

Ombudsman's Determination

Applicant	Ms D
Scheme	Gala Coral Pension Plan
Respondents	Halebarns Financial Planning Limited (HFPL) Gala Coral Pension Trustee Limited (the Plan Trustee) Mercer

Outcome

1. Ms D's complaint is upheld and to put matters right HFPL shall pay into Ms D's pension arrangement with Royal London, such amount as is necessary so that her monies in that arrangement is of the same value that it would have been had £415,106 been paid into Ms D's chosen investment on 8 December 2016, rather than £389,785 which was paid into a separate account and later transferred into her chosen pension arrangement.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Ms D's complaint is about the delay in transferring her benefits from the Plan to a personal pension plan with Royal London.

Background information, including submissions from the parties

4. Ms D had benefits in a number of different pension schemes, including the Plan, which she decided to consolidate into one arrangement with Royal London.
5. The Plan is administered by Mercer on behalf of the Plan Trustee.
6. Ms D's normal financial adviser, Safehands IFA Ltd (**Safehands**), was authorised to deal with the transfers from Ms D's defined contribution schemes but not the transfer from the Plan, a contracted-out defined benefit scheme. That process was undertaken by The IFA Partnership Limited (**IFAP**). IFAP is an appointed representative of HFPL.

7. The sequence of events is as follows:-

Date	Event
13/9/16	<p>Mercer send Ms D a Transfer Pack (TP). The covering letter says the TP comprises:-</p> <ul style="list-style-type: none">• 'Transfer out member statement' – quoting a TV of £415,106 guaranteed until 7 December 2016.• 'Transfer checklist' - detailing the documents to be completed and returned.• 'Application to proceed form' – to be completed by Ms D.• Transfer declaration forms: for a personal pension plan, occupational pension scheme and section 32 buyout policy – relevant form to be completed by the receiving scheme.• 'Member information form' – to be completed by Ms D.• Additional information form: personal pension plan and occupational pension scheme – relevant form to be completed by the receiving scheme.• TPR leaflet. <p>The covering letter dated 13 September 2016:-</p> <ul style="list-style-type: none">• Requested the provision of evidence that Ms D had received advice from an IFA and the IFA's FCA firm reference number.• Stated: "we will not be able to complete the transfer if any items on the checklist are missing, incorrect or incomplete."
On or around 28/9/16	<p>Ms D visited Safehands to have the transfer pack copied for sending to IFAP.</p>
9/11/16	<p>Safehands emailed IFAP. Safehands said Ms D is seriously looking at early retirement. Ideally the Plan is to be transferred to Royal London. Safehands asked for IFAP's view. Safehands informed IFAP that it should have everything attached but to let it know if anything has been missed.</p>
22/11/16	<p>IFAP telephoned Ms D to go through the transfer proposal.</p> <p>Same day IFAP emailed Ms D that it is happy to sign off the transfer. IFAP attached to the email:-</p>

- Part completed Royal London application form for a 'Royal London Personal Pension Plan', 'Key Features' and an 'Illustration'.
- 'Client Agreement' – between Ms D and IFAP.
- 'Letter of Authority' – for IFAP to access information on the Scheme via Mercer.
- Attitude to risk questionnaire.
- IFAP's 'Terms of Business'
- Mercer's: covering letter of 13/9/16 to Ms D, 'Member Information form', 'Transfer out member statement' and 'Personal Pension Plan - Additional Information Form'.

IFAP asked Ms D to complete and return: the Client Agreement, Letter of Authority ("in case we need to speak to the ceding scheme"), Attitude to Risk questionnaire, Discharge paperwork ("one signature and various questions to answer in the Member Information section, page 5") and the Royal London PPP application ("page 10 for the death nomination and page 15 – signature").

23/11/16	Ms D returned the signed forms to IFAP.
24/11/16	IFAP forwarded the signed forms to Royal London.
28/11/16	Ms D received an email from IFAP that the transfer amount of £415,106 "has now been received by Royal London". Later that morning Ms D receives a further email from IFAP that "the funds should be invested any day now".
29/11/16	Mercer received the signed papers from Royal London.
30/11/16	Mercer scanned signed papers to its system
1/12/16	Mercer identified three items missing:- <ul style="list-style-type: none">• The application to proceed from Ms D.• The transfer declaration from Royal London.• The IFA advice evidence letter.
	The same day, Mercer respectively wrote to Ms D and Royal London requesting the missing documents. Its letter to Mrs D included another 'Application to proceed form'.
5/12/16	Royal London telephoned Mercer to find out what else is needed.
6/12/16	16:07 – Mercer emailed Royal London copies of the forms that still required completing.

17:25 – Royal London emailed Mercer that it had posted the transfer declaration back to Mercer and asked by when Mercer required Ms D's application to proceed form.

7/12/16

16:35 – Mercer emailed Royal London that it required Ms D's completed application to proceed to be received by close of business that day for the transfer to go ahead.

At close of business the documents outstanding were:-

- The application to proceed.
- The IFA advice evidence letter from IFAP.

8. Following the expiration of the transfer value guarantee date, IFAP obtained from Mercer a new transfer value quote for Ms D of £389,785. Acting on Ms D's behalf, IFAP complained to Mercer. Mercer rejected the complaint:-

- The drop in transfer value was down to market forces.
- The initial transfer value quote, the covering letter, the transfer statement and the application to proceed made reference to the guarantee date.
- The covering letter stated that it would not complete the transfer if any documents listed on the transfer checklist were missing, incorrect or incomplete.
- The application to proceed form and confirmation that IFAP had advised Ms D, were not submitted by close of business on the 7 December 2016.
- Mercer wrote to Ms D and Royal London the day after it received the forms from Royal London.
- Mercer emailed Royal London on 6 December 2016, in response to a call from Royal London, copies of the forms that it still required to be completed.
- Mercer acted promptly and with adherence to all statutory requirements and timescales throughout the progress of the case.

9. Ms D decided to proceed with the transfer to Royal London.

10. Following the completion of the transfer, IFAP, acting on behalf of Ms D, complained to the Plan Trustee:-

- It believed, after speaking to various parties, that the funds would be transferred in due course to Royal London and that it would be informed if anything was required.

- Mercer wrote to, rather than emailed, Royal London that it required Ms D to complete the 'Application to proceed' form.
- It was not until the afternoon of the transfer deadline date that Mercer emailed Royal London.
- Mercer knew IFAP was representing Ms D but failed to contact IFAP about the matter.

11. The Plan Trustee rejected the complaint:-

- The transfer pack issued by Mercer to Ms D on 13 September 2016, included all the necessary forms and made it clear that the transfer could not proceed unless all the required documentation was received by 7 December 2016.
- The next contact Mercer received was from Royal London, date stamped 29 November 2016.
- The documentation received was incomplete. This left one week before the expiration date of the transfer value guarantee and limited time for the missing documentation to be requested and provided.
- As relevant, letters were sent to Royal London and Ms D, requesting the missing documents, on 1 December 2016. IFAP was not contacted as the papers submitted by Royal London did not include an email or telephone number for IFAP.
- There was email and telephone contact made by and with Royal London on 5, 6 and 7 December 2016.
- Notwithstanding this, Mercer was under no legal obligation to chase Ms D, Royal London, or IFAP, for the completed documentation.
- The IFA advice letter was dated 27 March 2017 and received as part of the second transfer process.
- Mercer had no record that IFAP contacted it prior to 8 December 2016.

12. Ms D complained to IFAP about the loss to her pension fund:-

- After completing and returning the documents to IFAP she received an email from IFAP on 28 November 2016, that the transfer amount (£415,106) had been received by Royal London and she was assured that the funds would be invested "any day now".

- She was away abroad from 24 to 30 November 2016, and away in the Forest of Dean from 2 to 6 December 2016.
- Mercer wrote to her on 1 December 2016, that three documents had not been returned. As she was away she did not receive Mercer's letter in time; her neighbour passed the letter with other post to her on 8 December 2016.
- The Pensions Advisory Service (**TPAS**) had advised her that IFAP was accountable for her loss. As IFAP had advised her on the process IFAP took responsibility for it. Two of the three missing documents had nothing to do with her and the third document, the 'Application to proceed' form, was not attached to IFAP's 22 November 2016 email. Consequently, she had no idea that she needed to sign it. The form was required for all such transfers.

13. HFPL rejected Ms D's complaint:-

- Ms D had not helped matters by not taking the transfer pack to Safehands shortly after she received it from Mercer.
- Because the transaction involved a number of parties it did not and would not ever guarantee that the transfer would be completed before the deadline date.
- The problem clearly started when Safehands failed to send all the documents to IFAP. However, it was not clear whether this was because Ms D failed to give Mr Harding the 'Application to proceed' form or he failed to send it to IFAP. In any event Ms D or Safehands could have already sent the form direct to Mercer. Either way it did not prevent IFAP from starting the transfer process.
- Within days of receiving the forms from Safehands it did all that it was required to do.
- It sent the forms to Royal London who forwarded them on to Mercer.
- Shortly afterwards it called Royal London who assured it that all was in order and that the transfer would complete before the cut-off date.
- The initial problem was made worse when, unbeknown to IFAP, Mercer chose to send Ms D a blank 'Application to proceed' form by second class post.
- This was beyond IFAP's control. Royal London had informed it that all was in order and Mercer did not contact IFAP.
- In its view a scanned signature would have been acceptable. If Mercer had simply emailed Ms D the form, she could have signed and returned it by email in a matter of minutes.

HFPL's position

14. HFPL say:-

- In keeping with FCA rules on “knowing your client” it made numerous attempts to speak with Ms D from 9 to 22 November 2016, to be satisfied that the transfer was in her best interests.
- On 22 November 2016 it spoke with Ms D, completed what it thought was all the paperwork sent by Safehands and sent it back to Ms D by recorded delivery. It asked Ms D to check, sign and return the forms.
- When Ms D returned the signed forms it immediately forwarded them to Royal London as the receiving scheme. It took 73 days to achieve this position, primarily due to Ms D not seeing Safehands until 9 November 2016.
- Royal London acknowledged receipt of the forms and said they had been forwarded to Mercer:

“We would have expected Royal London to inform us at that point if any documents were outstanding, thus although they did not actually confirm to us that the transfer was complete, they did not alert us to the fact that some paperwork was missing.

Knowing that [Ms D] was concerned and keen to put her mind at rest, as we had not heard to the contrary, we advised that the transfer process was now completed.”

- It sent its confirmation of advice letter for Ms D directly to Mercer. The letter was simply lost at Mercer's end.
- Mercer did not respond to Royal London's request for Ms D's funds until 4:40pm on the transfer deadline date of 7 December 2016.
- Mercer claimed it could not complete the transfer because it had not received the 'Application to proceed form' signed by Ms D. HFPL, Royal London and Safehands were not aware that the form was missing as it had not been previously sent by Mercer.

Ms D's position

15. Ms D says:-

- She took the transfer pack she received from Mercer to Safehands on or around 28 September 2016. Safehands photocopied the pack for sending to IFAP.

- It took several more weeks before Safehands received two outstanding transfer values (in respect of two of Ms D's other pension arrangements). This meant the earliest she was able to see Safehands was on 17 November 2016. She did not see Safehands on 9 November 2016, as stated by HFPL.
 - During her telephone conversation with IFAP on 22 November 2016, she made IFAP aware that she had a pre-planned holiday starting on 24 November and ending on 5 December 2016. IFAP assured her there would be no issue and that the transfer would go ahead.
 - On 23 November 2016 she returned by special delivery the forms that IFAP had asked her to complete. IFAP acknowledged receipt the next day.
 - Neither Safehands nor IFAP informed her that any of the contents of the pack (listed in Mercer's covering letter of 13 September 2016 which enclosed the pack) were missing.
 - Whilst on holiday she received IFAP's email of 28 November 2018 informing her that the transfer had gone ahead.
 - She did not delay the transfer process by 73 days, as stated by HFPL.
 - Safehands opened a pension portfolio with Royal London on 8 December 2016, with an investment instruction of "Governed Portfolio 4". Money was invested into this from her smaller money purchase schemes.
 - On completion of the transfer from Mercer, IFAP was instructed to place £389,785 into the same account. IFAP failed to do this, instead it set up a new account with Royal London with an investment instruction of "Government Portfolio 2". This came to light when she started to create a timeline regarding the original failed transfer. The account was closed, and the Royal London were then contacted, and the second account was closed, and the money transferred into the original account, on 29 August 2017.
16. Ms D has provided this office with a copy of the transfer pack she received from Mercer. All items noted in the covering letter are included with the exception of the personal pension transfer declaration.
17. IFAP has provided this office with a copy of the Mercer documents that Safehands attached to its 9 November 2016 email. Namely: the covering letter of 13 September 2016, 'Transfer out member statement', 'Member information form', 'Personal Pension Plan - Additional information form' and 'Occupation pension scheme – Additional information form'.

Adjudicator's Opinion

18. Ms D's complaint was considered by one of our Adjudicators who concluded that further action was required by IFAP. The Adjudicator's findings are summarised below:-

- The copy of Mercer's transfer pack provided by Ms D, does not have the personal pension plan transfer declaration. It is not clear whether the form was not included in the pack issued by Mercer to Ms D. Nevertheless, the form was subsequently completed by Royal London before the original transfer value guarantee date expired.
- Mercer's covering letter detailed the items included in the transfer pack and stated that it would not complete the transfer if any documents listed on the transfer checklist were missing, incorrect or incomplete. The letter and transfer out member statement stated that the transfer value was guaranteed until 7 December 2016.
- Ms D engaged IFAP, an agent of HFPL, to facilitate the transfer of her benefits from the Plan to Royal London. Therefore, from that date it was IFAP's responsibility to check that Royal London and Mercer each had all that they required for the transfer to proceed before the close of business on 7 December 2016.
- While Royal London informed IFAP that it had sent the forms to Mercer, IFAP did not check with Mercer that it had received the forms and that it had all that it required to pay the transfer to Royal London. Instead, and incorrectly, IFAP informed Mrs D on 28 November 2016 that Royal London had received the transfer value and that it would be invested shortly.
- HFPL has suggested that Ms D did not help matters by going on holiday. But Ms D appears to have told IFAP in advance when she would be away. Nevertheless, while Ms D was away it did not prevent IFAP from exchanging emails with her on 28 November 2016. It is therefore likely that the application to proceed could have been completed and returned to Mercer before the deadline date if IFAP had checked with Mercer whether there remained anything outstanding that it required in order to process the transfer to Royal London.
- To put matters right Ms D's scheme with Royal London should be put in the position it would now be in if £415,106 had been applied to Ms D's chosen investment on 8 December 2016.

19. HFPL did not accept the Adjudicator's Opinion and made no further comment.

Ombudsman's decision

20. I uphold Ms D's complaint. As IFAP is an agent of HPFL, HPFL is accountable for IFAP's actions in this matter and therefore responsible for putting matters right.

Directions

21. To put matters right HFPL shall:

- within 14 days of the date of this Determination request that Royal London confirm the sum required in order for Ms D's pension arrangement to be of the same value that it would have been had £415,106 been paid into Ms D's chosen investment on 8 December 2016, rather than £389,785 which was paid into a separate account and later transferred into her chosen pension arrangement; and
- within 14 days of receiving the cost from Royal London, pay this sum to Royal London for it to be transferred into Ms D's scheme.

Anthony Arter

Pensions Ombudsman
28 February 2019