

Ombudsman's Determination

Applicant	Mr Stephen Dodd
Scheme	M & S Pensions and Assurance Scheme ("the Scheme")
Respondent	Michael Bailey

Complaint Summary

Mr Dodd, a beneficiary as well as a trustee of the Scheme, complains that Mr Bailey refuses to provide him with any information in relation to his entitlements and the Scheme's current position.

Summary of the Ombudsman's determination and reasons

The complaint should be upheld against Mr Bailey because he has failed to comply with his duties as a trustee under the Scheme provisions and the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013.

Detailed Determination

Material facts

1. Obtaining the information to establish the timeline and events has proved difficult in this case, and I will return to this later. However, by a deed dated 10 November 1999 (the only one supplied to me), Mr Dodd and Mr Bailey were named as the Managing Trustees of the Scheme.
2. The Scheme is said to be an occupational pension scheme which is, though, governed by a trust deed and rules dated 22 February 1996.
3. The Principal Employer at the time of the 1999 deed was Orbitstore Limited of Walsall Road, Cannock, Staffordshire. There was also a Pensioneer Trustee – Ken Hovers (Pension Consultants) Limited.
4. Clause 6 of the deed sets out the Managing Trustees' duties, including managing the Scheme, acting as Administrator (unless one is separately appointed), and keeping proper records and accounts.
5. According to a letter from Beswicks Solicitors (for Mr Dodd) to this office, dated 25 March 2014, the Scheme is currently operated by a deed dated 17 January 2007. However, neither party has supplied this deed to me in response to requests for the scheme documentation.
6. I understand that this deed listed the Principal Employer as Brian James Holdings Limited. It is that company's cessation of trading in 2011 which forms the backdrop to an ongoing dispute between Mr Dodd and Mr Bailey, much wider than the complaint referred to me (and my remit).
7. Sections 6 and 11-13 of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 set out the requirements on trustees as to providing scheme information to members.

Summary of Mr Dodd's position

8. Following the cessation of trading of their employer, Mr Bailey assumed principal conduct of the Scheme's affairs.
9. The Scheme has several assets which should provide a monetary return for the Scheme and its beneficiaries, such as Mr Dodd.
10. Mr Dodd has sought disclosure of the Scheme's affairs from Mr Bailey. A detailed list of the information requested is set out in Beswicks' letter to Mr Bailey dated 16 January 2014.

11. Mr Bailey has failed and/or refused to disclose information to which Mr Dodd is entitled.
12. Mr Dodd, who is now 68 years of age, is concerned at the lack of co-operation and that the Scheme may not have been administered correctly and in the interests of its members.
13. Mr Dodd considers that a division between the trustees is necessary and is concerned that the problems he has encountered will reoccur unless the Scheme is wound up and independent funds created for each party.

Summary of Mr Bailey's position

14. Mr Bailey has made allegations concerning Mr Dodd and has referred to the previous involvement of the Insolvency Service and the Courts. But this would appear to relate to the use of company money and/or assets.
15. In response to specific questions put by my investigator, Mr Bailey says that since November 2009, he and his legal representatives have "answered all questions except M & S Pensions."
16. He also says: "If I answer all your questions and Mr Dodd promises to send you the paperwork he will have all the paperwork he wants which is the only lever I have had to get all my questions answered – he will then fail to send you the information."
17. And, in a separate letter, "I have explained to you as to why I have withheld information from Mr Dodd. Mr Dodd and...expect me to answer all their questions but they have refused to answer all my awkward questions since November 2009."
18. More recently Mr Bailey says that he has supplied some of the material requested by Mr Dodd but maintains that Mr Dodd himself has also failed to provide him with certain documents.

Conclusions

19. My role in relation to this complaint is to assess whether Mr Bailey, as the Respondent, has acted correctly and fairly in relation to the trustee duties he owes to Mr Dodd.
20. My investigation has been hampered by a lack of co-operation in terms of responses to specific questions and provision of relevant documentation. In particular, Mr Bailey has focused his attentions, despite reminders, on the company history and financial dispute – rather than the case at hand.
21. Mr Bailey owes a duty to Mr Dodd, as a co-trustee and as part of a trustee-member relationship, to provide the information Mr Dodd needs to establish and access his

benefits. Mr Bailey would also appear to be currently responsible for Scheme administration.

22. In the letters from my investigator, Mr Bailey was offered the opportunity to outline whether he accepted that he failed to comply with his duties as a trustee.
23. In response, Mr Bailey freely admits withholding Scheme information as a lever to try and obtain other information from Mr Dodd.
24. As such, he has breached his duties as a trustee by refusing to provide Scheme information to Mr Dodd – to which Mr Dodd was entitled by law and (as far as can be ascertained) under the Scheme provisions. I make a direction below in this regard.
25. I cannot find otherwise merely because Mr Bailey believes he has a valid complaint against Mr Dodd, whether on this issue or another, which is not before me.
26. It is for Mr Dodd to decide whether to approach the Pensions Regulator regarding the ongoing trusteeship of the Scheme. That is not a matter on which I can intervene.
27. Since Mr Dodd is now 68, he may have wished to crystallise or transfer his benefits before now. Should he subsequently establish to the required standard that he incurred a financial loss as a result of Mr Bailey's refusal to provide the necessary information, then he would be entitled to compensation in respect of which he may wish to lodge a further complaint.

Directions

28. The following directions will be enforceable in a County Court as if an order of the Court.
29. Within 28 days of the date of this Determination, Mr Bailey is to:
 - provide Mr Dodd with the information relating to the Scheme, as requested in Beswick Solicitors' letter dated 16 January 2014, which will allow him to exercise his rights and entitlements (and if such information cannot be provided because it does not exist, explain that, with reasons.)
 - personally pay Mr Dodd £300 in respect of the distress and inconvenience caused by his delay.

Tony King

Pensions Ombudsman
31 March 2015