

## Ombudsman's Determination

Applicant	Mrs T
Scheme	[Mr T's] Executive Pension Scheme <b>(the Scheme)</b>
Respondents	Rowanmoor Pensions <b>(Rowanmoor)</b>

## Outcome

1. Mrs T's complaint against Rowanmoor Pensions is partly upheld, but there is a part of the complaint I do not agree with. To put matters right, for the part that is upheld, Rowanmoor should pay Mrs T compensation of £500 for the significant distress and inconvenience caused to her by its failure to ensure that the only remaining asset of the Scheme, a Spanish property, was insured.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mrs T has complained that Rowanmoor failed to act in a timely manner on the pension sharing order which followed her divorce from Mr T.
4. She is also unhappy that Rowanmoor did not insure the property which formed part of Mr T's pension, and consequently, believes Rowanmoor should take responsibility for repairs arising out of the vandalism which occurred to it.
5. Lastly, Mrs T believes that Rowanmoor failed to remit rental income which Mr T had received into the pension fund.

## Background information, including submissions from the parties

6. The Scheme was set up as part of a Small Self-Administered Scheme (**SSAS**) in 2001. It had three members, including Mr T, and owned four properties. In 2003, two of these properties were sold, with another being sold a few years later. Two members of the Scheme subsequently transferred out, leaving Mr T as the sole member and in ownership of the single Spanish property which remained.
7. In a net assets statement dated 5 April 2009, the property within the Scheme was valued at £170,653.

8. On 14 June 2010, Rowanmoor wrote to Mr T's financial adviser and requested a copy of the current Property Insurance Schedules for the properties owned by the Scheme.
9. On 1 December 2011, a court order was issued which, ordered that provision be made in favour of Mrs T in respect of Mr T's rights under his pension arrangement with the Scheme.
10. Following on from this, on 7 December 2011, a Pension Sharing Order (**PSO**) was issued which entitled Mrs T to Mr T's pension rights under the Scheme.
11. On 17 April 2012, Mrs T's solicitors chased Rowanmoor, requesting that it act on the court order.
12. The letter was received on 19 April 2012, and Rowanmoor says that it was not aware of the court order until receipt of this letter.
13. On 13 July 2012, Rowanmoor wrote to Mrs T saying that although a court order was in place to transfer 100% of the Scheme to Mrs T, the transfer still needed to be completed in accordance with the Scheme rules and HMRC guidelines. It set out the two options available to Mrs T: to transfer the assets held within the Scheme to another pension scheme; or keep the current arrangement and prepare respective deeds of amendment removing Mr T and replacing him with Mrs T, as the Scheme member.
14. On 5 October 2012, Rowanmoor wrote to Mrs L confirming that one property remained within the Scheme. It understood that the property had not been occupied since its purchase and no rental payments had ever been received into the Scheme's bank account.
15. On 15 October 2012, following concerns raised by Mrs T, Mr T's legal representative attended court to inform Mrs T and her representative that he was "ready, willing and able to deal with any communications" about the pension sharing order on behalf of Mr T.
16. On 6 November 2012, Rowanmoor wrote to Mrs T explaining that as stated in its letter of 5 October 2012, it was awaiting details of Mrs T's legal representative and her new pension arrangement.
17. On 20 November 2013, Mrs T wrote to Rowanmoor to say that she had appointed another trustee to act for her in this matter and that they would be sending a deed of amendment and appointment, which were currently with Mr T for signing.
18. On 14 March 2014, Mrs T's representative informed Rowanmoor that Mrs T had obtained details of solicitors in Spain in connection with re-registering the property. It was also mentioned that there was some damage to the property. Consequently, Mrs T's representative requested that Rowanmoor provide a copy of its insurance certificate for the property.

19. On 24 March 2014, Rowanmoor wrote to Mrs T to ask if she had received the signed deeds from Mr T.
20. On 25 March 2014, Mrs T's representatives sent a Deed of Amendment, Removal and Appointment for the Scheme to Rowanmoor, signed by both Mr and Mrs T. Rowanmoor was requested to sign the relevant parts of the document, and return this to Mrs T's representative.
21. On 8 November 2014, Rowanmoor said that Mr T had over the years arranged insurance for the property but had never provided it with a copy of the insurance certificate.
22. On 29 December 2014, Rowanmoor reiterated that it had not been provided with a copy of the insurance certificates for the property, although this had been requested from Mr T's independent financial adviser. It also refuted concerns raised by Mrs T that it had not acted on the PSO in a timely manner. It said that in instances where a PSO was granted, it would normally receive a form from the courts requesting information from the Scheme Administrator in regard to the Scheme transfer values. It said this had not happened, so it could not be held responsible for any financial loss Mrs T may have suffered in the period following the issue of the PSO.
23. On 1 May 2015, Mrs T contacted her representative to say that towards the end of 2014 Rowanmoor had tried to persuade her to accept a transfer of the fund. Mrs T said she refused as Rowanmoor had not produced any evidence that the property within the Scheme had been insured.
24. On 3 August 2015, Mrs T wrote to Rowanmoor saying that she had lost the benefit of rental monies which should have been paid into the fund. She estimated this loss to be £34,400, incurred over a period of 43 months, with rent at £800 a month.
25. On 21 August 2015, Rowanmoor said that the property had not been let and provided a document, downloaded from the internet, dated August 2009. This listed the business, which had once operated, at the property, as closed. It also acknowledged the damage to the property and said that over the past few months, Rowanmoor had, from its own funds, employed builders to restore the structure of the property, replace a damaged rear window and install a metal roller blind to ensure security. Rowanmoor said the property was "now an empty shell which is in good condition and which could be placed on the market."
26. On 14 April 2016, Rowanmoor sent the following comments to this Office:-
  - The property had been vacant as of 2008. Rowanmoor's finance director had visited the property and spoken to other long established tenants. They had confirmed that the property had been empty for many years.
  - Mrs T believed that at the date of divorce, the pension fund was worth approximately £230,000. Rowanmoor was not notified in advance that divorce proceedings were to take place, nor were details requested of the Scheme's

assets and their value. In considering the value of other units that had been up for sale, the property in question most likely had a value of €60,000.

- Mrs T had sent Rowanmoor a copy of a rental agreement which she said demonstrated that rent had been paid for the property. However, this agreement concerned an adjacent premises, so it did not relate to the property held within the Scheme.
- Mr T usually settled the insurance of the property with insurers in Spain. Rowanmoor had no reason to believe he had stopped insuring the property until it recently discovered that the property had been vandalised.

27. In December 2016, in response to an information request made during the course of the Adjudicator's investigation, Rowanmoor said the following:-

- It had been provided with a Deed of Removal and Appointment. In April 2014, it confirmed to Mrs T's representative that it could not execute the Deed until the re-registration of the property was nearing completion. It was not prepared to execute the deed to remove itself as an independent trustee whilst still owning the property and remaining as the scheme administrator. It had not received the required information, from Mrs T's legal representative, to enable it to make the necessary transfer.
- It was the independent trustee and did not act as property manager, nor as a maintenance company.
- Mrs T was given the opportunity to amend the rules and continue with the SSAS, or transfer to another arrangement. Mrs T chose to keep the SSAS and transfer to a different provider.

28. In January 2017, the Adjudicator wrote to Mrs T with Rowanmoor's response. The Adjudicator said that there was no specific evidence of unreasonable and avoidable delays.

29. In a telephone call between Mrs T and this Office, in early February 2017, Mrs T said that her main concern was the damage to the property. She believed that Rowanmoor had a duty to keep the property insured. Her second main concern was that Rowanmoor had failed to collect rent money as she did not believe that Mr T had left the property vacant. Lastly, Mrs T said she was unhappy with the delays caused by Rowanmoor. The Adjudicator explained that Mrs T would need to provide evidence of specific delays in order for this part of her complaint to be successful.

30. On 14 February 2017, Mrs T provided further information.

## **Adjudicator's Opinion**

31. Mrs T's complaint was considered by one of our Adjudicators who concluded that the complaint should be upheld in part. The Adjudicator's findings are summarised briefly below:-

- Rowanmoor had said that it does not act as a property manager or maintenance company, and has no responsibility to maintain the property. Whilst the contract and Scheme deed did not specify these responsibilities, wider obligations owed by trustees needed to be considered.
- On the Pensions Regulator's website in the section entitled Regulatory Guidance, under the sub-section Trustee Guidance, Holding Scheme Assets Securely,<sup>1</sup> it says that trustees have a duty to make sure that a scheme's investments are held securely on its behalf. The guidance also says that Trustees should consider "all the possible risks, including fraud, theft and the destruction of property."
- This suggests that Trustees do have some responsibility for the security of the assets forming part of a scheme, including property. As the guidance stated that possible risks should be considered, it demonstrates that Rowanmoor had a responsibility to ensure that the property was insured.
- Accordingly, Rowanmoor ought to have had in place a procedure whereby it checked whether the property was insured, or made its own provision for insurance where no such policy was in place.
- In June 2010, Rowanmoor requested a copy of the property's current insurance schedules from Mr T's financial adviser. This suggested that Rowanmoor was aware of the duty to insure the property and had a procedure in place to monitor this.
- Rowanmoor's failure to ensure the property was insured, however, does not necessarily render it liable for the value of the repairs to the property, as there was no causal link between its failure to insure the property and the cost of its repairs.
- Notwithstanding the matter of insurance, Rowanmoor ought to contribute to the cost of the repairs. In its letter of 21 August 2015, Rowanmoor said that it had done so through its own funds.
- However, there was a considerable period of time between Rowanmoor informing Mrs T of the vandalism, and it taking action to remedy this. Rowanmoor should compensate Mrs T for the significant distress and inconvenience which she suffered during this period.
- With regard to the matter of rental monies, if any, not being remitted into the fund, this was Mr T's responsibility and so Rowanmoor could not be held liable.
- With regard to the delays which Mrs T says she has experienced throughout this matter, there has been considerable communication over a long period, but there is no evidence that Rowanmoor caused unreasonable delays.

32. Mrs T accepted the Adjudicator's Opinion. Rowanmoor did not accept the Adjudicator's Opinion; it said that the guidance referred to on the Pensions Regulator's website referred to the custody arrangements for the holding of scheme assets, specifically the safeguarding of the physical documentation of asset

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<sup>1</sup> <http://www.thepensionsregulator.gov.uk/guidance/guidance-for-trustees.aspx#s1549>

ownership, and is therefore not relevant to the matter of the insurance of the property. Rowanmoor asked the Adjudicator to reconsider her findings.

33. The Adjudicator reconsidered her findings but reached the same conclusions. In summary, she felt that Rowanmoor had construed the guidance too narrowly. She said irrespective of the meaning of the guidance, Rowanmoor's comments supported a duty to make provision for insurance. For example, it had said that it only recently came to realise that the property was uninsured, at which point it could not arrange for this due to the property having no liquidity. Furthermore, in Rowanmoor's June 2010 letter, it requested to be a named party in the insurance document.
34. Rowanmoor did not accept the Adjudicator's Opinion, maintaining that it was the member's duty to effect suitable insurance, therefore the complaint has been passed to me to consider. Rowanmoor provided its further comments which do not change the outcome. Therefore, I will only respond to the key points made by Rowanmoor for completeness.

### **Ombudsman's decision**

35. I have considered the guidance in question, however, irrespective of the extent to which the Regulator's guidance applies, the independent trustee owes a fiduciary duty to the beneficiaries of the scheme. When dealing with a scheme's investments, in this case a Spanish property, they have a responsibility, especially, as the professional trustee, to ensure that the assets are protected in order that its value is safeguarded as much as is reasonably practicable.
36. The property in question formed the main asset of the Scheme, as the independent trustee and also the Scheme administrator, Rowanmoor had a duty to safeguard this. Ensuring that the property was insured was intrinsic to such a duty in order to protect against financial loss.
37. Rowanmoor, obviously recognised this responsibility as it requested a copy of the property's current insurance details in 2010. However, this does not appear to have been followed up. Rowanmoor failed in its duty to regularly monitor whether insurance had been arranged on the property.
38. Rowanmoor has also commented that it had no reason to believe, until more recently, that the property was no longer insured, at which point the provision of insurance was not possible. I do not understand why Rowanmoor believed this to be the case when, as the Scheme's administrator, they had no documentary evidence that insurance cover had been maintained. Additionally, Rowanmoor made efforts to secure the property from its own funds after the vandalism had taken place. These comments and actions suggest that Rowanmoor itself understood, as a trustee, that it shared responsibility for the property's security.

39. I consider that Rowanmoor ought to have followed up its letter in 2010 given the risk of the property remaining uninsured. The administration of the Scheme was, in my opinion inadequate. If Rowanmoor had ensured that insurance cover was in place Mrs T would not have been caused unnecessary distress and inconvenience by the property remaining vandalised and uninsured during the period prior to Rowanmoor's subsequent intervention.
40. I have taken into account the steps that were eventually taken by Rowanmoor to repair and secure the property, however, Rowanmoor should be held to account for the considerable distress and inconvenience suffered by Mrs T.
41. I appreciate Mrs T's concern that rental monies have not been paid into the Scheme and the difference in opinion between her and Rowanmoor concerning whether the property was occupied. However, I do not accept that it was Rowanmoor's responsibility to oversee that Mr T was paying rental income into the Scheme.
42. Lastly, I do not find that Rowanmoor is at fault for the purported delays which Mrs T believes she experienced. Rowanmoor had set out its process for progressing the matter and there was continuing dialogue between various parties. I do not believe there were specific, avoidable delays on the part of Rowanmoor.
43. Therefore, Mrs T's complaint is partly upheld in respect of the non-financial loss for the distress and inconvenience suffered by her.

## **Directions**

44. I direct Rowanmoor to pay Mrs T £500 for the significant distress and inconvenience she has suffered.

**Anthony Arter**

Pensions Ombudsman  
5 June 2017