The Pensions Ombudsman

Ombudsman's Determination

Applicant	Mr E
Scheme	Standard Life Personal Pension One Plan (**the SL Plan**)
Respondent	Standard Life Assurance Limited (**Standard Life**)

Outcome

1. I do not uphold Mr E's complaint and no further action is required by Standard Life.

Complaint summary

2. Mr E has complained that Standard Life did not carry out sufficient due diligence checks when transferring his benefits in the SL Plan to the [Mr E] Creative Ltd Retirement Benefits Scheme (**the DMC Scheme**), a Small Self Administered Scheme (**SSAS**).

3. Mr E says that he has been unable to access his benefits in the DMC Scheme. He would like to be put back in the position he would have been had the transfer not taken place.

Background information, including submissions from the parties and timeline of events

4. 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.

5. Mr E is represented by Binghams Solicitors (**Binghams**).

6. On 10 September 2002, Mr E established the SL Plan.

7. Mr E says he received an unsolicited approach in 2013 concerning a possible transfer of his benefits out of the SL Plan. However, there is no evidence to show who this approach was from.

8. On 6 September 2013, Mr E signed a letter of authority allowing Isure Ltd (**Isure**) to act on his behalf in relation to his pension benefits. He also signed a disclaimer:

   "You have decided to transfer your occupational pension scheme into your SSAS. We have advised you seek the advice of a pension transfer specialist who is authorised and regulated by the Financial Services Authority, to ensure that your decision is the correct one based on your individual circumstances. However, you have chosen to proceed without taking advice, and therefore we can accept no liability for any loss of benefits either now or at retirement.

We are not authorised or regulated by the Financial Services Authority, and confirm that no advice has been sought or given by ourselves in relation to the transfer of these monies into your SSAS."

9. On 25 April 2014, Sorensen Financial Services (**SFS**), a firm regulated by the Financial Conduct Authority (**FCA**), emailed Standard Life a letter of authority signed by Mr E. It asked Standard Life to send it information on the SL Plan, including a transfer value illustration. This was provided to SFS by Standard Life on 10 May 2014.

10. On 15 July 2014, Mr E wrote to Standard Life. He included:

    10.1. his written consent for the transfer of his benefits to proceed from the SL Plan to the DMC Scheme;

    10.2. a copy of the DMC Scheme's HM Revenue & Customs (**HMRC**) notification of registration. This showed it as having been registered on 29 April 2014 with a Pension Scheme Tax Reference of 00805342RN; and

    10.3. a copy of the DMC Scheme's establishing Trust Deed and Rules (**TD&R**) dated 13 September 2013.

11. The TD&R show that Mr E was the sole trustee. Schedule B.2 shows that "the administration and management of the Scheme shall be vested in the Trustees in accordance with the powers expressed in this Deed and Rules."

12. Schedule C of the TD&R states that: "All investments and moneys for the time being constituting the Fund shall be held under the legal control of and by or in the names of the Trustees…"

13. A document dated 12 April 2013, concerning the appointment of administrator and practitioner for the DMC Scheme, showed Isure as being the pension practitioner.

14. On 5 August 2014, Mr E's benefits were transferred from the SL Plan to the DMC Scheme. The transfer value was £52,185.87 and Standard Life issued a transfer certificate to Mr E to confirm that the transfer had completed.

15. The DMC Scheme was invested in offshore truffle trees via Viceroy Jones New Tech Ltd. On 12 October 2018, the High Court wound up five companies that carried out investment scams promising high-value truffles for commercial sale. Viceroy Jones New Tech Ltd was one of these companies.

16. On 8 February 2020, Binghams made a complaint to Standard Life on behalf of Mr E. In summary, it said:-

16.1. Standard Life did not carry out sufficient due diligence before processing the transfer of Mr E’s benefits.

16.2. Standard Life failed to send Mr E the ‘Predator’s stalk your pension’ leaflet (**the Scorpion Leaflet**).

16.3. Standard Life failed to engage directly with Mr E regarding the concerns it should have had with the transfer.

16.4. The investments in offshore truffle spores were high risk and were now worthless. Mr E was not an experienced, sophisticated investor and could not afford to take the risks that were involved in such investments.

16.5. A number of factors should have highlighted to Standard Life that the transfer was potentially a pension liberation scam. These included:-

- The DMC Scheme was a newly registered scheme.
- The employer linked to the DMC Scheme, [Mr E] Creative Ltd (**the Employer**), was a newly registered employer.
- The transfer was being arranged by unregulated entities.
- There was no evidence that Mr E was being advised by an industry regulated firm.

16.6. Mr E would not have proceeded with the transfer had the red flags been brought to his attention.

16.7. Standard Life should reinstate Mr E’s benefits in the SL Plan.

17. On 5 March 2021, Standard Life provided its response to the complaint which it advised it had not upheld. It said:-

17.1. There had been no maladministration on its part.

17.2. It was reasonable for it to expect that SFS, as a regulated firm, would have passed the Scorpion Leaflet on to Mr E.

17.3. None of the information it had received gave it reason for concern and the appropriate level of due diligence had been undertaken.

18. Binghams made the following additional submissions on behalf of Mr E:-

18.1. In 2013, Mr E had been contacted by a firm that had no permission from the FCA to carry out regulated activities, such as advising on and arranging pension transfers. Furthermore, Isure was not regulated to provide investment related services covered by the Financial Services Authority.

18.2. Mr E had suffered a significant loss in excess of £78,298.90.

19. Standard Life made the following additional submissions:-

19.1. Although the DMC Scheme was newly established, the Employer had been incorporated since September 2013.

19.2. The name and address of the DMC Scheme were not similar to any other schemes it had dealt with.

19.3. It had looked for signs of business activity and found a website established by Mr E. This, together with the Employer’s name, suggested that the Employer was linked to Mr E’s creative profession which he had been in for 20 years. It had no concerns that this could be linked to a scam.

19.4. Isure, the appointed Scheme Practitioner, was incorporated in 2004, suggesting it would not have been involved in something that was a cause for concern.

19.5. It had not been made aware of where Mr E’s money in the DMC Scheme was going to be invested. It was not its role to assess the suitability of any investments he chose.

19.6. From July 2013, Scorpion Leaflets were manually inserted into information packs until the process became automated. The pack it sent to SFS in May 2014 would have included a copy of the Scorpion Leaflet.

Adjudicator’s Opinion

20. Mr E’s complaint was considered by one of our Adjudicators who concluded that no further action was required by Standard Life.

21. The Adjudicator’s findings are summarised below:

21.1. Standard Life had received Mr E’s request for a transfer to the DMC Scheme. It had a statutory duty to transfer his funds unless it had any indications that the DMC Scheme was being used as a pension scam or for pension liberation.

21.2. The Adjudicator reviewed The Pension Regulator’s 2013 publication ‘Pension liberation fraud - The predators stalking pension transfers’ (**the 2013 Guide**). This would have been in force at the time of the transfer in August 2014.

21.3. The 2013 Guide sets out a two-stage due diligence process. The first stage is to check whether there are any factors that would indicate a pension liberation or scam risk. Standard Life has said that its initial checks did not provide any indication that the DMC Scheme was a high-risk transfer. In particular, Standard Life identified a number of checks it had undertaken which included:-

- The DMC Scheme was registered with HMRC and, while it had been recently registered, the Employer had been incorporated for ten months before it had received the transfer paperwork from Mr E.

- It had not dealt with any other transfers involving schemes with a similar name or address to that of the DMC Scheme.

21.4. Furthermore, in the Adjudicator's view, there was no evidence that Mr E was attempting to access his benefits before age 55 or that he was attempting to exploit a legal loophole. The Adjudicator had seen no evidence that Standard Life was pressured to complete the transfer quickly, nor that it was notified that Mr E had been approached unsolicited.

21.5. Mr E subsequently said that he had been approached unsolicited. As this information had not been passed to Standard Life there was no reason for it to have raised this as a possible issue.

21.6. Binghams made the point that Isure was not FCA regulated. But its role was shown to be the 'pension practitioner'. A reasonable interpretation of this would be that it was the pension administrator which, as this was a trust based arrangement, did not require it to be regulated.

21.7. On 10 May 2014, Standard Life sent SFS an illustration of the transfer value in respect of Mr E's benefits in the SL Plan. Standard Life confirmed that, at that time, it was its standard practice to manually insert a copy of the Scorpion Leaflet with such illustrations. While this information was not sent direct to Mr E, SFS was FCA registered and, in the Adjudicator's opinion, it was therefore reasonable for Standard Life to expect that the DMC Scheme was being run in a manner consistent with the FCA's standards. In particular, that SFS would have shared the information provided by Standard Life with Mr E. So, the Adjudicator did not take the view that Standard Life could be held responsible if Mr E had not had access to the warnings present in the Scorpion Leaflet.

21.8. The 2013 Guide suggests that the receiving scheme being only recently registered with HMRC was a possible red flag. However, given the circumstances of Mr E's transfer, the Adjudicator was of the opinion that this was not the case here. Mr E chose to transfer his benefits to a SSAS, and it is not unusual for a SSAS to be set up shortly before a transfer takes place.

21.9. Binghams identified in its complaint of 8 February 2020, and in subsequent communications, a number of additional checks that it believed that Standard Life should have undertaken as part of its due diligence. These included:-

- The fact that the Employer was newly registered.
- The fact that the transfer was being arranged by unregulated entities.
- There being no evidence that Mr E was being advised by an industry regulated firm.

21.10. However, it is only if the initial analysis throws up some concerns that the 2013 Guide recommends that further checks are undertaken, otherwise the transferor can consider proceeding to payment. The Adjudicator took the view that there was no requirement for Standard Life to investigate these aspects of the transfer.

21.11. Standard Life said that it was not responsible for the suitability of the underlying investments. As explained in paragraphs 11 and 12 above, Mr E was the sole trustee of the DMC Scheme. As such he had responsibility for the administration and management of the DMC Scheme, including the power to select and manage the investments.

21.12. The Adjudicator acknowledged Binghams' comment that Mr E was an inexperienced investor. However, it was the Adjudicator's view that he would have had some knowledge of the risks involved given the specialist nature of investing in truffle spores. If he did not it was open to him to seek independent financial advice. In the Adjudicator's opinion, it was not for Standard Life to consider the underlying investments of the DMC Scheme as it was not aware of what investments Mr E had selected. Furthermore, it was not its role to advise him as it was not authorised to do so.

21.13. In view of the checks that were carried out, it was the Adjudicator's opinion that it was reasonable for Standard Life to make the transfer payment to the DMC Scheme.

22. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

23. Binghams provided some further comments in response to the Opinion. In summary it said:-

23.1. The Adjudicator took the view that it was reasonable for Standard Life to assume that SFS would forward the Scorpion Leaflet to Mr E. However, SFS was under no obligation to do so.

23.2. SFS had made a request for information only. The letter of authority it provided did not confirm that it was providing Mr E with advice. Standard Life confirmed that this was the only communication it received from SFS, and it had not marked SFS as an adviser on its records.

23.3. In fact, Standard Life had no knowledge of the relationship between SFS and Mr E and the assumptions it made resulted in Mr E being exposed to risk.

23.4. Mr E had acted correctly in engaging with an FCA regulated firm. However, while SFS facilitated the transfer, it did not issue Mr E with a suitability letter or the Scorpion Leaflet. Unbeknown to Mr E this meant that any advice given by SFS did not attract FCA protection.

23.5. Standard Life said that the Scorpion Leaflet was manually inserted into responses to information requests. This left significant room for error.

23.6. Standard Life should have engaged directly with Mr E, providing copies of the documentation sent to SFS. This would also have given it the opportunity to ask Mr E some simple questions which would have been likely to have raised some red flags.

23.7. The DMC Scheme and the Employer had both been established in September 2013. This justified direct engagement with Mr E by Standard Life. Furthermore, while Isure had been a pension operator since 2002, it had no obligation to offer advice on the underlying investments or comment on their suitability.

24. I have considered the additional points raised by Binghams; however, they do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

25. I have considerable sympathy for Mr E, who appears to have been a victim of pension liberation fraud and has lost considerable pensions investments.

26. Essentially, Standard Life had a statutory and contractual duty to transfer Mr E's funds. It was required to act upon this duty when it received his transfer paperwork, unless there were any indications of why the transfer should not go ahead, such as those indicating pension liberation fraud.

27. The 2013 Guide provided an outline of potential warning signs which could suggest pension liberation fraud activity was taking place.

28. Binghams says that the fact that the DMC Scheme and the Employer had both been recently established required Standard Life to engage directly with Mr E. I agree that the stage one checks recommended by the 2013 Guide include the receiving scheme being only newly registered with HMRC.

29. Checks on the sponsoring employer being newly registered together with the unusual nature of the underlying investments are part of the stage two checks. The 2013 Guide recommends that these checks are undertaken if the stage one checks raise any concerns. However, Standard Life was aware that Mr E had instructed an authorised independent financial adviser (**IFA**), so, in my view, it was reasonable to assume that he had received proper investment advice from an authorised advisor and that further checks were unnecessary.

30. Mr E maintains that he did not receive a copy of the Scorpion Leaflet from SFS. Binghams suggests that the manual insertion of the Scorpion Leaflet into Standard Life's responses left room for error. It also said that, if received, SFS had no obligation to pass the Scorpion Leaflet on to Mr E as it was not acting as his adviser in relation to the transfer. Mr E gave Standard Life authority to release information to an authorised IFA, Mr Colin McHugh, and to SFS, on 2 April 2014.

31. It is not uncommon for scheme managers to manually insert the Scorpion Leaflet as it is a physical document. At the time of Mr E’s transfer this was a well-established process and there is no evidence to show that the Scorpion Leaflet was not sent on this occasion.

32. SFS, a FCA regulated adviser, submitted a letter of authority and asked Standard Life for information, including a transfer value. In the circumstances, it was not unreasonable for Standard Life to conclude that SFS was providing advice to Mr E, whether or not this was actually the case. Certainly, the fact that SFS was registered with the FCA would have given Standard Life reassurance that it would behave in a professional manner. In particular, that Mr McHugh and SFS would have shared the Scorpion Leaflet with Mr E.

33. It was several years after the transfer was completed that it was recognised that the offshore truffle tree investments were a series of scams.

34. The 2013 Guide did not require the transferring scheme to consider the likely investments. Standard Life was not a financial adviser and so could not have provided advice to Mr E regarding the suitability of this particular investment.

35. It is regrettable that the transfer has not transpired to be in Mr E’s best financial interests, however, I do not find that Standard Life failed in its due diligence obligations in respect of the transfer.

36. I do not uphold Mr E’s complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
14 February 2023