

Ombudsman's Determination

Applicant	Mr Y
Scheme	Legal & General Employee Pension Plan (the Plan)
Respondent	Legal & General Assurance Society (Legal & General)

Outcome

1. I do not uphold complaint and no further action is required by Legal & General.

Complaint summary

2. The complaint against Legal & General is that it transferred the shareholding held within Mr Y's Selftrade SIPP (**the SIPP**), into the Plan even though he says that he did not specifically authorise this.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. Mr Y was employed by Legal & General and was a member of the Plan, which was managed and administered by Legal & General.
5. In late 2017, Mr Y says he was considering transferring his entitlement held within three other pension arrangements into the Plan.
6. One of those other arrangements was the SIPP, which was administered by Suffolk Life.
7. The assets within the SIPP were shareholdings (**the shareholding**) and cash.
8. During this time, Mr Y sent secure emails to Legal & General which gave a strong impression that he intended to sell the shareholding and transfer his whole pension fund.
9. The eventual request to transfer from the SIPP was made by Mr Y on 7 November 2018, after he submitted a formal transfer request form.

10. Legal & General subsequently requested the transfer of the entire fund within the SIPP, including the shareholding element.
11. Suffolk Life subsequently called Legal & General and asked whether it was a full or partial transfer. In this telephone call Suffolk Life only raised the general disinvestment of the Plan and did not specifically mention the shareholding.
12. In December 2018, Mr Y contacted Legal & General querying the transfer as he had received notification that his shareholding within the SIPP had been sold.
13. It was confirmed to him that only cash transfers were accepted and if Legal & General had been made aware of the shareholding within the SIPP, then ideally, he should have been contacted about this.
14. The transfer was finalised in early 2019. Mr Y says that the sale of the shareholding caused him an investment loss.
15. It could also have potentially caused him disciplinary issues with his employer as there were rules against trading in shares.
16. The trading issue was subsequently resolved but Mr Y claims that there is still an unremedied loss because of the lost value and income on the shareholding, which he had not intended to sell at that point.

Position of Legal & General

17. Legal & General states that it followed the instructions on the transfer request form and a partial transfer was not requested by Mr Y.
18. Had he expressed an interest in a partial transfer then, a partial transfer form would have been issued, which is separate to the main transfer form.
19. These partial transfer forms are not issued as standard as it does not encourage part transfers, which are decided on a case-by-case basis.
20. When Suffolk Life called to query the transfer, it only raised the general disinvestment of the Plan, not the shareholding within the SIPP, so there would have been no reason to contact Mr Y about this.
21. Any change in the value of the transfer from the amount stated on Mr Y's transfer request form could have been down to market movement.
22. Suffolk Life did not query the value stated on the transfer request form by Mr Y, during its phone call with Legal & General. So, there was no reason to have known that this also included the value of the shareholding, which Mr Y says he did not want to sell or transfer.

Position of Mr Y

23. Mr Y says that the shareholding within the SIPP should not have been sold without his express permission and he should have been consulted when Suffolk Life called querying the transfer.
24. He also says that in the call, disinvestment is discussed, but on his transfer request form he submitted, he made absolutely no mention of disinvesting anything.
25. He does not understand why the transfer was not put on hold, and why he was not contacted directly about it. Even if Suffolk Life did not say the word "SIPP", he never said to sell anything, so the shareholding should not have been sold.
26. He also says that Legal & General should have noticed that the actual transfer value, including the sale of the shares, was higher than he had stated on the transfer request form. So, this should also have been raised with Suffolk Life before the transfer was completed.
27. The secure emails he sent to Legal & General, which gave a strong impression that he intended to sell his shareholding and transfer his whole pension fund, were sent months before his actual transfer request. He had changed his mind about selling the shareholding by then and those emails should not have been taken into account when his transfer request was eventually made.

Adjudicator's Opinion

28. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by Legal & General. The Adjudicator's findings are set out in paragraphs 29 to 43 below.
29. Mr Y's complaint was that Legal & General had transferred the shareholding of the SIPP into the Plan without his express consent. The Adjudicator considered it important to note that for a complaint to be upheld by the Pensions Ombudsman a finding of maladministration must be made, from which any subsequent losses then flowed.
30. For example, a breach of overriding statutory guidance or internal policy or procedure would constitute maladministration. An expressed preference for further checks to have been made, or more time taken, would not constitute maladministration.
31. Legal & General accepted that the transfer from the SIPP was made in full but say that it was simply following Mr Y's instructions on the transfer request form.
32. The Adjudicator noted that My Y had not requested a partial transfer, and his earlier emails gave a strong impression he intended to sell the shareholding and transfer his whole pension fund. Although it was appreciated that he said by the time of the transfer, he had changed his mind about selling the shareholding.

33. The Adjudicator did not consider it was unreasonable that a full transfer took place. If Mr Y had changed his plans and no longer wished for the shareholding to be sold and transferred, he could have sent a follow up email confirming this at any point, especially after the transfer had been initiated.
34. The transfer request form stated the plan number and approximate value, but the shareholding was also an investment held within the SIPP. So, it would have been reasonable to expect this part of the fund to have also been transferred, unless stated otherwise.
35. The Adjudicator understood that only a cash transfer was allowed by Legal & General. So, the sale of the shareholding would have been the only way a transfer could have been completed. The Adjudicator also understood that requests for partial transfers would have been considered on a case-by-case basis requiring a separate application form, so there was no guarantee that Mr Y's transfer would have been allowed without the sale of the shareholding.
36. Mr Y had provided email evidence where it was stated that ideally, Suffolk Life should have made Legal & General aware of any SIPP element, and it would have then contacted him to make sure that he only wanted the cash part transferred.
37. The Adjudicator agreed this would have been preferable, but in a telephone call made to Legal & General by Suffolk Life, a copy of which had been provided to Mr Y, it was only asked whether it was a full or partial transfer. Suffolk Life also raised the general disinvestment of the SIPP but did not mention the shareholding.
38. As the shareholding was not mentioned by Suffolk Life, and a partial transfer was not requested on Mr Y's transfer form, there was no reason for Legal & General to have contacted Mr Y about this.
39. The value of the SIPP stated by Mr Y on his transfer request form, which did not include the value of the shareholding, was not queried by Suffolk Life. So again, there would have been no reason for Legal & General to have raised this with Mr Y.
40. Based on this, the transfer request form, and the earlier secure email correspondence, it was the view of the Adjudicator that it was reasonable that Legal & General did not contact Mr Y.
41. The Adjudicator appreciated that Mr Y also said he made no mention of disinvesting anything, but this was a general term often used during transfers. This would not have been enough to have alerted Legal & General to the shareholding within the SIPP.
42. In the absence of a financial adviser, it was for Mr Y to manage the transfer process. Legal & General would have been acting as an administrator on an execution only basis and would not have been expected to interpret his instructions, querying them but to follow them.

43. In the absence of an instruction not to sell and transfer the shareholding, a finding of maladministration could not be made.
44. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, so will only respond to the additional points made by Mr N.

Ombudsman's decision

45. In response to the Opinion Mr Y has reiterated his argument that at no point did he say that Legal & General should sell anything and his pension should have been treated with more care.
46. Legal & General simply followed Mr Y's instructions provided on the transfer request form. These instructions did not include a request for a partial transfer or a request not to sell the shareholding within the SIPP. Therefore, I consider that legal & General paid due care and consideration to Mr Y's request.
47. It was entirely reasonable for the fund to be disinvested and a full transfer to take place as this is what the transfer form instructed Legal & General to do.
48. I do not uphold Mr Y's complaint.

Anthony Arter

Pensions Ombudsman
28 November 2022