



Case study: Pension

PENSION TRANSFER REFUSAL AND PENSION TRANSFER DELAYS

Themes: Pension plan transfer, delays, trustee responsibilities

This complaint concerned the refusal of a Guernsey pension provider to transfer Ms P's pension to a new pension plan in Malta and the subsequent delays in transferring the pension to a UK pension plan which was Ms P's alternate choice.

In May 2017, Ms P requested, through her financial adviser, the transfer of her Guernsey pension plan to a UK self-invested pension plan. However, the progress of this transfer was held up after the proposed new provider advised that some actions underway on one of the investments within the pension needed to conclude first before the transfer would be accepted. The next month, in June of 2017, Ms P requested the transfer of her pension plan to another pension plan based in Malta but the existing pension plan provider refused the transfer request. When Ms P asked why, the provider said that as trustee it had a duty to ensure that any transfer was in the best interest of Ms P as the pension plan beneficiary, and it did not think this transfer was in her best interest. The existing pension provider refused to give any further explanation.

In August 2017, Ms P again approached the existing pension plan provider to sort out a transfer to the UK pension plan that was her original choice in May 2017. After Ms P had made several calls and emails to the existing pension provider and completed the necessary forms, the existing pension provider agreed to the transfer to the UK plan in early September. However, there was then several months of delay while the existing pension provider and the new pension provider in the UK discussed the wording of a "letter of undertaking", which is essentially an assurance that the new provider will adhere to certain obligations to protect the integrity of the original pension plan and the underlying assets. A particular problem was that the existing pension provider wanted this to include specific wording to prevent a future onward transfer to the pension plan in Malta that Ms P had proposed in June 2017.

In October 2017, Ms P again contacted the existing pension plan provider regarding the delays, which she said were causing her distress and affecting her health. In November 2017, Ms P made a complaint to the Channel Islands Financial Ombudsman (CIFO) regarding the delays, refusals and obstacles she had experienced from the existing pension provider over her requests to transfer her pension. In January 2018 the existing pension provider removed the disputed clause from the letter of undertaking and the two providers finally agreed the letter in February 2018 so the requested pension transfer could proceed.

CIFO's case handler suggested that the pension provider should give Ms P £400 compensation for the delay caused by it varying the wording of its standard letter of undertaking. However Ms P felt the pension provider had used a number of delaying tactics and was particularly concerned at the actions of the provider in refusing to allow her to transfer to a pension plan in Malta without giving

reasons for why this was not in her best interests and requested the Ombudsman review her complaint.

The Ombudsman noted that the issue was not a simple matter of the pension provider failing to follow the transfer instructions. The existing pension provider had specific legal duties as a trustee to act in the best interest of the beneficiary and there were many potential conflicts of interest and different regulatory and legal duties that applied to the different pension providers and financial advisers involved in the proposed transfer. In the absence of specific legal or regulatory guidance for trustees in this situation and given that most of the parties to the proposed transfer fell outside of the Ombudsman's remit or ability to compel evidence, the Ombudsman decided that the courts would be a more appropriate route to review this complex multi-party issue and make a legal determination as to whether the pension provider had carried out its fiduciary duties properly in refusing the requested transfer to the Malta pension plan.