

Ombudsman's Determination

Applicant	Mr H
Scheme	Debenhams Pension Savings Plan (the Plan)
Respondent	Legal & General Assurance Society Limited (L&G)

Outcome

1. I do not uphold Mr H's complaint and no further action is required by L&G.

Complaint summary

2. Mr H has complained that L&G did not carry out adequate due diligence when it processed and accepted his request to transfer to the Focusplay Retirement Benefits Scheme (the **Receiving Scheme**). He claims that had L&G done so, it would have stopped the transfer from proceeding and he would not have lost his pension funds. So, he would like L&G to restore the value of the fund or make an award, in recognition of its error.

Background information, including submissions from the parties

3. From 1 October 2012, Mr H was an active member of the Plan, a defined contribution occupational pension scheme, until mid-2015 when he became a deferred member.
4. On 24 September 2015, Mr H contacted L&G to ask for overseas discharge forms. It is unclear whether these were issued. However, Mr H did not contact L&G about these again.
5. On 19 December 2015, Mr H telephoned L&G and asked for transfer paperwork, which L&G later issued directly to Mr H, quoting a fund value of £55,379.03, as at 17 December 2015. The transfer paperwork contained the following statement:

"We have enclosed some important information we recommend that you read before you decide to transfer your pension pot, including a regulatory leaflet on pension scams. Further regulatory information concerning pension liberation, unauthorised payment charges and investment fraud may be found at www.legalandgeneral.com/protectyoursavings and we would urge you to read these before deciding to transfer. If you do not have access to the internet, please contact us and we will arrange to send copies to you.

We also recommend that you consider taking Financial Advice, from a Financial Conduct Authority registered Adviser, before making a final decision about transferring."

6. It appears that when completing the transfer paperwork, Mr H signed the member declaration, without dating it, and then sent it off to the Receiving Scheme for it to complete its declaration form. Consequently, he did not have sight of the information the Receiving Scheme had inputted, which stated that Mr H was employed by Lola Investments & Marketing Limited, an “associated employer”.
7. On 14 March 2016, L&G received a transfer request of Mr H’s funds to the Receiving Scheme from Roger Bessent on behalf of Gleeson Bessent Trustee Services Limited. This correspondence included the following:-
 - A letter of authority from Mr H, signed and dated 5 February 2016.
 - A completed Receiving Scheme declaration dated 24 February 2016 and member declaration signed by Mr H on 1 March 2016.
 - A copy of the Receiving Scheme’s second definitive deed and rules dated 7 February 2015.
 - A copy of the Receiving Scheme’s Deed of substitution and participation dated 27 March 2015.
 - A screenshot showing the scheme details HM Revenue & Customs (**HMRC**) held for the Receiving Scheme.
 - A copy of the Receiving Scheme’s registration document submitted to The Pensions Regulator (**TPR**).
 - A screenshot of HMRC’s acknowledgement of the Receiving Scheme’s registration for tax relief and exemptions.
 - An explanatory document that confirmed the participating employers and provided a Receiving Scheme declaration.
8. The salient information taken from the correspondence listed in paragraph 7 above, have been summarised below.
 - The Receiving Scheme had been established by Trust on 23 April 2013 and registered with HMRC on 2 May 2013.
 - Lola Investments & Marketing Limited, which was incorporated on 15 August 2011, became a Participating Employer of the Receiving Scheme on 27 March 2015 by Deed of Substitution and Participation, and this change had been submitted and registered to TPR on 6 July 2015.
 - The Receiving Scheme had written confirmation from Mr H that he had not been offered nor solicited the offer of cash or other payment in relation to his membership of the Receiving Scheme or the investments he had instructed.

- The Receiving Scheme had written confirmation from Mr H that he had read and understood the leaflet on Pensions Liberation Fraud entitled “Predators Stalking Your Pension” issued by The Pensions Advisory Service.
- The Receiving Scheme had written confirmation that Mr H understood the potential consequences of receiving directly or indirectly any benefit from his pension fund other than those benefits that are authorised by UK law and that it was not his intention to seek or receive any other benefits.

9. Having signed the member declaration, Mr H had accepted the following statements:

“I have read and understood the regulatory leaflet, together with the regulatory information on www.legalandgeneral.com/protectyoursavings, that Legal & General has given me.”

“I have read and understood the ‘Things to Consider When Transferring A Pension’ [sic] and how this may impact me.”

“I agree and acknowledge that Legal & General will let me know if it requests additional information from the receiving scheme to satisfy itself of the facts described in D(i) and (ii) above [that the receiving scheme is registered with HMRC and that the transfer would be a recognised transfer for HMRC’s purposes].”

10. On 19 March 2016, L&G wrote to Mr H to confirm that it had sent a payment of £57,578.54 to the Receiving Scheme. The transfer then completed on 23 March 2016.

11. On 18 January 2020, Mr H complained to L&G. He said, in summary:-

- He did not believe that L&G carried out the relevant and expected due diligence for his transfer from the Plan to the Receiving Scheme.
- While he was aware he requested and signed the transfer paperwork, this took place after he was cold called from an unknown company. At the time, he had just ended his employment with Debenhams and was not in the right frame of mind to make financial decisions. This was because he was “dealing with the fallout from the [employment] settlement and also the desire to disassociate [himself] with Debenhams and that brand.”
- Based on the telephone call and the literature he received, he thought he was moving away from L&G to a lesser known, but recognised scheme that had the same or better benefits.
- After seeking legal advice, he had been informed that there were warning signs that L&G could and should have identified that would have highlighted possible risks.
- He claimed that the following warning signs ought to have been identified:

- The Receiving Scheme was unregulated.
- It had only received recent approval from HMRC.
- He was not employed by the sponsoring employer, so he did not have the right to transfer to the Receiving Scheme, given that this was an occupational pension scheme.
- L&G did not check that he had received advice from a regulated Independent Financial Adviser.
- Had L&G looked into Gleeson Bessent, it would have found that it was owned by Roger Bessent, who was also the primary Trustee of the Receiving Scheme. So, he was using his own company to provide advice to third parties to encourage them to transfer to a Scheme he managed.
- The Receiving Scheme did not have a default fund for ongoing accrual, it did not offer a 'Default Lifestyle Strategy', nor did it offer members a choice as to how their funds were invested.

12. On 24 January 2020, L&G responded to the complaint. It did not agree that it was at fault for the following reasons:-

- The Receiving Scheme was registered as an occupational pension scheme, so it did not need to be regulated by the Financial Conduct Authority (**FCA**). Occupational pension schemes have to be registered with TPR, which the Receiving Scheme was. It had a copy of the TPR scheme details dated 6 July 2015, which confirmed that the Receiving Scheme was registered at the time of Mr H's transfer.
- The Receiving Scheme was registered with HMRC on 2 May 2013, so it was not recently registered.
- It was not its responsibility to carry out employment checks and Mr H had completed the transfer form and ticked to confirm that he was part of Lola Investments & Marketing Limited, which was listed as a participating employer of the Receiving Scheme.
- Financial advice was not a requirement for the transfer of a defined contribution pension. So, it did not need Mr H to have sought advice before proceeding. It had provided a leaflet which warned Mr H about the risk of transferring his pension and recommended seeking financial advice. In its view, it had provided Mr H with the relevant information to make an informed decision, but he proceeded without seeking advice.
- It had received other information, in addition to the communication from Gleeson Bessent about the transfer, and listed the paperwork outlined in paragraph 7 above. It also highlighted that Mr H had signed the declaration form.

- At the time of Mr H's transfer, the Receiving Scheme met the requirements and was approved by both HMRC and TPR. It had no authority over the Receiving Scheme, so it wouldn't be able to investigate information regarding investment options.
13. On 23 May 2020, Mr H contacted L&G, asking it to respond to the following questions under the Plan's Internal Dispute Resolution Procedure (**IDRP**):
- What due diligence was carried out in relation to his transfer request to the Receiving Scheme, considering L&G did not flag any concerns?
 - Why did it not ask him any questions about the reasons for joining the Receiving Scheme?
 - Why did it not send him a copy of TPR's 'Scorpion' pensions scams leaflet (the **Scorpion leaflet**), which was a requirement of ceding schemes since 2013?
14. On 11 June 2020, L&G issued its response under stage one of the Plan's IDR. It said, in summary:-
- It agreed with the original complaint decision after reviewing the transfer alongside its Pensions Technical Consultant, who affirmed that L&G had carried out full due diligence, which was outlined in L&G's email dated 24 January 2020.
 - It had received confirmation in 2015 from HMRC that the Receiving Scheme was legitimately registered, and the information provided to L&G included screenshots from 2016 showing that it was still registered. It was also registered with TPR and completing regular returns.
 - The transfer pack issued to Mr H had contained a Scorpion leaflet. The welcome letter in the pack mentioned the scams leaflet specifically, along with a link to additional scams information on L&G's website.
 - It had marked the Receiving Scheme as a concern in 2017, which was after Mr H's transfer.
 - It had responded to Mr H's queries regarding due diligence, his employment relationship and financial advice in its original complaint response.
 - It had not received an offer or payment from the Receiving Scheme or associated parties, as this would be inappropriate.
15. On the same date, Mr H escalated his complaint and made the following points:-
- He did not believe that L&G had evidenced that satisfactory checks had been carried out. Namely, that it had performed due diligence into the Receiving Scheme, its background, its regulatory position and the member's status in relation to the Scheme.

- Had L&G contacted him and made the most basic enquiries, it would have realised that he was not employed by the sponsoring employer. Instead, it transferred his funds without any checks whatsoever.
 - He highlighted two individual cases within the last six months where the Pensions Ombudsman (**tPO**) had issued a Determination in favour of the members who lost the money they had transferred to the Receiving Scheme.
16. On 15 June 2020, L&G responded to the complaint under stage two of the Plan's IDR. It said, in summary:-
- An independent trustee on the Dispute Resolution and Discretionary Payments Sub Committee reviewed Mr H's complaint, and agreed with the original complaint decision. They also noted that L&G had offered to send Mr H a copy of the transfer document in its original response.
 - The level of due diligence carried out met all of its transfer requirements. It did not need to telephone Mr H to check if he was employed by the sponsoring employer, because Mr H signed and returned the form, confirming that he was. It also included the pensions scams leaflet in the transfer paperwork, and Mr H chose to proceed without seeking financial advice.
 - It had a valid HMRC certificate dated 7 March 2016, a valid registration from TPR dated 6 July 2015, a copy of the Receiving Scheme's Rules, two Trust Deeds, a letter of authority from Mr H and the Receiving Scheme declaration signed by both Mr H and the Receiving Scheme. It wanted to reiterate that at the time Mr H transferred out, there were no red flags or scam concerns about the Receiving Scheme.
 - While it had reviewed tPO's previous Determinations on the Receiving Scheme, it could not comment on the decision as each complaint was reviewed on its own merit.

Mr H's position

17. He believes L&G failed to follow TPR's 2013 guidance on transfers, which had been "affirmed" in 2015 [The Pensions Scams Industry Group's 2015 publication "Combating Pension Scams – a Code of Good Practice" (the **2015 Code of Good Practice**)]. Had the correct level of due diligence been carried out, he would never have transferred to the Receiving Scheme, as he would have understood the risks involved. Due to the amount being transferred, he believes L&G should have asked some of the "most basic questions" advised within the 2015 Code of Good Practice, such as why he was transferring and how he heard about the Receiving Scheme. This would have highlighted that he had been cold called.
18. He does not believe L&G issued a Scorpion leaflet to him.
19. Lola Investment and Marketing Limited never existed and is not a registered company. Had L&G checked on Companies House or searched for this company, it

would have been aware of this. Further, it would have been evident that there was a considerable distance between his and the employer's addresses.

20. He does not recall seeing the vast majority of the information L&G received from the Receiving Scheme.
21. His signature is on only two pages out of the 60 plus documents that formed part of the due diligence. After reviewing this, L&G did not contact him until after it had processed the transfer. He believes this demonstrates a lack of care and due diligence.
22. There was a different style of handwriting between his signature and the other writing on the paperwork. L&G should have spotted this and checked whether Mr H had agreed to this.
23. L&G should have asked to see the written confirmations the Receiving Scheme said they had received from Mr H.
24. There is no evidence that L&G did any checks on Roger Bessent or his companies. Had it done so, it would have seen that a number of the companies of which Mr Bessent was a director, had been wound up and forced into liquidation.

L&G's position

25. It had received the Trust Deed of the Receiving Scheme, it could see that the employer was actively trading and had noted the Receiving Scheme was not newly established. There was no prior scams history associated with the Receiving Scheme at the time and while it was not an FCA-regulated scheme, it was regulated by TPR as an occupational pension scheme, and was completing regular scheme returns. In addition, based on the paperwork, Mr H had confirmed he was employed by the participating employer of the Receiving Scheme. Consequently, the transfer was deemed low risk.
26. It believes the original transfer documentation confirms that it sent the regulatory leaflet with its enclosed documents. A copy of the leaflet would not have been scanned to Mr H's Plan because it was an insert included by its print house. Further, Mr H signed the declaration in the form confirming that he had read and understood the regulatory leaflet that it had included.
27. There was no evidence that Mr H was trying to access his pension at any point before the transfer completed. It has also been unable to find any third-party requests relating to his pension.
28. It did not request the written confirmations from Mr H as this was not a requirement to satisfy L&G's due diligence checks, and Mr H had signed its member declaration.

Adjudicator's Opinion

29. Mr H's complaint was considered by one of our Adjudicators who concluded that no further action was required by L&G. The Adjudicator's findings are summarised in paragraphs 30 to 37 below.
30. The Adjudicator reviewed the applicable transfer due diligence guidance at the time of Mr H's transfer, which was TPR's February 2013 guidance the updated 2015 Code of Good Practice.
31. TPR's February 2013 guidance recommended that transferring schemes issue a warning to members about the dangers of pension liberation fraud, or 'scams'. The most common way of doing this was to include the Scorpion leaflet with the transfer pack. While L&G did not have a copy of this on Mr H's file, the Adjudicator was not persuaded that this meant it had been omitted, for the following reasons:
- L&G had said it was standard practice for a copy of the Scorpion leaflet to be inserted by its print house. Given that the transfer request took place nearly three years after TPR's guidance had been first issued, this process would have been well established.
 - If Mr H had not received the Scorpion leaflet, the Adjudicator would have expected him to have mentioned this or notified L&G as the transfer paperwork and declaration explicitly made reference to it.
32. Page 8 of TPR's February 2013 guidance listed criteria that transferring schemes ought to look out for. This included, but was not limited to:
- Receiving scheme not registered, or only newly registered, with HMRC;
 - Member is attempting to access their pension before age 55;
 - Member has pressured trustees/administrators to carry out transfer quickly;
 - Member was approached unsolicited;
 - Member informed that there is a legal loophole; and
 - Receiving scheme was previously unknown to you, but now involved in more than one transfer request.
33. The 2015 Code of Good Practice set out a two-stage due diligence process. The first stage was to check whether there were any factors that would indicate a pension liberation or scam risk. Only if this initial analysis threw up some concerns did the 2015 Code of Good Practice recommend further checks.
34. L&G's initial analysis did not present a risk for pensions scams activity. Further, it had not received any information that indicated that Mr H had been cold called, incentivised into a transfer, misinformed about access to benefits or informed about a

guaranteed rate of return/an overseas investment opportunity. So, it would not have needed to carry out further due diligence.

35. The Receiving Scheme was regulated by TPR, it had not been recently approved by HMRC, and based on the paperwork L&G received, Mr H was transferring to the Receiving Scheme as he was employed by a participating employer. Consequently, there was no reason for L&G to contact Mr H and ask for his reasons for joining the Receiving Scheme. Further, in *Hughes v Royal London*¹, the High Court decided that a person met the definition of “earner”, for the purposes of a statutory transfer to an occupational pension scheme, if they had earnings from any source. So, the fact that Mr H was employed elsewhere would not have prevented the transfer from proceeding.
36. As L&G had not identified any risks, it would not have been proportionate for it to undertake an in depth review of the employer, Mr Roger Bessent or Gleeson Bessent Trustee Services Limited. Nor would it have needed to have seen the written confirmations outlined in paragraph 8 above.
37. In addition, L&G would not have needed to have done the following:-
- question the two sets of handwriting on the transfer paperwork, as there were two sets of declaration forms to fill in;
 - question the investment options available in the Receiving Scheme;
 - check that Mr H had received financial advice regarding the transfer, as there was no requirement for a person transferring defined contribution benefits to obtain financial advice; nor
 - contact Mr H prior to completing the transfer, as the paperwork demonstrated that he had agreed to the transfer.
38. Mr H did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr H provided his further comments which do not change the outcome.
39. In summary, Mr H said that:-
- To satisfy the due diligence guidance in the 2015 Code of Good Practice, L&G needed to have contacted him and asked him a series of questions. Had it done so, it would have known that he was cold called, had been incentivised, that there was no employment link and that he lived far from the Receiving Scheme’s location.
 - It should not have assumed that he had not been approached unsolicited based on the transfer paperwork.

¹ [2016] EWHC 319 (Ch)

- His transfer request was the first request for a transfer to the Receiving Scheme that L&G received. So, L&G was required to ask more questions of him. His answers to which, would have indicated that risks were present, and had L&G highlighted these, it would have made him begin to question what he had been told by the introducer.
- L&G should not have relied on the declarations provided by Roger Bessant, it should have independently assessed and validated them.
- The copy of the TPR Scheme return demonstrated that rather than L&G conducting independent checks, it took the documents it received at face value.
- Had L&G checked the records at Companies House, it would have seen that Roger Bessant had been a director of numerous Trustee companies that were liquidated or trading at the time of his transfer, yet Roger Bessant was doing all of the administration. He thought this was odd.
- He believes his complaint has similar or identical circumstances to a number of previous complaints that had been determined and upheld, so his should also be upheld.

40. I note the additional points raised by Mr H, but I agree with the Adjudicator's Opinion.

Ombudsman's decision

41. I have considerable sympathy for Mr H, who appears to have been a victim of pension liberation fraud and is not able to access his pension funds. However, this matter cannot be viewed with the benefit of hindsight, and it is the circumstances and specific facts at play at the time of the transfer which must be analysed.
42. L&G had a statutory duty to transfer Mr H's funds. It was required to act upon this duty when it received his transfer paperwork, unless there were any indications of why the transfer should not go ahead, such as those concerning pension liberation fraud.
43. The 2015 Code of Good Practice and TPR's February 2013 Guidance provide an outline of potential warning signs which could suggest pension liberation fraud activity was taking place. However, in this case there was no indication that L&G had any reason for concern and, accordingly, it did not take the next step of making any further enquiries.
44. Based on the information L&G received and reviewed, the Receiving Scheme was not recently registered with HMRC, it had informed TPR about its recently added participating employer, Mr H had confirmed that he was employed by that participating employer, and he had also confirmed to the Receiving Scheme that he had not been incentivised and he had read the Scorpion leaflet. L&G was not in a position to know that Mr H had not seen the completed paperwork nor the additional information provided by the Receiving Scheme.

45. I acknowledge that Mr H believes L&G ought to have contacted him to ask the set of member questions outlined in the 2015 Code of Good Practice, that formed part of the initial analysis. However, the 2015 Code of Good Practice recognises that it is for a trustee to decide how to obtain the information it needs. I very much encourage trustees and providers to read and consider the useful processes set out in the Code of Good Practice, but it should be noted that it is not a statutory code, with the mandatory obligations that entails, and that trustees and providers are entitled to decide upon their own, proportionate due diligence processes.
46. By signing L&G's member declaration, Mr H had accepted that he had read and understood the Scorpion leaflet, and in any event I am satisfied that the Scorpion leaflet would have been, more likely than not, sent to Mr H. The Scorpion leaflet highlights key warning signs, such as unsolicited approaches to the member, overseas transfers and incentives being offered to transfer – similar to many of the warning signs and questions set out in the 2015 Code of Good Practice. So, in my view, having received the Scorpion leaflet, Mr H had the opportunity to raise the fact he had been, for example, cold called with L&G, yet he did not do so. Taking this into account, I am satisfied that the actions of L&G were reasonable, in this particular case and at this particular time, in not making further checks, or validations, of the information received and that formed a part of its due diligence process. Consequently, I do not agree that L&G's decision not to explicitly ask Mr H those question in this case, amounted to maladministration.
47. Mr H has brought to my attention a number of previous cases that have been determined by my predecessor. He has said that these cases contain similarities, but have been upheld. There are a number of factors that need to be considered when determining cases of this type. It is usually a combination of these factors that leads me to come to my conclusion.
48. While I acknowledge there are similarities, I do not agree that they are identical. For example, in two of the cases, the transfer took place prior to the 2015 Code of Good Practice and the case of *Hughes v Royal London*. So, at the time, the two-stage due diligence process had not been established, and the pensions industry's understanding was that in order to satisfy the definition of "earner" for the purposes of a statutory transfer to an occupational scheme, the person requesting the transfer had to be employed by an employer associated with the receiving occupational pension scheme.
49. In the other case quoted by Mr H, there was nothing to suggest that a Scorpion leaflet had been issued. In addition, there were other factors known to the ceding scheme, such as the member's insistence and the number of previous transfer attempts, which indicated that further due diligence was necessary. So, there is good reason why Mr H's case does not have an identical outcome.
50. It is regrettable that the L&G's decision to proceed with the transfer has not transpired to be in Mr H's best financial interests. However, I consider that L&G fulfilled its due diligence obligations with the information it held at the time.

CAS-43847-P7M0

51. I do not uphold Mr H's complaint.

Dominic Harris

Pensions Ombudsman

3 April 2023