Ombudsman's Determination

Applicant	Mr T
Scheme	Police Pension Scheme (**the Scheme**)
Respondent	Equiniti Pension Solutions (**Equiniti**)

Outcome

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

Complaint summary

2. Mr T has complained that Equiniti failed to provide him with sufficient information on transferring out of the Scheme and the potential for pension scams. Also, Equiniti did not check that he had taken advice from an authorised independent financial adviser or that the pension scheme he transferred to was properly authorised.

Background information, including submissions from the parties

3. Mr T was a member of the Scheme and on 3 October 2014 he requested a cash equivalent transfer statement (**CETV**) from Equiniti. Mr T received the CETV statement in December 2014. The CETV quoted was £90,855.10.

4. Mr T said that he appointed AIP Worldwide as introductory agent to The Pension Reporter, an Independent Financial Adviser (**IFA**). He returned his signed transfer request documents to the IFA on 17 January 2015.

5. Mr T said he received no other information or communication from Equiniti, including no documents advising care in the face of possible scams.

6. Mr T contacted the IFA for an explanation at various points and in April 2015, the IFA informed him that the transfer had been completed.

7. Mr T said he did not receive a formal confirmation of the transfer of funds from the new scheme's managers, STM, until August 2018. In the meantime, he had the following contact with STM:-

   - On 18 August 2015, he received a letter from STM Fidecs Pension Trustees Limited (**STM**), the corporate trustee of his new pension scheme, confirming the details of his new pension scheme “STM GIB Pension Transfer Plan” (**the Plan**), with the plan number GR565 and a commencement date of 20 March 2015.

- The “Plan Schedule” included with the letter showed that the transferred funds received from Equiniti were £90,855.10. The Plan Schedule showed that STM had invested his fund (£88,826.10 transfer value less STM’s fees, adviser’s fees and 3% investment fees) into shares in the “Trafalgar Multi Asset Fund” on 30 April 2015, according to his earlier instruction to STM.

- On 15 December 2015, he received an email from STM saying that an annual review of the investment funds was being completed by the administrators.

- On 1 April 2016, STM informed him that there was a delay in sending annual statements. Since then, he has not received an annual statement or any other statement showing the value of his funds in the Plan.

- On 26 August 2016, he received an email from STM stating that the Trafalgar Multi Asset Fund had been suspended because the administrators had not received the information they required for their annual review. He contacted STM to ask whether STM could transfer his funds. He received no response.

- On 10 and 25 January 2017, he received confirmation from STM as to fund options for continuing investment and an update on the current position of the Plan.

8. Mr T also says that around this time he contacted a new IFA, for assistance. After around three months, he heard from the new IFA that, in his view, the details concerning the Plan and investments did not seem to make sense. On 14 September 2016, the new IFA confirmed to him that he considered the Plan could be part of a scam.

9. In May 2017, while searching online he discovered information from the Serious Fraud Office that it was looking into STM and Victory Asset Management, a linked operation, for possible fraudulent activities.

10. Mr T has made various references to the Pension Regulator's guidance entitled “DB to DC transfers and conversions” (**TPR’s guidance**) of April 2015 and states that Equiniti failed to:

    - check that his appointed adviser had the correct permission to carry on the relevant regulated activity;

    - check his chosen receiving scheme to ensure that it was able and willing to accept the transfer and it was a legitimate arrangement; and

    - refer to TPR’s “scams action pack” which sets out what trustees and administrators can do when they suspect a scam and who to contact. He did not receive from Equiniti a copy of TPR’s booklet on pension scams at the time he received his statement of entitlement.

11. Mr T says that he does not know what has happened to his benefits and that Equiniti should make a substantial payment to put him back in the position he would have been in if the transfer had not taken place.

12. Mr T's complaint was considered by Equiniti under its Internal Dispute Resolution Procedure (**IDRP**). Equiniti did not uphold Mr T's complaint and in its IDRP response letter of 23 August 2019 said:-

- Section 48 of the Pension Schemes Act 2015 introduced a requirement that from 6 April 2015 trustees or scheme managers should check that advice had been taken before allowing a transfer to proceed where the CETV exceeded £30,000. Transitional arrangements were put in place whereby Section 48 did not apply to a CETV where the member application and authority was received before 6 April 2015. Mr T's transfer authority was signed on 17 January 2015 and received by Equiniti on 23 March 2015.

- The Plan was on HMRC's Qualifying Recognised Overseas Pension Schemes (**QROPS**) list at the point of transfer.

- There was no reference to the Trafalgar Multi Asset Fund prior to the pension transfer.

- The Pension Scams Code of Practice was introduced on 16 March 2015 and although endorsed by the governing bodies was not a statutory requirement for all schemes.

- The Pensions Scorpion leaflet was included with the transfer quotation. The following statement was also included:

"A transfer to an overseas pension scheme is a complex and involved financial transaction and it may have consequences which are not immediately obvious. For example, if it transpires that the receiving scheme involves you in a "pensions liberation fraud" or it does not comply with the conditions for being a qualified overseas pension scheme, then there is the possibility that you may become liable to a tax charge of 55% of the total transfer payment on top of any other fees you pay. Please ensure that you have taken all necessary steps for your own protection, including seeking appropriate financial advice before proceeding with the transfer."

- Mr T had a statutory right to transfer and had employed a financial adviser to act on his behalf.

- Equiniti received all the paperwork required to process the transfer and there was no reason to suspect potential pension liberation.

- The Plan is still in operation although the Trafalgar Multi Asset Fund has now been wound up.

Adjudicator's Opinion

13. Mr T's complaint was considered by one of our Adjudicators who concluded that no further action was required by Equiniti. The Adjudicator's findings are summarised below.

14. This complaint is principally concerned with Mr T's loss arising from his investment in the Trafalgar Fund which has now been wound up and there is little chance of any monies being returned to investors. The Trafalgar Fund was registered in the Cayman Islands and therefore does not come under the control of the Financial Conduct Authority.

15. Equiniti carried out the checks that it was required to do at the time that the transfer was requested. It checked that the Plan was on HMRC's QROPS list, it confirmed that STM was registered with HMRC, it issued the Scorpion leaflet and issued a further warning as outlined in paragraph 12 above and recommended that Mr T seek appropriate financial advice. The Adjudicator was of the opinion that the checks carried out by Equiniti were reasonable.

16. The decision to invest in the Trafalgar Fund was taken by Mr T with advice from his IFA. Equiniti was not a party to that decision and at the time that the transfer request was received, it was not a requirement for Equiniti to investigate how any transferred funds were to be invested in a new pension scheme.

17. Mr T has also referred to TPR's guidance of April 2015 and says that Equiniti failed to adhere to the principles contained therein. Equiniti says that Mr T's transfer request predated the implementation of TPR's guidance, and the transitional arrangements did not require it to take any further action, even though the CETV was paid after the implementation date of 6 April 2015. The Adjudicator was of the view that Equiniti complied with the transfer checks in place at the time.

18. Mr T had a statutory right to a transfer and as the checks that Equiniti carried out did not give rise to any warning signal about STM or the Plan, it had no option other than to pay the CETV.

19. In the course of the investigation, the Adjudicator asked Mr T his reasons for wishing to transfer to a QROPS and whether he had received any incentive for transferring. Mr T has explained that he was told that if the pension was in a QROPS and he was to die, the whole pension pot could be transferred to his wife. His wife cares for his children and would only receive a state pension at the state pension age. He had no intention of leaving the UK upon his retirement and he was also told that he could access the new pension from the age of 55. As he did not know what age he could retire at under the CARE 2015, the new police pension scheme, and believed that he would be working until 60, he thought 55 was a better age to retire.

20. Mr T also received an incentive of £2,000 to transfer and he was told it would be taken from his pension pot upon completion of the transfer. It was explained to him

that there was a small percentage that could be removed in the transfer procedure, resulting in the amount above being paid out, tax free.

21. Looking at the information that was provided to Mr T prior to the transfer it does seem that there was some misinformation given. As far as the Adjudicator was aware Mr T's wife would be eligible to receive a widow's pension from the Scheme if he were to die before retirement age while still working for the Police. Also, the payment of £2,000 from the transfer payment is not allowed under HMRC's rules and Mr T may be liable to a tax charge of 55% on the amount received. If Mr T had investigated the claims made by the adviser at the time, he may have made a different decision about transferring.

22. Although the Adjudicator had every sympathy for the position that Mr T now finds himself in, he was of the view that there were no grounds as to why Equiniti should be held liable for the loss he has incurred through his investment in the Trafalgar Fund.

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

24. Mr T has asked why has the Adjudicator decided that he received the scorpion warning? He did not receive the scorpion leaflet/warning and wishes to know what evidence Equiniti has produced to show that it provided the leaflet.

25. Mr T has also asked why Equiniti's check of the QROPS was sufficient given that it had been given an outdated letter from STM in 2010 as proof of being on the register. Finally, Mr T wants to understand the reasoning behind why the Adjudicator was of the view that the complaint is different to that of Mr N [PO-12763] which was a similar complaint which was upheld.

Ombudsman's decision

26. Mr T has asked why the Adjudicator decided that he received the Scorpion leaflet and what evidence Equiniti has produced to show it was sent. Equiniti say the Scorpion leaflet was included with the transfer quotation along with the warning statement outlined in paragraph 12 above. The transfer quotations were issued to Mr T's IFA.

27. The Adjudicator cannot say categorically that the Scorpion leaflet was included with the transfer quotation but given that the issuing of Scorpion leaflets was required from February 2013 it would have been a well established standard practice for this to be included. I therefore agree that, on the balance of probability, it was included. It may be that the IFA did not pass this on to Mr T, but that is not the fault of Equiniti.

28. Further, the Adjudicator considered whether the receipt of this Scorpion leaflet would have made any difference to the decision that Mr T made to transfer. As Mr T has said that his reasons for transferring were more to do with a wish to retire earlier than allowed for under the Scheme the Adjudicator concluded that even had Mr T received

the Scorpion leaflet it is more likely than not that he would have proceeded with the transfer.

29. Mr T has asked why Equiniti's check of the QROPS was sufficient given that it had been given an outdated letter from STM in 2010 as proof of it being on the register. Equiniti says that the STM Plan was on HMRC's QROPS list at the point of transfer. HMRC maintains a list of QROPS on its website. The list is updated regularly by HMRC and the STM Plan is currently on the list and has remained on the list since 2010. The check that Equiniti therefore carried out at the time was in line with the level of checks required.

30. Finally, Mr T wants to understand the reasoning behind why the Adjudicator was of the view that his complaint differs to that of Mr N [PO-12763]. I would point out that each complaint is looked at on the facts of the case and is not influenced by previous Determinations that I have made.

31. Mr N's case is similar in that it relates to a complaint against the Police Pension Scheme. But there are differences in Mr N's complaint, namely: that the pension scheme that Mr N transferred to, the London Quantum Scheme was a recently established occupational scheme as opposed to a QROPS; it was sponsored by a newly registered employer geographically distant from Mr N; and the Authority failed to check certain features of this new scheme. Indeed, it subsequently transpired that the London Quantum Scheme was a scheme of concern and that several providers had blocked transfers to it.

32. The facts of Mr T's complaint are different as the Plan and its provider STM are still valid and the QROPS is still on HMRC's list of approved QROPS. The reason for Mr T's loss is the failure of the Trafalgar Fund and at the time of the transfer, Equiniti was not required to investigate how any transferred funds were to be invested in a new pension scheme.

33. I do not uphold Mr T's complaint.

Anthony Arter

Pensions Ombudsman
18 November 2021