

Ombudsman's Determination

Applicant	Mr Peter Evans
Scheme	TPR Executive Pension Scheme
Respondent	Robert Evans

Complaint Summary

Mr Evans complains that his fellow trustee, Mr Robert Evans, has failed to co-operate with requests to sign a form which would enable him to transfer his pension benefits to another company.

Summary of the Ombudsman's determination and reasons

The complaint should be upheld against Robert Evans because:

- the evidence supports the Applicant's contention that Robert Evans failed to sign the relevant documentation; and
- the respondent has not provided any compelling reasons why, despite having been contacted on a number of occasions, he did not sign the transfer forms.

DETAILED DETERMINATION

Material Facts

1. The Scheme was instituted by a Trust Deed dated 1 August 1997. The Deed describes it as a Retirement Benefits Scheme, with the Principal Employer being Emes Ltd T/A TPR Plumbing and Heating Merchants.
2. The Deed was signed on behalf of the Principal Employer by Robert Evans (as Director) and Peter Evans (as Director/Secretary).
3. There were two trustees – Robert Evans and Peter Evans.
4. The Trust Rules, at 12, say:

“The Principal Employer as Trustee shall, subject to the consent of the Member concerned and subject to the terms of any undertakings given to the Board of the Inland Revenue, have the power to surrender at any time the benefits secured in respect of that Member under the Policies and to transfer the proceeds to the Trustees of any Scheme approved under Chapter 1 Part XIV of the Income and Corporation Taxes Act 1988 or any other fund, scheme or arrangement approved for the purpose of this Rule by the Board of the Inland Revenue...”
5. On 18 December 2013, the applicant’s representative wrote to Robert Evans, by recorded delivery, explaining that the applicant wished to transfer his share of the benefits of the Scheme from ReAssure – but they required a form to be signed by all trustees of the Scheme.
6. The letter indicated that several previous letters had been sent to Mr Evans, however they had been addressed incorrectly.
7. A further letter was sent on 2 January 2014, referring to the fact that the 18 December 2013 letter did not appear to have been delivered.
8. A Royal Mail ‘Track and Trace’ printout indicates that this further letter was delivered by Special Delivery Guaranteed Service on 7 January 2014, and contains a signature and a printed name ‘R Evans.’
9. No response was received so a further letter was sent to Mr Evans on 21 January 2014. ‘Track and Trace’ showed delivery (Special Delivery Guaranteed Service) on 22 January 2014, with a similar signature and a printed name ‘Evans.’
10. According to the Applicant’s representative, a telephone message was also left for Mr Evans on 30 January 2014.
11. There has been no response to the letters or telephone message, or at least no evidence provided of any reply.

12. The Applicant received a transfer value quote of £13,453.37 from ReAssure as at 4 March 2014.
13. This office wrote to Robert Evans on 17 April 2014 and 6 November 2014 but has also received no reply.
14. Unfortunately, the copy of the Trust Deed I have been provided with by Mr Peter Evans' representatives is not complete and despite my investigator's efforts to obtain the remainder, this has not been forthcoming. However, there are also statutory duties to assist members with accessing their benefits under section 99 of the Pension Schemes Act 1993.

Summary of Mr Peter Evans' position

15. The respondent has prevented him from accessing/transferring his pension because he has refused to sign the release form, which was first sent to him (at the correct address) in December 2013.
16. ReAssure have refused to go ahead without the signature of both trustees and there is no other way he could gain access to his pension.

Summary of Mr Robert Evans' position

17. No contact has been received, despite several requests, so Mr Robert Evans' position has not been explained.

Conclusions

18. In this complaint, I am not required to determine the applicant's statutory or contractual entitlement to a transfer. That is initially a matter for ReAssure. I am asked to consider whether the Respondent has breached his duties as a Trustee by failing to assist his fellow Trustee and scheme member to access his benefits.
19. Trustees have a duty to act in the best financial interests of the Scheme's beneficiaries. They also have a duty to act prudently and to comply with the statutory requirements governing pension schemes.
20. The sole purpose of the Scheme is to provide the members with the relevant benefits and it is reasonable to expect a Trustee to facilitate this.
21. When Mr Robert Evans signed the declaration of trust document he agreed to become a Trustee, and as a Trustee he has a responsibility to administer the plan according to the rules.
22. Under Rule 12 of the Scheme Mr Peter Evans was entitled to a transfer of his benefits, subject to compliance with the appropriate tax legislation. A similar provision exists at Section 99 of the Pension Schemes Act 1993.

23. He has made numerous requests of Mr Robert Evans to facilitate accessing his benefits. The evidence is that these requests were received and ignored.
24. Mr Robert Evans has provided no explanation for his actions.
25. In the circumstances, Mr Robert Evans has breached his duty as Trustee and caused inconvenience to the applicant.
26. I am not asked to consider compensation for any potential financial losses to Mr Peter Evans from the delay in providing the required signature. I have not been given any evidence of potential loss, nor do I know the details of the applicant's plans for the transfer or ReAssure's position when it received the full paperwork. But I can consider compensation for the inconvenience he has undoubtedly been caused.

Directions

27. Within 21 days of the date of this document Mr Robert Evans is to sign Mr Peter Evans' Transfer Payment Release Form, which he is to forward to ReAssure.
28. Within 21 days of the date of this document Mr Robert Evans is to pay the sum of £250 to Mr Peter Evans as compensation for the distress and inconvenience caused by his maladministration.

Jane Irvine

Deputy Pensions Ombudsman
14th May 2015