

## Ombudsman's Determination

Applicant	Mr E
Scheme	Wyre Marina Boatyard Limited Pension Scheme - <b>(the Scheme)</b>
Respondent	Mr Farrenas Pensioner Trustee of the Scheme

## Outcome

1. Mr E's complaint is upheld and to put matters right Mr Farren, as Pensioner Trustee of the Scheme, should provide a full written response to Mr E's questions regarding his Scheme funds, including the current value, and to assist him in exercising his statutory rights. He should also pay Mr E, £1,000, to reflect the distress and inconvenience caused to him by his maladministration.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr E's complaint is about Mr Farren's failure to respond to his enquiries about the status and security of his Scheme funds, leaving him unable to plan for his future and exercise his transfer rights.

## Background information, including submissions from the parties

4. Mr E is represented by Mr Cox.
5. The Scheme is a small self-administered scheme and was established by Wyre Marina Boatyard Limited, as the sponsoring employer, on 18 February 2014.
6. Mr Farren is a director of Wyre Marina Boatyard Limited and also Pensioner Trustee of the Scheme.
7. In August 2014, Mr E transferred £216,577.10 into the Scheme from his previous benefits held under the Local Government Pension Scheme from his employment with the London Borough of Tower Hamlets.

8. Mr Cox claims that Scheme funds were moved from a Barclays account without Mr E's consent. He says that Mr Farren had told him that the funds were transferred to SJC Global Ltd to prevent interference.
9. Mr Cox is concerned that the Scheme funds are not secure and are being invested inappropriately without Mr E's knowledge or consent.
10. Mr Cox asserts that as Scheme funds are not being invested properly it is resulting in a significant future financial loss to Mr E.
11. Mr Cox contends that Mr Farren told him that the Scheme funds were accruing at a rate of 5% per annum. However, despite requests for evidence of this Mr Farren has failed to respond.
12. Mr Cox also says that Mr Cummings of SJC Global Ltd also refuses to discuss Scheme matters with him.
13. Mr E wrote to Wyre Marina Boatyard Limited on 4 December 2014, requesting a transfer of his Scheme benefits back to the Local Government Pension Scheme.
14. Mr Farren wrote to Mr CoxX on 16 February 2015, on behalf of Wyre Marina Boatyard Limited, in connection with the Scheme saying,

“...As I have made you aware I am confident both my Company and myself were being misrepresented at the very least and potentially being set up for fraud. You are very aware my bank accounts have been breached by unknown 3<sup>rd</sup> parties and as such the accounts are currently frozen pending the outcome of my findings.

I will keep you abreast of the progress of this investigation...”
15. Mr Cox wrote to Mr Farren on 15 May 2015, requesting details of the Scheme fund investments and transfer information.
16. Mr Farren wrote to this office on behalf of the Scheme on 14 August 2015, regarding Mr E's complaint saying,

“I can confirm that I am currently conducting an investigation into the scheme, this is relating to membership entitlement and taxation, As Mr E is fully aware as per my numerous correspondence with him.

Upon conclusion of this investigation I will be more than happy to deal with Mr E's transfer request...”

### **Adjudicator's Opinion**

17. Mr E's complaint was considered by one of our Adjudicators who concluded that further action was required by Mr Farren. The Adjudicator's findings are summarised briefly below.

- There was a request from Mr E to transfer from the Scheme. Mr E cannot be deprived of his statutory right to transfer under Section 94 of the Pension Schemes Act 1993. Mr Farren is obliged to deal with it in accordance with the legislation. The Act provides a maximum time limit of 6 months for a statutory transfer to be made. If there is a delay a request for an extension this must be made to the Pensions Regulator within that timeframe. The evidence indicates that Mr N has not complied with these requirements.
- Mr Farren failed to respond to Mr E 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.
- Mr Farren has failed to respond to Mr E's requests for information concerning Scheme investments. The failure to provide the requested information is maladministration.
- It was therefore the Adjudicator's opinion that Mr E's complaint should be upheld. However, this requires Mr Farren's compliance in order for the Scheme assets to be secured and available to transfer and the statutory transfer to be made. Therefore, in order to provide a remedy should the Scheme fail to transfer Mr E's benefits, it is necessary for there to be an Ombudsman's Determination, as this will be binding and enforceable by Mr E in the county court.

18. Both Mr E and Mr Farren accepted the Adjudicator's Opinion with which I also agree, and is summarised above.

### **Ombudsman's decision**

19. Therefore, I uphold Mr E's complaint.

### **Directions**

20. Mr Farren, in his capacity as Pensioner Trustee shall :

- provide a full written response to Mr E's questions regarding his Scheme funds, including the current value. Should Mr E seek to exercise his statutory right to transfer then, within 28 days of Mr E requesting a transfer value to a named scheme that is prepared to accept it, Mr Farren will arrange for the transfer to that arrangement.
- within 14 days pay Mr E £1,000 in recompense for the significant distress and inconvenience caused to him by Mr Farren's maladministration.

**Anthony Arter**

Pensions Ombudsman

30 November 2016