

**Ombudsman Decision****CIFO Reference Number: 24-000318****Complainant: K L****Respondent: Sovereign Trust (Guernsey) Limited**

The Complainant, who I shall refer to as Mr L, complains about the administration of his pension scheme by Sovereign Trust (Guernsey) Limited ("Sovereign"). The complaint falls under the following principal headings:

- Non-compliance with the Trust Deed
- Waiver of rights to a suspended fund held within the scheme
- Reduction in the value of the scheme
- Fees charged
- Benefits / income drawdown
- Surrender / transfer of the scheme

**Background**

Mr L is a member of a personal pension plan ("the Scheme"). The Scheme is administered by Sovereign as Trustee who was appointed as Trustee in 2009.

In summary Mr L complains:

- That he had an automatic entitlement to income on reaching 55 years of age which Sovereign failed to comply with.
- That a fund within the Scheme was suspended and he was required to sign a waiver of rights to the fund before being allowed to transfer and/or withdraw from the Scheme.

- That Sovereign have continued to charge fees notwithstanding the delays it has caused and the reduced value of his pension.
- That Sovereign have not allowed him to take a full drawdown of his pension and he has lost the benefit of receiving a pension and given conflicting advice about the ability to make withdrawals due to the value of the pension.
- That Sovereign will not allow him to surrender or transfer his pension.

Sovereign did not accept that Mr L had cause for complaint. Mr L remained dissatisfied and referred his complaint to CIFO.

The Adjudicator, did not uphold Mr L's complaint. In summary, she said:

Having regard to the terms of the Trust Deed, as amended in 2012, she could not find that Sovereign had failed to comply with it.

The requirement to sign a waiver of rights to the suspended fund prior to transfer or surrender was reasonable as the fund could potentially have some value in the future.

The Scheme was operated on a "member directed" basis, the suspended fund had been part of the investments selected by Mr L's independent financial adviser ("IFA") and Sovereign was not responsible for monitoring investment performance.

The level of fees charged by Sovereign could not be considered by CIFO as this was a commercial decision, however she concluded that their fees had been notified to Mr L and had been fairly applied.

As regards the benefits / income drawdown:

In 2020 Sovereign advised there were insufficient funds in the cash account and sought instructions from Mr L's IFA regarding sale of assets from the plan but received no response.

In 2021 Sovereign gave Mr L options to enable him to achieve the drawdowns he requested by transferring to another pension plan and facilitated a backdated payment for that year.

In 2022 Sovereign advised Mr L of the minimum policy value requirements and made proposals to address the requirements for withdrawals. It also suggested that Mr L could take assignment of the policy containing the suspended fund into his own name if he did not wish to sign the waiver of rights to the suspended fund.

In 2024 the limits of the triviality rules were again explained to Mr L along with the policy's minimum value requirements to enable income drawdown.

As such, Sovereign had acted fairly and reasonably in addressing Mr L's requests to take benefits and income from the Scheme.

As regards the surrender / transfer:

In 2020 Mr L asked if he could surrender the policy. Sovereign responded stating it would require a signed instruction and that Mr L could keep the funds in cash within the pension plan if he wished. Mr L asked to take transfer of all the pension funds and Sovereign advised this was not possible under tax rules and gave details of an alternative pension plan that would enable flexible drawdowns not permitted under the Scheme. In November 2020 Sovereign was informed that a new IFA had been instructed by Mr L who asked what the requirements were to transfer to a self-invested pension plan ("SIPP") provider. Sovereign responded but no further communication was received by Sovereign in response.

In October and November 2021 emails were exchanged between Mr L and Sovereign regarding a transfer to the alternative pension plan and drawdown. In February 2022 forms were completed to make the transfer, but Mr L refused to sign a waiver of rights to the suspended assets.

Again, as referred to above, in April 2022 Sovereign explained that the policy could only be closed if it had no value and, as the suspended fund remained, Mr L could either waive his notional rights to that fund or keep the policy in force. In April 2022 Sovereign informed Mr L that to assist the investment manager, it would agree to make a transfer to the alternative pension plan *in specie* and reassign its policy to Mr L's name directly in

which case no waiver would be required and he could proceed with flexible drawdown as discussed.

As such, the Adjudicator concluded that Sovereign had acted fairly and reasonably with regard to a transfer of the Scheme to enable full drawdown.

Mr L did not accept the Adjudicator's recommendation.

He made a lengthy submission which I have summarised into the following points but in first-person language:

**Trust Deed:** Amendments to the Trust Deed were not made clear to me at the time and I refer you to Clause 6 of the Trust Deed which entitles me to an annuity at age 65 without having to request it in writing.

**Suspended fund:** My complaint is about Sovereign waiving my rights to any future benefit in the suspended fund that may materialise and why would they have any interest in me waiving my rights, or not, if they had no involvement or interest in the fund. I have been advised not to sign such waiver as there are ongoing legal cases related to the fund, and we are aware that several individuals have been compensated for their losses.

**Reduction in value of pension:** My complaint is not related to the investment of the fund, but to the reduction in the pension payable to me by Sovereign delaying various matters related to the pension and not acting in accordance with the obligations of the Trust Deed, for example:

1. The delay in the commencement of paying the annuity (entitlement at 65 if not sooner).
2. Poor administration, referring to Sovereign Gibraltar as the Trustee.
3. Late notice and inadequate action by Sovereign to ensure funds are available as is stated in their own correspondence on administering the Trust. *"The 'Important Information' document accompanying the 'Annual Retirement Plan Statement' wherein under 'BENEFITS' it states; The Trustee also recommends that you consult with your appointed financial adviser, where applicable, to ensure that sufficient liquidity is available within your pension plan for any payment of your benefits. If the trustee does not receive any instructions from you or your financial adviser with regard to releasing liquidity for benefit payments from your pension plan,*

*the trustee will nominate an asset of their own choosing to be liquidated in order to arrange payment to you of any appropriate level of pension income. They didn't and first wrote to me with the understanding that I was receiving my pension payments, which I wasn't, and then said that this would be corrected immediately, but wasn't and then advised the reason being insufficient funds, a complete mismanagement of the situation. This was then followed by suspending payments due to [the policy] Minimum Value Rule, a rule that clearly should not have been accepted by Sovereign for them to meet their obligations under the Trust Deed. A further complaint in this regard is that whilst they stated withdrawals were suspended, further withdrawals were made by [the investment manager] and Sovereign for their fees during the suspension period which was extended due to the request for a Waiver to Benefits from the suspended fund which I have continually contested. Consequently, due to Sovereign's actions, and lack of the appropriate action, the value of the pension payable has reduced and I totally disagree with CIFO's assessment of this item."*

4. Suspension of payments due to the fund falling below the policy's minimum value, a condition that I was not made aware of previous to it occurring. With this in mind, why did Sovereign, as Trustees with certain obligations under the trust accept the appointment of the investment manager with these terms and conditions?

**Fees:** When I entered the Plan, I was provided with a detailed schedule of fees by [name of previous policy provider] dated 21 January 2009. There was also reference to a charging structure but no reference to any trustee fees. None of the documents received from my IFA referred to any trustee fees, as was the case for any and all documentation related to the application, charges and terms and conditions. I contest that there was any agreement to pay trustee fees in addition to administration charges, investment dealing charges, regular policy management charge. The trustee was the policy holder, therefore any fees should have been incorporated in the regular policy management charge, purely by definition.

**Benefits / income drawdown and Surrender / transfer:** I submitted an application for a lump sum payment and a monthly benefit payment in July 2019 but there was a delay in receiving monthly payments until December 2019 which then stopped in April 2020 when Sovereign stated there were insufficient funds. Sovereign should have notified me before funds ran out.

Discussions followed about a transfer to an alternative pension plan. I had not requested suspension of the payments and in July 2021 I confirmed I wanted drawdown payments to recommence. Further discussions took place as I wanted to withdraw the full amount of the Scheme without penalty and agreement was reached to liquidate the assets. In January 2022 Sovereign acknowledged that, following a review drawdown, payments had not been made since November 2021 and would set up a regular monthly withdrawal. However, in February 2022 I was informed that the policy had fallen below the minimum value to enable withdrawals and no further benefit payments were received after November 2021. I submitted the application form for the alternative pension plan on 9 March and on 31 March Sovereign informed me that a waiver letter should be signed in respect of the suspended fund, not previously mentioned. I was advised not to sign the waiver.

In June 2023 Sovereign incorrectly advised that payments were being made to a Middle East bank account but they had stopped due to the policy's minimum value rule. I was again asked to sign a benefit election form notwithstanding I had already done so in July 2021. Sovereign said that to fully surrender the policy the form needed to select trivial commutation which had also been done. That trivial commutation was available where the value was £50,000 and in order to achieve this they could deduct fees due of £2,850, the trivial commutation fee of £500 and a payment to me of £6350.47 but I would be required to waive my rights to the suspended fund.

Sovereign had the power to look after a member's interests and to direct investments but failed to do so.

The requirement for a waiver of rights was not highlighted at the time of the investment.

Why couldn't Sovereign process the surrender of the Scheme without the waiver letter?

How is it that I could withdraw benefits until the Scheme is exhausted without waiving rights to the suspended funds and how is that different to a total lump sum drawdown.

## Findings

I have considered all the available evidence and arguments to decide what is, in my opinion, fair and reasonable in the individual circumstances of this complaint. Where necessary or appropriate, I reach my conclusions on the balance of probabilities; that is, what I consider is most likely to have happened, in light of the evidence that is available and the wider surrounding circumstances.

The Complainant has referred to a large quantity of correspondence exchanged over several years. CIFO has examined all of the correspondence and, where appropriate, has referred to specific items in relation to key points. It is not necessary for me to itemise and comment upon each item of correspondence in coming to my conclusion about the merits of the complaint.

## Trust Deed

The original Trust Deed was amended and restated on 23 March 2012 by Order of the Royal Court of Guernsey, upon application of the then Trustee. Recital C of the Instrument of Amendment and Restatement says that it is to comply with Guernsey tax law and maintain the Trust as an exempt pension trust approved under the Income Tax (Guernsey) Law, 1975.

The amended Trust Deed details the Terms and Rules of the Trust at Schedule 2, and it is useful for me to set out some key points of those Terms and Rules here:

### Rules

The Normal Retirement Age is defined as: “*the 55<sup>th</sup> birthday of a Member*”.

*“6 (a) On a Member attaining Normal Retirement Age such Member may elect (by giving notice in writing to the Trustees not less than one month before attaining Normal Retirement Age) to be provided with an annual annuity payable for the remainder of his life which shall be equal to the amount which the Trustees, acting on the advice of the Actuary, determine may be provided from the Member’s Interest at his Normal Retirement Age.”*

*“6(b) In default of receiving a Member’s election under Rule 6(a), or in default of receiving a Member’s election under Rule 7, on a Member attaining Normal*

*Retirement Age, the Trustees may provide the Member with an annual annuity payable for life.”*

*“7 On attaining Normal Retirement Age a Member may elect (by giving notice in writing to the Trustees not less than one month before attaining Normal Retirement Age), instead of receiving his annuity at Normal Retirement Age, to defer the provision of an annual annuity until a later date (the provision of an annual annuity may be deferred beyond the age of 75, if the Member so wishes).”*

*“9 (a) At any time on or after the Normal Retirement Age of a Member such Member may with the consent of the Trustees, elect to commute part of the value of his or her Member’s Interest for an immediate cash lump sum payment”*

*“9 (c) The amount of such cash lump sum referred to in Rules 9(a) and ((b) above shall be determined by the Trustees by reference to the Member’s Interest provided that such lump sum when aggregated with any other lump sums a Member may have previously received from his or her Member’s Interest shall not exceed an amount equal to 30% of the Member’s Interest.”*

The Deed of Adherence entered into by Mr L in 2008 when he joined the Scheme agrees that it will be administered in accordance with the Terms and Rules which say:

*“8.2 To the extent that such costs charges and expenses are not paid by the Member the Trustees shall pay all costs, charges and expenses incurred in connection with the establishment, administration and management of the Scheme out of the Fund.”*

*“12.2 Any Trustee which is a company shall be entitled to such fees or remuneration for services as Trustee as shall from time to time be agreed between such Trustees and the Member.”*

The rules relating to the payment of an annuity at age 55 are clear. There is no automatic obligation upon a Trustee to start paying an annuity at age 55, or indeed at age 65. Mr L attained the age of 55 years in 2007, several years prior to the appointment of Sovereign in 2013. As such I do not uphold this aspect of the complaint.



## **Suspended fund**

Mr L joined the scheme in 2008 and his investments were made by his IFA at that time. A waiver of rights was requested by the investment manager when Mr L sought to withdraw from the Scheme. It is not possible to sell a suspended fund. As such, it was reasonable for a waiver of rights to be sought to enable closure of the policy. When Mr L objected to signing the waiver of rights, an alternative option to enable Mr L to take the investments *in specie* was proposed. Later, when Sovereign proposed trivial commutation of the Scheme, it sought a waiver of rights which I also consider reasonable for the same reasons. I therefore do not uphold this aspect of the complaint.

## **Reduction in value of pension**

1. Delay in payment of annuity - For the reasons set out under the sub-heading "Trust Deed" I do not accept that Sovereign caused any such delay. I have seen a schedule of payments made to Mr L dating back to 2019. I make further reference to the payments made under "Benefits / income drawdown".
2. Poor administration - It is not clear to me when it is claimed that Sovereign referred to Sovereign Gibraltar as the Trustee. If it indeed did so, I cannot see how that would adversely affected the value of the Scheme or Mr L's entitlements.
3. Late notice and inadequate action – Mr L has referred to information provided with the annual statement that says:

*"The trustee also recommends that you consult with your appointed financial adviser, where applicable, to ensure that sufficient liquidity is available within your pension plan for any payment of your benefits. If the trustee does not receive instructions from you or your appointed financial adviser with regard to releasing liquidity to allow benefit payments from your pension plan, the trustee will nominate an asset of their own choosing to be liquidated in order to arrange payment to you of any appropriate level of pension income".*

From June 2020, correspondence was taking place about the surrender of the policy and transfer of the pension funds to an alternative pension plan that would enable the flexible drawdown required by Mr L. Correspondence continued throughout 2021, 2022,

2023 and 2024 as Mr L declined to proceed with any of the options offered.

I have noted that, at the time the monthly benefit stopped in April 2020, Sovereign advised that there were insufficient funds in the cash account and contacted Mr L's IFA seeking a dealing instruction to fund the monthly payments but did not receive a response.

Correspondence then followed about surrender of the policy and transfer of the pension funds to an alternative pension plan that would enable the requested flexible drawdown. Mr L says that he did not ask for the monthly drawdown income to be stopped and that Sovereign should have liquidated assets to enable the payments. Income payments resumed when Mr L requested this, and backdated payments were made in November 2021 totalling £9,411.76 which represented the 18 months' payments following a withdrawal from the policy.

Whilst Sovereign could have arranged for the withdrawal and payment earlier, given that Mr L's IFA did not respond to the request for a dealing instruction and discussions were taking place about surrender of the policy and transfer to another pension plan to enable flexible withdrawal, I do not think it was unreasonable under those circumstances when Sovereign did not assume that monthly payments were to continue. I do not uphold this aspect of the complaint.

4. Minimum value rule - The policy was selected by Mr L through his IFA. The policy rules are set by the policy provider and include a minimum value and the power to change the minimum limit. Therefore, I do not consider that Sovereign had any obligations to inform Mr L of the minimum value rule or any changes to it. Sovereign notified Mr L that the minimum value rule prevented withdrawal when instructed by the policy provider.

## **Fees**

As I have previously set out, Mr L signed the Deed of Adherence that agreed the Scheme would be administered in accordance with the terms and rules of the Scheme which enabled the Trustee to charge fees for its services "*as shall from time to time be agreed between the Trustees and the Member*". Further that the "*Trustees shall pay all costs, charges and*

*expenses incurred in connection with the establishment, administration and management of the Scheme out of the Fund.”*

It was accordingly clear that trustee fees for the administration of the Scheme would be charged and that these were over and above any fees charged by the policy provider.

Sovereign has produced a fee schedule for the Scheme that states, among other things, that the annual administration fee is £2,000 per annum. This schedule was provided by Sovereign to Mr L when he questioned the fees in 2019. Sovereign have demonstrated that the annual administration fee for the plan of £2,000 remained unchanged when it became Trustee, subject to a variation notified to Mr L October 2022 effective 1 January 2023 which reduced the annual fee to £750. Mr L has referred to documents provided to him when he joined the plan and that there was no reference to trustee fees. I cannot know what information was provided to Mr L by his IFA at the time he joined the Scheme in 2008 with the previous plan provider. That is matter between Mr L and his IFA. Trustee fees were being charged from the outset in accordance with the Scheme documents. As such, I am satisfied that Sovereign have correctly applied their fees. I therefore do not uphold this aspect of the complaint.

### **Benefits / income drawdown**

Mr L completed a form requesting a lump sum payment and monthly benefit payments on 30 July 2019. Sovereign acknowledged that there was an initial delay in this being actioned and such requests are usually completed within 3-6 weeks of all documentation being received. On 15 September 2019 a verification call took place with Mr L and on 16 September 2019 Sovereign resolved to pay Mr L a requested 30% lump sum payment of £35,850.65 and an annual income of £6,273.86, payable monthly. Thereafter the sale of two funds was actioned to provide the funds to do so. The monthly payments commenced in October 2019 upon payment of £37,419.11, being the 30% lump sum and three monthly payments of £522.82 for August, September and October 2019. As such I do not consider that Mr L suffered any loss as a result of the initial delay.

The monthly payments stopped in April 2020 when Sovereign stated there were insufficient funds in the plan. Mr L has complained that Sovereign should have notified him before funds ran out. The 2019 valuation showed a cash value of £4,960 as at 31 December but this was not provided to Mr L until 14 April 2020. Fees were deducted In February 2020 by the policy

provider leaving insufficient cash available to meet the April payment. The plan was member-directed and in those circumstances I do not consider Sovereign had a duty to pre-warn Mr L of the depleting cash. On 21 April 2020 Sovereign said it would contact Mr L's financial adviser to get a dealing instruction.

In July 2021 Mr L asked for the monthly drawdown payments to recommence and further discussions took place. He wished to withdraw the full amount of the Scheme without penalty and communication was exchanged regarding transfer to an alternative pension plan that would enable flexible drawdown.

In February 2022 Sovereign informed Mr L:  
*"the minimum value of [the policy] is 15% of the total premiums. The premium was GBP 454,748.30 so 15% equates to GBP 68,212.24. The policy value is now GBP 67,046.29 so is below the required minimum balance. As such the maximum withdrawal is now GBP 0 so no further withdrawals can take place".*

In June 2023 Sovereign incorrectly advised that payments were being made and asked Mr L if he wished to close his plan by way of trivial commutation, which would require him to sign a benefit election form. The monthly payments had stopped due to the policy's minimum value rule which Mr L was already aware of. A new benefits election form was required to request trivial commutation which had, at that point, become available to him.

In the circumstances, notwithstanding the incorrect communication regarding payments being made, I do not conclude that Sovereign acted unreasonably. I therefore do not uphold this aspect of the complaint.

### **Surrender / transfer**

Mr L wanted to surrender the Scheme and withdraw all of the assets, but this was not possible under its terms. Correspondence took place in 2020 and 2021 with Mr L and his IFA regarding a transfer to an alternative pension plan that would enable the desired "flexible access drawdown" so that Mr L could fully draw down his pension. In February 2022 forms were provided to effect the transfer, but Mr L refused to sign the waiver of rights to the suspended fund.

Sovereign then offered a transfer to the alternative pension plan *in specie* and reassignment of the policy into Mr L's name so that the waiver would not be required. Mr L did not take up this offer.

When the value of the Scheme became such as to enable it to be closed under the trivial commutation rules, this option was offered to Mr L. The value of the Scheme as at 31 December 2022 was £61,185.80. In order to reduce the plan value down to the legal triviality threshold of £50,000, it was proposed that outstanding trustees fees totalling £5,700 be deducted, the trivial commutation fee of £500 be paid, and £6,350 be paid to Mr L as the annual entitlement. Again, Sovereign required a waiver of rights of the suspended funds and a general indemnity as a condition of implementing this option. Mr L again refused.

To address the specific points made by Mr L:

Sovereign held the assets on trust for Mr L's behalf, but under the reserved powers of the Scheme, the investment powers are reserved to him personally. As such, the Scheme was member-directed and, as such, Mr L had the power and responsibility to make investment selections as he saw fit and with such advice as he chose to obtain.

Under the plan, the trustee has no responsibility in relation to the making, changing, reviewing and monitoring of investments. Sovereign's role was as administrator of the Scheme.

As regards the requirement for a waiver of rights not having been highlighted at the time of the investment, Sovereign played no part in advising Mr L when he initially chose his investments.

I have already detailed why the waiver letter was reasonably required and my view that Sovereign acted reasonably in seeking this as a precondition for actioning the offered options.

The Scheme had not been exhausted. The purpose of a pension is not to enable a total lump sum drawdown by the plan beneficiary. Guernsey tax law permits commutation under its triviality rules only under specific circumstances.

Taking all of the above into consideration, I cannot find that Sovereign have acted unreasonably as regards the proposals to surrender, transfer or commute the Scheme.

## **Final Decision**

My final decision is I do not uphold this complaint.

Douglas Melville  
Principal Ombudsman and Chief Executive

Date: 3 July 2025