

Ombudsman's Determination

| | |
|------------|---|
| Applicant | Mr S |
| Scheme | Krislan Travel Limited Executive Retirement Plan – Mr S (the Plan) |
| Respondent | Krislan Travel Ltd (KTL) |

Outcome

1. Mr S's complaint is upheld and to put matters right KTL should pay £1,000 compensation for the significant distress and inconvenience it caused.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr S had requested the transfer of his benefits under the Plan, administered by Zurich Life, to another pension arrangement. The request came as the result of regulated financial advice from an Independent Financial Advisor (the **IFA**), and included taking a lump sum to repay debt, with the remaining benefits to be invested with Prudential. The corporate Trustee, KTL, needed to sign documents to enable Mr S' transfer to proceed.
4. Mr Kumar, acting on behalf of the sole director of KTL (Mr Babbar), advised Mr S that he would need to pay a £1,670 fee to compensate Mr Babbar for the administration in acting as the Trustee. Mr S has refused to pay the fee as he has said that no fees are applicable with regard to the Trustee arrangement.

Background information, including submissions from the parties

5. Zurich Life (**Zurich**) wrote to Mr Babbar asking for the paperwork to be signed, advising him of Mr S's statutory right to a transfer value.
6. The IFA acting on behalf of Mr S has asked Zurich if his client could transfer without the signatory of the Trustee. Zurich said that they administer the Plan on behalf of the Trustee and cannot act without the authority of the Trustee.

7. The complaint was referred to The Pensions Advisory Service (**TPAS**) who requested that Mr Babbar sign the transfer paperwork for Mr S. TPAS also asked Mr Kumar to provide evidence of the administration fees that were due, which was not provided.
8. Mr Kumar confirmed that the transfer documentation would not be signed unless the £1,670 fee was paid. Mr Kumar responded to the complaint on 14 June 2017 which has been considered as KTL's formal response. In summary he said:-
 - Mr S had failed to transfer his benefits out of the Plan when the company was sold 16 years previously. No business would work for free and therefore Mr S was required to pay fees to cover administration costs.
 - The administration fee was £100 per annum, and therefore the outstanding total fee was £1,670 over 16 years.
 - "Krislan Travel Ltd would hold TPAS and Mr S jointly liable for any other costs [which] we may incur to recover our debt".
9. TPAS referred the complaint to our Service after receipt of this letter.
10. KTL has since confirmed that no agreement was ever made with regard to any fee. But Mr Kumar says there was a verbal agreement between KTL and Mr S for the pension to have been transferred within six months of the business being taken over 16 years ago. Mr S has said that no such verbal agreement existed. Furthermore, KTL cannot provide any evidence that they had been trying to claim an administration fee for the previous 16 years.
11. Mr Kumar stated that the £1,670 fee was to cover his expenses charged to KTL for the administration of the Plan, which he has administered on behalf of the sole director, Mr Babbar, who has been living in India for some time. Mr Kumar confirmed that no written documents exist to confirm that any fee can be taken, but he believes that Mr S should "be a gentleman" and pay the fees for the administration.
12. Mr Kumar had said that he believes Mr Babbar would continue to refuse to sign the transfer forms unless the "fees" were paid. Mr Kumar has said that Mr Babbar would ignore any determination made by an Ombudsman.
13. Mr S, through the IFA, has confirmed that he does not wish to pursue a claim for financial loss. Mr S simply wishes to be compensated for the distress and inconvenience he has suffered as a result of the Trustee refusing to agree his transfer value and access to his pension benefits.
14. Mr S has said that the refusal to sign the transfer forms has led to significant distress, believing that if they are not signed then, potentially, his pension benefits could be lost.

Adjudicator's Opinion

15. Mr S's complaint was considered by one of our Adjudicators who concluded that further action was required by KTL. The Adjudicator's findings are summarised briefly below:
 - Mr S cannot be refused a statutory right to transfer out and as such KTL should sign the necessary paperwork to enable the transfer to take place.
 - No agreement for fees exist, therefore KTL have no legal grounds to try and recoup 16 years' worth of fees.
 - KTL should pay £1,000 for the significant distress it has caused.
16. KTL did not accept the Adjudicator's Opinion that it should make a payment for the distress and inconvenience it caused. The complaint was passed to me to consider. KTL provided their further comments which do not change the outcome. I agree with the Adjudicator's Opinion and therefore, I will only respond to the key points made by KTL for completeness.
17. KTL made the following final comments, quoted below:
 - "It is evident you failed to consider Mr [S] unreasonable behaviour over a period of some 16 years when he failed to respond to company's correspondence and calls."
 - "Mr Babbar was never asked to be a Trustee and never agreed to be a Trustee. This matter was thrust on to him and the company by Mr [S] without any advice or discussion."
18. KTL have recently signed the transfer paperwork and the pension transfer has now taken place.

Ombudsman's decision

19. Mr S has said he is not making a claim for any potential financial loss and simply wanted his transfer paid to his new chosen provider. That has been actioned and therefore I am making no further comment.
20. Whether Mr Babbar agreed to be a Trustee or not is irrelevant. That is not part of the complaint. The fact is that he was a Trustee of the Plan and this was confirmed by the administrator, Zurich.
21. As Trustee, Mr Babbar had a fiduciary duty to ensure the Plan was run properly and in accordance with pension's legislation. Mr Babbar's belief that Mr S had been unreasonable in not transferring out his pension earlier is not relevant to the request to transfer out his pension.
22. By refusing to sign the necessary transfer paperwork Mr Babbar failed in his duties as the Trustee.

PO-17656

23. That refusal has, in my view, caused Mr S significant distress and inconvenience, as he was concerned that he may never be able to access his pension benefits which he had accrued during his employment with KTL many years ago.
24. Therefore, I uphold Mr S's complaint.

Directions

25. Within 21 days of the date of this Determination KTL will pay Mr S £1,000 for the significant distress and inconvenience it has caused to Mr S.

Anthony Arter

Pensions Ombudsman
15 November 2017