

Ombudsman's Determination

Applicant	Mr L
Scheme	Capri Holdings Retirement Benefits Scheme (the Scheme)
Respondent	Ian Earle, former sole trustee of the Scheme (Mr Earle)

Outcome

1. Mr L's complaint is upheld, and to put matters right Mr Earle shall pay Mr L £3,000 for the exceptional distress and inconvenience he has experienced.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr L has complained that Mr Earle failed to respond to his enquiries about the Scheme, leaving him unable to access his benefits and uncertain over what has happened to these.

The Pensions Ombudsman's position on failure to provide information

4. A trustee is required, under general trust law, to produce information and documents in relation to the scheme, such as a copy of the trust deed and rules. In addition, statutory disclosure duties are imposed under section 41 Pensions Act 1995 (such as supplying further information about members' rights and benefits upon request) and the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013.

Background information, including submissions from the parties

5. Mr L was introduced to the Scheme by an adviser from a company called Yardstick. Mr L understood he would receive a better return for his pension savings in the Scheme. The matter was then handled by Integra Administration Limited (**Integra**). Integra arranged for a transfer of £57,910 to be made to the Scheme from Mr L's previous pension arrangement, the Travis Perkins Pension and Dependants' Benefit Scheme (**Travis Perkins**). Mr L received confirmation from Travis Perkins that the transfer payment had been sent to Integra in October 2013.

PO-18253

6. On 12 February 2014 a letter was issued to Mr L by “Ian Earl – Trustee of Capri Holdings RBS” (an incorrect spelling of Mr Earle’s name) to say that the transfer received from Travis Perkins had been invested with Disruptive Tech Ltd (**DTL**) and that annual reports would be provided.
7. On 5 June 2014 Integra wrote to Mr L to say that it was no longer the administrator of the Scheme and that any queries he had in relation to the Scheme should be addressed to the trustee(s) of the Scheme, naming Mr Earle.
8. On 25 June 2014 Pension Matters Associates Limited (**Pension Matters**) wrote to Mr L to say that it had advised HM Revenue & Customs of its involvement in the Scheme. Mr L received a further letter from Pension Matters dated 6 November 2014 to say that it had “been appointed by the trustees of the scheme as administrators.”
9. Mr L tried to contact Pension Matters and the trustees about his benefits in the Scheme. He later contacted Action Fraud as he believed he might have been the victim of a pension scam.
10. On 10 August 2015 Pension Matters sent Mr L a final letter to say that it was in discussions with another company about it taking over the administration of the Scheme. The letter also said that the new company already had a working relationship with DTL and for Mr L to receive a lump sum of 25% of his fund the money would have to be disinvested from DTL. Pension Matters added “We believe that this company may have more success in achieving this than ourselves.”
11. Pension Matters was dissolved in April 2016, so it is not possible to take any action against that company.
12. On reviewing Mr L’s complaint this office made contact with Mr Earle. Initially Mr Earle said that he had resigned as trustee of the Scheme, and that he was not responsible for any Scheme investments as these were made before his appointment, and that he did not take over as trustee until late June 2014. Mr Earle also said he never had or saw any paperwork for the Scheme investments as this was held by the Scheme administrators.

Adjudicator’s Opinion

13. Mr L’s complaint was considered by one of our Adjudicators who concluded that further action was required by Mr Earle. The Adjudicator’s findings are summarised briefly below:-
 - The sequence of events relating to the transfer of Mr L’s benefits with Travis Perkins to the Scheme had some elements indicative of a pension scam such as:
 - the original introducer at Yardstick could not be contacted;
 - Mr L was never employed by the company that was the sponsor of the Scheme;

- the original administrator Integra was incorporated in May 2013 and dissolved in October 2014; and
 - the second administrator Pension Matters was incorporated in March 2012 and dissolved in April 2016, without any replacement being appointed by the trustee of the Scheme.
- Since mid-2014 there was only one trustee of the Scheme, Mr Earle. He had failed to keep members informed of changes to the Scheme, such as whom to contact for enquiries, and to provide regular reports and statements on members' benefits; these were breaches of The Pension Regulator's codes of conduct.
 - Mr Earle said he resigned by writing to Pension Matters. In the absence of the executed trust deeds for the Scheme, the Adjudicator had obtained a copy of the establishment deed for another scheme also administered by Integra, called the Carney Limited Retirement Benefits Scheme (**the Carney Scheme**), which was also invested with DTL. The Adjudicator believed, on the balance of probabilities, that the documentation for the Carney Scheme was identical in all material respects to the documentation for the Scheme. Clause 23 of the Carney Scheme's establishment deed dated 10 July 2013 stated:

“A trustee may resign subject to the written consent of the Provider. Any trustee may, by written instrument, be removed from office by the Provider, unless that removal would leave no remaining trustee.”

- The Adjudicator was of the opinion that as Mr Earle had not obtained the written consent of the Provider and no deed of removal or retirement had been produced, he remained the sole trustee of the Scheme. Even if the deeds for the Scheme were worded differently on this point, it was the responsibility of Mr Earle to demonstrate that he had validly passed on/relinquished his trustee duties – and he had not done so. Furthermore, Mr Earle could not claim he had no responsibility for the investments of the Scheme as he assumed that responsibility when he accepted the role of trustee. He was also responsible for the appointment of the administrators of the Scheme.
- There was no Scheme administrator, and Mr L had found it impossible to obtain an answer to his enquiries. The Adjudicator considered that to be maladministration, and that as trustee Mr Earle must bear the responsibility for that failing.
- DTL was acting as the investment manager and it was incumbent on it to provide regular reports to the trustee. DTL was now known as DTL (UK) Limited at Companies House and showed the Scheme as a shareholder.
- Mr Earle, as trustee, was a shareholder in DTL and he should be able to obtain a valuation of Mr L's investment in DTL and report this to Mr L.
- The Trustee had failed to provide Mr L with information on his investments over a prolonged period, and Mr L had also lost the opportunity to place his funds with a new provider if he so wished.

PO-18253

- Mr L had experienced a great deal of distress and inconvenience over his inability to obtain any relevant information on his investment, for which he should be compensated.
 - The Adjudicator considered that Mr Earle should, within 14 days of the finalisation of this complaint, pay Mr L £1,000 for the distress and inconvenience he had suffered. Mr Earle should pay this amount personally and not seek to claim this from the Scheme.
 - If Mr L wished to transfer away from the Scheme, then Mr Earle should provide him with a transfer quotation within 28 days of the request being received.
 - It was therefore the Adjudicator's opinion that this complaint should be upheld.
14. Mr Earle's only comment to the Adjudicator on the Adjudicator's Opinion, which was sent to Mr Earle by post and email, was that "I have been advised that the Pensions Regulator have appointed Dalriada Trustees Ltd (**Dalriada**) as trustees of this scheme as of 9th April".
 15. Dalriada subsequently confirmed to this office that it had been appointed by The Pensions Regulator as trustee of the Scheme, and provided evidence of its appointment from 9 April 2018.
 16. The complaint was then passed to me to consider. I agree with the Adjudicator's Opinion, and I will therefore only respond to the key point made by Mr Earle for completeness.

Ombudsman's decision

17. The fact that Dalriada has replaced Mr Earle as trustee of the Scheme earlier this year does not absolve Mr Earle of responsibility for his acts and omissions while he was the trustee of the Scheme.
18. The award of £1,000 that was mentioned by the Adjudicator is the amount that I award nowadays in cases where maladministration has caused serious distress and inconvenience. However, I consider the maladministration in this case to be exceptional.
19. I acknowledge that being a sole trustee is an onerous responsibility, however Mr Earle's lack of communication with Mr L since 2014, and his failure to adhere to Section 41 Pensions Act 1995, and the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013, demonstrated a complete disregard to his duties as Trustee. The failure of Mr Earle to properly execute his trustee duties has obviously been extremely frustrating and worrying for Mr L and amounts to exceptional maladministration. I consider that an award of £3,000 is appropriate in the circumstances, and should be paid by Mr Earle, not Dalriada, as the relevant maladministration occurred while he was the trustee of the Scheme.

PO-18253

20. The trust deed governing the Scheme contains an indemnity clause – see Appendix hereto, but that will not protect Mr Earle as his lack of compliance with the statutory disclosure of information requirements, which are designed to inform scheme members, constitutes “a breach of trust knowingly and intentionally committed”.
21. As Dalriada has replaced Mr Earle as trustee of the Scheme it will be the responsibility of that company, not Mr Earle, to provide Mr L with future communications about the Scheme, including a transfer quotation if Mr L makes a valid transfer request.
22. I uphold Mr L’s complaint.

Directions

23. Within 14 days of the date of this Determination, Mr Earle shall pay Mr L £3,000 for the exceptional level of distress and inconvenience that he has caused Mr L.

Anthony Arter

Pensions Ombudsman
9 November 2018

Appendix

Clause 2.14 of the trust deed and rules of the Scheme

“2.14 Indemnity

Each Trustee and former Trustee (or officer or former officer of a corporate Trustee) shall be indemnified out of the Scheme assets against all or any liabilities, claims, costs, losses, damages and expenses incurred by them as a Trustee of the Scheme. However this indemnity will not apply to:

- (a) any liability incurred as a result of a breach of trust knowingly and intentionally committed; or
- (b) any liability that is covered and met by insurance either under Rule 2.15 (Insurance) or a separate insurance arrangement; or
- (c) any liability of an officer or former officer of a corporate trustee to pay a fine imposed in criminal proceedings, or a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature; or
- (d) any liability of an officer or former officer of a corporate trustee incurred in defending criminal proceedings in which he or she is convicted.”