



Case study: Pensions

COMPLAINANT FAILS TO OPT-OUT OF PENSION SCHEME INVESTMENT RESULTING IN LOSS

Themes: Employer pension scheme; trust; commercial decision; investment.

This complaint relates to an employee pension scheme where the trustees made an investment that the complainant did not want, which resulted in a loss.

In August 2022, Mr L received a notification from the trustee of his employer pension scheme that was structured as a trust. The trustee advised that they intended to invest funds from Mr L's pension scheme into an investment and requested confirmation from Mr L as to whether he wished to opt-out of this investment opportunity. The trustee did not receive a response from Mr L and went ahead with the investment. A week later Mr L noticed a cash transfer out of his pension scheme and contacted his pension scheme trustee. The trustee confirmed that the transaction was in relation to the investment they had made. Mr L requested a reversal of the investment and the trustees confirmed they would sell the investment at the next trading date which was estimated to be in another week.

In October 2022, the funds from the investment were returned to Mr L's pension scheme but Mr L noticed a loss of approximately £2,600 which included loss of interest which Mr L would not have incurred had the funds remained in his pension scheme. Mr L made a complaint to the trustee who stated that they had a fiduciary duty to preserve and enhance Mr L's trust assets and at all times they acted honestly and within their fiduciary powers and duties when making the investment. They also reminded Mr L that he had received repeated offers to-opt out of the investment opportunity and the loss he incurred was as a result of his instruction to sell the investment. Mr L referred his complaint to CIFO.

CIFO noted that trustees have wide discretion in the way they manage investments and that it is inappropriate for CIFO to comment on how the trustees exercises their discretion as this would be considered a 'commercial decision' and CIFO will not generally review complaints if they concern the legitimate exercise of a financial service provider's commercial judgement. This includes a trustee's decision to enhance the assets of a trust through investment. CIFO investigated and concluded that Mr L's trustee had provided adequate notice regarding the investment opportunity and had repeatedly requested confirmation from Mr L to confirm if he wished to opt-out. The trustee had then acted in accordance with Mr L's instruction to sell the investment and could not be held accountable for the loss incurred by doing so.

Therefore, CIFO concluded that Mr L's complaint could not be upheld on the basis that the trustee had acted fairly and reasonably in making the initial investment, and again when it sold the investment in accordance with Mr L's instructions.