

Ombudsman's Determination

Applicant	The Estate of Mr K (the Estate)
Scheme	Timoran Capital SSAS (the Scheme)
Respondent	Mr Tristram Norriss

Complaint Summary

Ms N, as the executor of the Estate, has complained that Mr Tristram Norriss, as the Scheme's Trustee has failed to pay out death benefits from the Scheme and has stopped responding to her enquiries.

Summary of the Ombudsman's Determination and reasons

The complaint is upheld against Mr Tristram Norriss because he has failed to pay death benefits to the Estate within a reasonable timeframe and he appears to have ceased to properly administer the Scheme.

Detailed Determination

Material facts

1. Mr K was a member of the Scheme having transferred into it from another pension provider.
2. On 11 August 2014, the Scheme invested £140,000 into Dolphin Capital through a five year loan note returning a fixed rate of 13.8% (**the Dolphin investment**). The Scheme also held cash of £60,000 on Mr K's behalf.
3. The Dolphin investment was entered into with Dolphin Capital, later called Dolphin Trust, which was a German property fund now known as the German Property Group. Several companies in the German Property Group entered bankruptcy proceedings in Germany, and its founder, Mr Charles Smethurst is subject to a criminal investigation.
4. On 6 October 2016, a Letter of Guarantee was signed by Mr Tristram Norriss and Mr Michael Norriss as Trustees, on Timoran Capital headed paper. Details of the letter are redacted, but it appears that the Trustees of Timoran Capital Trust would provide a joint and severally liable guarantee of \$30,000,000 in relation to a bond which would be used to settle a £4,200,000 payment to the UK official receiver's office and a \$15,000,000 investment in Dolphin Trust loan notes.

5. On 23 January 2017, Ms N contacted Timoran Capital to inform it that Mr K had been diagnosed with terminal cancer with a prognosis of less than 12 months to live. She requested the Dolphin investment be disinvested and the remaining £60,000 in cash to be paid to her father, Mr K, as soon as possible.
6. On the same day, a change of beneficiary confirmation letter was also signed by Mr Tristram Norriss and Mr Michael Norriss, both referred to as Trustee.
7. On 8 June 2017, Dolphin wrote to Mr K confirming that in his circumstances, it would waive the investment's redemption date and allow him to redeem £40,000 of the Loan Note immediately.
8. On 6 July 2017 Mr K died.
9. On 14 January 2018, a Mr Mark Carter, the Scheme's administrator, informed Ms N that he had been chasing Mr Tristram Norriss for timescales for the payment of benefits but had received no response.
10. On 15 January 2018, Ms N emailed Mr Tristram Norriss requesting payment of the £60,000 which was held in cash. She highlighted the urgency of the situation.
11. On 17 January 2018, Mr Tristram Norriss wrote to Ms N. He explained that he was doing what he could for the pension to be settled. He stated that he had achieved an ex gratia payment from Dolphin prior to Mr K's death, but that the remaining funds held by Dolphin would not be returned until the due date on the loan notes. He reassured Ms N that the funds would be paid out along with the cash with interest, providing an estimate of £187,000. Mr Tristram Norriss said he had not been in contact recently due to health concerns.
12. On 19 January 2018, Ms N asked Mr Tristram Norriss to continue to negotiate a further ex gratia payment from the Dolphin investment. She asked again regarding payment of the £60,000 held in cash. She explained that the situation was causing her sleepless nights due to the lack of information.
13. On 29 January 2018, Mr Tristram Norriss informed Ms N that he would make further enquiries with Dolphin about possible further payments and on confirmation of this they would establish a date for settlement.
14. In respect of the £60,000 cash, Mr Tristram Norriss said:

“Regarding the other funds to come we are in the process of gathering this and have experienced unforeseen delays which I hope will soon be resolved. We have our own legal difficulties currently although we know we can at the very worst case extricate ourselves by the end of the contracts we hold with Dolphin in July 2019. Whether they will then pay in time remains to be seen. They have only been consistent concerning late payment since we have first started to deal with them. I do however believe that sums including interest are

safe and will eventually arrive. Therefore concerning your sleepless nights I can assure you that I consider that you will be eventually paid and that this will include interest for the time involved. I understand that now your father has passed on the six monthly installments [sic] either will or have ceased to be paid. However as a fall back position should we be given the answer that you will have to wait for this £100,000 plus interest I will ask if this form of payment might be possible for you in the interim. The payments were due at the end of January and the end of July if my memory serves me correctly. They never arrived at these times though.”

15. On 16 February 2018, Ms N requested a further update from Mr Tristram Norriss. On the same day, Mr Carter said that he had not heard from Mr Tristram Norriss since December, but that Mr Tristram Norriss had replied to a different client the day before.

16. On 9 March 2018, Ms N chased again. Mr Tristram Norriss replied saying:

“Agreed concerning Dolphin we will also chase these two payments. The £60,000 plus accruing interest will be settled as soon as possible. I am aiming to dovetail this with the Dolphin payment as I have written earlier. We are progressing on all fronts now and will notify you as soon as we know the dates of payment.”

17. On 18 March 2018, Ms N wrote to Mr Tristram Norriss saying:

“Thank you for keeping me updated on the Dolphin Trust situation. I have today contacted them directly (cc’d you) as I don’t feel I’m getting any traction through Timoran Capital or indeed Dolphin and getting no answers is not common practice of reputable companies. I am prepared to go to Dolphins Managing Directors, Charles Smethurst and Helmut A Freitag, as well as their Legal department and Press office if I do not get clear answers in writing with absolute evidence of tie in and the ceased interest payments they have not provided since upon death. They must provide terms and conditions of this investment by law and I should be able to see copies of that plus any exclusions upon death.

I have also never given you instruction to dovetail what is sterling cash sat in my dads investment fund which has absolutely no ties against the Dolphin 5yr fixed investment. On that basis I wish to restate my wishes as executor to receive that no tie cash amount by return now. I have an electronic email trail where you said it was available back in August 2017, then contradictions where you said we’d have to wait until November 2017 and your latest email says you are trying to dovetail with the 5yr Dolphin investment who are at this point in time refusing to release funds before November 2019. That is unacceptable and for the record I am not prepared for and never have agreed to these two completely separate investments to be tied to one another.

Please can you confirm when the sterling cash fund will be paid now. I look forward to your response by return.”

18. On 20 June 2018, Mr Tristram Norriss provided an update to Ms N. He said:

“I saw a message asking for an update from you flash on my phone in the last few days but upon looking at my inbox for some reason I did not have a copy of it here. There have been positive developments concerning our relationship with Dolphin recently. In addition and related to this process we have signed an LOI with a Chinese entity for them to buy out the assets held in our Trust. The date for this to be completed is currently the end of this month; however I have since heard from the key men that the process may take a few more months. I am negotiating with Dolphin to secure their agreement which includes a new and substantial two year term loan to them. For whatever reasons they have of their own they have linked your payment to our producing [sic] I have discussed these developments with [Mr R] and we have agreed that upon this taking place we will be immediately crediting you with the outstanding £100,000 plus interest held by Dolphin (assuming you sign a release form to the Trust for the final payment to come to us from Dolphin sometime in the second half of 2019) plus the £60,000 with interest to be calculated to end of July/August 2018.

I will keep you posted on developments.”

19. On 24 September 2018, Ms N wrote to Mr Tristram Norriss again requesting an update on the payment of the cash within the Scheme, demanding an answer for when the money would be received by the estate.

20. Ms N received no response despite further chasing.

21. On 1 November 2018, Mr Carter wrote to Mr Tristram Norriss stating:

“It is now November the 1st 2018 which in August this year, was your latest deadline for monies to be paid to the estate of the late [Mr K]. It is also one year from your original deadline to repay the cash element of the plan a simple procedure one would have thought. Please can you reply without delay by email to [Ms N] with concrete dates for when the money will arrive in the designated account? Please note once again I have copied Graham Archer into my emails with you to cover my integrity in this matter.”

22. On 6 December 2018, Mr Tristram Norriss provided the following response to Ms N:

“Without prejudice it is a great pity that you have decided amongst others to broadcast unsubstantiated accusations. In contrast and in many ways far more lamentably my relationship with your dearly departed father was

so good that I lent him money one weekend when Dolphin were late in their payment to him. Over a long period we liaised with him to ensure that the payments were managed as expediently as possible.

Indeed as it stands as long as Dolphin meet their obligations his investment through us with them although delayed has been a sound one. Upon reflection I hope that you understand that my position concerning the money due to you is the same as yours. Unfortunately the legal representative for Dolphin has chosen to ignore my message depicting the agreement with the Chinese and this has made a shorter term solution for us all the more difficult. To my recollection very little to nothing has been said between us concerning this matter. Therefore in the circumstances I again refer you to my message to you 28th January of this year. I will if you so wish continue to seek a quicker way to resolve the situation.

I feel that it would prove useful if we could unite and work together to ensure the result we all expect in 2019.”

23. On 4 February 2019, Ms N submitted a complaint about the non-payment of death benefits. There is no evidence that Mr Tristram Norriss acknowledged or responded to this complaint.
24. Ms N subsequently referred the complaint to The Pensions Ombudsman’s Office. Despite multiple requests for information via email and post, to date, there has been no response from Mr Tristram Norriss.

Conclusions

25. I previously issued a Preliminary Decision and invited comments from both Ms N and Mr Tristram Norriss. Ms N responded to my Preliminary Decision to say she had no further comment to make. Mr Tristram Norriss has provided no response at all to the complaint to my Office, including to my Preliminary Decision.
26. Regardless of the lack of response from Mr Tristram Norriss , the emails between him and Ms N satisfy me that the Scheme did hold funds and investments on behalf of the late Mr K, and that Mr Tristram Norriss remains in control of them.
27. It is unclear who precisely is the Trustee or Trustees of the Scheme. I have not had access to a Trust Deed or Rules, but Mr Tristram Norriss has signed off documents as a Trustee. There is reference to a second Trustee, Mr Michael Norriss. There has been no contact with Mr Michael Norriss or other indication who he might be. I note Mr Tristram Norriss’ full name is Tristram Michael Norriss. If Mr Tristram Norriss could clarify who Mr Michael Norriss is, or confirm that he is the sole trustee, it would assist me.

28. In the absence of any information from Mr Tristram Norriss, I am satisfied on the evidence available that he is a Trustee of the Scheme. I am supported in reaching this conclusion by the ex tempore judgment of His Honour Judge Hodge QC in *The Official Receiver v Norriss* [2015] EWHC 2697 (Ch) at paragraph 3:

“The transferee, Timoran SSAS, apparently acted by Mr Tristram Michael Norriss. On the evidence, he would appear to be the principal, and possibly the sole, trustee of Timoran SSAS.”
29. Mr Tristram Norriss has signed documents variously on behalf Timoran Capital, Timoran Trust and Timoran Capital SSAS. In the absence of a trust deed and rules of the Scheme, and any cooperation from Mr Tristram Norriss, it is not clear to me how these entities relate to one another, or indeed if they are merely alternative names for the Scheme. My office has made enquiries with HMRC, who have confirmed it holds PSTR, SCON and ECON numbers for the Scheme. So, I am satisfied that, on the evidence available, the Scheme is a UK occupational pension scheme.
30. A significant portion of Mr K’s benefits are invested in the Dolphin investment. The investment is highly likely to be materially or completely impaired. I would expect Mr Tristram Norriss to take steps to recover any money that is available from the investment as soon as possible if he has not already done so.
31. In the absence of any defence from Mr Tristram Norriss as to why the £60,000 held in cash and any recovered value of the Dolphin investment has not been paid to Mr K’s estate, I consider this inaction to be maladministration and a breach of trust. Mr Tristram Norriss has provided no explanation as to why the cash held by the Scheme has not been paid to Mr K’s estate and it has now been almost four years since he died. I find that this is an unacceptable failure by Mr Tristram Norriss.
32. I also find it is maladministration for Mr Tristram Norriss not to have responded to Ms N’s complaint and to have ignored my Office’s requests for information. Ordinarily such failures would warrant a distress and inconvenience award, but as Ms N is complaining in her capacity as the executor of Mr K’s estate, I am unable to direct a distress and inconvenience payment in this case.
33. The complaint is upheld because Mr Tristram Norriss has failed to take appropriate steps to pay out death benefits from the Scheme in a reasonable length of time or provide any explanation for why the benefits have not been paid to date.
34. I will also be referring the Scheme to The Pensions Regulator.

Directions

35. Within 28 days of this Determination, Mr Tristram Norriss shall:

- 1) produce a full account of the benefits attributable to Mr K's share of the Scheme at his own cost; and
- 2) pay the cash benefits attributable to Mr K's share of the Scheme and any recovered sums from the Dolphin Investment to Ms N as executor of Mr K's Estate, plus interest at 8% per annum from 6 July 2017 to the date of payment.

Anthony Arter

Pensions Ombudsman
5 January 2022