

Ombudsman's Determination

Applicant	Mr S
Scheme	EC Print (UK) Limited Retirement Benefit Scheme (the Scheme)
Respondents	Kuhrt Leach LLP Mr H

Outcome

1. Mr S's complaint is upheld against Kuhrt Leach LLP, also referred to as K L Pensions Administration Services. To put matters right Kuhrt Leach LLP should provide a full written response to Mr S's questions regarding his Scheme funds, including the current value, and to assist him in exercising his statutory rights. Kuhrt Leach LLP should also pay Mr S, £1,000, to reflect the distress and inconvenience caused to him by their maladministration.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr S complains that Mr H and Kuhrt Leach LLP failed to respond to his enquiries about the status and security of his Scheme pension, leaving him unable to plan for his future and exercise his transfer rights. They also failed to send him regular pension payments.
4. Mr S says that he would like Mr H and Kuhrt Leach LLP, to pay the outstanding pension payments owed to him from the Scheme, and to provide him with written information about his Scheme benefits. He also says he would like to either transfer his Scheme funds to another pension provider, or receive his benefits as a lump sum.

Background information, including submissions from the parties

5. Mr S is represented by Mrs T, who has been granted power of attorney over his affairs.
6. The Scheme is a small self-administered scheme, and was set up for Mr S, by Mr H and Kuhrt Leach LLP.

7. Mr S was copied into an email on 1 May 2008, sent by Mr H at Kuhrt Leach LLP, on 30 April 2008. Mr H said in the email,

“I have now registered EC Print (UK) Limited Retirement Benefit Scheme with HMRC I will arrange to see Mr S shortly with the original Deed for signing. I would also appreciate the opportunity of meeting up with you in the near future to go through what we are offering in terms of SSAS administration in terms of our service model”.
8. Mr H wrote to Mr S, in his capacity as partner at Kuhrt Leach LLP, on 8 October 2008 regarding pension planning.
9. In January 2009, Mr S transferred £100,138 into the Scheme from a Prudential SIPP, administered by James Hay.
10. Mr S says he received payments from the Scheme in 2009. He received no payments in 2010, one payment in 2011 and some payments in 2012. Confirmation of these payments was provided by Mr S via a handwritten note. Mrs T says that Mr S received one off payments in 2014, but there has been no further payment since October 2014.
11. Mr H and Kuhrt Leach LLP have not responded to the complaint, and letters sent by this office, even those sent by special delivery, have been returned. So they have not co-operated with our investigation.
12. Mr S has not been able to provide any Scheme documents. It is therefore difficult to ascertain where the funds were invested.

Adjudicator's Opinion

13. Mr S's complaint was considered by one of our Adjudicators who concluded that further action was required by Kuhrt Leach LLP. The Adjudicator's findings are summarised briefly below:
 - The Adjudicator was satisfied that Mr H and Kuhrt Leach LLP failed to respond to Mr S over a prolonged period of time, regarding the status and security of his Scheme benefits. This constitutes maladministration, which has caused him significant distress and inconvenience.
 - There was no formal request from Mr S to transfer from the Scheme, but it appears from his complaint form that he would wish to do so. Mr S cannot be deprived of a statutory right to transfer under Section 94 of the Pension Schemes Act 1993. Should Mr S make a valid transfer request, Mr H and Kuhrt Leach LLP are obliged to deal with it in accordance with his statutory rights.
 - The complaint is brought against the Scheme administrator. It appears from Mr H's email of 30 April 2008, received by Mr S on 1 May 2008, that he and Kuhrt Leach LLP were responsible for the administration of the Scheme. They have

refused to act on Mr S's requests for information, and to facilitate a transfer of his benefits, or to pay his benefits as lump sum. They also failed to send him regular pension payments. Mr H and Kuhrt Leach LLP's lack of action is maladministration.

- The Adjudicator considered whether a recommendation and eventual direction, if appropriate can be made against Mr H personally. He thought that there may be exoneration clauses in the trust deed, and in any event there would usually be such within the LLP agreement, that would make any directions against Mr H for financial compensation unenforceable, though he was unable to say for certain as he had not been provided with copies of the relevant documents. The Adjudicator thought that Mr S should be made aware of this should he wish to take legal advice on the point.

14. Mr H and Kuhrt Leach LLP did not respond to the Opinion.

15. Mrs T accepted the Opinion findings but raised the following questions:-

- Mr H has not replied to any correspondence and the Opinion states that mail has been returned as not delivered, how will Mr H's letter be delivered to him?
- If there is no other way of delivering the correspondence to Mr H, is there an alternative plan?
- What happens if Mr H does not respond?

16. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mrs T for completeness.

17. As the respondents failed to respond to the Opinion, the Adjudicator subsequently contacted Companies House to ascertain the current status of Kuhrt Leach LLP. As a result he has established that Kuhrt Leach LLP was dissolved in March 2016.

Ombudsman's decision

18. I note Mrs T's comments about Mr H's continued lack of communication during the course of this investigation. However, based on the evidence that has been presented, it is clear that Kuhrt Leach LLP was the Scheme administrator. Although Mr H may personally have been the one from that partnership who regularly liaised with Mr S, that is not sufficient for him to fall within my jurisdiction as an administrator, or de facto administrator, under section 146(4) and (4A) of the Pension Schemes Act 1993 and regulations thereunder. Mr H was acting for/under the partnership, which was responsible for administering the Scheme. Consequently, I do not consider that any further investigation by this office into any personal liability against Mr H is warranted. Even if it were possible to make a finding of personal liability against Mr H, under the Limited Liability Partnerships Act 2000 the claim would be restricted to the amount he invested into the partnership (which might be negligible).

19. It is unfortunate that Mr H has little documentary evidence of the pension payments made by Kuhrt Leach LLP. I also realise that for Mr H it is extremely frustrating that the partnership has now been dissolved.
20. Although, I do uphold Mr S's complaint against Kuhrt Leach LLP and set out my directions below which are enforceable in a county court Kuhrt Leach LLP has now been dissolved, so my directions alone may be of little positive effect. However, it is open to Mr S to take legal advice in pursuing this matter further, in particular to see whether it is possible to apply to the Court for the partnership to be re-instated, under S1029 Companies Act 2006. Should this prove possible, my directions can then be enforced if necessary against the re-instated LLP entity.

Directions

21. I direct that within 28 days of this determination Kuhrt Leach LLP are to:
 - provide a full written response to Mr S's questions regarding his Scheme funds, including the current value, pension payments outstanding and assist him in exercising his statutory rights. Should he seek to exercise his statutory right to transfer then, within 28 days of Mr S requesting a transfer value to a named scheme that is prepared to accept it, they are to pay the transfer value to that arrangement.
 - pay Mr S £1,000 to reflect the distress and inconvenience caused to him by their maladministration.

Anthony Arter

Pensions Ombudsman
16 September 2016