

Ombudsman's Determination

Applicant	Miss Dawn Owen
Scheme	AC Management and Administration Limited Fixed Income Retirement Plan
Respondent(s)	AC Management and Administration Limited (AC Management)

Complaint Summary

1. Miss Owen complains that AC Management has refused to act on her request to transfer her benefits out of the Fixed Income Retirement Plan (the Plan).

Background

Pension liberation

2. This case is connected to what is known as “pension liberation” or “pension scams”.
3. The present tax legislation is designed to prevent access to pension funds before the age of 55 (other than in ill-health or as benefits following death) as part of the policy that encourages pension saving by giving tax advantages, with penalties if the advantages are abused by using funds other than for authorised purposes. There was also, at the material time, a limit on the amount that could be taken as cash at any age.
4. The practice of pension liberation involves a transfer away from a genuine pension scheme intended to allow access to a scheme member's pension savings before the age of 55, or to more cash than would normally be allowed. It is recognised as being contrary to the broad policy of encouraging pension savings and is of concern to the regulatory and tax authorities and those responsible for national pension policy.

The statutory right to a transfer value

5. Section 94 of the Pension Schemes Act 1993 (PSA93), provides that a member of an occupational or personal pension scheme has a right to a “cash equivalent transfer value” of any benefits which have accrued under the transferring arrangement.
6. Section 95(1) of PSA93, says that a cash equivalent transfer value can be taken by making an application in writing to the managers of the transferring arrangement

requiring them to use the cash equivalent in one of several ways set out in subsequent paragraphs. In summary, and so far as relevant, they are:

- for acquiring “transfer credits” in an occupational pension scheme, or
- for acquiring rights under a personal pension scheme

which satisfies prescribed requirements in each case and where the trustees or managers of the scheme are able and willing to accept the transfer.

7. Section 99 of PSA93, requires the trustees or managers to carry out the member’s requirements within a specified period – basically within six months of application, or, in the case of salary related occupational pension schemes, six months of the date of guarantee of the amount of the cash equivalent. It also provides:
 - that the Pensions Regulator can extend the six month period in specified circumstances;
 - for notification to the Pensions Regulator where payment is not made; and
 - in the case of occupational pension schemes, for civil penalties to be imposed by the Pensions Regulator on trustees or managers who have not taken reasonable steps to comply.
8. An application, for the purpose of the time limit above, is one that requires the trustees or managers of the scheme to use the cash equivalent transfer value to acquire credits in an occupational or personal pension scheme which meets prescribed requirements under legislation and the trustees or managers of which are able and willing to accept payment.

Miss Owen’s case - Material Facts

9. Miss Owen has transferred two pension policies from Reliance Mutual to the Plan. Her complaint is not about the decision to transfer to the Plan, but what happened gives context to her later attempt to transfer away from it, about which she has complained.
10. On 28 July 2012, Miss Owen received transfer values for her policies from Reliance Mutual, through a third party company she had instructed. She says that she had been originally contacted by Green Footprint Company.
11. Miss Owen appears to have then had pension review reports carried out by two companies. However, both specifically comment on the ‘The Green Retirement Plan.’
12. On 4 January 2013, AC Management wrote (from 4 Alexandra Road, Gorseinon, Swansea SA4 4NW) to Reliance Mutual, enclosing the transfer documentation for Miss Owen which she had signed on 10 December 2012. They confirmed their role as scheme administrators and provided their client account details for payment. The Plan’s HMRC registration number was also provided.

13. Reliance Mutual processed the transfer on 10 January 2013. On 28 January 2013, a company named Green Footprint Investments wrote to Miss Owen asking her to complete a Members' Investment Decision Form. She opted, on 30 January 2013, for 75% in Just Loans PLC, which was said to have an investment term of 3 years and a 7.5% fixed return, and 25% in FSA regulated investments.
14. AC Management wrote to Miss Owen on 18 February 2013, to confirm that her pension transfer had been completed and the funds had been placed into her requested investment choice. The Plan handbook was included. The only contact information is for 'Mark Harris of The Fixed Income Retirement Pension Plan' at 4 Alexandra Road, Gorseinon, Swansea SA4 4NW.

Miss Owen's attempt to transfer from the Plan

15. Miss Owen says that she has not been able to obtain important information about her pension for over 12 months to enable her to review her financial position and exercise her rights.
16. She had been in email contact with Mark Harris from AC Management but he is no longer replying to her. Within her e-mails of 17 November and 3 December 2014, she requested a transfer value. She did not say where she wanted the transfer to go but indicated that she had recently made previous similar requests.

AC Management

17. We have written to AC Management for their response to this complaint but the post has been returned. They have given no explanation to Miss Owen (or us) regarding their lack of contact, failure to provide a transfer value or move of premises.

Conclusions

18. Miss Owen has transferred away from a reputable established scheme and there is little doubt that it was against her best interests to do so. She transferred to the Plan, which is of a type that is designed to avoid regulatory obligations that would otherwise limit scope for abuse and/or bad advice. She apparently did so in search of high investment returns and increased drawdown flexibility. I do not know what has happened to the assets she transferred. They may or may not be secure, though she is very rightly concerned that they are not.
19. However, I am not dealing with advice to transfer to the Plan. The matter Miss Owen has brought to me is her inability to get the money out of the Plan now.
20. The primary question is whether Miss Owen had a legal right to transfer out of the Plan. My usual approach would be to look at her rights first under the Plan and then under statute. No response to my investigator's enquiries has been forthcoming from AC Management but the Members' Handbook appears to provide Miss Owen with a freestanding right under the Plan to a transfer. In any event, though, she cannot be deprived of a statutory right to a transfer, if she has one.

21. So I move on to whether Miss Owen's application met the statutory requirements for a request for a cash equivalent transfer value.
22. Section 94 of PSA93, provides that a member of an occupational or personal pension scheme has a right to a "cash equivalent transfer value" of any benefits which have accrued under the transferring arrangement. Section 95(1) of PSA93, says that a cash equivalent transfer value can be taken by making an application in writing to the managers of the transferring arrangement and Section 99 of PSA93, requires the trustees or managers to carry out the member's requirements within a specified period – basically within six months of application in this case.
23. Miss Owen made several requests for a cash equivalent transfer value. However, to qualify as an application for the purpose of the six month time limit for payment it needed to require AC Management to use the transfer value to acquire credits in an occupational or personal pension scheme, the trustees or managers of which were able and willing to accept payment. Strictly, Miss Owen's original request did not meet the test.
24. But, it was unquestionably maladministration not to respond – and it is the lack of response that stopped the process. If Miss Owen had then submitted a full transfer request to a pension scheme, which met the prescribed requirements under legislation and was prepared to accept it, she would have acquired a statutory transfer right.
25. Miss Owen initially wrote on 17 November 2014. I find that if she had had a response she would have made a full request within a month. If she had, then, although there was not an express obligation to pay it before the six months was up, an unwarranted delay could amount to maladministration. There were no particular features of the transfer request that might have caused a request for further information, or a need to take advice of any sort and, therefore, I see no reason why the transfer could not have been paid by the end of January 2015.
26. I shall, therefore, direct that AC Management provide Miss Owen with a cash equivalent transfer value within the timescale specified below and upon receipt of all the relevant requirements they are to pay, to an arrangement which satisfies the prescribed requirements, the higher of a transfer value backdated to 31 January 2015, with interest and the current transfer value.
27. I make that direction without any great confidence that it will be complied with immediately. If AC Management do not comply, Miss Owen may attempt to enforce the direction through the courts, but sadly, even if AC Management respond, she may find that some or all of the money is no longer there.

Directions

28. Within 14 days of Miss Owen requesting a transfer value to a named scheme that meets the prescribed requirements under legislation and is prepared to accept it, AC Management are to pay the transfer value to that arrangement. The transfer value shall be the higher of:

- the cash equivalent transfer value as at 31 January 2015, plus simple interest at the average rate for the time being payable by the reference banks from that date to the date of payment, and
- the correctly calculated cash equivalent transfer value at the date of payment.

Anthony Arter

Pensions Ombudsman
21 July 2015