



## Case study: Pensions

### PENSION TRUST INCURS LEGAL FEES THAT COMPLAINANT BELIEVED WERE NOT RELEVANT OR NECESSARY

Themes: Pensions; retirement annuity trust; trustee's duties; legal fees

A complainant believed that the trustees of his pension acted wrongly by seeking legal advice and charging the fees for that advice back to his pension.

Mr H held a pension in the form of a retirement annuity trust with a local trust company. The trustees and Mr H's pension trust both held an interest in a separate company, of which the majority shareholder was Mr H's trust. In August 2018, Mr H – on behalf of the separate company – wrote to the trustees as shareholders, following which the trustees sought legal advice and billed Mr H's pension trust for legal fees of about £7,000.

Mr H complained to the trust company, seeking a refund of the legal fees plus interest. In response, the trustees said that the advice they had sought had covered a wide range of issues including the closure of Mr H's pension scheme; in other words, it was not just limited to the content of the company letter. The trustees maintained that not only was it appropriate for them to have sought legal advice, but it was right that the fees should have been billed to his pension.

CIFO investigated and noted the trustee's duties and responsibilities were not only to 'act in the best interests of the beneficiaries, to preserve and enhance the value of the trust' but also to 'take advice where appropriate'. This included seeking legal advice in appropriate circumstances. CIFO reviewed the company letter which Mr H had sent to his trustees, along with the legal advice the trustees obtained. Because the trustees were unable to provide a copy of any written instructions they had provided to the advocates (it had been covered orally in a meeting) CIFO had to use a balance of probabilities test to establish what had most likely happened. Overall, CIFO concluded that – in these specific circumstances – it had been reasonable for the trustees to seek the legal advice they did, and it was similarly reasonable that Mr H's pension should meet the legal costs incurred by the trustees. CIFO did not uphold Mr H's complaint.