

Ombudsman's Determination

Applicant	Mr N
Scheme	DAS Legal Expenses Insurance Company Limited Pension and Life Assurance Scheme (the Scheme)
Respondents	DAS UK Group (DAS) Trustees of DAS UK Group (the Trustees)

Outcome

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

Complaint summary

3. Mr N has complained that the Trustees failed to transfer his pension funds within an appropriate time period, and DAS has deliberately obstructed the transfer of his pension benefits.

Background information, including submissions from the parties

4. Mr N received a guaranteed statement of entitlement on 22 April 2015.
5. Mr N's financial adviser submitted a request to transfer on 2 July 2015. On the same date the Trustees were made aware that Mr N might be the subject of legal proceedings (**the proceedings**) brought by DAS.
6. Mr N chased the transfer request and asked for an explanation on 3 August 2015.
7. On 6 August 2015, the Trustees were given access to evidence relating to the proceedings for consideration.
8. The Trustees responded to Mr N on 7 August 2015, acknowledging that they was aware of the legislative time limits for transfers.
9. Mr N and his solicitor chased again on 4 September 2015. In his letter Mr N started the internal dispute resolution procedure (**IDRP**).

10. Mr N was served with notice of the proceedings on 25 September 2015.
11. Mr N's complaint was considered at Stage 1 of the IDRP and not upheld. The response was issued on 25 September 2015. They explained that the transfer had been delayed to allow the Trustees to consider all the information relating to the proceedings.
12. This was followed by a letter dated 29 September 2015, confirming that, in light of the proceedings, part or all of Mr N's pension might be subject to forfeiture. Therefore, the transfer deadline was extended until three months after the proceedings were concluded.
13. Mr N appealed, but the appeal was not received by the Trustees. The Trustees have confirmed that had the appeal been received, and considered, the response would not have changed.
14. The legal proceedings have not been concluded, and the transfer remains pending.

Adjudicator's Opinion

15. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by DAS or the Trustees. The Adjudicator's findings are summarised briefly below.
 - Section 99 (3) of the Pension Schemes Act 1993 (as amended), in circumstances where legal proceedings are brought against a member by the employer, allow the Trustees to consider forfeiture of the pension and extend the statutory deadline for transfer.
 - The Trustees were made aware of potential legal proceedings being brought against Mr N and requested sight of relevant evidence to consider whether the proceedings could lead to a forfeiture.
 - This consideration was kept confidential and not disclosed to Mr N. However, in the context of the proceedings being proposed the Adjudicator did not consider that decision was unreasonable.
 - Given the evidence considered by the Trustees, the Adjudicator concluded that the decision not to transfer the funds at that time was not unreasonable. There was reason to think that 'the whole or part' of the pension could be forfeited on conclusion of the proceedings.
 - The proceedings started and decision not to transfer at that time was communicated to Mr N within the statutory time limit for transfers. There had been a pause in the process whilst the evidence was reviewed, but the statutory time limit was adhered to. In the circumstances the Adjudicator thought the pause had been reasonable. As such the complaint that the Trustees should have transferred benefits sooner could not be upheld.

- The Adjudicator considered the actions of Mr N's employer, DAS, but concluded that it was not unreasonable for it to inform the Trustees of the potential legal action, and it was also not unreasonable for it to request the legal proceedings be kept confidential. The Adjudicator did not uphold the complaint against DAS.
16. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

17. Mr N has argued that the Trustees have an obligation to the Scheme beneficiaries and not the employer, DAS. The Trustees had been put under pressure not to transfer his pension benefits by DAS, and in doing so they had acted on behalf of DAS, not the beneficiary.
18. Linked to this was the argument that the Scheme is in deficit. As Mr N's pension is the largest liability a transfer away would remove that liability and the transfer would be in the best interests of all the other members.
19. In response to these points I first note that at this point, with the proceedings still unresolved, Mr N has not suffered a financial loss and the Trustees have not made a decision on whether forfeiture applies – only that it could apply.
20. Mr N has said, the Trustees are obliged to act in the interests of the members, but it could be argued that by delaying the transfer they are. If the funds are forfeited this would equally remove the liability, and if not, the liability would equally be removed by the eventual transfer. Additionally, it could be said that forfeiture might improve the ability of DAS to meet the employer covenant. So, I do not agree that the Trustees are acting against the interests of the Scheme beneficiaries. In any event, the Trustees primary duty is to act in accordance with the legislation and the Scheme rules. They also have an obligation to consider the views of the employer.
21. Mr N has said that the Adjudicator could not possibly conclude that the Trustee's stance on whether the pension might be forfeited was reasonable without sight of all the evidence, including the defence. This is a complex case and the Adjudicator would require external legal advice.
22. I do not doubt the proceedings are complex, but I do not agree that the Adjudicator's view is invalid. The test was not that the proceedings would definitely result in forfeiture, only that they might lead to a forfeiture. In such circumstances I am satisfied that the Adjudicator would not need to review every piece of evidence related to the proceedings. In my view the Adjudicator's conclusion was reasonable.

23. Mr N has referred to a previous case considered by the Ombudsman, where maladministration led to a delay. The conclusion was that the transfer having been made within the statutory timescales did not excuse the administrative delay.
24. The findings in that case do not mean that in every circumstance the transfer must happen as soon as possible following the transfer request. There are various reasons why Trustees might legitimately delay the payment of a transfer value. In my view the circumstances of this case is one of them. The reason the transfer did not proceed was the awareness of potential legal action. There is no specific rule on this point, but given the significance of the potential legal action I am satisfied that the decision to delay the transfer by what amounted to 3 months was a reasonable one to take. I would also add that should the transfer go ahead following the proceedings the Trustees have said that appropriate interest will be added.
25. Finally, Mr N refers to the Trustees acting dishonestly when communicating the reasons for the delay to the Scheme administrators and his advisors. The correspondence provided shows that the Trustees confirmed their awareness of the legislative time limits. In view of the proposed legal proceedings I do not consider the Trustees actions dishonest, and I do not think confidentiality on the matter was unreasonable.
26. As yet Mr N has suffered no financial loss. He disagrees with the Trustee's decision not to transfer at this time, but the Trustees have acted in accordance with the relevant legislation and have done nothing unreasonable in the circumstances.
27. Therefore, I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
23 January 2017