

Final Determination of the Deputy Pensions Ombudsman for the Isle of Man Mr S v Fedelta – 11 March 2019

Background

Mr S has made a number of complaints against the Fedelta Pensions Ltd as manager/administrator of his pension scheme (the "**Scheme**"). Tynwald Pensions Ltd (another Fedelta owned company) is co-trustee of the Scheme with Mr S.

The complaints are broadly as follows:

- (1) Mr S's Scheme was transferred to a new self-Invested pension scheme without his permission when, all he had agreed to, was that it should become a former QROPS. In particular he believes that he has been charged for the transfer;
- (2) the level of charges cannot be justified by the work carried out in relation to the Scheme. In particular:
 - a. the time spent was disproportionate to the work done;
 - b. the persons involved in the matter were too senior on several occasions to the work done i.e. there was a lack of junior charge out rates;
 - c. Mr S has been charged for a meeting with a close relative that he did not attend and Mr S's close relative has no recollection of attending;
 - d. The alleged time spent preparing a compliance review was excessive at £400;
 - e. A charge of £135 was made for a meeting on 9 October 2016 between Mr S and a member of Fedelta staff.
- (3) An adequate explanation of charges and other requests for information was not provided by Fedelta when requested.

I do not uphold any of the above complaints for the reasons set out in the determination below.

Background

The Scheme is a trust based arrangement established in the Isle of Man. The Scheme is regulated by the Financial Services Authority and approved by the Assessor of Taxes in the Isle of Man. The Scheme was originally set up in a way which allowed it to satisfy the requirements to be treated as a Qualifying Recognised Overseas Pension Scheme by the UK tax authorities (of which more later) and to accept transfers from Mr S's UK pension arrangements without adverse UK tax consequences. The Scheme has always been, and remains, a self-invested pension scheme/self-directed pension scheme under which the member is able to direct the investments made.

Fedelta is authorised as manager of the Scheme by the Isle of Man Financial Services Authority. Fedelta manages and administers the Scheme and Tynwald Pensions Limited (another Fedelta company) acts as co-trustee of the Scheme with Mr S. This means that Mr S has to jointly approve any decisions which needed to be made by his co-trustee and, I understand, gives joint approval to the payment of invoices. I understand that Mr S did approve the payment of the invoices relating to matters about which he subsequently complained. The involvement of Mr S as a co-trustee gave him greater control over the running of the Scheme but will necessarily add to the costs of running the Scheme.

The Scheme is an individual member pension arrangement (not a multi-member pension scheme) so is subject to the various compliance and regulatory obligations associated with such a scheme including costs relating to the management of investments, arranging disinvestment of investments to pay pensions, the calculation and payment of pensions and tax, including year-end returns and liaising with co-trustee. This included dealing with a large number of queries from Mr S. Under the contractual terms with Fedelta, Fedelta were able to charge for on a time charge basis for responding to these queries. The Scheme is currently only invested in a limited range of investments so is not using the full functionality of this type of arrangement which means that investment costs should be lower than in similar schemes. The Scheme is in income drawdown as Mr S has started to draw down his pension. This necessitates a ("Government Actuary's Department") calculation of the maximum amount of pension which can be taken each 3 years to comply with Isle of Man tax requirements. Fedelta also has to carry out a 3 year compliance risk assessment and comply with Isle of Man anti-money laundering/client identification requirements. This is a separate requirement from the Government Actuary's Department calculation.

Due to a progressive breakdown in mutual trust and confidence between Fedelta and Mr S over the last three years, Fedelta sought to encourage Mr S to transfer his pension to a new trustee and manager. Mr S at one point wanted to transfer the value of his pension assets to a Gibraltar scheme but this was not possible due to Isle of Man tax requirements. Mr S is in the process of transferring the Scheme to a new co-trustee and manager in the Isle of Man as he no longer wishes to retain Fedelta as a co-trustee and manager.

Complaint about change in Qualifying Recognising Pension Scheme Status

Mr S has made a series of complaints in connection with this Scheme ceasing to be a Qualifying Recognised Overseas Pension Scheme for UK tax purposes. Mr S believes, in particular, that the Scheme was transferred/ converted into a Self Invested Personal Pension Scheme (a SIPP) without his agreement and he has been charged for this. I am satisfied that this is not the case and the background has been adequately explained to him on more than one occasion (see below).

I understand that the Scheme was originally established in a form which enabled it to qualify as a Qualifying Recognised Overseas Pension Scheme for UK tax purposes to receive a transfer from Mr S's UK pension arrangements without this resulting in an adverse UK tax charge.

Several years after the Scheme was established the UK tax authorities changed the UK QROPS requirements in relation to minimum pension age. Fedelta contacted all schemes registered as QROPS advising that a rule change would be necessary to enable QROPS registration to be maintained. Fedelta contacted clients of all affected schemes and asked members to confirm whether they wished the scheme rules to be amended. Fedelta advised that there would usually have been a cost of £750 plus VAT for preparing an appropriate deed. Fedelta were however willing to prepare the deed at a one off cost of £150 plus VAT due to the fact that Fedelta were undertaking this task for a number of clients, leading to economies of scale. Given that Mr S had no plans to make any further transfers to the Scheme it did not make sense to incur this charge and this was explained to Mr S in 2015.

Mr S confirmed to Mr Shimmin of Fedelta by phone on 27 May 2015 that he did not wish to occur unnecessary charges so no further action was taken to maintain QROPS status (I have been provided with an email dating from 2015 confirming this). I understand that failure to maintain QROPS status did not have any adverse tax consequences for Mr S as the only purpose of maintaining QROPS status would be to enable further pension transfers and Mr S had confirmed there were not going to be any. Allowing the Scheme to become a "former

QROPS" therefore was a sensible course of action. The Scheme remains approved by the Isle of Man assessor of Income tax and remains regulated by the Financial Services Authority and is legally still the same trust based arrangement but is now classed for UK tax purposes as a "former QROPS" instead of a QROPS.

Despite the initial explanation Mr S queried again in November 2015 an explanation of why the Scheme had had its QROPS status removed and converted into a "normal pension scheme".

A further explanation of the situation was provided in September 2015. An email from Fedelta dated 11 September 2015 relating to the potential change in status states that:

"Charges regarding HMRC requests and QROPS legislation changes

Please be advised that our letter dated 5 May 2015 stated that whilst the work required to amend the Scheme rules would normally cost £750 plus VAT, as the bulk of the work had already been done the actual charge to you would only be £150 plus VAT. However, as we did not go ahead with the suggested changes, there will be no additional charge to you whatsoever. Please note however that due to this the Scheme is now a "former QROPS" Scheme rather than a QROPS Scheme. "

Following on from this email my understanding is that Mr S raised the issue again on several occasions but attempts to satisfy Mr S about this issue were not successful. This is evident due to the fact that Mr S also raised the issue with me during the complaints process. The difficulty may possibly have arisen as a result of the use of terminology (which admittedly in the pension sphere is often difficult to follow for a non pension specialist). The Scheme was referred to as a self invested personal pension scheme (which it is as investments are made on member instruction). Mr S appears to remain convinced (I think as a result of the use of different terminology) that it was a different pension arrangement and costs had been incurred transferring his pension to another scheme. Fedelta eventually, as previous attempts to explain the issue were not successful, arranged a meeting with a close relative of Mr S and Mr S to explain the issue again which unfortunately Mr S was unable to attend. On the evidence I have seen however this meeting did occur (see below).

My view is that, contrary to the arguments advanced by Mr S, the statement in the email dated 11 September 2015 (see above) does not preclude Fedelta charging on a time cost basis for seeking to answer Mr S's further questions including explaining the QROPS status on more than one occasion. The charge referred to in the email dated 11 September (in the context of past correspondence) relates to the documentation cost which would have been incurred if Mr S had wanted to take steps to retain the QROPS status.

I, therefore, do not uphold Mr S's complaint in relation to move to former QROPS status as the changes to HMRC requirements were explained to him at the time and he did agree that the extra documentation costs of maintaining QROPS status should not be incurred and as a consequence the Scheme ceased to be a QROPS and became a former QROPS. Legally there has been no change to the Scheme and his benefits have not been transferred to another pension arrangement without his consent. To the extent that costs have been incurred in attempting to explain the issue to Mr S, Fedelta were entitled to charge this under their terms and conditions of engagement (see below) and were not precluded from doing so as a result of commitments given at the time the decision was made not to maintain QROPS status (see above).

Complaints about charges

Mr S has made various complaints about the charges which have been levied recently which he considers excessive and Mr S considers that certain of the charges were not agreed.

Broadly as Deputy Pensions Ombudsman when considering these complaints I need to satisfy myself that the charges have been levied in accordance with the Fedelta terms and conditions that were agreed with Mr S. Also where charges are on a time cost basis members can expect and adequate explanation of the charges levied to demonstrate they were properly chargeable.

I have been provided with a copy of Fedelta's standard terms and conditions under which they are entitled to charge for their services.

Paragraph 9 of the Fee Schedule provides as follows:

"9. Fees and Discharge

- 9.1 *Fedelta's most recent scale of fees are listed in the Fee Schedule. At least 60 days written notice will be given to the Client if any of the prices change. Where VAT is or becomes payable on any of the Services, it will be added at the applicable rate.*
- 9.2 *Fedelta undertake to advise the Client of invoices issued by Fedelta in respect of Services performed, unless otherwise instructed by the Client. It is the policy of Fedelta to invoice in respect of administrative and investment services on a quarterly basis. Where in the opinion of Fedelta, the cost of these Services appears negligible, Fedelta reserves the right to accumulate costs and defer invoicing for such Services rendered until a subsequent period. The Client agrees to pay for the Services and authorised Fedelta to collect all fees in accordance with Fedelta's sale of fees from time to time in effect. All taxes, duties, expenses and charges of Fedelta, its officers, employees or agents incurred under instructions or in carrying out"*

The detailed Fee Schedule I have been supplied with allows Fedelta to charge various fixed charges including costs relating to the establishment of the Scheme, on transfers and an annual management charge of £375 minimum. In addition the fee schedule provides for administrative costs to be charged on top on a time cost basis. The relevant section of the fee schedule states:

"Administrative Charges

Time Based Charges Apply

Administration fees will be charged on a time spent basis commensurate with the level of seniority involved, in multiples of ¼ of an hour. The hourly rates range from £34 to £240, Initial consultations with clients and their advisers are free of charge. However, where Fedelta have expended time in planning and arranging appropriate structuring, such time may be invoiced if the client proceeds to instruct Fedelta to act.

A fee will be charged for liquidations, dissolutions and transfers commensurate with the amount of work involved the minimum fee is £500."

I understand from Fedelta that in practice they have not increased the regular annual charge of £375 for Mr S since the Scheme was set up. Fedelta have, as they are entitled to, charged for various administrative matters as they are entitled to do under their terms and conditions. Mr S has also been charged for the cost relating to the preparation of the annual report and accounts by the accountants.

M S has made a number of complaints about the time charged in relation to the Scheme. I have not gone through and reviewed the underlying files to verify all the time entries against the relevant correspondence. However, I have been provided with various correspondences relating to certain of the matters complained of when Fedelta sought to explain what the charges related to. Mr S was originally provided with copies of the

underlying time entries not all of which relate to time which was actually charged. Many of the time entries in the original time sheets were quite generic e.g. admin fees and in themselves arguably did not provide sufficient information about what they related to. I have, however, been provided with more detail in an annotated set of time entries where Mr S had raised particular issues as part of the complaints process. This information has been shared with Mr S. Many of the disputed entries relate to the QROPS issue (discussed above) and the compliance review (discussed below). I am satisfied on the basis of the annotations to the time entries that the charges related to actual time spent by members of Fedelta's staff in relation to Mr S's Scheme and as a result of this subsequent explanation Mr S has now had an adequate explanation of the level of charges.

In view of the various complaints made by Mr S about the charges, Fedelta in an effort to resolve this matter later proposed that Mr S given an independent accountant of his choice direct access to the files to independently verify the items that were charged. This would have necessitated a visit to the Isle of Man because at the time I understand the files could not easily be made available electronically. However, there was a call between Fedelta and Mr S's accountants. Mr S's accountants also commented briefly at the time on the time sheet entries.

During the current complaints process the offer of giving Mr S's accountants direct access to the underlying files was repeated. Mr S did instruct his accountants again in relation to the matter who have prepared and submitted an analysis of the time recorded and charged in the period from 2014 onwards. The accountants did not undertake an analysis of the underlying file but focussed on analysing the time cost and invoices levied for the last four years. This is understandable as Mr S would have had to incur the cost of this more detailed analysis which he would not then be able to recoup.

On Mr S's accountant's figures over the 4 year period from 2014 to 2018 (excluding the cost of preparing the accounts and annual report) a total of £3,338 was charged over the four year period and there was a write off of £1,740 (i.e. a significant part of the time cost was not charged). I also understand that recently Fedelta have not been charging further for time spent on the matter (as they would be entitled to do so under its terms and conditions). The figures provided by Fedelta's own analysis of the time cost entries (in excess of the regular fee and accounts fee) are slightly lower than the figures provided by Mr S's accountants. On both sets of figures, however, it is apparent from the documents I have seen that not all the time recorded was charged. Fedelta's view is that the charges levied are very competitive in relation to the local market for this type of scheme. I am not in a position to independently verify this statement as I do not have sufficient knowledge of charges levied by Fedelta's competitors in the market to form a view.

Complaint about seniority of staff involved

In terms of seniority of the persons involved given the nature of the issues raised (including the issues about the QROPS, the compliance review and the fact complaints were made) I do consider it appropriate to have involved more senior staff. Also even if junior staff are involved there must be an element of supervision. I, therefore, do not uphold Mr S's more general complaints about the level of charges or that the time was not incurred by persons of suitable seniority.

QROPS Charge Complaint

In relation to the specific complaints Fedelta is entitled to charge on a time cost for explaining on several occasions the issue about the QROPS status and answering Mr S's other many and varied questions. Mr S considers that Fedelta has charged for a meeting with a close family member at which his personal affairs were discussed without his

agreement. Mr S is correct that it would not be appropriate to discuss his affairs with a family member without his agreement. On the evidence I have seen there does, however, appear to have been a meeting arranged at which Mr S and a close family member was invited to attend to explain the QROPS issue on 12 June 2017. I understand indirectly from Mr S that Mr S's close relative may not recollect this particular meeting (which is quite possible without a bit more context). However, I have seen email evidence that a meeting was arranged with both Mr S and his close relative with a date and time which was confirmed by Mr S's close relative and Mr S was aware of in advance of the meeting. Fedelta did not I understand establish that Mr S was unable to attend the meeting until Mr S's relative arrived and the issue of QROPS was discussed. In the circumstances and in my view on the balance of probabilities Mr S had impliedly consented to the meeting to seek to resolve the issues concerning with the QROPS. Accordingly, it was legitimate to charge for the meeting as it was of potential benefit to Mr S in relation to the QROPS issue as it sought to explain (although as events subsequently showed unsuccessfully) that legally it was still the same pension scheme. On the balance of probabilities I am satisfied this meeting did take place and Mr S had agreed to it in advance (expressly or impliedly) although he did not attend.

Compliance Review complaint

Mr S has also complained about the charges for a compliance review required under anti-money laundering and compliance requirements. Mr S does not consider that an alleged charge (of "several hundred pounds") was justified. This review is separate from the triennial review required to assess the minimum and maximum amount of pension payable in income drawdown. The two reviews have become confused by Mr S at several points during the complaints process. I am satisfied that both reviews were required and Fedelta were entitled to charge for both.

I have been provided with a copy of the compliance review as part of the complaints process (which has also been copied to Mr S) which required Mr S to supply various information relating to Isle of Man anti-money laundering requirements/client identification and self certification of tax residency. The review took place between 27 September 2016 and ended on 26 October 2016. I understand that there is in fact time recorded of £304 in relation to the compliance review by a senior member of staff at Fedelta. However, I understand that only £597.75 of the total administration time of £861.75 (which included the compliance review) was billed during the relevant invoice period. Accordingly if this write-off is allocated on a proportionate basis the time actually charged for the compliance review was significantly less than the time recorded. I also understand that there were difficulties obtaining certain of the required information to complete this review from Mr S. Fedelta had to chase Mr S for the information as failure to complete the report potentially could have caused Fedelta regulatory issues. In my experience compliance with client identification and anti-money laundering requirements can be quite time consuming. It is also a very important regulatory requirement which pension managers have to take very seriously and need to comply with.

Having regard to all the above my view is that the time charged would appear to have been justified and properly chargeable. I do not uphold Mr S's complaint in respect of this charge.

Complaint about 19 October 2016 meeting charge

Mr S has also complained about a meeting on 19 October 2016 for which a charge of £135 was made in relation to one hour 15 minutes of the member of Fedelta's staff's time which was invoiced as "Admin Recov Standard" and according to Mr S solely related to approval of accounts and authorisation of fees. Fedelta have explained that the meeting was not just in

relation to reviewing and signing the Annual statements for the Scheme but also certifying Mr S's Know your Customer information and also attending to outstanding fees and going over old queries that had previously been answered in the past. There would also almost certainly have to have been some preparation in advance of the meeting which Fedelta would have been entitled to charge. I am satisfied with this explanation and do not uphold Mr S's complaint in relation to this charge.

Explanation provided to Mr S about the fees charged

On the basis of the documents I have seen Fedelta have always made genuine and repeated attempts to answer Mr S's requests for explanations for the charges levied and other matters relating to the Scheme. Fedelta also offered to go through the files with an accountant of his choice at no additional charge to Mr R.

I do not uphold Mr S's complaint about the alleged failure to provide explanations or failure to comply with these requests.

Ian Greenstreet

Deputy Pensions Ombudsman

11 March 2019