

Ombudsman's Determination

Applicant	Mr R
Scheme	Armed Forces Pension Scheme (the Scheme)
Respondents	Veterans UK

Outcome

1. I do not uphold Mr R's complaint, and no further action is required by Veterans UK.

Complaint summary

2. Mr R has complained that Veterans UK failed to conduct adequate checks or enquiries before transferring his pension to the Shearwater Pension Plan (**the Plan**) which is managed by Marlborough Pension Trustees Limited (**Marlborough Trustees**).

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. On 6 December 2010, Mr R sent a letter to Veterans UK requesting transfer forms and any necessary papers to be sent to Marlborough Trustees. The necessary transfer forms were subsequently sent to Marlborough Trustees.
5. On 16 January 2011, Marlborough Trustees provided Veterans UK with its transfer acceptance. The signed discharge forms were also enclosed along with the receiving scheme's Qualifying Recognised Overseas Pension Scheme (**QROPS**) number, a certified copy of the HMRC approval and proof of identity and address for Mr R.
6. On 19 January 2011, Veterans UK sent Marlborough Trustees a letter regarding the transfer. It stated the following:-
 - The gross transfer value under market conditions on 19 January 2011 was £25,996.96.
 - The consent to transfer could not be recorded until Mr R had received a statement from the administrators of the receiving scheme which showed: the transfer credit,

or benefits which would be purchased by the transfer of his rights and of the protected benefits he could expect to receive if the transfer value was invested in the receiving scheme and the conditions (if any) under which the transfer credit, or benefits, or part of it, could be forfeited or withheld.

- It requested that the completed original option form was returned along with a copy of Mr R's birth certificate or passport and proof of address.
 - An administrator (who was resident in the country of the receiving scheme) must sign the statement provided by the receiving scheme along with evidence of its QROPS status.
 - When the transfer was complete, Mr R would relinquish all rights to a pension award from the Scheme and he would no longer have any rights to any information and services from the Ministry of Defence (**MoD**).
7. On 30 January 2011, Veterans UK received a letter from Control Risks Services Limited in Basrah (**the Employer**) which stated that Mr R was employed from 18 July 2010 in the capacity of Second in Command for the Iraq Operations.
 8. On 16 February 2011, Marlborough Trustees sent Veterans UK the signed and completed transfer of pension rights forms along with the remaining requested documentation.
 9. On 21 February 2011, Veterans UK sent Marlborough Trustees confirmation that a cheque would be issued for the amount of £25,996.96. Authority for the payment was provided by the MoD the following day and the transfer was completed.
 10. On 14 February 2013, The Pensions Regulator (**TPR**) launched a new awareness campaign against pension liberation schemes (**the Scorpion guidance**). This comprised:
 - a "fraud action pack" for pension professionals; and
 - an information leaflet entitled "Pension liberation fraud – The predators stalking pension transfers" (**the Scorpion leaflet**), to assist members in understanding what might happen should they take up an offer.
 11. The fraud action pack stated on page 8:

"Looking out for pension liberation fraud

When processing a transfer request, trustees and administrators may be in a position to identify the warning signs that suggest that pension liberation fraud is occurring. If you are a trustee or administrator, and any of the following criteria apply to a transfer request you have received, then you may be about to transfer a member's pension to a scheme designed to liberate their funds. Here are some of the things to look out for:

- Receiving scheme not registered, or only newly registered, with HM Revenue & Customs.
- Member is attempting to access their pension before age 55
- Member has pressured trustees/administrators to carry out transfer quickly
- Member was approached unsolicited
- Member informed that there is a legal loophole
- Receiving scheme was previously unknown to you, but now involved in more than one transfer request.

If any of these statements apply, then you can use the check list on the next page to find out more about the receiving scheme and how the member came to make the request.”

12. In July 2014, TPR issued an action pack for trustees and administrators on pension scams, ‘A lifetime’s savings lost in a moment’. This stated on page 3:

“Here are some common features of pension scams:

- Phrases like ‘one-off investment opportunities’, ‘free pension reviews’, ‘legal loopholes’, ‘cash bonus’, ‘government endorsement’
- Victims are approached out of the blue over the phone, via text messages or in person door-to-door
- Transfers of money or investments overseas, meaning the money is harder to recover
- Access to pension pot before age 55
- No member copy of documentation
- Victims encouraged to speed up transfer of their money to the new scheme

...

If any of these features apply, then you can use the check list on the next page to find out more about the receiving scheme and how the member came to make the request.”

13. On 20 January 2020, Mr R’s representatives, Pension Claim Consulting (**PCC**), submitted a Subject Access Request (**SAR**) to Veterans UK on his behalf.
14. On 6 February 2020, Veterans UK provided PCC with the SAR documents.

15. On 23 October 2020, PCC sent Veterans UK a formal complaint letter on Mr R's behalf. The complaint was regarding maladministration in carrying out a detrimental pension transfer procedure that did not reflect the regulatory guidance. It stated the following:-
- In 2020, Mr R became aware that the Plan was based overseas, and he could not transfer back into a UK registered pension due to the investments being illiquid.
 - Mr R had been approached unsolicited by an agent of an unregulated and unregistered company called Caledonian International Associates (**CI Associates**) who advised that he would be better off financially if he transferred.
 - Mr R did not understand the benefits he held in the Scheme and was misled by CI Associates. He was not warned by the Scheme, and he was not aware at the time that the Plan was overseas. He had no intention of living outside of the UK.
 - Mr R did not receive any direct communication from the Scheme at any point in the transfer process and an overseas transfer should result in further due diligence.
 - Mr R should be compensated for the maladministration and should be placed in the financial position that he would have been in had the transfer not taken place.
16. On 23 November 2020, Veterans UK sent PCC the Stage One response of its Internal Dispute Resolution Procedure (**IDRP**). It stated the following:-
- The complaint was rejected.
 - The rules of the Scheme were applied correctly.
 - Mr R had a statutory right to transfer, and it was a personal choice for him to do so, for which Veterans UK did not know the reasons.
 - It was provided with a signed statement in which Mr R declared and accepted that:

"the overseas scheme named may/will not be registered by UK Law and that consequently there may be no obligation under that law on my chosen overseas scheme to provide any particular value or benefit in return for the transfer payment. I understand and accept that notwithstanding any checks made by the MoD to discharge its duties under legislation that I shall be entering into the transfer at my own risk"
 - Marlborough Trustees was a registered pension scheme with HM Revenue & Customs (**HMRC**).
 - It could not apply current levels of knowledge and understanding of pension liberation / scams or present standards to a past situation.

17. Following the complaint being referred to The Pensions Ombudsman (**TPO**), Mr R and Veterans UK made further submissions that have been summarised below in paragraphs 18 and 19.
18. PCC, on Mr R's behalf, stated the following:-
- Mr R did not agree that the necessary procedures were followed at the time of the transfer. Mr R was not contacted directly, and neither the Cash Equivalent Transfer Value (**CETV**) Illustration nor the discharge forms were received by him and there was no evidence that identification checks were carried out.
 - CI Associates was an unregulated business who had led Mr R to believe that transferring was the best option for his pension.
 - There was no evidence that the Scorpion leaflet was issued to Mr R and he had confirmed that he did not receive it. Mr R would not have transferred had he been provided with the Scorpion leaflet.
19. Veterans UK stated the following:-
- It rejected the complaint as all necessary procedures were followed at the time.
 - It ensured that the receiving scheme was registered with HMRC as a QROPS and Mr R signed declarations stating that he understood that he was entering the transfer at his own risk and that the scheme may not be registered by UK Law.
 - It would not have been acceptable for it to have denied Mr R's wishes or challenged him further upon satisfaction of the checks and completion of the paperwork.
 - The department could not be held accountable for any unsolicited advice Mr R may have considered from any third parties. By his own admission, it appeared that he had been significantly influenced by CI Associates.

Adjudicator's Opinion

20. Mr R's complaint was considered by one of our Adjudicators who concluded that no further action was required by Veterans UK. The Adjudicator's findings are summarised below:-
- Mr R's transfer completed on 22 February 2011. TPR did not launch its awareness campaign against pension liberation schemes until 2 years later, on 14 February 2013. It would be inappropriate to judge a historical matter using the standards that were applied after Mr R's transfer took place. The Adjudicator stated that reference to the TPR guidance and the Scorpion leaflet was made with the benefit of hindsight and the complaint should only be considered against the industry standards that applied when the transfer was made.

- At the time of transfer, Mr R had a statutory right to transfer. The law regarding a statutory right to transfer is set out in the Pension Schemes Act 1993. Section 93A states that Mr R had a right to a statement of entitlement, which would set out the CETV of his benefits in the Scheme (**See Appendix One**).
- To have this statutory right, Section 95 (1) states that Mr R had to make an application in writing. This requirement was complied with on 16 February 2011 upon return of the completed transfer pack (**See Appendix Two**). Also, as part of the transfer process in January 2011, Veterans UK satisfied itself that the receiving scheme was registered with HMRC by obtaining the receiving scheme's registration number and the scheme's QROPS number. So, Veterans UK had no right to refuse Mr R's request to transfer.
- Although Veterans UK may have known that some Scheme members would be financially unsophisticated, it would have been assured by the fact that Mr R had sought independent advice. There was no requirement at the time for Veterans UK to check if an adviser was regulated. At the time of the transfer, Veterans UK carried out an appropriate level of due diligence which was in accordance with the guidance at the time. In the Adjudicator's opinion, it could not be said that Veterans UK was negligent when agreeing to transfer Mr R's benefits.
- Although Veterans UK may not have explicitly warned Mr R against the transfer and the potential risks involved, there was no evidence or guarantee that, if it had, Mr R would have taken that advice and refrained from transferring. On the contrary, Mr R stated himself that he was led to believe that the transfer was the best option for his pension. The Adjudicator stated that on the balance of probabilities, it was likely that the transfer would have gone ahead as it did.
- Furthermore, Veterans UK did highlight in its declarations, which were signed by Mr R, that transferring to an overseas pension could carry a risk. In any case, at that time, there was no requirement for Veterans UK to have warned Mr R about the transfer.
- Although the Adjudicator sympathised with Mr R's circumstances, in her opinion, the complaint should not be upheld, and no further action was required by Veterans UK.

21. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion.

Ombudsman's decision

22. Mr R has complained that Veterans UK failed to conduct adequate checks or enquiries before transferring his pension to the Plan which is managed by the Marlborough Trustees.

CAS-63400-N0T9

23. As pointed out by the Adjudicator, TPR's Scorpion guidance was published two years after Mr R's transfer took place. So, Veterans UK cannot be expected to have applied the due diligence set out in the guidance, or to have sent a copy of the Scorpion leaflet to Mr R.
24. I find that Veterans UK conducted the due diligence expected of it at the time of Mr R's transfer and it therefore would not have had the right to refuse Mr R's request to transfer.
25. I do not uphold Mr R's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman

21 October 2024

Appendix One

Pension Schemes Act 1993

Section 93A, 'Salary related schemes: right to statement of entitlement', provides:

- (1) The trustees or managers of a salary related occupational pension scheme must, on the application of any member, provide the member with a written statement (in this Chapter referred to as a "statement of entitlement") of the amount of the cash equivalent at the guarantee date of any benefits which have accrued to or in respect of him under the applicable rules.
- (1A) In subsection (1), the reference to benefits which have accrued does not include benefits which are attributable (directly or indirectly) to a pension credit.
- (2) In this section—
- “the applicable rules” has the same meaning as in section 94; “the guarantee date” means the date by reference to which the value of the cash equivalent is calculated, and must be—
- (a) within the prescribed period beginning with the date of the application, and
- (b) within the prescribed period ending with the date on which the statement of entitlement is provided to the member.
- (3) Regulations may make provision in relation to applications for a statement of entitlement, including, in particular, provision as to the period which must elapse after the making of such an application before a member may make a further such application.
- (4) If, in the case of any scheme, a statement of entitlement has not been provided under this section, section 10 of the Pensions Act 1995 (power of the Regulatory Authority to impose civil penalties) applies to any trustee or manager who has failed to take all such steps as are reasonable to secure compliance with this section.”

Appendix Two

The Pension Schemes Act 1993

As relevant, Section 95, 'Ways of taking right to cash equivalent', provides:

- “(1) A member of an occupational pension scheme or a personal pension scheme who acquires a right to a cash equivalent under this Chapter may only take it by making an application in writing to the trustees or managers of the scheme requiring them to use the cash equivalent to which he has acquired a right in whichever of the ways specified in subsection (2) or, as the case may be, subsection (3) he chooses.”