

Ombudsman's Determination

Applicant	Mr Peter Thomas
Scheme	The Keyhaven Trust (the Trust)
Respondent(s)	Legal and General Assurance Society Limited (L&G)

Complaint summary

Mr Thomas has complained that Legal & General Trustee Services (**the Pensioner Trustee**) failed in their duty as a professional trustee to provide him (as a fellow trustee and a member of the scheme) with sufficient information and guidance about transferring out of two deferred (defined benefit) occupational schemes and into the Trust (a Small Self-Administered Scheme (**SSAS**)).

Summary of the Ombudsman's determination and reasons

The complaint should not be upheld against L&G because, as Pensioner Trustee, they supplied Mr Thomas with the information he requested and they were not responsible for his decision to transfer his deferred pensions to the Trust.

DETAILED DETERMINATION

Material Facts

1. After been made redundant by TVS (his employer) in May 1989, Mr Thomas says that he asked L&G for advice regarding his deferred pension plan benefits. He says that L&G discussed the option of a SSAS. L&G wrote to Mr Thomas on 5 December 1989 setting out the services they provide in respect of a SSAS. Among these were “investment administration – general guidance on suitability of investments, implementation of investment decisions, and administration of investments”.
2. On 19 December 1989, Mr Thomas established the Trust with L&G. L&G were the Pensioner Trustee while Mr Thomas and his wife were General Trustees. The letter from L&G dated 21 December 1989 confirming the Trust stated in Section 4 – Investments – that:

“The Trust Deed will confer extremely wide powers on the General Trustees as regards investment of the Scheme assets. The only constraints upon their freedom of action are;-

the general suitability in “pension fund” terms, in particular the need ultimately to realise the investment to provide benefits;

the requirements of the Inland Revenue.

Our role at [L&G] would not be to advise the General Trustees on the selection of specific investments, but we would comment on the suitability of their broad strategy in the context of securing and maintaining Inland Revenue approval of the Scheme”.
3. L&G (as the Pensioner Trustee) wrote to Mr Thomas on 6 February 1990 and included a copy of the transfer value received from TVS. The letter went on to say that L&G would contact him regarding the transfer of the GMP benefits in the deferred plans to a buy-out plan in the Trust. TVS wrote to Mr Thomas on 12 April informing him that L&G were asking for a minimum of £8,265.42 to cover the GMP. TVS said that their actuaries considered that only £4,832.37 was necessary to cover the GMP and so he may wish to consult with L&G about it. Mr Thomas says that he did raise the issue with L&G and was satisfied with the response he received.
4. L&G wrote to Mr Thomas on 24 April 1990, referring to his earlier letter of 12 April. They noted his comments on the lack of advice or guidance concerning the transfer value offered by Plantation Holdings (a previous employer). L&G said in the letter that they did not have enough information to “advise you regarding which course of action to take, but merely to suggest how the transfer, if elected, could be treated. Nevertheless, I would be delighted to explore this subject with you further if required”.

5. Mr Thomas wrote to L&G on 18 September 1990 making some enquiries before he signed the forms of discharge to complete the transfer. He wanted to know what would happen to the Trust in various hypothetical scenarios. L&G replied on 11 October addressing his concerns and informed him that a rate of 11.47% would be required from the buy-out plan to match the benefits from TVS.
6. In October 1990, Mr Thomas took out two L&G Section 32 GMP buy-out plans by transferring his benefits from the TVS and Plantation Holdings pension funds. He says that he did so following the advice provided by L&G. He signed the form of discharge for the TVS Pension fund on 16 October 1990. The form noted that – “I understand that neither [the Trustees of the TVS Pension Fund] nor [L&G] can accept any responsibility for the benefits provided under the policy and that there may be circumstances in which the benefits ultimately payable under the policy will not be as favourable as the benefits which would otherwise have been payable under the [TVS Pension Fund]”.
7. On 6 November 1990, L&G confirmed receipt of the transfer funds from TVS in respect of the associated buy-out policy.
8. Mr Thomas says that the buy-out plans have under-performed and he holds L&G responsible for not warning him of the risks associated with transferring his benefits from his previous occupational schemes. He says that, as experts, they should have required him to take independent financial advice.

Summary of Mr Thomas's position

9. Mr Thomas is concerned that L&G may have failed to acknowledge a conflict of interest in 1990 when, as trustee and service provider, they could have suggested that he should obtain quotations from other providers for the transfer. He says that L&G did not manage this conflict by training or arranging for the induction of the General Trustees. He had no knowledge or experience of pension funding matters and investment in stock and shares. L&G should have ensured that he was aware of the downward trend in annuity rates prior to the transfer.
10. Mr Thomas says that L&G had specific obligations to provide advice according to the services agreement to provide trustee services. He says that L&G failed in its duties to him as a General Trustee. Their role was not limited to taking action in the event of the Trust being wound up. He says that L&G had a duty under trust law and contract law to ensure that their response to his requests resulted in him being aware of the significant risks involved in the transfers-in. He points to the following sections in the services agreement:

“Administration

[L&G] will conduct all the work associated with the routine administration of the Scheme during the course of each year. This will include:-

(e) providing such information and advice as members may require from time to time regarding their benefits...

Secretarial Duties

[L&G] will provide a secretarial service to the General Trustee. The main areas which will be covered by this service are:-

(c) providing such assistance and advice as may be required by the General Trustees concerning:-

(i) their duties as trustees...

(iv) developments in the field of pension and associated benefit provision by virtue of legislation or changes in Inland Revenue practice, etc.”

11. He also says that L&G failed to inform him of the pensions mis-selling scandal despite their contractual obligation to keep him informed of relevant pension matters. He admits that they provided huge amounts of very useful information in the annual reports to trustees, but they provided nothing on the scandal.
12. He says that L&G should share the losses he has sustained as a result of transferring from his previous occupational schemes into the Trust.

Summary of L&G's position

13. L&G say that they have met all their responsibilities as a trustee. They say that their role as Pensioner Trustee was to ensure that the Scheme was operated in line with the trust deed and relevant legislation. There was a clear delineation between the roles and responsibilities of the General Trustees (Mr Thomas and his wife), in whom the power of investment was vested, and the Pensioner Trustee, whose role was limited and clearly defined. They note Mr Thomas' comments regarding the services agreement but those responsibilities refer to the compliant operation of the Scheme.
14. They do not have a responsibility to provide personal financial advice. They say that Mr Thomas did not request financial advice or guidance relating to the suitability of the transfer. They were not responsible for deciding how the Trust chose to invest its assets and they disagree that they assumed any fiduciary duty towards Mr Thomas or that any conflict of interest existed. Furthermore, Mr Thomas was not included in the pension review as that only relates to personal pension plans where customers have received advice to opt-out of, not join or transfer benefits of an occupational scheme. However, L&G sent him a cheque for £500 in respect of the delay in addressing his complaint.

Conclusions

15. Essentially, Mr Thomas says that the role of L&G as Pensioner Trustee meant that they should have ensured that he had sufficient information and guidance to decide whether to transfer his deferred benefits to the Trust. In hindsight, Mr Thomas does not consider that it was in his best interests to have done so.
16. Considering the information available from 1989/90, I have not seen any evidence that L&G refused any request from Mr Thomas for information or guidance. This is different from advice, which I think is what Mr Thomas really considers that he should have received from L&G. Mr Thomas' latest comments appear to try and introduce this issue. As we have already told him, this Service is unable to consider complaints regarding advice and Mr Thomas is considering making a separate complaint to the Financial Ombudsman Service about that.
17. The role of L&G as Pensioner Trustee was to provide actuarial, accounting, administrative and secretarial services to the Trust. This did not include deciding what investments Mr Thomas should make or reaching a view on whether other investments were preferable. For example, it would have been a different matter entirely had the proposed investment been one that was not permitted by Her Majesty's Revenue and Customs (HMRC).
18. The responsibilities mentioned by Mr Thomas from the services agreement do not place any obligation on L&G, as pensioner trustees, to vet his investment decisions beyond ensuring that they comply with HMRC rules and legislation. Their role is mainly administrative in nature. Mr Thomas alludes to this when he says that they provided useful information in the annual reports to trustees. Although he is unhappy that they did not include information about pensions mis-selling, I do not find anything wrong in that as it did not concern his SSAS. In other respects, Mr Thomas does seem satisfied with the provision of information to him.
19. As the decision to transfer the deferred pensions to the Trust was that of Mr Thomas alone, it was for him to ensure that he had sufficient information and guidance to make that decision. It was also up to him to make himself aware of the risks associated with the transfer. The Pensioner Trustee was available to help him acquire such information and guidance if asked to do so. The letters from L&G dated 24 April and 11 October 1990 bear this out. There is no indication that Mr Thomas made further requests which L&G did not respond to. L&G cannot be responsible if Mr Thomas did not become aware of the risks as a result of the provision of the information he requested.
20. If Mr Thomas required financial advice, which he appears to be saying in a roundabout way, then he should have sought it from the appropriate channels by contacting an independent financial adviser. It was not for L&G to direct him to do so and, in any event, he did not inform them of his need for such advice. Accordingly, they would have been unaware of his continuing lack of understanding regarding the

transfer. This was not incompatible with their role as Pensioner Trustee and did not absolve Mr Thomas of his own responsibility for investment decisions.

21. Mr Thomas himself was the trustee with the responsibility for taking investment decisions and it was his decision to proceed with the transfer when he, with the benefit of hindsight, now says that he did not have sufficient information to have done so. The letter from TVS dated 12 April 1990 raised concerns about the amount required by L&G to cover the GMP and Mr Thomas could himself have sought quotations from other providers to compare. L&G as the receiving scheme did not have to tell him to obtain quotations from other providers and that does not amount to a conflict of interest. L&G did not make any investment decisions for the Trust so the question of a conflict of interest does not arise. The form of discharge also warned of the risk that the benefits ultimately payable may not be as favourable as the benefits which would otherwise have been payable in the TVS Pension Fund. Mr Thomas willingly accepted the risk of what has now occurred.
22. Mr Thomas had sufficient information and understanding (as a General Trustee) to decide on whether he needed a financial adviser and it was his choice not to appoint one.
23. I do not uphold the complaint.

Jane Irvine

Deputy Pensions Ombudsman
31 March 2015