

Ombudsman's Determination

Applicant	Mr E
Scheme	Asphalt Reinforcement Services Pension Scheme (the Scheme)
Respondent	PIM Trustees Limited (PIM Trustees)

Outcome

1. Mr E's complaint is partly upheld and to put matters right, PIM Trustees shall pay an award to Mr E in respect of the non-financial injustice it caused him.

Complaint summary

2. Mr E's complaint against PIM Trustees concerns alleged financial loss as a result of its poor administration of the Scheme. Specifically:-
 - Delays in completing the deed of removal and appointment (the **Deed**), in connection with its replacement as pensioner trustee.
 - Mismanagement of the leases for the commercial properties, including failure to re-negotiate them.
 - Failure to complete the transfer of the share dealing account, after Barclays Plc (**Barclays**) decided to withdraw this facility.

Background information, including submissions from the parties

3. The Scheme is a small self-administered scheme (**SSAS**). Asphalt Reinforcement Services Limited is the Principal Employer. Mr E is the Managing Director.
4. PIM Trustee is the former pensioner trustee of the Scheme. Heritage Trustees Limited is the current pensioner trustee.
5. Regulation 9 of The Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991 (the **SSAS Regulations**), lays down provisions concerning pensioner trustees. It provides that one of the trustees of a SSAS shall be a pensioner trustee. The Finance Act 2004,

removed this requirement but pensioner trustees already appointed could continue in office as trustees.

6. Under the SSAS Regulations, a “pensioner trustee” means a trustee of a scheme who—

“(a) is approved by [HM Revenue and Customs] to act as such, and

(b) is not connected with—

(i) a scheme member,

(ii) any other trustee of the scheme, or

(iii) a person who is an employer in relation to the scheme”.

7. The Scheme’s Definitive Trust Deed dated 21 October 2008, names Mr E as the Managing Trustee. It names Pension Asset Services Limited as the Pensioner Trustee. It says the Principal Employer had requested that the Managing Trustee and Pensioner Trustee be the first trustees and Administrators of the SSAS. It indicates that they had consented to act in this capacity.

8. Pension Asset Services Limited and PIM Trustees have a common sole director.

9. The SSAS held:

- commercial property (the **Property**) with two tenants;
- a share dealing account with Barclays; and
- a deposit account.

10. In July 2016, Mr E said that he completed forms to transfer the share dealing account to Equitrade Capital.

11. On 1 February 2017, Mr E said that he requested a transfer of his SSAS to Heritage Pensions. He followed up his request with telephone calls and letters to PIM Trustees. He did not receive a response. Mr E claims PIM Trustees continued to be “slow and obtrusive” in its dealings with him.

12. On 21 March 2017, Mr E complained to The Pensions Advisory Service (**TPAS**). He stated that there was a break clause in the tenancy agreement but no attempt had been made to negotiate new terms. Both tenancies had expired and the tenants needed to know where they stood.

13. Mr E also stated that he had sent emails to PIM Trustees in connection with the transfer of the share dealing account. But he was still unable to trade eight months later.

14. Mr E explained that due to PIM Trustees’ alleged inability to service his SSAS correctly, Heritage Pensions had written to PIM Trustees on 1 February 2017, to request a transfer. PIM Trustees had failed to respond. It had also failed to respond to subsequent communication from Heritage Pensions.

15. On 8 June 2017, PIM Trustees was sent the Deed.
16. On 18 July 2017, TPAS wrote to PIM Trustees. TPAS referred to its letter to PIM Trustees dated 9 April 2017 and its telephone calls on 24 April and 7 May 2017, concerning a formal complaint from Mr E.
17. TPAS acknowledged that PIM Trustees had advised that it was waiting for a completed Deed, but that Heritage Pensions did not agree with PIM Trustees' version of events.
18. In connection with PIM Trustees' removal as pensioner trustee, on 20 July 2017 Heritage Pensions asked PIM Trustees to respond urgently. On 27 July 2017, it followed up its request.
19. On 25 August 2017, Heritage Pensions emailed a copy of the Deed to PIM Trustees. The original copy was sent to PIM Trustees by first class post.
20. On 25 August 2017, PIM Trustees contacted TPAS and apologised for the delay in responding. It said that Heritage Pensions should now have received the information it had requested. It advised the signed Deed had been sent that same day.
21. On 30 August 2017, Heritage Pensions emailed PIM Trustees. It advised that it would be meeting with Mr E on 11 September 2017, "to get the necessary signatures to the Deed". In the interim, PIM Trustees should provide the following information:
 - the Equitrade account number and contact details so that Heritage Pensions could deal with the re-registration of the account;
 - the lease for the tenant occupying the first floor of the Property;
 - details of the party that completes the VAT Returns in respect of the Property;
 - bank statements received from 28 April 2017 in respect of Account A;
 - bank statements received from 19 April 2017 in respect of Account B;
 - bank statements received from 1 September 2016 in respect of Account C; and
 - whether PIM Trustees would insist on Heritage Pensions using a particular firm of solicitors in connection with re-registering the Property.
22. On 19 September 2017, Heritage Pensions emailed a copy of the Deed and followed up its request for information. It requested that PIM Trustees add Heritage Trustees Limited as SSAS Administrator to Pension Schemes online. It asked PIM Trustees to provide confirmation once this had been completed. It also requested the name of the solicitors who would be acting for PIM Trustees in connection with the re-registration of the Property. Alternatively, confirmation that PIM Trustees would sign the documentation prepared by its solicitors.

23. On 3 October 2017, TPAS emailed PIM Trustees after Mr E raised a further issue. He had alleged that it had failed to respond to two emails and a telephone call from him in connection with:-
- Information that was still outstanding.
 - Updates to Pension Schemes online to add Heritage Trustees Limited to the SSAS.
24. On 4 October 2017, PIM Trustees confirmed to Heritage Pensions that:-
- It would add Heritage Trustees Limited as SSAS Administrator and provide confirmation once completed.
 - It would be happy to sign documentation prepared by Heritage Pensions' solicitors. Specifically, "a TR1 changing the Trustees".
 - The current VAT registration for the SSAS had been active since the date the Property was purchased. PIM Trustees were unsure whether Heritage Pensions would be able to register the SSAS "a fresh". It would await advice from Heritage Pensions on this.
25. On 24 October 2017, Heritage Pensions advised that the VAT registration was in place. Also, the option to "tax over" the Property.
26. Heritage Pensions confirmed that it had control of the Equitrade account. It also confirmed that its solicitors were working on the re-registration of the Property.
27. Heritage Pensions asked PIM Trustees to take the following action:-
- Link Heritage Trustees Limited as SSAS Administrator and provide confirmation once this action had been completed.
 - Confirm that the VAT return for quarter ending 30 September 2017, would be the last return completed by PIM Trustees.
 - Pay the VAT due before 7 November 2017.
 - Provide a copy of the rental invoices for October 2017.
 - Confirm whether PIM Trustees completed the VAT return on an "invoice accounting basis" or a "cash accounting basis."
 - Close the rent deposit account and remit the funds to the tenant: Asphalt Reinforcement Limited.
28. The same day, following a request from PIM Trustees, Heritage Pensions emailed a copy of the VAT Certificate and the "Option to Tax".
29. Around November 2017, following intervention from TPAS, PIM Trustees completed an amending deed permitting the change of administrators of the SSAS.

30. Mr E advised TPAS that he wanted to recover losses he had allegedly suffered as a result of the delays. He was advised to quantify his losses and negotiate a settlement with PIM Trustees.
31. On 29 March 2018, Mr E complained to The Pensions Ombudsman Office (**TPO's Office**). He asserted that Heritage Pensions and TPAS had written and communicated with PIM Trustees over a period of 14 months. Due to PIM Trustees' poor administration, the transfer of the cash and the Property held in the SSAS, to Heritage Pensions, was still outstanding on 29 March 2018.
32. Mr E said that he had suffered financial detriment as a result of the alleged maladministration. Mr E's calculated loss was £9,999, in respect of shares held in Xcite Energy Ltd. This allegedly arose because he was unable to put a "stop loss" on the share trading account. He claimed that he had suffered further financial loss as he could not invest the cash held in the SSAS for over a year. In the intervening period, his financial loss continued to mount up while he waited for the transfer of the cash and Property to be completed.
33. **Mr E's position:-**
- PIM Trustees continued to obstruct the transfer of his SSAS to Heritage Pensions.
 - His pension has not kept up with the rate of inflation. This is because he was unable to invest cash, buy/sell shares, and increase the rental on the commercial leases.
 - Due to the time taken to transfer the share dealing account from Barclays to Equitrade, and his inability to trade, he suffered losses on the stocks and shares held in his SSAS. He also suffered losses on both leases on the Property. They were significantly "out of date".
 - He requested information in relation to PIM Trustees' delays in signing the necessary documents. It failed to reply.
 - Subsequent calls he made between 8 May and 26 August 2017, were not returned.
 - He sent a letter on 18 July and 2 August 2017, by recorded delivery but did not receive a response.
34. PIM Trustees was given the opportunity to provide a formal response to TPO's Office but failed to do so. TPO's Office initially requested a formal response on 21 November 2019. It sent a further request on 8 March 2021. This was followed up on 9, 21 and 30 April 2021.
35. Mr E's case raises similar issues to Mr R's complaint [PO-9677], which was Determined by the Deputy Pensions Ombudsman on 27 June 2017.
36. Mr R claimed that PIM Trustees had allegedly:-

- Refused to resign as Trustee to the SSAS.
 - Failed to remove itself as signatory to the SSAS bank account.
37. Mr R also claimed that, as a consequence of the failure to set up a new SSAS bank account, the SSAS had missed the opportunity to earn higher interest on cash balances, resulting in a financial loss to the SSAS.
38. The Deputy Pensions Ombudsman upheld Mr R's complaint to the extent that PIM Trustees remained unwilling to initiate its own removal from the bank mandate.

Adjudicator's Opinion

39. Mr E's complaint was considered by one of our Adjudicators who concluded that further action was required by PIM Trustees. The Adjudicator's findings are summarised below:-
- The Adjudicator noted Section 150(4) of the Pension Schemes Act 1993, provides that:

“If any person without lawful excuse obstructs the Pensions Ombudsman in the performance of his functions or is guilty of any act or omission in relation to an investigation under this Part which, if that investigation were proceeding in the court, would constitute contempt of court, the Pensions Ombudsman may certify the offence to the court”.
 - The Adjudicator stated that in cases where a respondent fails to provide a response to TPO's Office, the complaint would likely be determined by the Ombudsman based on the available information. It is for the Ombudsman to certify whether that failure constitutes contempt of court.
 - The Adjudicator considered that PIM Trustees had been given sufficient opportunity to provide its version of events. The Adjudicator noted that PIM Trustees had not put forward any counter-arguments or offered any explanation for any of the delays. The Adjudicator considered that where evidence is limited, it is necessary to form a view as to what is more likely to have happened.
 - The Adjudicator concluded that the available evidence, which includes a copy of the file TPAS provided to TPO's Office, supports Mr E's version of events concerning the alleged delays. The sequence of events indicates ongoing inaction and delays on the part of PIM Trustees. In the Adjudicator's opinion, these instances are sufficiently serious to justify a finding of maladministration. The Adjudicator accepted that they could potentially have had financial implications for Mr E.
 - The Adjudicator also accepted that the ongoing delay would have likely placed Mr E in a very difficult and uncertain financial position. However, for his claim to

financial loss to succeed, he must demonstrate that the financial loss he has described amounts to actual, as opposed to speculative, loss.

- The Adjudicator noted that Mr E had not submitted any supporting evidence to substantiate the extent of that loss, if any.
- The Adjudicator acknowledged that a “stop-loss” order is an advance order to sell shares if the share price reaches a particular price point. It allows investors to exit the trade, once the market price satisfies the exit condition, and limit their losses. The Adjudicator was unable to find any evidence in Mr E’s submissions to TPO’s Office to support that he would have traded in a particular way. Consequently, any argument he might make in this regard would be speculative. Similarly, the Adjudicator had found no evidence to support a direct correlation between PIM Trustee’s alleged failure to re-negotiate the leases and loss of rental income.
- The Adjudicator stated that in cases such as these, the onus is on the applicant to demonstrate that they would have acted materially any differently.
- The Adjudicator highlighted that the Ombudsman would only make a direction, that requires another party to remedy financial injustice, where the evidence supports actual financial loss. In the Adjudicator opinion, Mr E would need to provide new evidence and/or additional arguments for there to be a good chance of the Ombudsman coming to a different conclusion on the outcome.
- The Adjudicator noted that TPO’s Office’s usual starting point for awards for distress and inconvenience is £500. The Adjudicator further noted that where a respondent persists in behaviour making it difficult for members to achieve redress and causing more anxiety, this is likely to result in a higher award.
- In the Adjudicator’s opinion, the timeline indicates that there were numerous and repeated delays over a prolonged period on the part of PIM Trustees. It failed to take reasonable steps to put the matter right at the earliest opportunity, mishandled Mr E’s complaint and delayed replying to TPAS and Heritage Pensions on several occasions.
- The Adjudicator concluded that Mr E would likely have been prevented from making informed decisions concerning his SSAS. The fact that PIM Trustees failed to respond to, or delayed in responding to him, likely compounded matters. The Adjudicator considered that Mr E is entitled to an award to the extent that PIM Trustees’ maladministration caused him to suffer serious non-financial injustice.
- In view of the individual circumstances of Mr E’s case, the Adjudicator recommended a distress and inconvenience award of £1,000.

40. I agree with the Adjudicator's Opinion. I note that Mr E has accepted the Opinion and made no additional points.
41. I also note that PIM Trustees did not comment on the Opinion.

Ombudsman's decision

42. I note that the Adjudicator initially requested comments on the Opinion from PIM Trustees on 14 July 2021 and that the Adjudicator followed up that request on 29 July, and then contacted PIM Trustees on 3 August 2021. The Adjudicator subsequently made a further request for comments on 10 August 2021.
43. Having considered the available evidence, I find that Mr E is entitled to an award for distress and inconvenience. This is in recognition of the non-financial injustice PIM Trustees has caused Mr E, which was made worse by its failure to engage with my Office during its investigation of his complaint.
44. I agree that an award of £1,000 is sufficient in respect of the serious non-financial injustice that Mr E has suffered in connection with this matter. In the absence of evidence to support that he has sustained financial injustice, as a direct result of PIM Trustee's maladministration, I make no further award.
45. I partly uphold the complaint.

Directions

46. Within 14 days of the date of this Determination, PIM Trustees shall pay £1,000 to Mr E to remedy the serious non-financial injustice it has caused him.

Anthony Arter

Pensions Ombudsman
21 September 2021