

## Ombudsman's Determination

Applicant	Mr L
Scheme	Dartford 1967 Limited SSAS ( <b>the Scheme</b> )
Respondent	Bespoke Pension Services Ltd ( <b>Bespoke</b> )

### Complaint Summary

Mr L has complained about Bespoke's involvement in the establishment of the Scheme and an investment made by the Scheme into White Sands Hotel & Spa 198/2 Limited (**the Investment**) through The Resort Group PLC (**The Resort Group**).

### Summary of the Ombudsman's Determination and reasons

The complaint is not upheld against Bespoke because it carried out its contractual duties in relation to the establishment of the Scheme and the Investment.

## Detailed Determination

### Material facts

1. At some time in 2014, Mr L met with an individual of First Review Pension Services (**First Review**), an unregulated pension introducer, now dissolved. The Investment was presented to him, and he was persuaded to transfer his existing pension provision into the Scheme to facilitate the Investment.
2. First Review confirmed by an undated letter that a pension transfer application form would be forwarded to Bespoke which would undertake an initial check and then forward the proposal to HMRC to undertake a “12 point check”. This letter went on to say that once the transfer was complete an independent financial adviser, Sequence Financial Management, would contact Mr L to advise on the “cash management program”.
3. On 28 July 2014, Dartford 1967 Limited was incorporated with Mr L as its Director.
4. On 5 November 2014, Mr L provided authorisation to the Scheme’s bank (despite the Scheme not yet having been established) that Pension Practitioner.com could deduct charges from the Scheme bank account.
5. On 24 November 2014, the Trust Deed for the Scheme was signed by Mr L and witnessed by a First Review ‘consultant’. Dartford 1967 Limited was named as the Principal Employer. The Deed was drafted on Bespoke headed paper. The Investment Powers are contained in the Deed, Clause 8, with relevant sections set out in the Appendix.
6. On the same day, an agreement was signed between Bespoke and Mr L as Trustee of the Scheme (**the Agreement**). The Agreement was for Bespoke to provide administration services to the Scheme on behalf of the Trustee, the services are detailed in Schedule 1 of the Agreement and include:
  - “5. Administering and reconciling all Scheme investment transactions and all payments to and from the Scheme.
  - ...
  7. Arranging for the safe keeping of appropriate Scheme records including records of members, benefits payable, contributions paid, investments bought and sold and documents of title or original legal documents.
  - ...
  21. Ensuring the Trustee obtains proper advice as required by s.36 of the Pensions Act 1995.”
7. Proper advice is defined in Section 36 of the Pensions Act 1995 (**Section 36**) as:
  - “(6) For the purposes of this section “proper advice” means—

(a) if the giving of the advice constitutes the carrying on, in the United Kingdom, of a regulated activity (within the meaning of the Financial Services and Markets Act 2000), advice given by a person who may give it without contravening the prohibition imposed by section 19 of that Act (prohibition on carrying on regulated activities unless authorised or exempt);

(b) in any other case, the advice of a person who is reasonably believed by the trustees to be qualified by his ability in and practical experience of financial matters and to have the appropriate knowledge and experience of the management of the investments of trust schemes.”

8. On 11 December 2014, Mr L signed a Pension Scheme Account Opening Request with Metro Bank. The Scheme administrator was recorded as Bespoke. The mandate states:

“Any one Trustee and one Bespoke Pension Services Limited signatory as per the Bespoke Pension Services Limited signatory list. I/We hereby authorise Metro Bank Plc (The Bank) to deduct from my/our pension scheme bank account such management charges/fees and adviser charges/fees as may be notified from time to time to the bank under the sole instruction of two authorised signatories of Bespoke Pension Services Limited.”
9. On 12 December 2014, Mr L signed an undated report from Broadwood Assets Ltd (**Broadwood**), an unregulated business specialising in advice in relation to investments held within a SSAS. The advice was provided to Mr L in his capacity as a Trustee. It records that this advice met the requirement for appropriate investment advice to be considered under Section 36 of the Pensions Act 1995. The report discussed the Investment and listed the typical risks associated with such unregulated property investments. It described the Investment as suitable for adventurous investors with an otherwise diverse portfolio. Bespoke retained a copy of this advice.
10. On 22 April 2015, Mr L, as Trustee of the Scheme, signed a payment instruction for £57,285 to be invested in the Investment. Mr L also signed an instruction to invest, which was addressed to Bespoke. This stated that he wished to invest a total of £70,289.06 in the Investment and requested the consent of Bespoke to proceed. This letter also confirmed that Broadwood was considered to be an appropriately qualified adviser for the purposes of Section 36 of the 1995 Act.
11. On 23 April 2015, an “Agreement For Sale of Membership of a Company” (**the Membership Agreement**) became effective. This had been signed by Mr L on 17 December 2014. The parties to the agreement were White Sands Beach Hotel & Spa, S.A, Mr L (as Trustee of the Scheme) and The Resort Group.
12. The Agreement involved the Scheme purchasing membership of “White Sands Hotel & Spa 198/2 Limited” for £68,474.15. The Company is a company limited by

guarantee, holding assets on trust for members and does not issue shares. The Company in turn would purchase “the Property”, Hotel Suite 460 of the White Sands Hotel & Spa in Cape Verde. As of September 2020, the hotel remains under development.

13. Of note is clause 3.3, which states: -

“If for any reason beyond the control of the Purchaser, the subsequent pension transfers required to fulfil the full deposit due are not made, and cannot be made, but where part payments have been received, then the Founder Member agrees to return these funds to the Purchaser. The refund of the funds referred to in the present clause shall only be affected with the unequivocal statement by the trustee of each pension scheme confirming the impossibility of the payments due being made.”

14. On 11 May 2016, The Resort Group wrote to Mr L requesting that he complete a due diligence questionnaire and provide evidence of his identity. This was to enable it to issue a Fractional Ownership Certificate for the Investment.

15. On 24 February 2017, The Resort Group wrote to Mr L confirming the Scheme’s investment. It stated that the Scheme would receive 3.5% per annum on the Investment until the property was finalised. It confirmed it had paid £3,675.76 to date.

16. On 15 June 2017, Mr L signed a revocation agreement requesting the return of the funds. This said: -

“The First Party [White Sands Beach Hotel & Spa] refund Second Party [Mr L as Trustee of the Scheme] of the funds mentioned in clause 3.1 above, in the amount of £57,285.00 (Sterling Pounds), plus an additional £4,050.00 (Sterling Pounds) to cover your Bespoke Pension fees, to the relevant scheme within 6 months of signing this agreement.”

17. On 18 October 2017, Bespoke wrote to a regulated independent financial adviser, which was now acting for Mr L. It confirmed the necessary actions for Mr L to transfer away from the Scheme.

18. Over the course of 2018 there was communication between Bespoke and The Resort Group as the former had attempted to have the funds returned. It appears that various other investors have been given refunds over time, however the Scheme to date has received none of its capital investment back.

19. Mr L has provided correspondence showing that there had been a proposed change of bank for the Scheme and a change of administrator. Bespoke has since confirmed that the bank account and administration arrangements for the Scheme will not be changing because Mr L intends to transfer once the investment has been disinvested. Bespoke say that Mr L received this correspondence in error and has advised him to disregard it.

20. More recently, I understand that Mr L has refused to authorise Bespoke's fees be paid out of the Scheme. Mr L says that Bespoke has failed to carry out its duties in respect of Dartford 1967 Limited's annual returns and this has put him at risk of fines from Companies House.

### **Summary of Mr L's position**

21. Mr L has said, in summary:-

- He considers that Bespoke failed to ensure he received independent advice or that he understood the risks of the arrangement that he entered into.
- He also considers that Bespoke had accepted business from an unregulated party, and arranged the Scheme with the sole purpose of transferring his pension funds into the unregulated investment.
- Bespoke had been regularly facilitating transfers into SSASs and then into unregulated investments, which its introducer had promoted as "approved" by HMRC. Bespoke should have been taking care to protect individuals such as him from entering into such arrangements, but instead were complicit.
- Bespoke was aware of the pressurised sales being made by its introducer, First Review, and was complicit with the introducer for those inappropriate sales techniques.
- He signed Broadwood's document without ever having read it. Broadwood are untrustworthy, unregulated and were complicit in the inappropriate arrangement of the Scheme and the Investment.
- Bespoke was aware of Broadwood's status and are in breach of Section 36 of the Pensions Act 1995 for not ensuring proper advice was received. Additionally, it failed to warn against the Investment.
- Bespoke has facilitated this scam and now benefits from it by taking fees from the Scheme. Sums received from the Investment may be being made from other individuals' pension funds and this may be a Ponzi arrangement. Mr L is not a signatory to the Scheme bank account and therefore has no control over the incomings and outgoings.
- The fact that the funds have not yet been returned to the Scheme serves to demonstrate how unsuitable the Investment is for a pension scheme.
- Bespoke are struggling to arrange the return of both Mr L and others' funds.
- Bespoke has taken a name similar to a reputable SSAS provider to deliberately hoodwink clients.
- Bespoke has been complicit with investment scams as described in various forms of media.

- Mr L has stressed that the Scheme and Investment were promoted to him by First Review on the basis that:

“(Broadwood) assets ltd had undertaken consultation with HMRC and it was approved investment on a twelve point vigorous code used by HMRC.” (sic)

- Mr L has highlighted that he has not signed any documents confirming his fractional ownership of any assets in relation to the Investment, and he has nothing to prove ownership. He questions what The Resort Group needs to liquidate in order to pay back his investment.
- Mr L considers that Bespoke should be compelled to prove that other investors have received a refund since he submitted the revocation agreement; a position that is implied in the correspondence between Bespoke and The Resort Group. He doubts that these refunds have been made and suggests they have been fabricated.
- Mr L has pointed to the directors of the Investment and suggests that had Bespoke conducted appropriate due diligence on the Investment it should not have allowed it to proceed because of the risk of unauthorised payments being made or that the Directors might mishandle the funds.
- Mr L has also raised concerns about the Investment being made through Gibraltar. He argues that given its status as a tax haven, with opaque corporate structures, Bespoke should not have allowed the Investment to be made.

### **Summary of Bespoke’s position**

22. Bespoke has said, in summary:-

- It did not provide advice or promote the suitability of the Scheme or the Investment to Mr L.
- It did not make reference to a 12 point checking system as suggested by Mr L or state that the Investment was approved by HMRC.
- It did not pressure Mr L to transfer his pension or invest in The Resort Group and it is not involved in any fraudulent activity or scam.
- As required by the Agreement, Bespoke had ensured Mr L received proper advice from Broadwood and Mr L signed to accept that advice.
- The nature of the Investment, as in a company limited by guarantee, meant that Regulated advice was not required. In this respect Bespoke did not fail in its contractual duty to Mr L.
- Mr L accepted advice from Broadwood, which itself invited him to seek regulated financial and legal advice. Mr L did not seek further advice.

- Bespoke is trying its best to recover the capital investment on behalf of the Scheme.
- Mr L has completed the revocation agreement, but the disinvestment process is solely the responsibility of The Resort Group and Bespoke has no influence over the timing or amount of the disinvestment.
- Until recently, the Scheme has received the contractual returns from the investment.
- Mr L had been contacted about a change of administrator and bank account in error. He should disregard that correspondence. The Scheme's bank account provider did however intend to close the account at some point in the future.

## Conclusions

23. Mr L believes he has been cheated of his life savings and that the funds invested in the Investment are unrecoverable. Before I address the complaint, if the Investment has been lost, I am very sympathetic to Mr L, and I have no doubt the uncertainty of this matter will have caused him very significant distress. While I am sympathetic, this complaint can only look at the actions of Bespoke, and whether it has acted correctly and in accordance with its obligations.
24. Broadly, the questions that I consider relevant to determining the case are:-
- As the Scheme's administrator; what obligations did Bespoke have toward Mr L; did its role extend beyond those of Administrator; and, did it have any fiduciary duty or duty of care towards Mr L in respect of the suitability of the Investment?
  - To what extent was Bespoke required to ensure Mr L understood the Scheme and the Investment to allow him to make an informed judgment on whether Broadwood's advice was adequate in the context of Section 36 of the Pension Schemes Act 1995?
25. On the first question, in addition to its responsibilities as the Scheme's administrator, under Section 270 of the Finance Act 2004, there were other obligations that it took on as set out in Schedule 1 of the Admission Agreement and the Trust Deed. The issue is whether those obligations extended to advising Mr L of the suitability of the Investment.
26. Having considered the Agreement and obligations set out in the Trust Deed, I find that Bespoke's role did not extend to providing Mr L with investment advice or that there was a requirement for it to comment on the suitability of the Investment. Regarding the Investment, Bespoke's role was limited to using all reasonable endeavours to ensure that Mr L had obtained proper advice and that the advice met the requirements set out in Section 8.3 of the Trust Deed (see the Appendix below). Within this framework of obligations, Bespoke had no advisory capacity in respect of the Investment itself.

27. I have also considered whether Bespoke had any fiduciary duty or broader assumed duty of care toward Mr L that required it to ensure the advice was suitable. But there is no justification for applying these standards, which are outside of Bespoke's contractual obligations, and there is no fiduciary relationship between Bespoke and Mr L to consider.
28. To meet the criteria of 'proper advice' for the purposes of the Pensions Act 1995, in respect of the intended investment it must have been:

“..., the advice of a person who is reasonably believed by the trustees to be qualified by his ability in and practical experience of financial matters and to have the appropriate knowledge and experience of the management of the investments of trust schemes.”
29. To ensure Mr L had received 'proper advice' and to the extent that its obligation to “use all reasonable endeavours” was met, I consider Bespoke was required to have reviewed the advice Mr L had received and to have been reassured that the definition of 'proper advice' was met. Having reviewed Broadwood's advice, which Bespoke appears to have received a copy of at the time, and which carries Mr L's signature confirming that he had read and understood the advice, I am satisfied that Bespoke could reasonably conclude that 'proper advice' was received.
30. I say this particularly as the advice specifically outlines Broadwood's experience in investment matters, suggesting that it had considerable expertise and knowledge. This is supported by the fact that searches of publicly available registers show that the Director of Broadwood had significant previous experience as a Director of a separate pension administration company.
31. The nature of the Investment, a company limited by guarantee, means that Mr L was not purchasing shares and that the advice need not have been regulated, an additional requirement of Section 36 6(a). As such, Broadwood's unregulated advice was sufficient for these circumstances.
32. Turning to the specific content of the advice, while it is broad in its comments on the Investment, the advice is clear in its warnings and addresses the significant risks, highlighting that it was appropriate for an adventurous investor.
33. On the basis that Bespoke received a copy of Broadwood's advice and reviewed its contents I find that it was reasonable to conclude that Mr L had received 'proper advice' and that the obligation placed on it by the Trust Deed and the Agreement was discharged.
34. I do note, however, that Broadwood has been linked to a number of other complaints of a similar nature against other SSAS providers which allowed lay member trustees to invest in TRG. I am not aware of how many SSAS' Bespoke allowed to invest in TRG on the basis of Broadwood's advice, but the fact that Broadwood was closely involved in many such arrangements is indicative of a business model driven on referring clients to TRG. Given the outcomes for investors due to Broadwood's advice



I would suggest that Bespoke is weary of similar unregulated parties such as this in future.

35. It seems likely to me that a SSAS was an unsuitable pension vehicle for Mr L to have transferred into. There seems little doubt that he did not appreciate the responsibilities he would be taking on as a Trustee or the complexities of the Scheme. I am of the view that the use of a SSAS in these circumstances was an attempt to circumvent possibly more stringent requirements placed on other types of pension scheme in terms of investment responsibilities and possible regulatory oversight. This façade extends to the fact that a non-trading company was established to facilitate the Scheme and the Investment. This expense and complication would not have been necessary in a mainstream pension arrangement.
36. However, while it may not have been a suitable or appropriate arrangement for Mr L, there was no obligation on Bespoke to have advised him on the appropriateness of a SSAS for his circumstances or decline his business. It was entitled to accept his instruction however inadvisable it may have been.
37. Mr L has referred to recent legal developments in respect of SIPP's and questioned the applicability of those arguments to these circumstances. However, SSAS' and SIPP's are distinct and subject to different regulatory regimes.
38. Mr L has pointed to the directors of the Investment and says that had Bespoke conducted appropriate due diligence on the Investment it should not have allowed it because of the risk of unauthorised payments being made. He suggests that those directors might mishandle the funds. While that was certainly a risk, that would not give rise to an unauthorised payment as the funds would be within the corporate identity of that company, not from a pension scheme. Notwithstanding that, it was for Broadwood to highlight any such risks to Mr L, not Bespoke. As I have said, Bespoke had no remit to comment on the suitability of the Investment and in any event Broadwood had disclosed risks in the suitability report and Mr L continued regardless.
39. Mr L has stressed that he agreed to the Scheme and Investment on the basis of First Review's statement that:

“(Broadwood) assets ltd had undertaken consultation with HMRC and it was approved investment on a twelve point vigorous code used by HMRC.” (sic)
40. While it may be that First Review promoted the Scheme to Mr L on the basis of the above statement, there is no documentary evidence that Bespoke was aware of this apparently deliberate misrepresentation. Bespoke is not responsible for the representations of First Review. While First Review was not regulated, Bespoke was not required to accept business only from regulated financial advisers.
41. Mr L has argued that he did not receive genuine advice from Broadwood and it was just the undated report, which he was not given the opportunity to properly consider. However, Mr L signed to acknowledge that the report had been considered and that Broadwood met the necessary criteria to provide 'proper advice'. If Mr L was not

given the opportunity to properly consider the advice, I consider it would have been responsible of him as the Scheme's Trustee, and the beneficiary of the investment, to have demanded the opportunity to do so.

42. I appreciate there may have been pressure to sign quickly, but I have not seen any evidence that Bespoke was part of that process. Mr L informed Bespoke that he was satisfied that the advice met the criteria, and in turn it acted on his instruction. I cannot attribute the consequences of the advice to Bespoke in these circumstances.
43. Mr L has said that he has not signed any documents confirming his fractional ownership of the Investment, and he has nothing to prove ownership. That being the case, Mr L questions what The Resort Group needs to liquidate to pay back his investment.
44. The revocation agreement states that funds would be returned within six months, but after four years The Resort Group has not paid anything back to the Scheme. In the case of unregulated property investments, liquidity is a risk and is often a problem. It is not unusual for it to take longer than anticipated for liquidity to become available. In the case of the Investment, to raise capital to repay Mr L, it seems The Resort Group must sell his holding and there appears to be little or no market for this type of investment at the moment<sup>1</sup>. While this is understandably distressing and frustrating for Mr L, the situation is a contractual dispute between the Scheme and The Resort Group. Bespoke is not responsible for the fact The Resort Group has not returned any funds.
45. While Bespoke is not responsible for the unreturned funds, it is reasonable to expect it to have been in regular contact with The Resort Group in order to progress the matter wherever possible. The evidence shows that Bespoke has been reasonably persistent in chasing The Resort Group. Mr L argues that Bespoke should be compelled to prove that other investors in The Resort Group have received a refund since he submitted the revocation agreement; a position that is implied in coincidental correspondence between Bespoke and The Resort Group seen by this Office. Mr L doubts that these refunds have been made, suggesting they have been fabricated, and he thinks I should compel Bespoke to provide further evidence of these transactions.
46. I can see the point Mr L is making, but he is viewing it from the perspective that the Investment is not genuine and that Bespoke is complicit with a sophisticated scam. I cannot view the arrangement from that perspective because, while Mr L has his doubts, to date these are unproven and there does appear to be a hotel under construction. Mr L's request is for me to investigate the finances of separate pension schemes, on the basis of his assumptions, but I am not persuaded that this would be a proportionate step for me to take in the circumstances.

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<sup>1</sup> <https://www.ftadviser.com/pensions/2020/06/12/offshore-property-chief-admits-substantial-drop-in-fractional-values/?page=1>

47. Mr L has also raised concerns about the investment being made through Gibraltar. He argues that given its status as a tax haven, with opaque corporate structures, Bespoke should not have allowed the Investment to be made. I do not agree. The Resort Group is based in Gibraltar, and while this is overseas and subject to a different regulatory framework, it does not mean such investments cannot be held within a SSAS, and neither does it make the Investment inherently illegitimate. That the Investment was made via Gibraltar is not sufficient for Bespoke to have refused Mr L's instruction.
48. In respect of the bank mandate, Mr L was a signatory from the outset, but the mandate also required a second signature from Bespoke to make payments. This was an explicit condition of the Trust Deed. Although this arrangement limits Mr L's unilateral control of the funds, the use of two signatures ensures that any payments made by the Scheme were authorised by Bespoke, reducing the risk of a possible unauthorised payment being made. This is a reasonable condition given the scope of Bespoke's role as the Scheme's administrator.
49. There was a second mandate allowing Bespoke to unilaterally make payments from the account. This allowed the Scheme to operate without Mr L having to authorise every payment from it, reducing the administrative burden on him. Mr L has since rescinded this mandate, but I find that it was an otherwise appropriate arrangement despite Mr L's misgivings and there is no evidence that Bespoke has abused this to take amounts more than the contractual fees.
50. Mr L has commented on the correspondence he received in relation to a possible novation of his administration agreement to a different provider. Bespoke has said that it proposed this novation in error and has retracted those letters. He has also raised issues about Bespoke's role in submitting returns to Companies House. These events occurred after the complaint was brought to this Office and so I am unable to determine them here.
51. As I have said, I have great sympathy for Mr L if it comes to pass that he is unable to recover his funds from the Investment and I can understand his considerable distress and frustration. However, the central issue is The Resort Group's reluctance or inability to meet the terms of the revocation agreement and refund the Scheme's funds. I can only suggest Mr L petition The Resort Group to make the refund urgently, as I do not find that Bespoke has any liability for the possible losses to the Scheme.
52. Bespoke has not breached its duties in respect of Mr L, but it should be vigilant of facilitating arrangements involving unregulated parties such as First Review and Broadwood Assets. The lack of regulation of firms such as this mean that they are not necessarily acting in the best interests of their clients who may not fully appreciate the risk they are taking and it is now aware of this.

PO-16688

53. I do not uphold Mr Y's complaint.

**Anthony Arter**

Pensions Ombudsman  
17 January 2022

## Appendix

### Trust Deed dated 24 November 2014

#### 8 Investment Powers

8.1 Subject to section 49(1) of the 1995 Act, the Trustee may operate an account with a bank, building society, finance company or other financial institution for the purpose of managing the cash assets of the Fund on such terms as It may agree provided that the Administrator must be a mandatory signatory to any such account and any cheques drawn on the account and any instructions given in relation to such account.

8.2 Subject to Clause 8.3 and 8.4, the trustee may invest the Fund and may transpose and vary any investment made as if it were absolutely and beneficially entitled to the assets of the Scheme. In particular, and without prejudice to the generality of the foregoing, the Trustee may invest in any part of the Fund in any:

...

8.2.3 interest in commercial land or property;

...

And any such investment may be made within or outside of the United Kingdom whether or not:

- (a) involving a liability on the Fund;
- (b) producing income; or
- (c) of a wasting or reversionary nature.

8.3 No investment of the Fund may be made unless:

8.3.1 the administrator is satisfied that:

- (a) where the investment is made by the Trustee rather than an investment manager, the process of making the investment shall not constitute the managing of investments by way of business within the meaning of article 37 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 and article 4 of the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001; and
- (b) the investment will not amount to taxable property within the meaning of Part 2 of the Schedule 29A of the Act; and
- (c) the status of the Scheme as a Registered Scheme shall not be prejudiced;

8.3.2 the Administrator consents to the making of that investment; and

8.3.3 where the investment relates to an “investment of a specified kind” within the meaning of section 22 of the Financial Services and Markets Act 2000 (Regulated Investment), the Trustee must appoint an investment manager who is an “authorised person” within the meaning of section 31 of the Financial Services and Markets Act 2000 in accordance with Clause 8.9 to exercise the powers set out in Clause 8.2 in relation to Regulated Investments.”