

Ombudsman's Determination

Applicant	Mr N
Scheme	Principal Civil Service Pension Scheme (PCSPS)
Respondents	Mr Ian MacPhail the Trustee of the Brookes Limited Retirement Benefits Scheme (the Trustee), MyCSP

Outcome

1. Mr N's complaint is upheld and to put matters right the Trustee should pay Mr N £2,000 for its failure to reply to Mr N and MyCSP should pay £500 for the distress and inconvenience caused.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N has complained that MyCSP failed to carry out sufficient due diligence before agreeing to pay a transfer value to the Brookes Limited Retirement Benefits Scheme (**the Brookes Scheme**). Also that he has been unable to obtain any information from the Trustee.

Background information, including submissions from the parties

4. Mr N was a deferred member of the PCSPS and says that in 2013 he received a cold call from Yardstick Marketing who persuaded him that he could receive a better return on his pension in the PCSPS by transferring this to the Brookes Scheme. Mr N then completed a form authorising Pensions Matters Associates to obtain details of his pension from MyCSP.
5. On 1 July 2013 MyCSP provided Pension Matters Associates with a statement of entitlement for Mr N.
6. On 24 July 2013 Mr N completed an application form to transfer his PCSPS benefit to the Brookes Scheme via its administrator Integra Administration Ltd (**IAL**). Mr N also completed an application form to join the Brookes Scheme.

7. On 14 August 2013 IAL wrote to MyCSP and enclosed:
 - A signed letter of authority from Mr N
 - A discharge of liability form signed on behalf of the Brookes Scheme trustees
 - A signed application form to join and also transfer to the Brookes Scheme
 - A copy of the Brookes Scheme's HMRC registration certificate
 - Copies of two Scorpion leaflets entitled 'Predators stalk your pension' and 'Action Fraud' that Mr N had signed to confirm that he had read these.
8. MyCSP say that on receipt of the transfer application it referred to a 'Transfer Watch List' to check that it did not include the Brookes Scheme. As the Brookes Scheme did not appear on the list the transfer application was accepted and a payment of £10,950 was made on 27 August 2013.
9. Mr N says that after agreeing to the transfer he had second thoughts and thought that he could lose his pension savings. He contacted the Brookes Scheme and was told he would have to wait a year before he could transfer out. A year later he tried to contact IAL but they had been dissolved. He also tried to contact the Trustee of the Brookes Scheme but without success.
10. On 12 August 2014 Mr N contacted MyCSP saying that he wanted to undo the transfer but was informed that this was not possible. Mr N complained about the refusal to undo the transfer and instigated the Internal dispute Resolution Procedure (IDRP). After completing both stages of the IDRPP Mr N brought his complaint to this office.

Adjudicator's Opinion

11. Mr N's complaint was considered by one of our Adjudicators who concluded that further action was required by the Trustee and MyCSP. The Adjudicator's findings are summarised briefly below.
12. The sequence of events relating to the transfer of Mr N's benefits with PCSPS have some elements of a pension scam as:
 - Mr N was cold called by Yardstick Marketing who cannot now be contacted;
 - Mr N had no employment relationship with the sponsor of the Brookes Scheme and the Brookes Scheme appears to have been set up solely with the intention of accepting transfers in;
 - the original adviser Pension Matters was incorporated in March 2012 and dissolved in April 2016;
 - the administrators IAL were incorporated in May 2013 and dissolved in October 2014;

- there is only one Trustee of the Scheme, Mr Ian MacPhail, who has failed to keep members informed of changes to the Brookes Scheme, such as who to contact for enquiries and to provide regular reports and statements on members' benefits, these are breaches of the Pension Regulator's codes of conduct;
 - monies received are invested with a company called DTL (UK) Limited (**DTL**) which invests in what its website describes as 'exciting technology businesses';.
 - Mr N has carried out his own investigation as to where his pension monies have gone and pursued a claim against DTL in the County Court which resulted in DTL repaying the transfer value to him; and
 - Mr N does, however, wish to pursue his complaint against the Trustee and MyCSP. He feels that the Trustee has been involved in a pension scam and that MyCSP did not carry out sufficient due diligence on the Brookes Scheme before making the transfer payment. MyCSP have outlined the steps it took when it received the transfer application and these included referring to a transfer watch list.
13. On 14 February 2013, The Pension Regulator (TPR) issued a press release aimed at pension schemes and members, highlighting the potential risk of pension liberation giving rise to an unauthorised tax charge. TPR also said that in future scorpion leaflets should be issued for members wishing to transfer and that transferring schemes should carry out additional checks. These included checking to see if the receiving scheme was newly registered, sponsored by a newly registered employer and connected to an unregulated investment company. TPR also said that if the answer to these questions were yes, it does not mean that it is a pension scam but there may be cause for concern.
14. The Ombudsman has viewed TPR's announcement on 14 February 2013 as a catalyst for change in the transfer procedure but has recognised that there may be a period before the new procedures are implemented. However, he would expect pension schemes to put these new procedures in place within a few months of the announcement. Mr N's transfer value application was received some six months after the TPR announcement.
15. There is no evidence that MyCSP carried out any of the new checks or issued the scorpion leaflets which is maladministration. MyCSP has commented that it did not send the scorpion leaflets to Mr N as MyCSP had received scorpion leaflets signed by Mr N as part of the transfer documentation from IAL. However, if the further checks had been carried out these could have been highlighted to Mr N and MyCSP could have asked for confirmation that he wished to proceed.
16. Mr N has through his own efforts managed to retrieve the pension transfer monies but admits it was extremely stressful. The Adjudicator considered that MyCSP bore some responsibility for this and that MyCSP should pay Mr N £500 for its failure to complete the additional checks.

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17. The Adjudicator also considered that the Trustee, Mr MacPhail, should compensate Mr N for his failure to reply to his enquiries and to provide details of who the administrators are and to provide regular communications on the progress of the Brookes Scheme. As the Trustee has a greater responsibility to members, and also because of his failure to respond to either Mr N or this office, the Adjudicator considered that Mr MacPhail should pay a higher level of compensation to Mr N for the considerable distress and inconvenience he has suffered.
18. Mr N and MyCSP accepted the Adjudicator's Opinion but Mr MacPhail failed to respond to any enquiries. The complaint has now been passed to me to consider. I agree with the Adjudicator's Opinion.

Ombudsman's decision

19. I agree that the facts surrounding the transfer of Mr N's benefits in the PCSPS to the Brookes Scheme have all the hallmarks of a pension scam. It is to Mr N's credit that he has been able to retrieve the transfer value from DTL. It has, however, been a traumatic episode for him and I think it only right that he should be compensated for this.
20. MyCSP have agreed to pay the award recommended by the Adjudicator but no response has been forthcoming from the Trustee, Mr MacPhail. I find that Mr MacPhail has failed to recognise or honour the duty of care that he owes to Mr N and presumably other scheme members and that a report should be made to the Pensions Regulator.
21. Therefore, I uphold Mr N's complaint.

Directions

22. To put matters right within 21 days of the date of this determination the Trustee and My CSP should pay Mr N £2,000 and £500 respectively for the distress and inconvenience they have caused him.

Anthony Arter

Pensions Ombudsman
27 September 2017