



Ombudsman's Determination

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| Applicant | Mr S |
| Scheme | Legal & General Personal Pension (the Scheme) |
| Respondent | ReAssure Limited (ReAssure) |

Outcome

1. I do not uphold Mr S' complaint and no further action is required by ReAssure.

Complaint summary

2. Mr S has complained that Legal & General Assurance Society Limited (**Legal & General**) did not carry out effective due diligence when it processed his transfer request. Consequently, he would like an award to cover his losses.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. It should be noted that at the time the transfer request took place, the Scheme was held with Legal & General. However, ReAssure took over a number of Legal & General's policies in September 2020, which is why it is the Respondent to the complaint.
5. Mr S has said he was approached by an individual or a firm that was not regulated by the Financial Conduct Authority (**FCA**) prior to 15 July 2016, and was encouraged to transfer his pension arrangements to the Optimum Retirement Benefit Plan (the **Receiving Scheme**). The Receiving Scheme was administered by Optimum Financial Solutions Limited (**OFSL**), which was regulated by the FCA but did not have relevant permissions to carry out pensions-related regulated activities.
6. On 15 July 2016, OFSL wrote to Legal & General with a letter of authority, asking for details of Mr S' pension arrangement.
7. At the same time, OFSL wrote to two of Mr S' other pension providers, which later resulted in transfer requests.

8. On 19 July 2016, Legal & General wrote to OFSL and provided it with a statement of benefits, a transfer value and a discharge form. Included in this information were the following statements and declaration:

“We have enclosed some important information we recommend that you read before you decide to transfer your pension pot, including a regulatory leaflet relating to pension scams. Further regulatory information concerning pension liberation, unauthorised payment charges and investment fraud may be found at www.legalandgeneral.com/protectyoursavings and we would urge you to read these before deciding to transfer. If you do not have access to the internet, please contact us and we will arrange to send copies to you.”

“We also recommend that you consider taking Financial Advice, from a Financial Conduct Authority registered Adviser, before making a final decision about transferring.”

“I have read and understood the regulatory leaflet, together with the regulatory information on www.legalandgeneral.com/protectyoursavings, that Legal & General has given me.”

9. On 12 September 2016, OFSL confirmed to Legal & General that the Receiving Scheme was a registered pension scheme with HM Revenue & Customs (**HMRC**). It provided the following documents:
- bank details;
 - HMRC registration details showing that the Receiving Scheme had been registered on 30 June 2015;
 - confirmation that the Receiving Scheme had accepted Mr S’ application;
 - a confirmation letter from Mr S saying he wished to transfer his funds; and
 - the completed transfer application forms from Legal & General.
10. On 22 September 2016, Legal & General wrote to OFSL, asking it to provide the name and address of the sponsoring employer, confirmation of whether the sponsoring employer employed the member, and, if so, the date of when he became employed. If not, it asked for details of the scheme eligibility requirement that enabled him to become a member of the Receiving Scheme. It also asked for its “Further Information Checklist” to be completed and returned.
11. On the same date, Legal & General wrote to Mr S asking him to confirm the date he commenced employment with his employer. It stated the following:
- “This additional information is required to protect your pension investment and until [we have] received this, your pension fund will continue to be invested.

[...] If you haven't already spoken to an Independent Financial Adviser authorised by the Financial Conduct Authority on this proposed transfer, we would suggest you speak to an adviser before continuing with this transfer.

[...] We would also like to highlight an issue that The Pensions Regulator and Financial Services Authority have made us aware of:

- Some pension schemes are offering the availability of cashing in your pension before the age of 55 or offering more than [sic] the permitted maximum amount of tax free cash of 25%. Payments from pension schemes before the minimum retirement age of 55 or which are not registered with Her Majesty's Revenue & Customs are subject to high tax charges.
- Some pension schemes are offering the availability of a loan, commission rebate or transfer cash incentive. Loans are not permitted to members of pension schemes and any other form of cash payment to yourself could attract tax charges and may reduce the value of your pension fund.
- Some pension schemes are promising and offering high returns on investment opportunities. These may transpire not to be permitted pension fund investments and you may face tax charges on the amount invested.

Although we're unable to comment on the pension scheme you are transferring to, if you've been offered any of the opportunities listed above, please let us know."

12. On 26 September 2016, OFSL wrote to Legal & General to reconfirm that the Receiving Scheme was a registered pension scheme. It had enclosed the completed "Further Information Checklist", stating that Mr S did not need to be employed by the sponsoring employer to join the Receiving Scheme. It provided a copy of its Trust Deed and Deed of Amendment, and a screen print from HMRC's website, noting that the latter had already been provided. It stated the following:

"I once again confirm that your client [Mr S]' application has been accepted by our Scheme and as such we ask the Trustees of Legal and General Pension Scheme to transfer the pension funds to the attached Trustee account."

13. On 29 September 2016, OFSL wrote to Legal & General in response to Legal & General's letter dated 22 September 2016 to Mr S. It reconfirmed that the Receiving Scheme was a registered pension scheme and shared a copy of its Trust Deed, which included the Scheme Rules, and Deed of Amendment, to demonstrate that Mr S did not need to be employed by the sponsoring employer to join the Receiving Scheme. It stated that Mr S was unable to provide the information requested in Legal & General's letter, as an employment link was not a requirement to join the Receiving Scheme.

14. On 15 October 2016, Mr S wrote to Legal & General and confirmed that he had commenced employment with TNT on 1 June 2015 and enclosed a recent payslip as proof.
15. On 19 October 2016, one of Mr S' other transfers to the Receiving Scheme completed.
16. On 24 October 2016, Legal & General wrote to Mr S and OFSL, confirming that a payment of £23,218.21 had been paid to the Receiving Scheme.
17. On 7 February 2017, the remaining pension provider, Zurich, wrote to Mr S, stating that having reviewed the information provided to it about the Receiving Scheme and the response it had received from HMRC, it was unable to agree to Mr S' transfer request.
18. On 7 October 2021, Mr S complained to Legal & General. He said, in summary:-
 - It had failed to carry out appropriate due diligence in respect of the Receiving Scheme. Notably, although OFSL confirmed the Receiving Scheme was registered with HMRC, Legal & General ought to have carried out its own checks. Had it done so, it would have been alerted to the fact that HMRC was unable to provide positive confirmation of the registration status for the Receiving Scheme.
 - HMRC can only provide positive confirmation of the registration status when both conditions apply, which he believed HMRC could not give at the time he transferred. Without this, it should not have processed the transfer request as it would not have been able to conclude that the transfer would be considered by HMRC as an authorised payment in accordance with section 169 of the Finance Act 2004.
 - Zurich checked the Receiving Scheme's registration status with HMRC and declined Mr S' transfer request after HMRC could not confirm the Receiving Scheme's status.
 - It did not highlight that not all the parties involved were authorised by the FCA to carry out pension transfer/opt out advice, which exposed him to risk. In particular, when it failed to advise him to seek advice from a regulated independent advisor prior to proceeding with the transfer.
 - In addition, it did not provide a copy of The Pension Regulator's (TPR) 'Scorpion' pensions scams leaflet (the **Scorpion leaflet**) to him. Even if it had, this does not discharge the duties owed to him. Legal & General should have taken heed of the Scorpion leaflet too.
 - After reviewing Legal & General's response to his Digital Subject Access Request, there was nothing that demonstrated that it acted on TPR's pension liberation guidance when it processed the transfer request. Nor did it make sufficient checks to ensure the transfer was a valid and authorised payment pursuant to Finance Act 2004.

- The following should have highlighted that the Receiving Scheme was a scam:
 - it was a newly registered scheme;
 - the transaction was being arranged by unregulated entities; and
 - there was no evidence that he was being advised by an industry regulated firm.
- He believed that but for Legal & General's breaches of tortious, statutory and contractual duties and/or negligence, he would not have proceeded with the transfer and suffered financial loss and damage.

19. On 21 November 2021, ReAssure responded to the complaint. It said, in summary:-

- It was satisfied that Legal & General had conducted the relevant due diligence and presented Mr S with a number of warnings in respect of the transfer to the Receiving Scheme.
- It received a signed letter from Mr S, declaring he wanted the transfer to the Receiving Scheme to go ahead. In the due diligence Legal & General carried out, it made Mr S aware he should consider the risks and costs involved in making the transfer. He declared that he understood that once his pension had been transferred, Legal & General would have no responsibility for his pension benefits, or for any losses or costs, he may incur as a result.
- Records showed that Legal & General raised the risks of making the transfer with Mr S and strongly recommended taking regulated advice from an FCA authorised company. The letter, together with other supporting documents, evidenced that due diligence had been carried out by Legal & General.
- Legal & General also approached HMRC to check the registration status of the receiving scheme and HMRC confirmed that the scheme was registered. There was no evidence that it had been set up to facilitate pension liberation.
- Mr S' benefits held with Legal & General were not safeguarded rights, nor did they hold any guarantees, so regulated advice was not a legal requirement.
- Legal & General was not responsible for any advice Mr S received from unauthorised introducers or ensuring the suitability of any investment in the receiving scheme, nor is it allowed to give advice. The only recommendation that was made with respect to the transfer, was to strongly recommend that Mr S take regulated financial advice before making a decision to transfer.
- Legal & General gave Mr S the opportunity to change his mind about making the transfer and provided very clear warnings and information on the risks to help him make his decision. However, Mr S still continued with the transfer exercising his statutory right, meaning Legal & General could not legally stop it.

- While ReAssure was sympathetic to Mr S' situation, it was satisfied that all the relevant warning and risks associated with the transfer were provided and assessed in line with the due diligence obligations.
- As the restrictions placed on the receiving scheme were in 2018, they are not relevant when Mr S' transfer took place in 2016. At that time, there were no suspicions surrounding the Receiving Scheme.

Mr S' position

20. TPR has confirmed that the Receiving Scheme's assets have been lost, so Mr S' benefits are now worthless. He was a victim of a scam that could have been avoided had Legal & General acted with the skill, care and due diligence of a prudent pension provider. Had his pension benefits remained with Legal & General, the value of the benefits would have been significantly higher.
21. Given that Zurich declined his transfer request, after contacting HMRC about the Receiving Scheme's registration status, he did not understand why Legal & General did not do the same.

Additional information

22. After asking ReAssure to provide documentation demonstrating Legal & General's approach to HMRC regarding the Receiving Scheme's registration status, it stated that it would not be able to, as this involved checking HMRC's recognised pension scheme register online.

Adjudicator's Opinion

23. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by ReAssure. The Adjudicator's findings are summarised in paragraphs 24 to 32 below.
24. The Adjudicator reviewed the applicable transfer due diligence guidance at the time of Mr S' transfer, which was TPR's February 2013 guidance and the updated 2015 'Combating Pension Scams: A Code of Good Practice' by the Pension Scams Industry Group (the **2015 Code of Good Practice**).
25. TPR's February 2013 guidance recommended that transferring schemes issue a warning to members about the dangers of pension liberation fraud, or 'scams'. The most common way of doing this was to include the Scorpion leaflet with the transfer pack. While Legal & General did not have a copy of this on Mr S' file, the Adjudicator was not persuaded that this meant it had been omitted, for the following reasons:
 - The transfer request took place nearly three years after TPR's guidance had been first issued. So, the process of inserting a copy of the Scorpion leaflet to transfer packs, would have been well established.

- If Mr S had not received the Scorpion leaflet, the Adjudicator would have expected him to have mentioned this or notified Legal & General as the transfer paperwork and declaration explicitly made reference to it.
26. Page 8 of TPR's February 2013 guidance listed criteria that transferring schemes ought to look out for. This included, but was not limited to:
- Receiving scheme not registered, or only newly registered, with HMRC;
 - Member was attempting to access their pension before age 55;
 - Member had pressured trustees/administrators to carry out transfer quickly;
 - Member was approached unsolicited;
 - Member informed that there is a legal loophole; and
 - Receiving scheme was previously unknown to the transferring provider, but now involved in more than one transfer request.
27. The 2015 Code of Good Practice set out a two-stage due diligence process. The first stage was to check whether there were any factors that would indicate a pension liberation or scam risk. Only if this initial analysis threw up some concerns did the 2015 Code of Good Practice recommend further checks.
28. Legal & General's initial analysis did not present a risk for pensions scams activity. Further, it had not received any information that indicated that Mr S had been cold called, incentivised into the transfer, misinformed about access to benefits or informed about a guaranteed rate or return/an overseas investment opportunity. So, it would not have needed to carry out further due diligence.
29. Although there was not an online pension scheme register for UK-based pension schemes, in the Adjudicator's view, it was reasonable for Legal & General to rely on the proof of HMRC registration provided by the Receiving Scheme. This indicated that the Receiving Scheme had been registered with HMRC for over a year. An information request to HMRC would only be suggested if a pension liberation risk had been identified after conducting the initial analysis. So, there had been no error.
30. OFSL's registration with the FCA did not cover the provision of advice in relation to pension transfers, or the arrangement of such transfers. However, the Adjudicator did not agree that Legal & General had any reason to look more closely at the FCA register over and above a basic check to make sure that OFSL was present.
31. Mr S' benefits were not 'safeguarded benefits' but Legal & General had made him aware of the potential risks. Notably, it had recommended that he take financial advice in the transfer paperwork issued on 19 July 2016 and again in its letter dated 22 September 2016. It was Mr S' choice not to act on this. Further, it was reasonable for Legal & General to expect a member to inform them of any applicable warning signs listed in the Scorpion leaflet.

32. Although Zurich had conducted its due diligence differently and had declined Mr S' transfer request, this did not mean that Legal & General's due diligence was insufficient.
33. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to determine.
34. In summary, Mr S said that:-
 - By not checking the Receiving Scheme's registration status with HMRC, Legal & General failed to meet the expected professional standards of pension administrators in respect of their duties under Part 4 of the Finance Act 2004. In doing so, it had failed to safeguard both itself and him. This was important considering, as at February 2017, HMRC could not confirm the Receiving Scheme's registration status.
 - Had Legal & General contacted HMRC, it would have been alerted to HMRC's inability to confirm the Receiving Scheme's registration status. Following this, it ought to have concluded that the transfer could not be permitted as HMRC would consider it as an unauthorised payment. Legal & General had an obligation to complete the same level of checks as completed by Zurich.
 - The fact that the transfer request and registration confirmation came from a FCA-regulated firm, did not exclude Legal & General from its duties. Legal & General ought to have appreciated that professionals make mistakes and making an assumption on such a key obligation (the Receiving Scheme's registration status) was improper.
 - Legal & General had a duty to check that the Receiving Scheme was able and willing to accept the transfer and that it was a legitimate arrangement. It also had a duty to carry out checks to assess the level of risk of the member.
 - As the Receiving Scheme was a defined contribution occupational pension scheme in the U.K., Legal & General should have checked the employment link. This had been established in a previous case determined by the Pensions Ombudsman. A red flag should have been identified as the Receiving Scheme was sponsored by a geographically distant company, for which he did not work.
 - TPR first became aware of concerns regarding the Receiving Scheme on 18 May 2016. This was five months before his transfer completed, so he found it hard to believe that the Receiving Scheme was not placed on a warning list at the time he made his transfer request.
 - Taking the above into consideration, Legal & General could not have been sure, beyond reasonable doubt, that the Receiving Scheme was registered. It was only in these circumstances that the transfer ought to have proceeded without any further checks.

35. I have considered the additional points raised by Mr S, but I agree with the Adjudicator's Opinion.

Ombudsman's decision

36. When assessing the due diligence carried out by a trustee or a pension provider, the starting point is to look at the industry standard at the time. I understand that Zurich chose not to proceed with Mr S' transfer request, shortly after his transfer from Legal & General completed. However, this does not mean that Legal & General's due diligence was insufficient, nor that Legal & General had an obligation to complete the same level of checks as Zurich. Trustees and providers are entitled to decide upon their own, proportionate due diligence processes.
37. Mr S has argued that without contacting HMRC directly, to check the Receiving Scheme's registration status, Legal & General could not have been satisfied that the transfer payment to the Receiving Scheme was an authorised payment, for the purposes of Part 4 of the Finance Act 2004. So, by omitting to do this, it had failed in its duty to ensure the Receiving Scheme was a legitimate arrangement that was able and willing to accept the transfer. It had also failed its duty to carry out checks to assess the level of risk. I disagree.
38. The 2015 Code of Good Practice, which was welcomed by 14 organisations including the FCA, TPR and HMRC, outlines a two-stage due diligence process where an information request should only be made to HMRC, if a risk is indicated within the initial analysis. While I understand that this is not a statutory code, it strongly suggests that trustees and pension providers are entitled, and encouraged, to accept information relating to the receiving scheme's registration status from other entities, provided that no risk had been identified and sufficient due diligence had been carried out. Consequently, relying on information provided by a receiving scheme would not be considered as "making an assumption" or "improper" in those circumstances, nor would the trustees or pension providers be considered as having failed their duties under Part 4 of the Finance Act 2004.
39. In this case, Legal & General had: given Mr S the opportunity to inform it of any applicable member-related warning signs; checked the Receiving Scheme's registration status; reviewed the Receiving Scheme's Trust Deed and Deed of Amendment; reviewed the completed transfer paperwork; and checked whether Mr S was considered an "earner" for the purposes of a statutory transfer to an occupational pension scheme. None of these checks presented a risk, meaning it would not have been proportional for it to have contacted HMRC. Taking paragraph 38 above into account, I consider it reasonable for Legal & General to have relied on the information it received from OFSL, which confirmed that the Receiving Scheme was registered and willing to accept Mr S' transfer. To claim that Legal & General ought to have contacted HMRC regardless, is an argument made with the benefit of hindsight.

40. I note Mr S has suggested that Legal & General ought to have checked Mr S' employment link and has quoted a previous complaint where I concluded this. However, there are a number of factors that need to be considered when determining cases of this type. It is usually a combination of these factors that leads me to come to my conclusion. Mr S' case differs to the one that he has quoted, as that transfer took place prior to the 2015 Code of Good Practice and the case of *Hughes v Royal London*¹. It was following this case, which was heard on 19 February 2016, that it was permissible for a transfer to be made in circumstances where the individual did not receive earnings from the sponsoring employer of the recipient pension scheme. As a result, Legal & General did not need to check whether Mr S was employed by the sponsoring employer, nor its geographical location.
41. Further, I acknowledge that TPR was made aware of concerns regarding the Receiving Scheme in May 2016. However, this does not mean that pension providers would have been notified about this. In particular, when it was not until 9 February 2018, that TPR's Case Team asked the Determinations Panel to make an order, under section 7 of the Pensions Act 1995, to appoint an independent trustee to the Receiving Scheme.
42. It is regrettable that the decision to proceed with the transfer has not transpired to be in Mr S' best financial interests. However, I consider that Legal & General fulfilled its due diligence obligations with the information it held at the time.
43. I do not uphold Mr S' complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
30 August 2023

¹ *Hughes v Royal London Mutual Insurance Society Ltd* [2016] EWHC 319 (Ch)