

Ombudsman's Determination

Applicant	Mr W
Scheme	The Holstein-Friesian Pension and Life Assurance Scheme (1992) (the Scheme)
Respondents	<ol style="list-style-type: none">1. Holstein UK (Holstein)2. The Trustees of the Holstein-Friesian Pension Scheme (the Trustees)

Ombudsman's Determination and reasons

1. I do not uphold Mr W's complaint and no further action is required by Holstein or the Trustees.
2. My reasons for reaching this view are explained in more detail below.

Complaint summary

3. Mr W's complaint is that Holstein and the Trustees refused to allow him to transfer his entitlement from the Scheme.

Background information, including submissions from the parties

4. Under section 94 of the Pensions Act 1993, a member of an occupational pension scheme has a statutory right to a cash equivalent transfer of their benefits from the scheme.
5. Rule 16 (Lien) of the rules to the Scheme says:

"16.1 The insurance effected in respect of a Member under the Scheme shall stand charged with the payment to the Trustee (or other person paying the same) of the amount of:

 - any Member's contributions paid on behalf of the Member but not deducted from his remuneration or otherwise repaid by the Member; and
 - any debt or liability owing by and arising out of the criminal act or omission of the Member, if the Trustee so determines.

PROVIDED THAT nothing herein contained shall have the effect of creating any charge or lien on any transfer payment received by the Trustee under Rule 10.1.

16.2 The Member shall be given a certificate showing the amount to be recovered and its effect on his benefits and in the event of a dispute about the amount to be recovered, recovery shall not be enforced unless the debt has become enforceable under a court order or the award of an arbitrator appointed in accordance with the Arbitration Act 1996. This Rule is subject at all times to sections 91 to 94 of the PA 1995.”

6. Mr W has been a member of the Scheme since 1986.
7. Mr W says:
 - a. on 29 April 2013, following a difference of opinion regarding a staff matter, he resigned his position and in accordance with the terms of his contract of employment he gave one year's notice;
 - b. on 16 July 2013 he was informed that he was being placed on garden leave with immediate effect;
 - c. following a disciplinary meeting held in March 2014, he was dismissed on grounds of gross misconduct - he denies the charges;
 - d. in November 2014, after he had obtained figures about the value of his pension fund, he completed and sent to Holstein's pension advisors the necessary papers for his pension to be transferred;
 - e. on 7 January 2015, his pension advisors received an email from the administrators of the Scheme saying that the matter had been referred to Holstein's solicitors and that all future matters should be referred to them;
 - f. on 21 January 2015, his pension advisors received an email from the administrators of the Scheme informing them that the transfer was held pending investigation and that any further correspondence should be addressed to them and not to Holstein's solicitors;
 - g. he has been unable to obtain statutory information regarding his benefits from the Scheme, despite two requests, nor has he been provided with a copy of the complaint procedure;
 - h. he does not understand why Holstein are being allowed to withhold his pension for such a length of time, given that the initial advice from their solicitors is that they should not withhold his pension for any extended period of time;
 - i. he has not been arrested or charged with fraud; and
 - j. no restraint order is in place and the Trustees have not issued a certificate as required under rule 16.2.
8. On 24 March 2014, Mr W was dismissed by Holstein for gross misconduct. Holstein say that due to the severity of the allegations against him, the matter was passed on to Hertfordshire Police Constabulary (**HPC**) for investigation. They also say that the

case was with the Crown Prosecution Service (**CPS**) and they had been instructed by the HPC not to transfer Mr W's pension fund until they hear from the CPS.

9. Holstein informed me, by email on 7 March 2016, that a restraint order was served on Mr W on 4 March 2016 at court.

Adjudicator's Opinion

10. Mr W's complaint was considered by one of our Adjudicators who concluded that no further action was required by Holstein or the Trustees. The Adjudicator's findings are summarised briefly below:
 - a. Under section 94 of the Pensions Act 1993, Mr W has a statutory right to a cash equivalent transfer value from the Scheme. However, rule 16.1 of the Rules allows the Trustees to exercise a lien in respect of any monies due or owing by a member arising from a criminal act or an omission.
 - b. Given the allegations made against Mr W and the advice they received from HPC to hold his pension and HPC's investigations, it was not unreasonable for the Trustees to exercise a lien under Rule 16 and refuse the transfer of his benefits.
 - c. Of course, in exercising a lien under rule 16, the Trustees must give the member a certificate setting out the amount to be recovered and the effect on the member's benefits under the Scheme. It is not unreasonable that the Trustees have not as yet been able to issue a certificate, given the amount to be recovered has been, and still is, subject to a criminal investigation. The amount to be recovered will be identified during the course of the criminal investigation, but clearly at present the Trustees do not have this information to issue a certificate.
 - d. Indeed, as a result of HPC's investigations Mr W has been charged with theft and there is a restraint order on his assets.

Ombudsman's decision

11. In response to our Adjudicator's opinion Mr W says:
 - a. In his initial complaint he said that he had requested a copy of the Scheme accounts for 2013. This has still not been addressed.
 - b. He refers to an email dated 18 February 2011 which he sent to the then Chairman and Director of Finance (Mr E), both of whom were Trustees. He says that there is clear communication on his salary and pension, which contradicts the position taken by Mr E during the disciplinary process and the current stance that it was never disclosed to the Trustees.
12. In his email of 18 February 2011, Mr W says that his recollection was that he and Holstein had agreed on a salary figure, but it would be paid to both him and his wife.

He added that his pensionable salary should be the combined salary paid to him and wife.

13. As stated in 3 above, the complaint accepted for investigation was about the refusal to allow Mr W to transfer his entitlement from the Scheme. He was sent a letter by us on 17 September 2015 confirming that this was the matter which we would be investigating. He did not respond to say that we should also be investigating other matters. There is nothing in Mr W's application form, dated 18 April 2015, or his letters to us (11 April 2015, undated letter which we received on 9 June 2015, 24 September 2015, 18 September 2015, 2 October 2015, 4 November 2015, 12 February 2016, 19 February 2016 and 11 March 2016) to show that his complaint included the Trustees' failure or refusal to provide him with a copy of the 2013 Scheme accounts or any dispute about what portion of his salary was pensionable. The Trustees would have to be given the opportunity to address these matters first before I am able to consider them.
14. With regard to Mr W's original complaint I find that it was not unreasonable for the Trustees or Holstein to refuse to allow him to transfer his benefits from the Scheme because:
 - a. rule 16.1 of the Scheme rules allows the Trustees to exercise a lien in respect of monies due and owing arising out of a criminal act or omission of a member if the Trustee so determines;
 - b. the Trustees and Holstein had been instructed by Hertfordshire Police Constabulary not to allow Mr W to transfer out his pension benefits from the Scheme pending the completion of a criminal investigation; and
 - c. the Trustees are unable to provide Mr W with the certificate required under rule 16.2 until the amount to be recovered has been identified. As yet this has not happened.
15. In any event the trustees would now be unable now to transfer funds because they are bound, as am I, by the terms of the restraint order issued by HHJ Bright on 26th February 2016.
16. Therefore, I do not uphold Mr W's complaint.

Karen Johnston
Deputy Pensions Ombudsman
17 May 2016