

Ombudsman's Determination

Applicant	Mr Y
Scheme	Sun Life Financial of Canada plan number 490-193326-25 (the Plan)
Respondent	Sun Life Financial of Canada (SLOC)

Outcome

1. I do not uphold Mr Y's complaint and no further action is required by SLOC.

Complaint summary

2. Mr Y complained through his then representative, The Financial Repayment Service (**TFRS**), that SLOC did not carry out the appropriate due diligence when transferring his pension fund from the Plan into the Henley Retirement Benefits Scheme (**the Henley Scheme**).

Background information, including submissions from the parties

3. Mr Y is now represented by Mendelsons Solicitors (**Mendelsons**).
4. He says he cannot trace his assets and is concerned all his pension funds have been lost. He wishes to be put back into the position he would have been in had the transfer not occurred.
5. The sequence of events is not in dispute, so I have only set out the key points. I acknowledge there were other exchanges of information between all the parties.
6. Mr Y was born in March 1952.
7. On 28 January 2013, Sanderson Clarke submitted a Letter of Authority, signed by Mr Y and dated 23 January 2013, to SLOC with a request that it issue a transfer pack including an up-to-date transfer value within 10 working days.
8. Sanderson Clarke was not an adviser regulated by the Financial Conduct Authority.
9. On 5 February 2013, SLOC issued the transfer pack to Sanderson Clarke and sent a copy direct to Mr Y.

10. On 5 March 2013, SLOC received the completed documents to proceed with the transfer. The covering letter was dated 3 March 2013 and was sent by T12 Administration, administrators of the Henley Scheme.
11. In addition to the formal request to transfer, the returned documents included: a copy of the HM Revenue & Customs' (**HMRC**) Registration Certificate showing the Henley Scheme as having been registered on 4 September 2012; an authority form appointing Omni Trustees Limited to collate Mr Y's membership information; and a 'Pension Scheme CV' giving details of the Henley Scheme. Where appropriate the documents had been signed by Mr Y and dated 13 February 2013.
12. On 8 March 2013, the transfer value of £31,822.65 was paid to the Henley Scheme.
13. Sanderson Clarke was dissolved on 7 January 2014, T12 Administration was dissolved on 17 March 2015 and Omni Trustees was wound up on 25 November 2020.
14. On 12 January 2017, The Pensions Regulator (**TPR**) appointed Dalriada Trustees Limited as independent trustee of the Henley Scheme.
15. Dalriada has since reported that the Henley Scheme was primarily invested in storage pods and that it is in talks to try to recover monies due to the scheme, but says that members' expectations should not be raised unduly about the prospects of this being successful. There is a second investment which may relate to the Henley Scheme and Dalriada is working with the investment provider to understand the full details of this.
16. On 16 November 2018, TFRS sent a formal complaint to SLOC. TFRS said:-
 - Mr Y had received an unsolicited call from a financial adviser for a free pension review, but Mr Y did not realise at the time that the adviser was unregulated.
 - It was incumbent on SLOC to conduct the necessary due diligence to protect its member's interests.
 - TPR had issued guidance regarding the due diligence checks transferring scheme managers and trustees should take before agreeing to the transfer of members' benefits (**the 'Scorpion guidance'**) in February 2013. However, this was merely a reminder of the obligations on pension professionals. SLOC should have been complying with the spirit of the warning even before it was issued.
 - SLOC had allowed Mr Y to transfer out without undertaking the due diligence advised by TPR.
 - Mr Y had suffered a serious loss through SLOC's negligence.
17. To support its case, TFRS cited my Determinations in cases PO-12763 and PO-3809. TFRS also said that before making the transfer, SLOC should have engaged verbally

with Mr Y and warned him of the risks. TFRS observed that SLOC had not followed the Scorpion guidance and had failed to point out any warning signs.

18. SLOC responded to the complaint on 22 January 2019. It said:-

- It was fully aware of Pension Liberation and the associated regulatory warnings. In the interests of its clients, it had appropriate procedures and controls in place, to be followed prior to a pension transfer being approved.
- Before it made the payment it conducted a number of due diligence checks in line with regulatory guidelines. These checks encompassed a vigilant approach to ensure it acted in the best interest of its client.
- On receipt of the completed transfer forms, it had checked that they were signed by the client and completed correctly. It had no concerns with Mr Y's confirmation of his wanting to take benefits as he was age 60 and therefore already over the minimum retirement age of 55.
- In addition, it received evidence that the Henley Scheme was registered in September 2012 as an approved scheme under HMRC pension scheme tax reference (PSTR) 00786433RW.
- Having completed its checks payment was authorised on 8 March 2013, with confirmation to the Henley Scheme and to Mr Y.
- The timing of the transfer was significant, taking place prior to the implementation of TPR's Scorpion guidance.
- While there was no definitive instruction by TPR as to how quickly providers should introduce the new checks, SLOC had proceeded to implement changes to its procedures for the inclusion of this to clients.
- With Mr Y's transfer process already underway, it considered its approach in facilitating Mr Y to transfer his pension investments to have been consistent with regulatory guidelines at the time. It was satisfied there was no indication or evidence of any potentially unauthorised payment being made or Mr Y being under any pressure regarding the transfer of his pension.
- It therefore did not uphold Mr Y's complaint and would not agree to reinstate Mr Y's benefits.

Adjudicator's Opinion

19. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further was required by SLOC. The Adjudicator's findings are summarised below:-

- This complaint is concerned with the level of due diligence that SLOC was required to carry out at the time that a request was made to transfer Mr Y's benefits to the Henley Scheme.

- TPR has since appointed Dalriada as independent trustee of the Henley Scheme. It is clear from this that something has gone wrong.
- The underlying investments of the Henley Scheme appear inappropriate for a pension arrangement and Dalriada is in negotiation to recover as much of the assets as possible. However, SLOC would not have been aware of any of this at the time of the transfer of Mr Y's pension.
- Mr D had a statutory right to a cash equivalent transfer of his benefits under the Plan, and he exercised his right by requesting SLOC to make a transfer payment to the Henley Scheme.
- TFRS had argued that, had SLOC undertaken sufficient due diligence, it would have discovered that it should not have proceeded without Mr Y taking advice and had said that SLOC failed to warn him of the consequences of transferring his pension.
- SLOC said that, at the time, the checks it carried out were mainly to ensure that the receiving scheme was registered with HMRC.
- In the Adjudicator's view, this complaint must be considered in the context of SLOC's regulatory obligations at the time of the transfer.
- TPR had issued its Scorpion guidance on 14 February 2013, which included a check list for trustees and administrators to help identify pension liberation fraud. The action pack also set out that trustees and administrators had a duty to carry out a member's transfer request where the legislative requirements are met.
- In this case, Mr Y had signed the transfer request on 23 January 2013, that is before the TPR guidance was issued. Sanderson Clarke submitted the transfer request to SLOC on 28 January 2013 and the transfer pack was issued on 5 February 2013. There was then one month's delay before this was returned, although Mr Y had signed the formal application to transfer on 13 February 2013.
- TPR's guidance was very newly issued and as of 5 March 2013, when SLOC received the completed documentation, it had been published for little more than three weeks.
- The question was whether it was reasonable to expect SLOC to have reconsidered Mr Y's transfer application before it paid the transfer.
- TFRS had argued that SLOC should already have been complying with the spirit of the guidance before it was issued. But that was not the Adjudicator's view. He pointed out that, in previous Determinations, I have found that a period of time is appropriate during which pension providers could and should have reviewed the substance and then amended their procedures in response to the TPR's new guidance.

- In this instance, the formal transfer application was dated before TPR's guidance was issued and the formal transfer request was received little more than three weeks after the publication of TPR's guidance, with the transfer taking place three days later. No new information had been received to raise concerns about the transfer, the Henley Scheme or to doubt Mr Y's intentions. Given the timeline, it was the Adjudicator's view that it would not be reasonable to have expected SLOC to have an updated transfer process in place, and to have then revisited this transfer application at that late stage of the process.
 - The Adjudicator did not consider that SLOC was required to carry out the enhanced due diligence, involving further checks on the Henley Scheme, as set out within the Scorpion guidance. The due diligence SLOC carried out was in accordance with what would have been expected for transfers processed prior to the issue of the Scorpion guidance. That is, checking that the receiving scheme was registered with HMRC.
 - In the Adjudicator's view, SLOC was not negligent in allowing the transfer and he did not consider that doing so amounted to maladministration.
20. SLOC accepted the Adjudicator's view, whereas Mr Y did not and the complaint was passed to me to consider.
21. On Mr Y's behalf, Mendelsons said that it believed SLOC should have done more. However, I agree with the Adjudicator's Opinion for the reasons I have set out below.

Ombudsman's decision

22. I have considerable sympathy for Mr Y, who appears to have fallen victim to a scam as a result of which he may have lost his pension savings.
23. Mendelsons, on behalf of Mr Y, says that SLOC should have done more in the way of due diligence before transferring his funds. However, this matter cannot be viewed with the benefit of hindsight and it is the circumstances at the time of transfer which are of importance.
24. TFRS previously cited my Determinations in cases PO-12763 and PO-3809 in support of Mr Y's case. However, each of these cases involved specific issues which do not apply here. In both cases the events being complained about took place several months after the publication of TPR's new guidance. As the Adjudicator rightly pointed out, I have previously found that a period of time is appropriate during which pension providers could and should have reviewed the substance and then amended their procedures in response to the TPR's guidance.
25. In this case, I have considered whether SLOC ought to have done more to alert Mr Y to the risks of the transfer. The transfer took place shortly after TPR's guidance was issued, and I consider it reasonable to allow SLOC, as a provider, the necessary time to implement any changes arising from this. I consider a one-month period, from 14

February 2013, a reasonable timeframe to do so. Accordingly, I do not consider that SLOC made an administrative error in not making further enquiries about Mr Y's reasons for requesting the transfer.

26. The High Court judgment in *Hughes v Royal London* indicated that there is very little providers can do to stop a transfer, where a statutory (or other) right exists, even if they have serious concerns about the destination of the money or the nature of the receiving scheme.
27. SLOC had a statutory and contractual duty to transfer Mr Y's funds which it was required to act upon when it received his transfer paperwork unless there were any indications of why the transfer should not go ahead.
28. At the time of Mr Y's transfer request, the checks undertaken by SLOC were reasonable. The transfer paperwork was in order, the receiving scheme was registered with HMRC and it had confirmed that it was willing to accept the transfer and provide benefits to Mr Y.
29. In hindsight, it was not a suitable decision for Mr Y to transfer his pension, but it was his choice to do so. There was not maladministration by SLOC in allowing the transfer to proceed in accordance with Mr Y's statutory rights and his clear instruction.
30. I do not uphold Mr Y's complaint.

Anthony Arter

Pensions Ombudsman
13 July 2021