the arrangement Mr N agreed that a transfer payment of over £22,500 should be made to the Plan from Mr N's previous pension arrangement. FP is the Plan provider/administrator and the Trustee is responsible for the trusteeship of the Plan. It appears that the two companies are connected. There is limited documentation available about the exact nature of the Plan, but from FP's website it appears that it was an occupational pension scheme.
5. In 2015, as he was nearing age 55, Mr N asked FP if he could take a tax-free cash sum (TFCS) from the Plan. FP replied, on 8 February 2015, that he could not take a TFCS until age 65 because the Plan had fixed term investments in order to target annual returns of 4%, and those investments could not be disinvested within the fixed term. FP also said that Mr N's financial adviser would have explained these

restrictions when Mr N joined the Plan. Mr N later said that he did not have a financial adviser at that time.

6. On 28 May 2015 FP sent Mr N an annual benefit statement as at 31 March 2015. He did not receive any subsequent benefit statements.
7. In early 2016 Mr N asked FP for a transfer value quotation. FP replied on 26 February 2016 that his pension fund value as at 31 January 2016 was £25,164, but there was an early exit penalty applicable until 3 April 2023; this meant that the current transfer value available was £17,111.
8. In June 2016 HM Revenue & Customs (HMRC) wrote to Mr N to ask if he had taken any money out of his pension schemes. Mr N replied that he had not, but after further correspondence with HMRC he became worried that the loan he had received from Blu Funding had come out of his pension schemes.
9. Mr N said that he later tried to contact FP, by email and telephone, to obtain further information about the Plan and his investment in it, but FP did not respond to his emails and the telephone number shown on FP's website was not answered.
10. In March 2017 Mr N submitted a complaint to FP under the Plan's internal dispute resolution procedure (IDRP). FP acknowledged his complaint and said that it would respond within eight weeks.
11. In July 2017 we exercised our statutory discretion to investigate Mr N's complaint even though the IDRP had not been completed, because FP had failed to issue a response to Mr N within the designated period of eight weeks.
12. We then asked FP to provide a formal response, together with a copy of the Plan's trust deed and rules and any agreement signed by Mr N regarding early exit penalties and fixed investment terms. FP did not provide a proper response by the required deadline. When FP disputed that Mr N had submitted his IDRP application form we explained that we had exercised discretion to investigate his complaint.

Adjudicator's Opinion

13. Mr N's complaint was considered by one of our Adjudicators who concluded that further action was required by FP. The Adjudicator's findings are summarised briefly below:-
 - Mr N should have been sent an annual benefit statement in 2016 (and also in 2017). Although FP's letter of 26 February 2016 quoted his current fund value it was not an annual benefit statement. It was unreasonable for FP and the Trustee not to issue annual benefit statements. Furthermore, over several months FP had failed to provide an adequate telephone, email and internet communication service for Mr N, and to respond to his queries. These failures constituted maladministration, which had caused Mr N significant distress.

- We had investigated and determined similar cases involving FP and the Trustee. Those determinations are available on our website www.pensions-ombudsman.org.uk. We upheld those complaints, and there were no significant differences in Mr N's complaint which would warrant a different outcome here.
 - A formal request from Mr N to transfer out of the Plan had not been disclosed, but if he wished to do so he could not be deprived of any statutory right to transfer under section 94 of the Pension Schemes Act 1993 (**the Act**).
 - To qualify as an application for the purposes of the six months' time limit in section 99 of the Act, such a request would need to require the Trustee to use the transfer value to acquire credits in an occupational pension scheme, the trustees or managers of which are able and willing to accept payment. If Mr N made a valid request in this way, the Trustee would be obliged to deal with it in accordance with his statutory rights. Whether such a transfer would be subject to an early withdrawal penalty, and whether an "in specie" transfer (instead of a cash transfer) would be the only available option, would depend on the trust deed and rules governing the Plan and on the terms and conditions that Mr N had signed, which had not been disclosed.
 - Therefore, this complaint should be upheld because FP and the Trustee had failed to respond in a timely manner to Mr N's requests for information regarding the Plan, and had failed to issue annual benefit statements. This constituted maladministration which had caused Mr N significant distress, for which FP should pay him an award of £2,000.
14. Mr N accepted the Adjudicator's Opinion, but asked if the proposed compensation amount could be increased from £2,000 to £4,000, as HMRC had sent him a tax demand for £2,235 on the grounds that the loan he received was an unauthorised payment from the Plan.
15. FP and the Trustee did not accept the Adjudicator's Opinion and provided several comments on it. They said that if the IDRPs had been completed before the case was referred to me, it would have been clear that Mr N had signed up to a ten year fixed term for investments, with a penalty for early redemption, and he was aware that the Plan rules gave the Trustee a discretion whether or not to make any transfer payment; the annual statement for 2016 was sent to Mr N within a reasonable timeframe (on 15 September 2016); although the service that they provided in 2016 was poor, the service they provided from 2017 was satisfactory; compensation of £750 instead of £2,000 should suffice.
16. The complaint was then passed to me to consider. Mr N's and FP's comments 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 N and FP for completeness.

Ombudsman's decision

17. With regard to the objections raised by FP and the Trustee, Mr N sent the IDR application forms to FP in March 2017; this was acknowledged by an email from Mr Porter of FP on 28 March 2017. I consider that there should have been sufficient time for FP and the Trustee to complete the IDR before the Adjudicator's Opinion was issued on 18 August 2017.
18. FP's letter of 26 February 2016 to Mr N, referred to a time-based early exit penalty applicable until 2023, but it did not say (as FP and the Trustee have recently mentioned) that the Trustee had a discretion whether or not to make a transfer payment. In the absence of such a restriction Mr N was entitled to assume that a transfer (subject to an early exit penalty) was available to him on request. FP has referred to restrictions on transfers contained in the Plan rules, but these have not been disclosed and there is no evidence that a copy was given to Mr N when he agreed to join the Plan. In any event, FP and the Trustee have not produced any evidence to show why the relevant overriding legislation (s.94 of the Pension Schemes Act 1993, right to cash equivalent) should be restricted by contract terms.
19. FP said that the annual statement for 2016 was sent to Mr N within a reasonable time frame. However, Mr N's application form (which we accepted on 15 March 2017) said that he had not received it, so there are opposing views on this matter. However, I do not consider that this point materially affects the outcome of this complaint.
20. FP has suggested that the proposed compensation payment for its poor service should be reduced to £750. Mr N, on the other hand, has suggested that the amount should be increased from £2,000 to £4,000. The sum of £2,000 that was proposed by the Adjudicator was intended to recognise the very significant distress and inconvenience that Mr N has suffered due to the conduct of FP and the Trustee. It is consistent with the amount that I have directed to be paid in some other cases recently. It is not an amount designed to reflect Mr N's tax liability: Mr N's tax position is a matter for him to settle with HMRC. However, I have reconsidered the circumstances of this case and of similar ones and have decided to increase the award for the unnecessary distress and inconvenience suffered to £2,500.
21. Therefore, I uphold Mr N's complaint.

Directions

22. To put matters right, I direct that within 28 days of the date of this Determination:
 - the Trustee shall provide a full answer to Mr N's queries about the Plan, and clarify his right to access his pension funds and any penalties that apply; if Mr N seeks to exercise a valid statutory right to transfer out of the Plan then, within 28 days of Mr N having requested a transfer to a named pension arrangement that is willing to accept it, the Trustee shall pay the transfer value to that arrangement; and

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- FP shall pay Mr N £2,500 to reflect the significant distress and inconvenience caused to him by its maladministration.

Anthony Arter

Pensions Ombudsman
28 November 2017