CAS-79469-G9X0

Ombudsman’s Determination

Applicant	Mr E
Scheme	HSBC Bank (UK) Pension Scheme (**the Scheme**)
Respondents	Willis Towers Watson (**the Administrator**)

Outcome

1. I do not uphold Mr E’s complaint and no action is required by the Administrator.

Complaint summary

2. Mr E has complained that:-

- The Administrator caused delays in the transfer of his pension funds from the Scheme into the HSBC Flexible Retirement Account (FRA) (**the Arrangement**).
- His pension funds were disinvested early, and he should be compensated for the period his funds were not invested in the Arrangement.
- The Administrator did not fully answer or respond to his information requests.

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.

4. As relevant, His Majesty’s Revenue and Customs (**HMRC**) Pensions Tax Manual PTM1000001 states:-

> “Before making a transfer the scheme administrator should have carried out reasonable checks in relation to the transfer as part of their due diligence. If HMRC considers that the scheme administrator has not carried out sufficient due diligence checks into the transfer, they will not normally have met the conditions to be discharged from the scheme sanction charge.
>
> There is no checklist of the acceptable due diligence requirements as each case will depend on the circumstances.

If a scheme administrator has any concerns about a proposed transfer, they can write to HMRC to ask about the status of the receiving scheme."

5. Under guidance set out by the Pensions Regulator (**TPR**), administrators and trustees are required to perform and document sufficient levels of due diligence for any member who requests a transfer of benefits. The due diligence checks are carried out to protect members from transferring their benefits to a pension liberation scheme, otherwise known as a pension scam.

6. On 1 September 2020, Mr E was made redundant from his employment at HSBC.

7. In September 2020, Mr E requested his HSBC Jade Advisor to transfer his pension benefits in the Scheme to the Arrangement.

8. On 12 November 2020, the Administrator received Mr E's completed discharge forms.

9. On 19 November 2020, the Administrator asked Mr E to validate his identification. On the same day, the Administrator disinvested Mr E's pension benefits in the Scheme.

10. On 3 December 2020, the Administrator requested an HMRC check on the Arrangement. It emailed Mr E a consent form on the same day.

11. On 24 December 2020, the Administrator advised Mr E that the HMRC check on the Arrangement was still outstanding.

12. On 6 January 2021, Mr E complained to the Administrator about the delays with his transfer.

13. On 8 January 2021, the Administrator spoke to Mr E and sent him an email. The Administrator said that:

    - it acknowledged that his pension benefits had been disinvested early on 19 November 2020

    - on 19 November 2020, it realised that an HMRC check was required on the Receiving Scheme. HMRC checks normally took 15 days but unfortunately response times were taking longer;

    - except for the early disinvestment, it was satisfied that it had followed the correct processes;

    - it had followed procedures to ensure that any pension scheme to which a member was transferring to was HMRC registered to mitigate the risk of pension liberation; and

    - it would calculate any financial loss caused to Mr E because of the early disinvestment.

14. On 11 January 2021, the Administrator emailed Mr E regarding his transfer and the HMRC check. It said that the check was required on all new transfers but were only requested once it had received all the necessary documents.

15. On 21 January 2021, Mr E emailed the Administrator for an update about his transfer.

16. On 22 January 2021, the Administrator emailed Mr E's HSBC Jade adviser to advise him that it had requested an HMRC check on the Arrangement because it was not on its green list. It said its process was to send a member's consent form to the member and then request the HMRC check once the completed consent form was received.

17. On 29 January 2021, the Administrator emailed Mr E to say that it still had not received an HMRC check on the Arrangement. In light of this, the Scheme Trustees (**the Trustees**) prepared a discharge form to waive the HMRC check, so the transfer could instead be made upon the receipt of the completed discharge form.

18. On 1 February 2021, Mr E emailed the Administrator raising his concerns and confirmed that he was not prepared to sign the discharge Form.

19. On 12 February 2021, Mr E received an email from the Member Administration Manager for the Scheme (**the Scheme manager**), which said that:

    - it acknowledged that Mr E had declined to sign the discharge form and confirmed that the discharge form met industry standards and had been tailored for him;
    - it explained that the Administrator had seen delays in HMRC check response times and that the check was for the Arrangement, not the Scheme; and
    - the Scheme manager also agreed with the Administrator that Mr E should be compensated for any loss he had incurred because his pension benefits in the Scheme had been disinvested early.

20. The HMRC check was subsequently received on 16 February 2021 and Mr E's pension benefits of £84,291.90 were transferred to the Arrangement on 11 March 2021.

21. Mr E remained unhappy and raised a complaint under the Scheme's Internal Dispute Resolution Procedure (**IDRP**).

22. On 14 May 2021, the Trustee provided its Stage one IDRP response to Mr E, which said:-

    - It was satisfied that the process that the Administrator had followed was reasonable and had not caused a delay.
    - It is part of the transfer process that the Administrator seeks confirmation of a pension schemes HMRC registered status before making a transfer. The only circumstances in which such a request was not made was where the receiving scheme was on the Administrator's green list. The Arrangement was not on the

green list and, therefore, the Administrator acted properly in seeking the appropriate HMRC check.

- It appreciated that the delays whilst Mr E was waiting for the HMRC check were frustrating, but the processes were in place to protect members' benefits and to ensure that transfers were only made to schemes with the appropriate HMRC registration status. This step could only be completed once the Administrator received confirmation of where a member intended to transfer their benefits and it had no control over the length of time it took HMRC to respond to those requests.

- It did not consider that there was any basis for concluding that Mr E's transfer could have completed at an earlier date.

- It appreciated that the Administrator had made an error disinvesting Mr E's pension funds in November 2020, but it had increased the value of his funds to reflect the investment return that Mr E would have received had his funds remained invested in the Scheme during this period.

- It did not consider that there was any basis to conclude that Mr E should receive compensation based on the investment return he would have received if he had invested in the Arrangement during this period.

- It noted that the Administrator had already offered Mr E £500 for the distress & inconvenience for its maladministration.

23. Mr E remained dissatisfied with the Trustees response and raised a complaint under Stage two of the Scheme's IDRP.

24. On 20 September 2021, the Trustees sent Mr E its Stage two IDRP response, which said:-

- In assessing whether Mr E had grounds for complaint, it had to decide whether there had been any delays on the part of the Administrator in relation to the transfer process.

- The Administrator operated a process, on behalf of the Trustee, that was aimed at ensuring member's benefits were protected and appropriate checks were carried out prior to the transfer of monies out of the Scheme.

- Part of this process was the need to obtain confirmation of a receiving scheme's registered status from HMRC, as the Trustee could not transfer benefits to a scheme that did not have the appropriate registration.

- The Administrator operated a 'green list' of receiving schemes which do not require referral to HMRC, however, the Arrangement was not on this list. The result of this was that the request to HMRC was a required step in the Administrator's process prior to it transferring Mr E's benefits.

- In Mr E's complaint, he referred to the Pensions Administration Standards Association (**PASA**) Code of Conduct. This set out a minimum standard that was said to be expected in the administration of pension transfers. However, this was not a legislative code, and it was not prescribed that all administrators must follow it.

- It was perfectly proper for the Administrator to operate an administrative standard that goes beyond the minimum criteria set out in PASA and for it to have adapted the suggested process to its own framework. As such, the Trustees were satisfied that the Administrator had acted properly.

- It noted that Mr E was offered the opportunity to sign a discharge form to waive the HMRC requirement. This was not a standard part of the process, but rather, it was an attempt by the Trustee and the Administrator, to acknowledge Mr E's dissatisfaction and the time taken to receive a response from HMRC.

- This was not an approach that would be offered as standard given the risk that it presented to members. Ultimately, the Trustees noted that the confirmation was received from HMRC before there was a need to proceed with the suggested discharge form.

- The Trustees did however note the issue that Mr E had with the Administrator disinvesting his funds at an earlier date than it should have done.

- The Administrator had compensated Mr E in respect of this issue for the lost return that he would have benefitted from within the Scheme had the early disinvestment not occurred.

- Mr E was offered £500 in respect of the distress and inconvenience caused by the early disinvestment error and the Trustee agreed that this was a reasonable offer in line with the likely award that The Pensions Ombudsman (**TPO**) would make if he was asked to consider the matter.

25. On 19 October 2021, Mr E brought his complaint to TPO.

26. **Summary of Mr E's position:-**

- The transfer was poorly executed over a long period of time with drawn out and stressful communication.

- The Administrator's decision to complete a HMRC check was unnecessary. Mr E said his financial advisor's view was that the check was not needed given their own guidelines and precedent in not referring other transfers to HMRC.

- There were no red flags on his transfer, so the Administrator's decision to request a HMRC check was a poor judgement call during an incompetent transfer process.

- He questioned why the Arrangement was not on the Administrator's green list and why action had not been taken to put it on the list.

27. **Summary of The Administrator's position:-**

- It operated a process, on behalf of the Trustee, that aimed to ensure that a member's benefits were protected from scams, and it had carried out appropriate checks prior to the transfer of monies out of the Scheme.

- It followed a standard transfer out procedure to mitigate the risk of pension scams. This procedure incorporated the principles of The Pension Regulator's guidance and PASA's Code of Good Practice on combating pension scams.

- Apart from the early disinvestment of Mr E's funds, it was satisfied that it had properly completed the transfer process. It had offered him compensation of £500 for the distress it had caused him by disinvesting his funds too early.

- It had operated a green list procedure on all UK transfer out requests since 2015.

- The green list is a list of receiving scheme administrators and providers where it had decided there was a low risk of a pension scam happening if benefits were transferred to them. It is not a list of schemes that are "approved" for transfers, and it is not a list of "safe" pension schemes. There is still a risk when transferring benefits to these administrators and schemes. Its administration teams had to ensure that all required due diligence checks were completed.

- At the time of Mr E's transfer, the green list consisted of:

    i. Pension schemes administered by the Administrator.

    ii. Pension schemes administered by other well-known third-party administrators (TPAs).

    iii. Pension schemes or policies administered by or set up by well-known insurance companies or pension providers.

    iv. Public Sector schemes (e.g. Local Authorities, Police, Teachers', or NHS).

    v. Pension schemes of previously nationalised organisations such as Royal Mail or The Railway Pension Scheme.

    vi. Pension schemes administered by any other "household names" (which do not fall into the categories listed above).

- It did not add schemes or providers to the green list unless it had concluded that the scheme satisfied certain criteria and there was a low risk of the scheme or provider being involved with pension scams. This required extensive investigation and it would not consider adding a scheme or provider to the green list without completing a full investigation beforehand.

- Historically, it had rarely added any schemes or providers to the green list as it took a risk averse approach to pension transfers.

- In addition, following previous legal advice (and reinforced by industry concerns around mis-selling), it was not considering adding any new Self Invested Personal Pension (**SIPP**) providers to the green list in March 2021.

Caseworker’s Opinion

28. Mr E’s complaint was considered by one of our Caseworkers who concluded that no further action was required by the Administrator. The Caseworker’s findings are summarised below:-

- The Administrator operated a process on behalf of the Trustee that was aimed at protecting a member’s benefits and it therefore carried out due diligence checks prior to the transfer of funds out of the Scheme.

- The HMRC pensions tax manual stated a reasonable level of due diligence was to be undertaken by a scheme administrator before it could be discharged from any possible HMRC sanction charges. Additionally, if there were any queries about a receiving scheme, HMRC should be contacted for further information and about the scheme’s status.

- There was no prescribed list for what due diligence measures should be taken and, in addition, HMRC does not specify how long due diligence should take. So, although he understood Mr E’s frustration at the time it took the Administrator to complete its due diligence checks, he was satisfied that the Administrator had acted within HMRC’s guidance.

- The Arrangement was not on the Administrator’s green list. So, it acted in line with HMRC’s guidance and its own internal due diligence checking process to check the Arrangement’s registration status.

- The Administrator had given Mr E an opportunity to waive the HMRC check, which he decided not to take.

- Mr E’s transfer took place within the six months generally allowed for transfers and the Caseworker thought there were no unnecessary delays. He appreciated that Mr E would have liked the transfer to have been made sooner but, in his opinion, the Administrator had been acting in Mr E’s best interests by following HMRC guidance, industry rules and regulations.

- The Caseworker did not believe there were grounds to compensate Mr E for the time his benefits were not invested in the Arrangement because he was of the view there had not been an undue delay in transferring his benefits.

- The Administrator had acknowledged that it disinvested Mr E's funds too early on 19 November 2020, but it had compensated him by paying an extra £2,542.42 into the Arrangement.

- The Caseworker thought that the Administrator had tried to answer and help Mr E when he requested information, but some information was commercially sensitive and confidential.

- The Caseworker recognised that Mr E has suffered some distress and inconvenience in dealing with this matter, however, he said that the Administrator's offer of £500 was in line with a significant award that TPO might make for non-financial injustice. He did not think a higher award for serious non-financial injustice was justified.

- The Caseworker said that TPO can only remedy individual acts of maladministration and cannot make general comments about commercial or business practices.

29. Mr E did not accept the Caseworker's opinion and his complaint was passed to me to consider. I agree with the Caseworker's Opinion.

Ombudsman's decision

30. Mr E has complained that the Administrator caused delays in the transfer of his pension funds into the Arrangement.

31. Mr E requested the transfer on 12 November 2020, and it was not transferred until 11 March 2021. Mr E wants to be compensated for the period of time his funds were disinvested and not invested in the Arrangement. He also seeks additional compensation for the distress and inconvenience.

32. I find that the Administrator's transfer process, including its request for an HMRC check on the Arrangement, did not amount to maladministration. This process followed appropriate due diligence checks to ensure Mr E's benefits were protected and that it complied with HMRC due diligence requirements. The Administrator had limited experience of the Arrangement, so it was not on its green list. The fact the Arrangement was a part of HSBC does not change the need for appropriate checks.

33. The Administrator has apologised and paid an extra sum to the Arrangement to compensate Mr E for disinvesting his benefits early.

34. I find that there was no undue delay in the transfer of Mr E's benefits to the Arrangement, so I do not consider there are grounds to award additional compensation for the time Mr E's funds were not invested in the Arrangement.

35. I accept that Mr E has suffered some distress and inconvenience in dealing with this matter. However, I consider the Administrator's offer to pay £500 for non-financial injustice to be sufficient.

36. I do not uphold Mr E's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman

17 June 2023