

Ombudsman's Determination

Applicant	Mr S
Scheme	Pinnacle Pension Scheme (the Scheme)
Respondent	Chartwell Trustee Pension Solutions Ltd (Chartwell)

Outcome

1. Mr S' complaint is upheld and to put matters right Chartwell shall provide Mr S with the information he requested. Chartwell shall also pay Mr S £2,000 in recognition of the significant distress and inconvenience he has experienced.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr S' complaint is about Chartwell's failure to properly administer the Scheme and its refusal to provide information when requested.

Background information, including submissions from the parties

4. In 2013 Mr S began reviewing his existing pension provision with a view to consolidating his two existing pension arrangements into one scheme.
5. Around this time Mr S became aware of a company called Pinnacle Pensions (**Pinnacle**).
6. Limited information is available about Pinnacle. However, according to the Financial Conduct Authority (**FCA**) register, Pinnacle is not currently, nor has it ever been, authorised or regulated by the FCA.
7. With Pinnacle's assistance and according to his testimony, persuaded by Pinnacle's assertions that his former occupational pension scheme was facing financial difficulties, Mr S transferred his pensions into the Scheme.
8. Mr S estimates that in total around £150,000 was transferred to the Scheme in 2013.
9. Chartwell acts as Trustee to the Scheme.

10. Mr S has said that in June 2013 he received a statutory money purchase illustration (**SMPI**) showing that he would receive an income of £0 in retirement from the Scheme. Mr S contacted Chartwell by email to query this, however he said that he did not receive a response.
11. On 1 October 2015, Mr S has said that he received a telephone call from a Mr Steve Stewart who identified himself as calling from Chartwell. In relation to this call Mr S has said:

“He [Mr Stewart] then told me he was working for Chartwell trustee pension solutions and did not know who Pinnacle Pensions were. He told me that I can only get in touch via the E-mail address of [address removed] and he gave me a phone number of [number removed]. He said he could not give me a postal address and must use the e-mail address. I have rung the number given but it just rings out. He then went on to the Pinnacle Pensions website and said he knew nothing about this site!”
12. Mr S has said that Mr Stewart then went on to confirm that his pension value was around £148,800 and that it, “was doing well.” It was also confirmed that Mr S would receive an annual statement by the end of October 2015.
13. Mr S has said that he did not receive an SMPI in October 2015.
14. On 4 November 2015, concerned about the lack of information regarding his pension and worried that he may have fallen victim to a scam, Mr S wrote to Chartwell to complain under the Scheme’s internal dispute resolution procedure (**IDRP**).
15. On 5 November 2015, Mr S received a call from a Mr Steve Bass who identified himself as calling from Active Pensions Limited. In relation to this call Mr S has said: -

“He [Mr Bass] then made reference to our conversation of the 1st October; the man I spoke to on the 1st Oct 15 said he was called Steve Stewart.

Once again he told me my money was safe with Chartwell trustee pension solutions and the money was in Pinnacle Pensions account... This after [sic] telling me that he did not know anything about ‘Pinnacle Pensions’ in our last conversation...

He gave me a telephone number of [number removed] and said I could ring him anytime. I tried this number directly after hanging up, no such number.”
16. On 12 November 2015, Mr S received an SMPI, dated 5 November 2015, showing a fund value of around £140,800. Unhappy with the discrepancy in the two values over the relatively short period of time, Mr S tried to contact Chartwell again.
17. On 17 November 2015, Mr S wrote to Chartwell again requesting a response to his complaint in line with the IDRP and pointing out that: “I did receive a statement from you. I do not believe this was a reply to my request for IDRP in respect of my

PO-10505

complaint.” Mr S’ letter also detailed the difficulties he had experienced trying to contact Chartwell.

Chartwell’s position

18. Chartwell has accepted that, “communication with [Mr S] has fallen short of its normally high standards,” in recognition of this Chartwell offered Mr S £250 compensation.

Mr S’ position

19. Mr S has described a catalogue of problems he has experienced when trying to contact Chartwell including emails being ignored, telephone calls ringing unanswered and the contact numbers he was provided being invalid.
20. Mr S has said that without the information he has requested, he cannot make any plans about his retirement. Mr S is also concerned that his pension has been invested in a fraudulent investment and that he has lost, or will stand to lose, his entire pension provision.
21. Mr S rejected Chartwell’s offer on the basis that the information and reassurance he sought has still not been provided.

Adjudicator’s Opinion

22. Mr S’ complaint was considered by one of our Adjudicators who concluded that further action was required by Chartwell. In reaching this view the Adjudicator commented: -

“I have experienced the same difficulties as Mr S has described in attempting to obtain information from Chartwell. I mention this here as, to my mind, this adds considerable weight to Mr S’ general testimony that he has found Chartwell to be obstructive and unhelpful.”

23. The Adjudicator’s findings are summarised briefly below:-

- As Trustee, Chartwell has legal obligations in relation to the way in which the Scheme is operated. Chartwell’s duties and obligations extend to Mr S as a member of the Scheme.
- The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (**the Regulations**) provide that certain information must be given to pension scheme members either routinely or when requested.
- The statutory position is that Chartwell must provide Mr S with a summary funding statement, at least annually [Part 5 of the Regulations]. In this case Chartwell has been unable to demonstrate that such statements have been sent to Mr S. This amounts to maladministration.

- Regulation 13 in Part 4 of the Regulations specifies that: -
 - (1) The information listed in Part 3 of Schedule 3 must be given to a relevant person in accordance with this regulation where the relevant person makes a request for the information.
 - (2) The information must be given within two months of the date the request is made.
- Part 3 of Schedule 3 covers information on funding principles and actuarial valuations. The definition of 'relevant person' within the Regulations encompasses members, therefore this extends to Mr S.
- Under the Regulations, Chartwell has a statutory obligation to provide Mr S the information he requested. However, Chartwell did not provide Mr S with the information he asked for, which he is legally entitled to, within the prescribed timeframe. This also amounts to maladministration.
- Section 50 of the Pensions Act 1995 requires that the Scheme operates an IDRPs, and a Scheme's IDRPs must ensure that decisions are reached and notified to applicants within a 'reasonable period'. The Pensions Regulator provides that the relevant decision-maker will be expected to determine disputes within four calendar months of receiving the application.
- Chartwell did not provide a response to Mr S' IDRPs application dated 4 November 2015. This is again evidence of Chartwell's maladministration.
- Chartwell has failed in its legal and fiduciary duties to Mr S and, in doing so, has acted in maladministration.
- It is not clear whether Mr S wants to transfer away from the Scheme. He has said that without the information he asked for, he cannot make this decision. However, if requested, Chartwell must, under Regulations 93A and 95 of the Pension Schemes Act 1993, provide Mr S with a transfer value and the right to transfer.
- Further, Part III of the Occupational Pension Schemes (Transfer Values) Regulations 1996 requires that the transfer value, referred to as a 'statement of entitlement' in the Act, must be provided within three months of it being requested.
- Finding that he was unable to obtain details about his pension provision, over a prolonged period of time, is bound to have caused Mr S concern. Given that Mr S already suspected that he had fallen victim to a scam, the fact that when he did manage to speak with someone on the telephone, the seemingly same individual, identified himself as being from two different companies, with two different names. This is likely to have exacerbated Mr S' worry causing significant distress and inconvenience.

PO-10505

24. Mr S accepted the Adjudicator's Opinion. However, he asked for this matter to be referred to me, so that a legally binding Determination can be issued.
25. Chartwell did not agree with the Adjudicator's Opinion and provided its further comments which do not change the outcome.
26. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points for completeness.

Ombudsman's decision

27. I am satisfied that Chartwell failed to respond to the requests made by Mr S, over a prolonged period of time. Further, I find that Chartwell's behaviour has been extremely uncooperative for no relevant reason.
28. I accept that Mr S has not been able to substantiate, with evidence, his claim that the apparently same individual identified himself with two different names and claimed to be from two different companies. But I disagree with Chartwell's claim that no weight should be attached to this testimony. On the whole I find Mr S' evidence to be reliable and his account accords with my Adjudicator's experience of dealing with Chartwell.
29. Similarly, I do not consider it necessary to make a finding that Mr S has invested in a fraudulent investment. What matters is that Mr S had concerns this is the case and that Chartwell's inaction did little to allay Mr S' worry.
30. Chartwell has acted in maladministration, which has caused Mr S significant distress and inconvenience.
31. Therefore, I uphold Mr S' complaint and make a direction aimed at remedying the considerable injustice of Chartwell's failure to furnish Mr S with information about the Scheme. Also, given the way in which Chartwell has completely ignored its duties and responsibility under the Regulations, and the significant distress and inconvenience which Mr S has suffered as a consequence, I am increasing the award in respect of non-financial loss to £2,000.
32. The directions that follow will, if necessary, be enforceable by Mr S in the County Court as if they were a County Court Order (section 151(5) of the Pension Schemes Act 1993 and regulations thereunder).

Directions

33. Within 14 days of this Determination, Chartwell shall provide Mr S with the information he requested. Chartwell shall also respond promptly to any other requests Mr S should make.

PO-10505

34. If, on receipt of the information, Mr S decides that he wants to transfer out of the Scheme, Chartwell shall provide a transfer value and carry out the transfer in accordance with Chapter IV of the Pension Schemes Act 1993.
35. Chartwell shall, within 14 days of this Determination, pay Mr S £2,000 in recognition of the significant distress and inconvenience he has experienced.

Anthony Arter

Pensions Ombudsman
26 July 2017