Ombudsman's Determination

Applicant	Mr S
Scheme	The Equitable Personal Pension Plan and The Equitable Managed Pension (**the Plans**)
Respondent	Equitable Life

Outcome

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

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr S has complained that Equitable Life transferred the Plans to a fraudulent pension scheme, the Salmon Enterprise (UK) Pension Scheme (**the Salmon Scheme**), and he has subsequently lost his entire pension.

Background information, including submissions from the parties

4. On 15 April 2010, The Pensions Regulator (**TPR**) issued a Determination Notice against Tudor Capital Management Limited (**Tudor Capital**)[1]. The Notice suspended Tudor Capital from acting as a Trustee stating that the Financial Services Authority (**the FSA**), HMRC and TPR were investigating its actions. It stated:

   "This order has the effect of prohibiting Tudor Capital Management Limited, during the period of the suspension, from exercising any functions as a trustee of any trust scheme in general..."

5. On 2 June 2010, Wightman Fletcher McCabe Ltd (**Wightman McCabe Ltd**), which until October 2007 had been an appointed representative of a regulated network of IFAs, wrote to Mr S providing forms for a "Bespoke Pension Scheme". This letter implied that Wightman McCabe Ltd was, "a trading style of The Clarkson Hill Group Plc (**Clarkson Hill**) which is authorised and regulated by the Financial Services Authority". The Financial Conduct Authority (**the FCA,** formally the Financial Services Authority) register shows that Wightman Fletcher McCabe, without the 'Ltd'

[1] http://www.thepensionsregulator.gov.uk/docs/DN2416059.pdf

designation, was recorded as a trading name of Clarkson Hill, and was a regulated business until 2013.

6. The letter to Mr S asked him to contact his pension provider and request a transfer pack, and was signed by an individual of Wightman McCabe Ltd, Mr Ray.

7. On 10 June 2010, Equitable Life wrote to Mr S and provided him with options in relation to his pension, including a transfer to a different scheme.

8. On 23 June 2010, a Final Determination Notice was issued by TPR, upholding the Determination Notice. TPR has confirmed that these Notices were not published until January 2014.

9. On 7 July 2010, Tudor Capital, acting as the administrator for the Salmon Scheme wrote to Equitable Life, enclosing a completed transfer application form, and confirmed that Mr S wished to transfer. Included was the Salmon Scheme's pension scheme summary, confirming its PSTR, SCON and ECON references, and that it was registered on 28 August 2009. This was signed on behalf of Tudor Capital by a Mr Mander.

10. On 12 July 2010, Equitable Life responded stating that the transfer could not go ahead as there had been no confirmation of how the pension would be operated and whether it could accept an unsecured pension. As Mr S was already in drawdown he could only transfer to purchase an annuity or to another scheme which offered an unsecured pension facility.

11. On 15 July 2010, Mr Ray, previously of Whiteman McCabe Ltd, rang Equitable Life stating that he was representing Tudor Capital. He was told that the transfer form would need to be re-sent, with the relevant box ticked.

12. On 21 July 2010, Equitable Life wrote to Mr S in respect of the second one of the Plans, providing retirement illustrations.

13. On 26 July 2010, a revised form was signed by Mr S and submitted to Equitable Life. This version of the form was signed on behalf of Tudor Capital by Mr Ray.

14. On 27 July 2010, Mr Ray rang Equitable Life again, stating he was calling from Tudor Capital seeking assistance with the transfer documentation. The record relating to this call only refers to, "help with MPBF", the form required to transfer.

15. On 29 July 2010, there is a note relating to a message from Mr Ray, of Tudor Capital, to resend the letter of 12 July 2010, on the basis that it had not been received.

16. On 3 August 2010, there is a call note stating that Mr Mander of Tudor Capital rang. The note states, "web for MPBF as not filled in correctly". Mr Mander was referred to the website to download the relevant form.

17. On 9 August 2010, a further transfer form was completed and signed by Mr S. This was signed by Mr Mander of Tudor Capital and confirmed that Mr S was transferring into an unsecured pension arrangement.

18. On 11 August 2010, Equitable Life received a further transfer request for the second of the Plans to be transferred into the Salmon Scheme.

19. On 24 August 2010, there was a discussion between Equitable Life and Mr Andrew Meeson, Tax Director of Tudor Capital, as to whether the Salmon Scheme could provide unsecured benefits for Mr S. Following this call, Equitable Life was persuaded that the transfer could proceed and the Salmon Scheme could provide an unsecured pension arrangement.

20. On 28 August 2010, Equitable Life wrote to the Salmon Scheme confirming that the transfer value had been forwarded and that it understood the Salmon Scheme offered an unsecured pension facility.

21. On 6 September 2010, Equitable Life wrote to the Salmon Scheme confirming that the second of the Plans had also been transferred.

22. On 7 January 2015, Mr S spoke to Equitable Life requesting information on where the Plans had been transferred. Equitable Life confirmed that both plans had been transferred into the Salmon Scheme. Over the following months Mr S made further requests for information and raised a complaint about Equitable Life’s decision to transfer.

23. On 1 March 2016, Equitable Life responded to the complaint and confirmed that in its view, it had properly followed the procedures and requirements in place at the time of the transfers and had not acted inappropriately. The complaint was not upheld and Mr S referred it to this Office for investigation.

Adjudicator’s Opinion

24. Mr S’ complaint was considered by one of our Adjudicators who concluded that no further action was required by Equitable Life. The Adjudicator’s findings are summarised briefly below:-

    - This Office cannot make findings against the financial adviser, although Mr S may wish to pursue an alternative route of redress via the Financial Services Compensation Scheme.

    - This Office is unable to make findings on perceived failings Mr S has highlighted in relation to the actions of TPR, the FCA and HMRC.

    - Mr S was a victim of a pension liberation scam, an issue which has become more prevalent over recent years. In this context the issue to determine is whether there were failings by Equitable Life when processing the transfer.

- Under current case law, where an individual has a statutory right to transfer, the transferring scheme is obliged to process the transfer despite any concerns it might have about the quality of the receiving scheme. The Adjudicator could see no reason to conclude that Mr S did not have a statutory right to transfer.

- Mr S' transfer request was made in 2010. It was not until February 2013 that industry good practice changed and more rigorous due diligence on transfers became typical. At the time of Mr S' transfer, expectations on the extent of due diligence undertaken on transfers were lower.

- The Salmon Scheme was able to provide its PSTR, evidence that it was registered with HRMC, and it declared that it would provide benefits in accordance with the relevant legislation. Normal industry practice, at that time, was to ensure that these requirements were met by the receiving scheme. The Adjudicator did not take the view that Equitable Life was required to do more.

- The Adjudicator accepted that by the time of the transfer Tudor Capital had been suspended by TPR, but that Equitable Life could have been aware of this fact as TPR did not publicise its Determinations until 2014. So this fact was unknown to Equitable Life.

- The Adjudicator also accepted that there was a discrepancy in the business Mr Ray was representing. Initially he appeared to act for the IFA, but later acted for the administrator of the Salmon Scheme. The Adjudicator noted that Mr Ray did not appear to have represented himself to Equitable Life, as acting for the IFA at any time, so it could not have picked up on this possible discrepancy. But even if he had, and Equitable Life noticed that he had acted for both the IFA and the administrator, such a change in role could easily be explained and this would not have been sufficient for Equitable Life to have blocked the transfer.

- Queries were raised by Equitable Life on whether the Salmon Scheme allowed unsecured pension arrangements and whether it could accept the transfer. The Adjudicator noted that there was no reason the Salmon Scheme could not have provided an unsecured pension facility, and once it had confirmed this point to Equitable Life, there was no obstacle to the transfer. Although Equitable Life could have requested sight of the Salmon Scheme rules to investigate this issue further, such a request was not typical and there was no reason for it to further question what it was being told.

- The Adjudicator acknowledged that Equitable Life could have written to HMRC to check the status of the Salmon Scheme. However such a request was not standard due diligence in 2010, and Equitable Life had no reason to doubt the Salmon Scheme's registration given that evidence of registration had been provided, the Adjudicator could not see any reason for Equitable Life to question the status of the registration at the time.

- Further, even if HMRC had been contacted, whilst Tudor Capital had been suspended from acting as a Trustee, it was only acting as administrator for the Salmon Scheme. In these circumstances the Adjudicator was not persuaded that the Salmon Scheme would necessarily have been deregistered by HMRC in 2010.

- Mr S commented on the fact Equitable Life had said that it could not have told him of any investigations even if it was aware of any. The Adjudicator could understand why Mr S would be concerned by these comments, but thought this was likely to have been linked to the Proceeds of Crime Act 2002 and the potential ramifications of 'tipping off'. But this argument was hypothetical, as Equitable Life was not aware of any investigation and so could not have warned him in any event.

- As Equitable Life could not have been aware of any concerns over the Salmon Scheme, and it had met all the then current due diligence requirements, the Adjudicator could find no fault on its part.

25. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr S for completeness.

Ombudsman's decision

26. Mr S has argued that the Adjudicator has avoided addressing the consequences of TPR's, HMRC's or the FCA's perceived failure to inform pension providers of Tudor Capital's suspension and ensure the determination notices were complied with. As the Adjudicator has said, this is not the forum for complaints against those bodies. If Mr S wishes to take this up with those bodies, he should do directly.

27. Likewise, if Mr S has concerns about a regulated financial adviser there are appropriate routes for those to be addressed within the regulatory structure, whether they be via the Financial Ombudsman Service or Financial Services Compensation Scheme. I cannot make findings or directions against those financial bodies.

28. In the circumstances of Mr S' case, what I can do is make findings and directions against Equitable Life, if there has been maladministration on its part.

29. Mr S reiterates the confusing relationships between Wightman Fletcher McCabe; Wightman Fletcher McCabe Ltd; and Tudor Capital, whose employees appear to be interchangeable, and implies this ought to have been considered more thoroughly by Equitable Life. Whilst I appreciate the argument, I am not persuaded that Equitable Life ought to have identified the fact that Mr Ray appears to have been acting for both the IFA and administrator. The letter from the IFA on which Mr Ray's name appears, was addressed to Mr S, not Equitable Life and it is not clear that it was aware of this letter.

30. Further, even if it was provided to Equitable Life and the discrepancy was identified, it is not implausible that the individual could have changed roles in the meantime. If Equitable Life had queried it, it could have been simply explained as Mr Ray changing jobs. I am not persuaded that this discrepancy on its own would have been sufficient to alert Equitable Life, even if it had been aware.

31. Mr S also states that the nature of the paperwork and documents were defective. Whilst the paperwork received from the Salmon Scheme initially failed to meet Equitable Life's requirement that it be capable of providing an unsecured pension, this was later clarified over the course of a telephone call and the corrected paperwork was resubmitted. With hindsight, and in the knowledge that the Salmon Scheme was a vehicle for pension liberation, this would be suspicious, but it is not unusual for forms to be filled in incorrectly and subsequently put right, and there was nothing restricting the Salmon Scheme from providing an unsecured pension if the rules allowed it.

32. I take the view that Equitable Life's initial decision to push back on the transfer, because of questions over its ability to accept unsecured pension arrangements, is reassurance that it was acting in Mr S' best interests. On receiving assurance from Tudor Capital that the Salmon Scheme could accept an unsecured pension, Equitable Life had no reason to lawfully refuse the transfer that Mr S had requested.

33. Mr S suggests that the Adjudicator takes the stance that the complaint should not be upheld because there is collective negligence between Equitable Life, TPR the FCA, HMRC and the Financial Services Compensation Scheme, and it would be impossible to blame Equitable Life specifically. Without commenting on the actions of the other bodies, I cannot identify any negligence or maladministration on the part of Equitable Life. It followed typical due diligence procedures at the time and acted on Mr S' request to transfer in an appropriate manner. Whilst there are oddities surrounding the transfer, which I have referred to, I do not find that Equitable Life would have been aware of both of the odd features, and unfortunately, it is only with hindsight and in the knowledge that the Salmon Scheme was a pension liberation vehicle that they stand out. Therefore, I am not persuaded that they were sufficient for Equitable Life to have undertaken additional due diligence, and as established in the case of Hughes v Royal London[2], any such concerns would not take precedence over Mr S' statutory right to transfer.

34. As with any victim of a pension liberation scam I have great sympathy with Mr S' position, especially as this transfer happened at a time when the receiving scheme was prohibited from accepting the transfer by TPR. However, I can only consider the complaint against Equitable Life and I do not find that was any error on its part when processing the transfer.

[2] Hughes v The Royal London Mutual Insurance Society Ltd, Court of Appeal - Chancery Division, February 19, 2016, [2016] EWHC 319 (Ch)

35. Therefore, I do not uphold Mr S' complaint.

Anthony Arter

Pensions Ombudsman
21 February 2018