

## Ombudsman's Determination

<b>Applicant</b>	Mr N
<b>Scheme</b>	The Keytech Network Services Ltd Directors Small Self-Administered Scheme ( <b>the SSAS</b> )
<b>Respondent</b>	Mr Paterson

### Complaint Summary

Mr N complains that Mr Paterson has not adhered to the settlement agreed last year, when Mr N brought his original complaint to this Office.

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

Mr N's complaint is upheld, because Mr Paterson has not met the terms of an agreed settlement.

### Detailed Determination

#### Material facts

1. This case has a long and complex background, and so I have referred only to the most salient facts below.
2. Mr N and Mr Paterson were previously directors and co-owners of a limited company, which is now dissolved. During the period the company was active, the SSAS was set up to provide retirement benefits for Mr N and Mr Paterson. The SSAS is still active.
3. Mr N and Mr Paterson are the beneficiary members of the SSAS, as well as member trustees. AJ Bell is the professional trustee and provides the SSAS platform.
4. Mr N previously raised a complaint which was considered by an Adjudicator at this Office in 2017. As part of his complaint, Mr N said that Mr Paterson had withdrawn an unauthorised loan from the SSAS. In addition, Mr N said he wanted to exit the SSAS, but Mr Paterson was refusing to allow this.
5. Mr Paterson disagreed that the loan he withdrew from the SSAS was an unauthorised loan. However, he agreed that there was an outstanding balance of £100,000 which

his company – Millgate Property Development Ltd (**the Millgate company**) – owed to the SSAS. Mr Paterson argued that the disputed loan was paid to the Millgate company for business purposes, and all but £100,000 has been repaid.

6. Mr Paterson previously agreed to re-mortgage one of the Millgate company's properties (**the Parkway property**), in order to repay the remaining £100,000. Mr N was then going to withdraw his share of the funds from the SSAS, plus a further £125,000. This would leave Mr Paterson as the sole beneficiary of the SSAS, which owns an asset valued at £250,000 (**the Millgate property**).
7. Mr N's original complaint with our Office was closed in June last year, on the basis of the agreement outlined above. However, after almost a year, Mr Paterson has still not paid the £100,000 into the SSAS, and so Mr N has been unable to transfer his assets out of the SSAS.
8. Mr N therefore brought a secondary complaint to our Office, saying that the settlement agreed, as part of the initial complaint, has not been complied with.

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

9. Mr N points out that he cannot withdraw his benefits from the SSAS until the terms of the settlement have been met is waiting for the settlement to be completed. He plans to use his benefits to set up a SIPP from which he can draw a pension, but this is continually being delayed because Mr Paterson has not carried out what was agreed in the settlement.
10. In addition, Mr N has provided evidence that the Millgate property is incurring ongoing expenses which he is still having to pay. In particular, the Millgate property has incurred costs of £9,338.75 in respect of non-domestic business rates. As the Millgate property is vacant, SSAS assets will be used to meet this cost.
11. AJ Bell has forwarded to both Mr N and Mr Paterson, a copy of all invoices, and Mr N has paid half of the cost of those, amounting to £4,669.38. This covers the period, April 2018 - March 2019, as business rates are always payable for the upcoming tax year.
12. Specifically, Mr N has evidenced that he previously paid £2,578.91 towards the Millgate property business rates, and he has paid the remaining £2,090.47 within the last few months. He has highlighted that if the settlement previously agreed had been adhered to within a reasonable period, he would not have incurred these costs as he would no longer be a member of the SSAS.

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

13. In responding to the complaint, Mr Paterson says he has been unable to secure a re-mortgage on the Parkway property. The evidence indicates this is because the lender requires confirmation that part of the capital being raised by the re-mortgage will be used to repay an existing legal charge on the Parkway property. However, the legal

charge registered on the Parkway property does not equate to the £100,000 owed to the SSAS, and the Millgate company's accounts do not clearly show when the £100,000 was received from the SSAS, or for what purpose.

14. In other words, the lender will not offer the re-mortgage, because it does not have sufficient evidence that the funds raised will be paid to the correct party to satisfy the relevant legal charge.
15. Mr Paterson has asked AJ Bell to provide the lender with confirmation of how much the SSAS is owed by the Millgate company. It is unclear whether any information AJ Bell can provide to the lender will be sufficient for it to offer the re-mortgage; however, Mr Paterson believes he should be offered a re-mortgage by September 2018.
16. However, Mr Paterson has not provided this Office with any evidence that he is likely to be offered a re-mortgage. Also, he has not provided a copy of the agreement for the loan in dispute, or evidence that it has been properly recorded in the Millgate company's accounts. Mr Paterson previously claimed he had such evidence available, but he has failed to respond to our Office requesting sight of such evidence.
17. With regard to the disputed loan, AJ Bell has suggested that it may now need to report it to HMRC, as it must report all unauthorised payments from the SSAS.
18. Mr Paterson has made no comment on the ongoing costs Mr N has accrued.

## **Conclusions**

19. It is clear that Mr Paterson has not complied with the settlement agreed in June 2017. This has resulted in further significant distress and inconvenience for Mr N.
20. Mr N has explained that he wishes to exit the SSAS with his share of the funds, so that he can establish a SIPP and begin to draw his pension. He has been delayed in doing this, because Mr Paterson has failed to repay the £100,000 he owes to the SSAS.
21. In addition, I agree that Mr N would have paid less in business rates for the Millgate property, if the settlement previously agreed had been complied with.
22. On the basis that Mr N and Mr Paterson each have an equal responsibility to pay the business rates for the Millgate property, Mr N's share of the business rates for the whole tax year 2018/19 would have been £4,669.38, or £389.12 per month. However, the payment that Mr N made of £2,578.91, covers approximately 6.5 months of his 50% share of the business rates, until November 2017. I find that this was a reasonable period in which to have completed the settlement agreement, and so Mr N should not have had to pay the additional £2,090.47.
23. Therefore, I uphold Mr N's complaint and set out my directions below. I acknowledge that AJ Bell has said that it now seeks to report the disputed loan to HMRC, and I

note that this may result in penal tax charges being applied to the SSAS. If Mr N finds that this action will cause him a financial detriment, he will have to raise this matter separately if and when it arises.

24. Finally, whilst I can see that AJ Bell were trying to facilitate a resolution in 2017, as professional trustee and administrator of the SSAS, it should have contacted both member trustees and explained that it had a duty to report the disputed loan to the Pensions Regulator and HMRC and to have done so.

### **Directions**

25. Within 90 days of the date of this Determination, Mr Paterson shall:
- pay £100,000 into the SSAS, in order that Mr N can take his share of the SSAS funds and exit the arrangement;
  - reimburse Mr N the £2,090.47 he contributed towards the payment of the Millgate property business rates; and
  - pay Mr N £1,000 for the severe distress and inconvenience caused by his failure to complete the agreed settlement.

**Anthony Arter**

Pensions Ombudsman  
29 August 2018