Den 3. juni 2015 blev i sag nr. 85940:

xxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxx
xxxxxxxxxxxxxxx

mod

Nordea Pension
Klausdalsbrovej 615
2750 Ballerup

afsagt

k e n d e l s e :

_____

Forsikringstageren har pensionsordning i Nordea Pension. Han klager over, at selskabet har afvist at yde kompensation for et manglende afkast i forbindelse med, at selskabet ikke rettidigt overførte hans opsparing fra et gennemsnitsrenteprodukt til et markedsrenteprodukt.

Selskabet har i sit afslag henvist til, at klageren som følge af passivitet har fortabt retten til at gøre krav gældende. Derudover har selskabet bestridt opgørelsen af klagerens krav.

I klageskema af 14/3 2014 til nævnet har klageren bl.a. anført:

"**Explanation of Events**

I have a pension in Nordea Liv og Pension since 2000.

The pension at Nordea Liv og Pension is divided into 2 accounts:

The Liv a/c …052 is a savings account and only receives interest. The Link a/c …303 can be invested in bonds, mutual Funds, etc.
In order to invest the funds in Liv a/c, i.e, into the equity market, the funds need to be moved to the Link a/c.

In Feb 2011, I asked the pension company (Nordea Liv & Pension, livsforsikringsselskab A/S -previously owned by Tryg) to transfer the entire money from my 'Liv' a/c to my existing 'Link' a/c so that the entire money could be invested into the stock market. My advisor at Tryg Insurance, Mr. … [rådgiver 1] was responsible for handling my pension at Nordea.

He provided me with the form to be filled out and signed in order to process this transfer. In Feb 2011, at a meeting with Mr. … [rådgiver 1] at my office, I signed this form and gave it to him to do the needful.

In May/ June 2011, my wife … followed up with Nordea Liv og Pension and was informed that the Liv a/c had not been moved yet to the Link a/c, and they were not sure why. The person she spoke to in Nordea was a pension's advisor called … [rådgiver 2]. She asked to resend the form to her, which we did via email. Ms. … [rådgiver 2] confirmed that everything was in order and the papers would be processed within 4 weeks at the latest. She also confirmed a meeting with a pension's advisor from Tryg at my office. So in June 2011 I had a meeting in my office with Mr. … [rådgiver 1] and an expert on pensions, Mr. … [rådgiver 3] (both from Tryg). Mr. … [rådgiver 3] said he will look into the matter and comeback to me or my wife. After following up several times with him and Mr. … [rådgiver 1], we finally got an email in December 2011 from Mr. … [rådgiver 3] stating that the Liv a/c has not been moved. However no explanation was provided why the Liv a/c wasn't moved to Link a/c. Mr. … [rådgiver 3] was not able to give an explanation when we called him up. He said he would have to check with Nordea. We followed up numerous times after that in 2012 and 2013, both with Nordea and with Tryg but did not get any satisfactory response or explanation. We were constantly just asked to speak with our advisor Mr. … [rådgiver 1] at Tryg.

Mr. … [rådgiver 1] was extremely difficult to get a hold off and after many calls & emails when we finally got a hold off him, his standard answer was, 'I will look into it and come back to you.' Since … [rådgiver 1] was difficult to get a hold off, we also called Nordea to ask about the status/transfer. They said somebody would call back. And many times we did not receive any return calls, and other times the person who called said they would look into it and revert back. Most follow ups were done over the phone and no one gave us proper answers explaining what the issue was and why the transfer had not been done.

We complained to Mr. … [rådgiver 1] boss (Mr…. [chef 1]) about the poor service and after repeatedly complaining, Mr. … [rådgiver 1] was replaced by another advisor at Tryg, Mr … [rådgiver 4] in 2012. Mr. … [rådgiver 4] was new and did not have all the information. He was also away from work a lot, due to medical reasons.

In July 2013 my wife followed up with Nordea again to check the status of the pension. Again the answer was that the Liv a/c had not been moved to the Link a/c. This time she spoke to a person called Mr. … [rådgiver 5]. Only at this point did we learn why it had not been moved. Mr. … [rådgiver 5] said that they had informed Tryg about everything and our advisor Mr. … [rådgiver 1] was supposed to have informed us. But we had not received any information from him on this matter.

Mr. … [rådgiver 5] explained, that the reason the transfer had not been processed was because with the kind of product I have, only the ratepension amount in the Liv a/c could be transferred to the existing Link a/c, and not the full amount as we had previously been informed. Before this date no explanation was given as to why the transfer had not been done despite contacting and following up with both Nordea and Tryg numerous times.

In July 2013, we were informed that since the whole pension could not be moved from the Liv a/c to the Link a/c, the old form was not applicable. We had to sign a new form and Mr. … [rådgiver 5] sent us this form. The transfer of the rate pension from the Liv a/c to the

existing Link a/c (This amount is more than 75% of the total in Liv a/c) was done on 15 August 2013.

Since we had not been informed earlier by anyone (Tryg or Nordea) of the reasons why the transfer had not been done, we asked Nordea in August 2013, to compensate us for the loss of income between Feb 2011 to Aug 2013.

[Rådgiver 5] at Nordea who had been dealing with our pension since July 2013 agreed that we should be compensated and said he would speak to his boss … [chef 2] to put this into motion.

Thereafter, Nordea sent the case to Tryg's legal department. After several weeks, we were informed by Nordea that Tryg has refused to compensate, even though Mr. … [chef 1] (Mr. … [rådgiver 1's] boss at Tryg) admitted, that Mr. … [rådgiver 1] had made many mistakes. On a phone call with my wife, Mr. … [chef 1] accepted this and said that most probably Nordea will compensate me and then get compensation from Tryg. Even Mr. … [rådgiver 5] from Nordea, over several phone calls admitted that there has been a mistake and the amount in question is fairly large which is why the case is taking so long to deal with. He hinted that Tryg has perhaps refused to compensate us, as the amount is fairly large.

After Tryg refused to compensate, the case was being looked at by Nordea's legal department. On 5 Dec 2013 I received a letter & email from Nordea that they will not compensate me due to my 'passiveness' and I have therefore contributed to this mistake.

Please refer to the timeline, which is not 100% complete, as we have not kept all the correspondence and unfortunately my wife, … (who has been handling this matter from the very beginning) deleted all emails with Mr. … [rådgiver 1], after our advisor at Tryg was changed. Much of the communication was done primarily over the phone especially since Mr. … [rådgiver 1] at Tryg was not responding to the emails.

We are not sure how to calculate the loss of income and Nordea has refused to send us any calculations. We did request this both over the phone and via email to Mr. … [rådgiver 5] at Nordea. The Link account has an investment guarantee associated with it, i.e., that even though there is a loss in the future income (afkast) the amount invested and the profit earned over the past years is still guaranteed. I therefore anticipate the loss of income to be between DKK 500,000 — DKK 2,000,000 (all depending on the method used to calculate).

The performance in general of the equity markets in all of 2013 and 2012 was positive. While 2011 saw a small drop, this should not affect the amount of my pension as mentioned, because the kind of product I have, the investment and afkast earned are guaranteed.

Conclusion
Nordea has accepted over the phone that there has been a loss of income to my pension. They have also informed us that it is Tryg's fault. They have indicated that the amount of loss is fairly large. I also think so, otherwise they would have easily come to a compromise/settlement. What they are now saying is that due to my 'passiveness', Nordea cannot be held liable.
…

2. What specifically is it you want the insurance company to do? (must be filled in).

WE WOULD LIKE NORDEA LIV OG PENSION TO COMPENSATE US FOR THE LOSS OF INCOME BETWEEN FEBRUARY 2011 TO AUGUST 2013, ARISING BECAUSE THE FUNDS IN THE LIV ACCOUNT WERE NOT TRANSFERRED TO THE LINK ACCOUNT IN FEB 2011. "

I selskabets brev af 21/5 2014 til nævnet er det bl.a. anført:

"**Redegørelse**

Indledningsvist skal Nordea Liv og Pension gøre opmærksom på, at overførslen har været håndteret af både Nordea Liv og Pension og Tryg. Tryg har på Nordea Liv og Pensions vegne forestået en del af kontakten til og rådgivningen af klager.

Klager anmodede i februar 2011 om, at der skete en overførsel af en pensionsordning til klagers pensionsordning … 303, bilag 1. Af selve anmodningen fremgik det imidlertid ikke, hvor overførslen skulle ske fra. Nordea og Liv og Pension rettede henvendelse til Tryg, da der skulle ske en afklaring af, hvad klager ønskede.

[Klagerens hustru] henvendte sig på vegne af klager ved e-mail fra den 27. maj 2011 til Nordea Liv og Pension. I denne mail var vedhæftet en begæring, hvor det var udfyldt, at kunden ønskede en overførsel fra …052. Af begæringen fremgik det ikke, til hvilken ordning at hele værdien af pensionsordningen skulle overføres til, men sammenholdt med tidligere modtaget begæring og e-mailens indhold, skulle det ske til markedsrenteproduktet, … 303, bilag 2.

Nordea Liv og Pension tilkendegav pr. e-mail fra den 6. juni 2011, at overførslen vil ske indenfor 4 uger, se klagers bilag.

Efter Nordea Liv og Pension havde sendt mailen fra den 6. juni 2011 og i forbindelse med sagsbehandlingen af klagers anmodning om overførelse, noterede vi os, at kunden dels ville have den bestående livrentepension dels ratepensionen overført fra det traditionelle produkt, pensionsordning …052, til markedsrenteproduktet på pensionsordningen … 303.

Af systemmæssige årsager tilbyder Nordea Liv og Pension ikke livrentepension på det markedsrenteprodukt, som klager havde og stadig har. Skulle livrenten over på et markedsrenteprodukt kunne klager ikke anvende sin bestående ordning, men det skulle i stedet for have været håndteret ved, at der skete en nytegning af vores nyere markedsrenteprodukt, der kan håndtere en livrente.

Vi skulle have klager til at tage stilling til en samlet løsning - skulle kunden have en samlet pensionsordning indeholdende dels en rate- dels en livrentepension — eller to forskellige pensionsordninger, hvor ratepensionen blev placeret på det af klager allerede oprettede markedsrenteprodukt, og livrentepension på et nyoprettet markedsrenteprodukt. Endvidere skulle klager have taget stilling til, hvad der skulle have været sket med den løbende præmie på ca. 300.000 kr. årligt.

Klagers valg ville have indflydelse på de samlede omkostningerne. Der er i sagens natur forskel på at have to pensionsordninger i stedet for en. Endvidere er omkostningsstrukturen forskellig på de to produkter. Slutteligt er der stor forskel på måden, hvorpå garantien

på det markedsrenteprodukt, som klager allerede havde, og det nyere produkt, som klager ville skulle have haft, om klager havde valgt hel eller delvis overførsel til dette.

Klager burde på dette tidspunkt have været kontaktet og rådgivet. Ved en fejl skete dette ikke.

Klager nævner i sin klage til Ankenævnet for Forsikring, at han den 13. december 2011 fik en e-mail fra Tryg, hvoraf det fremgik, at overførslen ikke var sket.

Klager har i sin klage til Ankenævnet for Forsikring oplyst, at han fra december 2011-2012 har kontaktet Tryg og Nordea Liv og Pension adskillige gange for at følge op på den manglende overførsel.

Nordea Liv og Pension ligger ikke inde med registreringer på sådanne henvendelser. Nordea Liv og Pension har naturligvis spurgt Tryg, om de har registreret sådanne henvendelser. Hertil er svaret ligeledes nej.

En medarbejder i Nordea Liv og Pension talte med klager den 16. november 2012. Medarbejderen har noteret sig, at han talte med klager i ca. 45 minutter. De talte om investeringsgarantien på det bestående markedsrenteprodukt, som kunden havde og stadig har - den ordning, som kan modtage og håndtere en ratepension, men ikke en livrentepension. Medarbejderen noter sig, at klager på dette tidspunkt er fuldt ud klar over, at ingen overførsel er sket. Klager aftalte med Nordea Liv og Pension, at han fik kontooversigter på de bestående ordninger. Kontooversigterne blev sendt til klager den 26. november 2012. Vedlagt er kontooversigten med opsparingen pr. 31. oktober 2012 på pensionsordning … 303, som bl.a. blev sendt til klager, bilag 3.

Klager anmodede i august 2013 om, at overførslen af ratepensionen skete, bilag 4. Livrente-pension forbliver på den bestående pensionsordning. Samtidig med anmodninger beder klager Nordea Liv og Pension om at tage stilling til en kompensation.

Ved brev fra den 4. december 2013 svarer vi klager, at vi grundet udvist passivitet ikke er berettiget til kompensation, bilag 5.

Konklusion

Der sker en fejl ved, at klager ikke kontaktes i forbindelse med, at Nordea Liv og Pension ved sagsbehandlingen af overførselsanmodningen i juni 2011 indser, at vi ikke kan honorere anmodningen ud fra de informationer, som begæringen indeholder, sammenholdt med de systemmæssige muligheder, vi har. Her burde klager have været kontaktet og rådgivet.

Klager er vidende om, at overførslen ikke er sket i december 2011. Hvorfor han fra dette tidspunkt selv burde have reageret.

Klager skriver til ankenævnet, at han adskillige gange har kontaktet Nordea Liv og Pension og Tryg. Hverken klager, Nordea Liv og Pension eller Tryg ligger inde med registreringer af disse henvendelser, hvorfor vi ikke mener, at disse anbringender kan inddrages og lægges til grund ved vurdering af sagen.

Næsten et år efter at klager har haft viden om, at overførsel ikke var sket som lovet med udgangen af juni 2011, har klager en samtale med en kunderådgiver i Nordea Liv og Pen-

sion. Klager bliver rådgivet omkring de bestående ordninger. Klager beder ikke om, at overførslen sker. Klager beder alene om kontooversigter tilsendes, hvilket sker. Ved modtagelsen af disse er det endnu en gang tydeligt, at overførslen ikke er sket.

Klager har således ved flere lejligheder haft mulighed for at bede om overførslen sker - vel og mærke alene en overførsel, der vedrører ratepension, og som placeres på det markedsrenteprodukt, som han har. Undervejs undlader han at overføre livrentepensionsdelen, hvilket understøtter, at han undervejs har ændret mening om, at hele pensionen på - både livrente- og rate-pensionsdelen - skulle overføres til et markedsrenteprodukt.

Han har ved sin henvendelse i sommeren 2013 mistet retten til en evt. godtgørelse, da han i mere end halvandet år efter, at han er vidende om, at Nordea Liv og Pension ikke har overført pensionsordningen, ikke dokumenteret har reageret på den manglende overførsel.

For god ordens skyld skal vi gøre opmærksom på, at vi ikke er enige i, at en evt. godtgørelse ligger i niveauet 500.000-2.000.000 kroner, som klager har fremsat i sin klage til ankenævnet.

Vi har beregnet, at det manglende afkast ligger på maksimalt 279.225 kroner. Vi har til brug for denne opgørelse taget udgangspunkt i perioden 1. juli 2011 til overførslen sker. Den 1. juli 2011 er valgt, da det er fra denne dato, at klager efter vores mail fra den 6. juli 2011 havde fået en forventning om, at overførslen ville ske."

Hertil har klageren i brev af 1/7 2014 til nævnet bl.a. bemærket:

"Mr. … [rådgiver 1] was assigned to me by Tryg as my pension advisor. In Feb 2011 I expressed to him that I would like to move my entire Liv a/c to my existing Link a/c. We arranged a meeting at my office whereby he would bring the relevant form for me to sign. The form that he got was **filled out by him** (Exhibit 6). He just asked me to sign it. Since he was my advisor and clearly understood what I wished to do with my pension, there was no reason for me to doubt if the form was correctly filled out or not. On the form it is marked, `Jeg ønsker at flytte hele min pensionsordning, inkl. værdien af eventuelle værdipapirer tilknyttet pensionsordningen.' Then it states my Link a/c (…303) to which it should be put. To me this meant that my entire pension at Nordea Liv & Pension should be placed in this Link a/c. After this I was never approached by Mr. … [rådgiver 1] or Tryg or Nordea for further clarification on the form. Mr. … [rådgiver 1] confirmed that the transfer would be done in a few weeks.

My wife was constantly trying to follow up with Mr. … [rådgiver 1]. We have tried to obtain the call log for my wife's land line number (XXXXX166) from our operator Cirque (Exhibit 8). It can be seen that she tried to reach him at least 7 times during Feb/March 2011, both on his mobile number (XXXXX445) and his direct landline (XXXXX560). It can be seen from the duration of many calls that he didn't answer his phone. She also tried to reach him from her mobile number. (The mobile operator could not provide us with a call log for … [klagerens hustrus] number as they do not have the possibility to go so far back in time.)

Contrary to Nordea's claim that I have been passive, it was us who took the initiative to approach Nordea in May 2011 to check on the Liv pension. At that point we were in contact with Ms. … [rådgiver 2] who is a Pensionsrådgiver at Nordea. It is clear from my wife's

email to … [rådgiver 2] dated 27/05/2011 (Exhibit 5), that we are upset because … [klagerens hustru] was promised that someone at Nordea would contact her but she hadn't heard from anyone (clearly shows who was passive!). The form was resent to … [rådgiver 2]. My wife through her emails on 01/06/11 and 14/06/11 (Exhibit 5) asked … [rådgiver 2] if everything was in order and if my entire pension was in my Link a/c now. Through her email on 06/06/11 (Exhibit 5) … [rådgiver 2] confirmed 'I just looked through the form, and everything appears to be in order They will process the papers as fast as possible-within 4 weeks at the latest.' No mention was made about the form being incomplete or that the entire Liv a/c could not be moved to the existing Link a/c due to the product we have. Needless to say, it was Nordea's or the case worker's duty to check what the issue was and to inform us of that, especially since the transfer was not done in the first instance.

So in the first instance Mr. … [rådgiver 1] (Tryg) made a mistake and in the second instance Ms. … [rådgiver 2](Nordea) made a mistake .

Nordea claims that only after Ms. … [rådgiver 2] sent the email on 06-06-2011 to my wife did they notice what the problem was. First of all that is very surprising as Ms. … [rådgiver 2] was looking into the matter and should have spotted the problem. Secondly when they did notice this, why weren't we contacted by Nordea or Tryg, either by letter, email or phone. They never approached us even after discovering the problem. How could we then have taken a position or call on what we wished to do with my pension. Up until July 2013, no one at Nordea or Tryg was able to give us an explanation as to **why** the transfer could not be done.

In June 2011, it was us who took the initiative to have a face to face meeting at our office with Mr. … [rådgiver 1] and another pension's advisor at Tryg, Mr. … [rådgiver 3] (Exhibit 5-email to … [rådgiver 2] dated 27/05/2011). During the second half of 2011 my wife was following up on a regular basis with Mr. … [rådgiver 3] and Mr. … [rådgiver 1] to know what the status of the pension was. Please refer to the call log from Cirque (Exhibit 8) for … [klagerens hustrus] landline number (XXXXX166) which shows that my wife called Mr. … [rådgiver 1's] direct & mobile (XXXXX560/XXXXX445) 5 times and Tryg's landline no. (70112020) 4 times from Aug-Dec 2011. Besides this she also tried to reach Mr. …. [rådgiver 1] & Tryg from her mobile no. (Again we could not obtain the call log from the mobie operator for … [klagerens hustrus] mobile no.)

It was only on 13 Dec 2011 that Mr. … [rådgiver 3] responded with an email that the transfer had not been done (Exhibit 5). There was no explanation given in the email or via phone as to why the transfer was not done and how we should proceed. He said on a phone call with … [klagerens hustru], that he would check with Nordea and revert back. However we got no further explanations from him. We tried to reach Mr. … [rådgiver 1] regarding this and either he did not pick up his calls or then responded that he would check and revert back.

Throughout 2012 and 2013 my wife tried to follow up several times with Tryg to understand what the issue was with the transfer of the Liv pension amount. This is evident from the call log of … [klagerens hustrus] landline number (XXXXX166) (Exhibit 8) which shows that she has tried to reach Mr. …[rådgiver 1] or Tryg (XXXXX445/XXXXX560/70112020) numerous times. She also tried to reach Mr. … [rådgiver 4](direct XXXXX220/mob.XXXXX554) after Mr. … [rådgiver 1] was replaced (due to our complaints of his passiveness). The call log also shows that she tried to reach Nordea on 03/10/12 & 15/11/12. During the calls in Oct/Nov. 2012 my wife asked why the

transfer wasn't done and still received no proper explanation. We asked Nordea to send us the konto oversigt at this time and were waiting for them to come back to us with some sort of explanation.

From November 2012 till June 2013, I was dealing with a lot of very serious personal and professional matters which required my entire focus.

In July 2013, when I turned my attention to the pension status again, my wife contacted Nordea. Only at, this time, through Mr. … [rådgiver 5] did we get an explanation on the structure of our product and that only the rate pension in the Liv a/c could be moved. Nordea claims that I have changed my opinion regarding what I wished to do with my Liv a/c. This is not correct. I wanted to move the entire amount in the Liv a/c to my existing Link a/c, because my existing Link a/c is guaranteed for both the investment and the afkast/return. (If there is a loss on the stock market, it will not affect my amount in Link a/c because whatever I have invested or earned over the previous years is guaranteed.) However, Nordea could not move the entire Liv a/c amount to the existing Link a/c, so whatever I could move, ie the rate pension, I asked them to move. The liv rente amount in the Liv a/c could only be moved to another new Link a/c which would not have the same terms and conditions, ie the same security. Hence that still remains in the Liv a/c.

I disagree that if the rate pension amount in Liv a/c had been moved in 2011, the afkast till August 2013 would be only 279.225 kroner. The following reasons explain how I came to this conclusion:

1. If you look at my Link a/c on 15/08/2013 (Exhibit 9), the balance was 692.308,77 kr. The indbetaling was 2.881.893,64 kr. On a total of 3.574.203 kr the afkast /return from 15/08/13 to 31/12/2013 was 217.857,95. Based on this, the proportionate return on the money transferred from Liv a/c (2.833.593,64 kr) (Exhibit 10) would be about 172.716 kr (for 4.5months)and 38.381 kr monthly (172.716 kr / 4.5 mth). In 2013 the markets all over the world saw a steady growth upwards, so we can assume that the return in the first 7.5 months of 2013 would be about the same. Taking this simplistic view, the return for the first 7.5 mths of 2013 on the transferred amount would be about 287.858 kr (38.381 kr x 7.5 mth). This is an amount only for the first 7.5 months of 2013.

2. Another way to calculate would be to look at the return in 2012 and 2013 on my Link a/c which was invested in the stock market.

- From 01/01/13 till 14/08/13 (Exhibit 11) the afkast/return on my Link a/c was 59.900,32 kr. The opening balance was 642.662,21. The return on investment was therefore +9.32%. Based on this, the return on 2.833.594 kr (the amount transferred), would be 264.091 kr. Again this would be only for the first 7.5 months of 2013.
- Similarly in 2012 my Link a/c (Exhibit 12) shows the opening balance as 552.366,79 kr. The indbetaling was 43.839,00 kr and the afkast was 55.858,74 kr. So the return on investment was + 9.37%. Based on this, the return on an approximate amount of 2.8 million (perhaps this figure would be slightly different in 2012 but I don't have that info), would be 262.360 kr.
  So the combined afkast of 2012 and part of 2013, would have been more than 500,000 kr.
- 2011 saw a small drop in the markets but as explained, my Link a/c has both the investment and positive return guaranteed, so it would not have affected the overall return that I would made had the transfer taken place.

In any case the overall return from Feb or June 2011-Aug 2013 would be much higher than what Nordea claims!"

I selskabets brev af 4/9 2014 til nævnet hedder det bl.a.:

"Vi fastholder vores afgørelse om, at klager ikke er berettiget til kompensation. Endvidere mener vi ikke, at klagers beregning af manglende afkast er retvisende, hvis Ankenævnet for Forsikring skulle man komme frem til, at klager er berettiget til kompensation.

Klager har i sit brev beskrevet, at han ved flere lejligheder har rettet henvendelse til Tryg. Som vi skrev i vores brev fra den 21. maj 2014 ligger Tryg ikke inde med en registrering af, at klager ved telefonisk henvendelse ville have overført sin ordning efter det tidspunkt, hvor Nordea Liv og Pension meddelte klager, at han kunne påregne, at overførslen ville ske. Tidspunktet regnes fra juli 2013, jf. sagens bilag 5.

Opkaldsloggen, som klager har fremlagt, dokumenterer henvendelser til Tryg, men loggen siger i sagens natur ikke noget om klagers ærinde, herunder om opkaldene eventuelt alene relaterede sig til et kundeforhold mellem Tryg og klager. Tryg har en betydelig skadesforretning udover at forestå salg og rådgivning af pensionsordninger, som Nordea Liv og Pension udbyder. Som ovenfor anført har Tryg ikke henvendelser af betydning for denne sag.

Vi fastholder vores svar til Ankenævnet for Forsikring dateret den 21. maj 2014, herunder at klager ved telefonisk henvendelse i november 2012 var vidende om, at overførslen ikke var foretaget og baggrunden herfor. Vi er således uenige i, at han ikke fik en forklaring. Allerede i december 2011 var klager vidende om, at ingen overførsel var sket.

Vi henviser til vores brev fra den 21. maj 2014 i sin helhed.

Vedrørende klagers beregning af evt. kompensation, så fastholder vi, at det manglende afkast ligger på maksimalt 279.225 kroner.

Vi kan som udgangspunkt godt følge forsikredes metode til at opgøre kompensationsbeløbet. Vi understreger, det er klagers metode at opgøre kompensationsbeløbet på, at vi nedenfor forholder os til. Vi understreger, at vi ikke er enige i klagers metode.

Der er en række misforståelser fra klagers side, som vi ønsker at adressere i det følgende.

1) Kontorente tilskrevet på forsikringsnummer …052 for perioden 1.7.2011-1.8.2013 skal fratrækkes, da forretningen sker på markedsrenteordningen, hvis beløbet flyttes tidligere. Denne forretning udgør 96.543 kr.

2) Forretningen på markedsrenteordningen udgør for perioden 1.7.2011-31.12.2011 = -119.911 kr. (regnet forholdsmæssigt efter forsikredes principper).

3) Efter tabet i 2011 (se 2) er det den faktiske saldo efter tabet, som er investeret og forrentes. Dermed bliver afkastet lidt mindre end forsikrede anslår.

4) Prisen for investeringsgarantien stiger, da der skal betales for perioden 1.7.2011-1.8.2013 (=25 måneder), hvilket koster 42.500 kr.

Det betyder, at klagers opgjorte kompensationsbeløb på godt 500.000 kr. skal reduceres med 299.363 kr. Beløbet på ca. 200.000 kr. regnet efter hans principper ligner derfor det beløb på 279.225 kr., som vi har regnet i vores svar af 21. maj 2014.

Ovennævnte illustrerer således, at klager i sin opgørelse af kompensationsbeløbet tilsyneladende overser visse ting af betydning for opgørelsen."

Klager har i brev af 30/9 2014 til nævnet bl.a. anført:

"I would like to stress again that both Nordea and Tryg have made mistakes and are at fault with regards to the loss that I have incurred on my pension at Nordea Liv & Pension from Feb or July 2011 - Aug 2013. Hence I should be compensated.

Please refer to my previous letters dated 14/03/14 & 01/07/14 for full explanation.

Nordea claims that if Ankenævnet decides that we should be compensated then the amount of compensation should be 279.225 kroner. I disagree with this amount for the following reasons.

Nordea has not been transparent and open about the correspondence & communication I have had with Tryg and Nordea regarding this matter. With regards to all follow up they are just saying that they or Tryg have no record of anything. I find this surprising considering they are both large institutions. Hence I don't believe that they are being honest about the amount.

Before filing a complaint with Ankenævnet we had requested Nordea to provide us with the compensation figure. Nordea responded via email that we would hear from their legal department. However we received no response from them regarding the figure. (Exhibit 14)

At no point have Nordea provided any proper working of how they came up with the figure.

It is very difficult for me to calculate the correct amount of loss as I do not have all the information that Nordea has access to nor do I know the method used by Nordea to make the calculations.

- For example, only the rate pension in my Liv account could be moved. I do not know what the rate pension amount in Feb or July 2011 would have been, so I don't know how much would have been transferred.
- Since I don't have that figure I cannot calculate the interest amount that Nordea says should be deducted.
- Similarly I cannot check what the amount of loss in 2011 in my Link a/c would be and what would have been invested in 2012. According to me since I have an investment and afkast guarantee on my Link a/c, the loss should not be taken into consideration.
- Every year there has been an indbetaling of approx.300.000 kroner into my Liv a/c and approx. 40.000 kroner into my Link a/c at Nordea. Part of this amount would have been invested as well and should be accounted for.
- If I look at my Link a/c (Exhibit 15), since the transfer has been made (15-08-2013) til date (30-09-2014) the afkast on the full amount of 3.574.202,30 kr is

622.033,78 kr. The afkast after deducting admin cost (51.427,78 kr) is 570.606 kr. Based on this the afkast, after cost on 2.881.893,64 kr (the amount transferred) would be 460,082 kr for 13.5 months, giving an average monthly afkast of 34.080,15 kr. Using this info the afkast for 25.5 months (July 2011- 14 Aug.2013) would be 869.043,82 kr.
The markets have steadily been going up since 2012.
Since I cannot speculate the exact situation in the past, I have applied this simplified method using the afkast I have already earned after the transfer. If interest is deducted from this, the amount is still much larger than what Nordea has proposed.
Hence I still believe that the compensation amount should be anywhere between 500.000 — 2.000.000 kroner."

I selskabets brev af 27/10 2014 til nævnet fremgår det bl.a.:

"Indledningsvist bør det fremhæves, at det er det garanterede beløb, som opskrives med positivt afkast fratrukket omkostninger og pris for Investeringsgarantien. Har der været negativt afkast, fratrækkes dette altid i et positivt afkast, inden det garanterede beløb opskrives. Det er den faktiske opsparing, som investeres — ikke det garanterede beløb.

Havde vi overført klagers ratepension den 1. juli 2011, da havde beløbet været på 2.714.227,76 kroner.

Der havde været et negativt afkast på 160.057,76 kroner i 2011. Afkastet for 2012 havde været på 267.247, 86 kroner. Afkastet for 2013 frem til overførselstidspunktet den 16. august 2013 havde været 258.527,01 kroner. Det vil sige, at der på overførselstidspunktet pr. 16. august 2013 havde stået 3.079.944,88 kroner.

Vi overførte 2.833.594,00 kroner, hvilket er 246.350,88 kroner lavere end det beregnede beløbet på 3.079.944,88 kroner.

Lægges det til grund — det er det, som vi bestrider - at klager er berettiget til kompensation, så er det således beløbet på 246.350,88 kroner, som er det, der mangler på overførselstidspunktet. Da der har været en positiv udvikling på klagers ordning, havde der været et merafkast af beløbet efter den 16. august 2013. Afkastet frem til den 29. april 2014, som er den dato, hvor vi beregnede kompensationsbeløbet til brug for vores første besvarelse i denne sag ved Ankenævnet for Forsikring, havde merafkastet været 32.873,90 kroner.

Det vil sige, at hvis det lægges til grund, at der skal ydes et kompensationsbeløb, udgør dette, 246.350,88 kroner tillagt 32.873,90 kroner — i alt: 279.224,78 kroner (før PAL).

Klager anvender bl.a. en afkastberegning, hvor der tages udgangspunkt i perioden efter overførselsdatoen den 16. august 2013 til beregningen af kompensationsbeløbet. En sådan fremgangsmåde er ikke anvendelig, da den ikke tager højde for mindre gunstige perioder i afkastmæssig henseende."

Parterne har herefter haft yderligere indlæg for nævnet, der navnlig har vedrørt opgørelsen af kompensationskravet.

Nævnet har fået forelagt sagens bilag herunder parternes korrespondance forud for sagen blev indbragt for nævnet samt den af klageren fremlagte opkaldslog.

I mail af 6/6 2011 fra selskabet til klagerens hustru vedrørende overførslen af pensionsordningen fremgår det bl.a.:

> "Dear … [klagerens hustru],
>
> Thank you for your reply.
>
> I just looked through the form, and everything appears to be in order. I have forwarded your email, with attatched form to our administrationsdepartment. They will process the papers as fast as possible - within 4 weeks at the latest.
>
> Let us know if there is anything else we can do to help.
>
> Kind regards
> Pensionsrådgiver
> … [rådgiver 2]"

I mail af 15/6 2011 fra selskabet til klagerens hustru fremgår det bl.a.:

> "Hi …
>
> Thank you for your email.
>
> Our administrationsdepartment is currently working on your husband account. He will receive an updated pension survey, as soon as the transaction is completed.
> …
> Kind Regards
> Pensionsrådgiver
> … [rådgiver 2]"

I mail af 13/12 2011 fra Tryg til klagerens hustru er det bl.a. anført:

> "Hej … [klagerens hustru].
>
> Hans police …052 står i gennemsnitrente og er ikke flyttet. der står pr. 30-11-2001 kr. 3.339.296. Jeg har givet besked til NLP hvor meget han har brugt i … [andet selskab] d.d. jf. vores møde i går.
>
> Venlig hilsen
>
> … [rådgiver 3]"

I selskabets breve af 26/11 2012 til klageren fremgår det bl.a.:

13. 85940

"**Kontooversigter fra oprettelsestidspunkt til nu**

Efter aftale sender vi kontooversigter for dine pensionsordninger.

Aftalenummer 152-9314303 er oprettet tilbage i år 2000. Det betydet at du vil opleve, at kontooversigterne fra 2000-2005 ser anderledes ud end dem fra 2005 og frem. Det skyldes at vi i 2005 overgik til et andet design af vores kontooversigt.

Har du spørgsmål er du velkommen til at kontakte vores Kundecenter på tlf. 70 33 99 99.
…
Kontooversigt - Forsikringsnr.: …052 Arbejdsgiver: …

Du får her en oversigt over din pensionsopsparing for perioden 1.9.2010 - 31.10.2012.
På kontooversigten kan du se opsparingens størrelse og de bevægelser, der har været i perioden.

Status på din forsikringsdækning med mere, kan du se af den sidste pensionsoversigt, vi har sendt til dig.
…

Kontooversigt

Nordea Liv & Pension — Forsikringsnr. '-052
Oversigtsdato 20.5.2014

Indbetalinger fremgår af kontooversigten, når de er modtaget og registreret.

Betalingsoversigt	I perioden 1.9.2010 til 31.10.2012 har vi modtaget	984.304 kr.
	Videresendt arbejdsmarkedsbidrag	78.744 kr.
	Indbetaling til pensionsordningen	905.560 kr.

	Tilvækst i kr.	Fradrag i kr.	I alt i kr.
Opsparing pr. 1.9.2010			0
Indbetalinger	905.560		
Overførsel fra anden aftale i Nordea Liv & Pension	2.650.008		
Renter efter skat af pensionsafkast	159.196		
Risikogevinst	123		
Betaling til administration		30.834	
I alt	3.714.887	30.834	3.684.053
Opsparing pr. 31.10.2012			3.684.053

I mail af 15/7 2013 fra klagerens hustru til selskabet fremgår det bl.a.:

"Dear Mr. … [medarbejder],

I am writing with regards to my husband … [klagerens] Pension. He has both a Liv (…052) and a Link (…303) account. In February 2011 he had signed a form to move his Liv account to Link so that he could invest in stocks and bonds. However this has not been done till now. I had contacted a pensionsrådgiver Ms…. [rådgiver 2] in June 2011 again to see why the account hadn't been moved and she emailed me confirming that it would be done from the date the form was signed. She said it would be done within a month. However it still hasn't been done. I am attaching the form signed by my husband and the email from Ms. … [rådgiver 2].

Please have a look and let me know why the Liv Pension hasn't been moved to Link. I hope to hear from you soon as it has already been more than 2 years. You can contact me on my mobile or via email."

I mail af 25/7 2013 fra klagerens hustru til selskabet hedder det bl.a.:

"Dear … [rådgiver 5],
Please see my email to … [medarbejder] on 15 July regarding my husband's pension. Also find attached the form he had signed in Februray 2011, which was provided to him by his advisor Mr. … [rådgiver 1]. And email from … [rådgiver 2] in June 2011, confirming that everything would be in order within 4 weeks. Recently I had a look and nothing has been changed. Please investigate and let me know. Thanks"

I mail af 6/8 2013 fra klagerens hustru til selskabet er det bl.a. anført:

"Dear … [rådgiver 5],

Please find attached the form which is filled and signed as per discussed over the phone. I actually followed the information you had filled out on the last form you had sent. Please check and see if everything is correctly filled out on the form. My Danish is not perfect so I prefer you check it. Besides that, as promised to me, you will be discussing the date with your boss when she is back. This is to see if we can get compensation due to the mistake by Nordea in 2011.

Please get back to me on this. Thanks"

I mail af 7/8 2013 fra selskabet til klagerens hustru fremgår det bl.a.:

"Hello … [klagerens hustru]

Thank you for the mail.

As agreed I will talk with my boss about this case on Monday when she Is back from vacation.

… [rådgiver 5]"

15. 85940

I mail af 15/8 2013 fra selskabet til klagerens hustru hedder det bl.a.:

> "I have today sent a letter that tells that i have transferred 2.833.593,64 kr. from the liv acount to the link acount.
>
> We have know started the process to get compensation from Tryg.
>
> Yours faithfully
> [rådgiver 5]"

Klageren hustru rykkede herefter selskabet for svar ved mails i september og oktober 2013, og kontaktede en chef i Tryg, der ved mail af 9/10 2013 til klagerens hustru bl.a. anførte:

> "Dear … [klagerens hustru],
> I called Nordea's legal department yesterday and asked when they have any news regarding your husbands pension. Hopefully end this week or beginning next week!
> …
> Med venlig hilsen
> … [chef 1]"

Ved selskabets mail af 12/11 2013 til klagerens hustru fremgår det bl.a.:

> "Hello … [klagerens hustru]
>
> I have send your mail on to our legal department.
>
> I guess you will here from them.
>
> … [rådgiver 5]"

I selskabets brev af 4/12 2013 til klagere, bliver han meddelt afslag på kompensation med følgende begrundelse:

> "Vi bekræfter i juni 2011 at have modtaget en anmodning om overførsel fra …052 til police …303. I denne forbindelse bliver i oplyst at overførslen vil blive gennemført indenfor 4 uger. Da overførslen ikke er sket burde i have reageret på dette.
>
> Næste kontakt er først i november måned 2012, hvor der bliver fremsendt kontooversigter og pensionsoversigt for alle aktive pensionsordninger. Kontooversigterne var fra oprettelsestidspunktet og frem til november 2012. Her burde i have reageret på den manglende overførsel og bedt om at få denne overførsel gennemført Dette sker ikke.
>
> Den næste henvendelse i sagen sker sommeren 2013, hvor i fremkommer med jeres krav om kompensation for hele den mellemliggende periode. Ifølge dansk ret er man forpligtet til at bidrage med begrænsning af et eventuelt tab. Dette er ikke sket i denne sag da i har forholdt jer passivt omkring kompensationskravet fra juni 2011 og frem til juli måned 2013."

16. 85940

Nævnet udtaler:
Det fremgår af sagen, at klageren i februar 2011 anmodede selskabet om at få overført pensionsmidler fra et gennemsnitsrenteprodukt til et markedsrenteprodukt. Klageren havde efter det oplyste møder herom med rådgivere fra både selskabet og Tryg, der bistod selskabet med håndteringen heraf.

Efter anmodningen var afgivet til selskabet viste det sig, at der var behov for yderligere oplysninger for, at overførslen kunne ske. Selskabet kontaktede ikke klageren herom, og overførslen først blev bekræftet endeligt gennemført den 15/8 2013 efter klagerens henvendelser til selskabet herom.

Klageren har gjort gældende, at selskabet skal erstatte det tab, han har lidt i form af manglende afkast på markedsrenteproduktet i perioden 2011 til 2013.

Selskabet har gjort gældende, at klageren med viden om, at overførslen ikke var sket, forholdt sig passivt frem til juli 2013 og dermed ikke har et krav mod selskabet. Klageren har hertil oplyst, at han gentagne gange blandt andet telefonisk har forsøgt at rykke selskabet for svar.

Det fremgår af selskabets mail af 6/6 2011 til klageren at: *"I just looked through the form, and everything appears to be in order. I have forwarded your email, with attatched form to our administrationsdepartment. They will process the papers as fast as possible - within 4 weeks at the latest."*

Det er nævnets opfattelse, at selskabet herved har givet klageren en berettiget forventning om, at pensionsordningen – eller den del af pensionsordningen, som det var muligt at overføre – ville blive overført inden for fire uger, og at han har kunnet indlade sig på ikke at skulle foretage sig yderligere.

Efter en gennemgang af sagen finder nævnet, at selskabets sagsbehandling, herunder selskabets information af klageren efter mailen den 6/6 2011, har været mangelfuld, og at selskabet som følge heraf har pådraget sig et erstatningsansvar. Nævnet har herved

lagt vægt på, at selskabet havde påtaget sig at få overført pensionsmidlerne efter klagerens anmodning i 2011, og at selskabet ubestridt har begået fejl i forbindelse hermed. Dette ses blandt andet anerkendt i selskabets brev af 21/5 2014.

Nævnet lægger til grund, at klagers hustru den 6/6 2011 fik at vide, at papirerne ville være i orden senest inden 4 uger. Den 15/6 blev det oplyst, at der ville blive fremsendt opdaterede forsikringspapirer, når overførslen var sket, og den 13/12 2011 fik hun besked om, at policen stadig stod i gennemsnitsrente og ikke var flyttet.

Nævnet finder, at det ved modtagelsen af mailen af 13/12 2011 måtte stå klageren klart, at hans overførselsanmodning fra februar 2011 ikke var effektueret, og at der heller ikke var nogen grund til antage, at den ville blive effektueret inden for kort tid. Nævnet bemærker i den forbindelse, at det direkte fremgår af mailen, at midlerne ikke er flyttet.

Uanset at den manglende overførsel af den del af midlerne, der senere blev overført, beror på en fejl fra selskabets side finder nævnet, at klageren – dels som følge af den loyale samarbejdspligt i kontraktforhold dels som følge af tabsbegrænsningspligten - inden årets udgang burde have kontaktet selskabet med henblik på at få selskabets sagsbehandlingsfejl løst.

Som sagen er oplyst og under hensyntagen til størrelsen på det beløb, der skulle overføres, finder nævnet, at klageren ikke bevist, at han pr. telefon eller e-mail inden 2013 har gjort selskabet opmærksom på den fejl, som kunne udledes af selskabets mail af 13/12 2011. Nævnet har også lagt vægt på, at selskabet gennemførte overførslen i 2013 kort efter, at klageren ved e-mail havde rettet henvendelse til selskabet om fejlen.

På denne baggrund finder nævnet, at selskabet er erstatningsansvarlig for de sagsbehandlingsfejl, det begik i 2011, men med den begrænsning, at klageren ikke har krav på erstatning for perioden efter den 31/12 2011.

Som sagen foreligger oplyst, har nævnet ikke mulighed for at fastsætte erstatningsbeløbet. Selskabet skal derfor genoptage sagen og skal beregne og erstatte klageren for

det tab, han har haft i perioden 1/7 2011 til 31/12 2011 som følge af, at der ikke skete overførelse af den del af pensionsbeløbet, der kunne overføres, til markedsrenteproduktet.

Selskabet skal endvidere beregne, hvilket afkast det ovenfor anførte erstatningsbeløb ville have opnået, hvis det i perioden 1/1 2012 til 15/8 2013 henstod på klagerens gennemsnitsrenteordning. Dette beregnede, tabte afkast skal selskabet ligeledes erstatte over for klageren.

Som følge heraf

b e s t e m m e s :

Selskabet, Nordea Pension, skal anerkende, at det er erstatningsansvarlig som følge af sagsbehandlingsfejl i perioden 1/7 2011 til 31/12 2011. Selskabet skal genoptage sagen og skal beregne og erstatte klageren for det tab, han har haft i perioden 1/7 2011 til 31/12 2011 som følge af, at der ikke skete rettidig overførelse af pensionsbeløbet til markedsrenteproduktet. Selskabet skal endvidere beregne, hvilket afkast det ovenfor anførte erstatningsbeløb ville have opnået, hvis det i perioden 1/1 2012 til 15/8 2013 henstod på klagerens gennemsnitsrenteordning. Dette beregnede, tabte afkast skal selskabet ligeledes erstatte over for klageren.

Marianne Højgaard Pedersen
formand