

## Ombudsman's Determination

Applicant	Mr S
Scheme	LV Personal Pension Scheme ( <b>the Scheme</b> )
Respondents	Liverpool Victoria ( <b>LV</b> )

## Outcome

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

## Complaint summary

2. Mr S used his benefits in the Armed Forces Pension Scheme to purchase a With Profits Annuity with LV. Subsequently, the Financial Services Compensation Scheme (**FSCS**) decided that Mr S had acted on unsuitable advice. He received £50,000 compensation from the FSCS and sought to recover the shortfall in his financial losses from LV.

## Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the main points. I acknowledge there were other exchanges of information between all the parties.
4. In 2009, Mr S acting on advice from Rockingham Independent Limited (**the Firm**) used his Armed Forces defined benefit pension to purchase a With Profits Pension Annuity with LV.
5. Several years later, Mr S reached the view that he had been mis-sold the With Profits Annuity, but the Firm was no longer trading. As a result, he contacted the FSCS to complain through Reclaim Pension Investments (**Reclaim Pension**).
6. On 1 October 2019, the FSCS wrote to Mr S and advised him that he had a valid claim against the Firm and his total loss was £98,077.25. The Firm had breached its duty of care towards Mr S, was negligent in its dealings with him, and had provided unsuitable advice.
7. The FSCS offered Mr S £50,000 compensation, this being the maximum it could pay under its rules, leaving a shortfall of £48,077.25. The correspondence advised that if

Mr S accepted the compensation, he would have to transfer his legal rights against the Firm, and any other third-party, to FSCS. If the FSCS decided not to use Mr S' rights, it could consider reassigning them back to him.

8. On 23 June 2022, Mr S complained to LV regarding the advice he had received from the Firm and the subsequent transfer of his defined benefits pension to LV. He sought to recover the additional shortfall of £48,077.25 from LV. Mr S said that LV had not followed proper procedure when accepting the incoming transfer, so it was jointly liable with the Firm. Mr S requested that his pension be returned to him, and the additional losses reimbursed, factoring in the additional months that had since passed.
9. On 7 September 2022, LV wrote to Mr S to advise him it did not uphold his complaint. LV said that Mr S' Discharge Form was received on 16 November 2009 and signed by him on 12 November 2009. The paperwork had confirmed that Mr S intended to transfer his Armed Forces Pension Scheme defined pension benefits to the LV Personal Pension Scheme to purchase a With Profits Annuity.
10. The Discharge Form that Mr S had signed had explained that the payment of the benefits to LV would discharge the transferring scheme of all claims and responsibilities in respect of the part of the benefits he held within the transferring scheme. Mr S was also invited to read the policy information, and by signing the form he had agreed to be bound by the information and declaration.
11. Further, LV had never provided any financial advice in relation to the transfer and as the product provider it had no obligation to check the suitability of the advice received. By checking whether the Firm was regulated at the time, LV had discharged its obligations towards Mr S.
12. Whilst the Financial Conduct Authority (**FCA**) showed the Firm was no longer registered, this was with effect from 22 June 2016, and it would have likely been registered in 2009. LV said its records in respect of the transfer indicated that this was the case. Further, while the Firm was fined in 2011, with two of the directors and an adviser being banned, this was two years after Mr S' transfer.
13. Mr S complained to the Pensions Ombudsman (**TPO**).

### **Mr S' position**

14. He realised in June 2017 that he had been mis-sold a pension by the Firm, so he contacted the FSCS through Reclaim Pension. The FSCS upheld his complaint, but only awarded some of his losses, and advised him to contact LV for the remainder, approximately £49,000.
15. Mr S said he left Reclaim Pension to pursue the issue with LV in November 2019. He then tried to contact Reclaim Pension for 18 months during the Covid-19 pandemic, and then found out the Firm was no longer trading.

16. In June 2022, he contacted LV himself, but LV did not uphold his complaint. He said he had requested a Data Subject Access Request (**DSAR**) which LV had not replied to.
17. He believed his pension with LV should be returned to him so he can reinvest it and guarantee that his children would inherit. He wanted LV to pay him the additional losses as he held them jointly responsible with the Firm.
18. He suffers from various of health conditions, and this was also the case at the time of the transfer, so this had caused him stress and anxiety. He wanted LV to compensate him for the distress and inconvenience he had experienced.

### **LV's position**

19. It had no concerns about the transfer at the time and it had discharged its obligations by checking that the Firm was regulated, which its records had confirmed that it had been in 2009.
20. Mr S' transfer was made before the pension regulator had launched, in February 2013, its Scorpion campaign for providers to include transfer warning literature in the transfer packs.
21. It acted as the product provider and therefore had no obligations to check whether the advice was suitable. This was the responsibility of the Firm and the IFA. The Firm was an FCA approved adviser at the time of the transfer, in 2009, and LV had no cause for any concern. LV had simply acted on Mr S' and the Firm's Instructions.
22. It had received £74,562.46 from the Armed Forces Pension Scheme and after paying Mr S the available tax-free cash lump sum, it used the remaining £55,921.85 to set up the annuity. Mr S had continued to receive monthly annuity payments since 2009.

### **Adjudicator's Opinion**

23. Mr S' complaint was considered by one of our Adjudicators who concluded that no further was required by LV. The Adjudicator's findings are summarised below: -
  - LV as the receiving scheme, and the product provider, was not required to check the suitability of the advice given to Mr S and, in any event, it did not have authority to provide 'counter advice' as to the suitability of the transfer.
  - Under, section 48 of the Pension Schemes Act 2015 (**PSA 2015**), the requirement to check that appropriate independent advice has been received is a duty on the trustees or managers of transferring schemes, since it is the transferring scheme that makes the payment to the receiving scheme to allow the member to acquire a right or entitlement to flexible benefits. In any event, before section 48 of the PSA 2015, any such checks were not a legal requirement – and this transfer took place before that requirement became law.

- Ensuring that the transfer was suitable for Mr S was the responsibility of the Firm.
- The activity of providing appropriate independent advice in the context of pension transfers is a regulated activity and falls within the remit of the Financial Conduct Authority's (**FCA**). LV's own due diligence obligations were to check that the Firm/IFA was registered. Having checked its records, it confirmed that the Firm was registered at the time of the transfer. The evidence showed that LV had gone through its internal checklist and was satisfied that the Firm was authorised.
- The FCA register showed that the Firm was authorised to provide regulated activities from 17 May 2005 to 22 June 2016. While, the Firm was fined for recommending unsuitable investment advice, this was published in 2011, which was after Mr S' transfer. On the evidence, the Firm was regulated in 2009, and LV had no reasons to be suspicious of the Firm or the transfer.
- Mr S said that LV had not dealt with his Data Subject Access Request DSAR which LV ought to action, failing which Mr S could approach the Information Commissioner's Office (**ICO**).

24. LV accepted the Adjudicator's Opinion and said that it had responded to the DSAR on 4 July 2022. Mr S had telephoned LV on 5 October 2022 and said he had never received it. As a result, the information was re-sent to him on 6 October 2022.

25. Mr S did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mr S provided his comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr S:

- He did not understand why the decision regarding his complaint only reflected one person's opinion and why he was not permitted to disclose the decision for an external review.
- The core issue of his mis-sold pension stemmed from improper and unlawful practices, not from his signature on the paperwork. Focusing narrowly on his signature overlooked the impact on his mental health and well-being.
- His military pension should have never been transferred out of the Armed Forces Pension Scheme, particularly given the military's own advice against doing so. He believed the opinion was incorrect and he ought to receive the full pension along with associated losses.
- The Firm who had sold the pension to LV had disappeared with no come back or paperwork for further investigation. LV had also admitted that the pension was mis-sold.

## **Ombudsman's decision**

26. Before accepting the transfer, LV had checked that the Firm that had provided Mr S with advice was registered with the FCA. As the Firm was registered, LV was satisfied that the advice received was from a regulated firm, and so it had no concerns or reasons not to proceed with the transfer.
27. I find that LV, as the product provider, was not required to check the suitability of the advice given to Mr S and was simply acting on Mr S' instructions regarding the transfer, who himself was following advice from a regulated firm. So, while the advice was thereafter found to be unsuitable, in these circumstances, LV is not liable regarding the advice or the subsequent transfer. I further note that Mr S continues to receive the annuity payments from LV's With Profits Pension Annuity.
28. While, Mr S has indeed suffered additional losses that have not been recovered from the FSCS, LV did not cause these losses and so I cannot find it accountable for them.
29. Therefore, I do not uphold Mr S' complaint.

**Dominic Harris**

Pensions Ombudsman  
18 December 2024