

Ombudsman's Determination

Applicant	Mr I
Scheme	Standard Life Personal Pension Plan (the Plan)
Respondent	Standard Life Assurance Limited (Standard Life)

Outcome

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

Complaint summary

2. Mr I complained that Standard Life failed in discharging its duty of care when he requested to transfer his benefits from the Plan to a new pension arrangement. In particular, Standard Life failed to:
 - conduct adequate checks and enquiries about the new pension arrangement;
 - determine why Mr I wanted to transfer his benefits; and
 - discuss with Mr I the concerns that would have resulted from the enquiries.
3. As the assets of the new pension arrangement are unlikely to be recovered in full, or even at all, Mr I asked to be reimbursed for the loss he has incurred.

Background information, including submissions from the parties

4. Mr I enrolled in the Plan in 2000. It was a defined contribution (**DC**) arrangement set up by his employer. He stopped paying contributions in 2006 when his employment ended.
5. On 20 August 2012, Mr I signed a letter (**the Discharge Letter**) addressed to Standard Life which instructed the transfer of his benefits in the Plan to the DM1 Retirement Pension Plan (**the DM Plan**). The letter was typed, except for Standard Life's address, and Mr I's name and personal details, which were handwritten. It stated the DM Plan's Pension Scheme Tax Reference (**PSTR**) number and confirmed that the administrator was AC Management & Administration Limited (**the Administrator**). It included the Administrator's bank details and gave authority for Standard Life to deal directly with the Administrator.

6. The Pensions Ombudsman (**TPO**) understands that Fast Pensions Limited (**Fast Pensions**) was the DM Plan's sponsoring employer and FP Scheme Trustees Limited was the Trustee (**the DM Trustee**).
7. On 5 September 2012, the Administrator wrote to Standard Life and enclosed the signed Discharge Letter and the DM Plan's HM Revenue and Customs (**HMRC**) Registration Certificate (**the HMRC Certificate**). The DM Plan had been registered with HMRC for tax relief and exemptions on 14 August 2012.
8. On 6 September 2012, Standard Life telephoned the Administrator, who verbally confirmed that the DM Plan was a DC occupational pension scheme.
9. On 7 September 2012, Standard Life issued Mr I's transfer certificate (**the Transfer Certificate**) to the Administrator and paid a transfer amount of £20,306.26 (**the Transfer**). The Transfer Certificate was also issued to the adviser who had helped Mr I enrol in the Plan.
10. On 30 May 2018, Fast Pensions and five other related firms were wound up in the High Court.
11. On 5 July 2018, Dalriada Trustees Limited (**Dalriada**) was appointed by The Pensions Regulator (**TPR**) as independent trustee to the DM Plan and a number of other pension arrangements linked to Fast Pensions. This was due to TPR having concerns that the pension arrangements were being used for pension liberation or were scams.
12. TPO understands from The Insolvency Service that while members of the DM Plan were told that investments would be made in a wide-ranging portfolio, funds were mostly used to make loans to companies and other entities which appeared to be connected with Fast Pensions and the DM Trustee. Dalriada is still investigating the prospect of these loans being repaid in the future.
13. On 21 October 2019, Mr I's representative wrote a letter to Standard Life. The main points of the letter are set out in paragraphs 14 to 28 below.
14. Standard Life had a duty to comply with its common law and statutory duties of care to the beneficiaries of the Plan. So, meeting a transfer request must be conducted with care and skill which professional trustees should reasonably be expected to have.
15. S.99(1)(b) of the Pension Schemes Act 1993 (**PSA 1993**), states that: "...the trustees or managers of the scheme have done what is needed to carry out what the member requires....the trustees or managers shall be discharged from any obligation to provide benefits...". It questioned whether Standard Life had done what was needed to carry out what Mr I required.
16. Pension liberation was first identified within regulations in 2004. This included pension administrators being required to enquire as to whether the intention was to liberate a pension. A transfer is not allowed if it is for the purpose of liberation.

17. In July 2010, TPR provided guidance that clarified the role of the employer and trustee and aimed to ensure that trustees are actively involved in managing the risk of transfers. It highlighted that trustees should start from the presumption that transfers are not in members' interest and should be approached cautiously and actively. Trustees should "apply a high level of scrutiny to all incentive exercises to ensure members' interests are protected.....no pressure of any sort to be placed on members to make a decision to accept the offer."
18. TPR set out guidance on the level of knowledge and understanding required by trustees in Code of Practice No. 7.
19. In the Determination PO-1837¹ issued by the Pensions Ombudsman (**the PO**) in January 2015:-
 - Paragraph 24 said that TPR published a press release in February 2012 warning against early release pension offers and a fact sheet for members about pension liberation fraud. It also said that the Financial Services Authority had published its own material for consumers, and in February 2013, TPR had published "Pension Liberation Fraud - An Action Pack for Pension Professionals".
 - Paragraph 101 said that if a transfer could be for pension liberation, this would be a good reason for delaying the transfer and asking relevant questions.
20. In another Determination by the PO in June 2015, PO-5869², it stated in paragraph 22 that TPR did not issue guidance to providers about pension liberation and scams until February 2013. It said that this could be regarded as a point of change in what could be regarded as good industry practice. However, Mr I's representative said that this was incorrect as previous Determinations had said that TPR provided guidance on the matter in July 2010 and February 2012.
21. At the time of the Transfer, there was sufficient publicly available information of which Standard Life would have been aware. In failing to take this into account, it had caused Mr I to suffer a loss.
22. The Discharge Letter contained three different types of handwriting and Standard Life's address had been handwritten. This inferred that it had been sent to Mr I incomplete, and he had been encouraged to sign it before the adviser completed the address. So, the Discharge letter should have "rung alarm bells" to Standard Life.
23. Any competent trustee would know that HMRC registration does not provide reassurance of compliance, approval or certification.
24. Standard Life failed to make any enquiries and simply "rubber stamped" the Transfer request. So, it had failed in discharging its duty of care and is liable for the loss sustained. In particular, Standard Life failed to:

¹ <https://www.pensions-ombudsman.org.uk/sites/default/files/decisions/PO-1837.pdf>

² <https://www.pensions-ombudsman.org.uk/sites/default/files/decisions/PO-5869.pdf>

- conduct adequate checks and enquiries about the DM Plan;
 - determine why Mr I wanted to transfer his benefits; and
 - discuss with Mr I the concerns that would have resulted from the enquiries.
25. Standard Life should have provided advice to Mr I comparable to that in the “Scorpion” warning leaflet published by TPR in February 2013, including recommending that he obtains independent advice and that being cold called and promised a signing up bonus were pension scam warning signs.
26. As a minimum, Standard Life should have contacted Mr I to find out why he wanted to transfer, how he had been contacted by the Administrator, and whether he had been offered an incentive to transfer his benefits.
27. If Standard Life had carried out reasonable due diligence, it would have discovered the following:
- the DM Plan had been recently set up;
 - the Administrator had recently been registered as a new company; and
 - Mr I had been cold called by an unregulated adviser and told that this was an “opportunity not to be missed”.
28. This would have resulted in Standard Life being suspicious of the Transfer.
29. On 24 October 2019, Standard Life replied to the letter from Mr I’s representative with the following points:-
- The Discharge Letter appeared to comply with the requirement for a statutory right to transfer.
 - It contacted the Administrator who confirmed that the DM Plan was a DC occupational scheme.
 - The HMRC Certificate showed that the DM Plan was properly registered with HMRC.
 - It would not be appropriate to apply current levels of knowledge about pension liberation and scams to a situation from the past.
 - It was satisfied that it had carried out the required checks at the time.
30. Additional comments from Mr I’s representative are set out below:-
- It was concerned about the Discharge Letter. Standard Life’s address had clearly been written in different handwriting to Mr I’s signature.
 - It had never before seen a pension transfer authority with a handwritten address.

- Receiving such a “shoddily” prepared transfer authority should have made it clear that something was wrong and should have raised “red flags”.
- Mr I had been offered £1,000 and the doubling of his pension pot in the event of his death or diagnosis of terminal illness for transferring his benefits.

31. Standard Life’s additional comments are set out below:-

- It was satisfied that the Discharge Letter was an acceptable signed authority from Mr I.
- It was not unusual for Standard Life to receive an authority in a format where the main body is typed but the reference and address are handwritten.
- It was satisfied that it received all the information it could reasonably have expected to receive at the time.

Adjudicator’s Opinion

32. Mr I’s complaint was considered by one of our Adjudicators who concluded that no further action was required by Standard Life. The Adjudicator’s findings are summarised below:-

- It was apparent that Mr I had been the victim of fraud, and this will have caused him significant distress and affected his retirement plans. However, his complaint was solely based on the question of whether Standard Life’s decision to accept the transfer request was reasonable at the time he submitted it.
- The DM Plan was registered with HMRC, and the Administrator confirmed orally to Standard Life that the DM plan was a DC occupational pension scheme. The Administrator’s letter to Standard Life on 5 September 2012 inferred that it was willing to accept the Transfer. So, Mr I’s transfer application appeared to comply with the requirements in section 95(1) of the PSA 1993, resulting in him having the right to a cash equivalent transfer value (**CETV**) under section 94 of the PSA 1993.
- To the extent that Standard Life had a duty of care to Mr I, it would have been overridden by the statutory obligation to make the transfer. This was consistent with s.99(1)(b) of the PSA 1993, referred to by Mr I’s representative.
- Mr I’s representative had referred to the following regulations and guidance:-
 - The Pensions Act 2004 (**PA 2004**), referred to as “regulations in 2004” in paragraph 15. While the PA 2004 did recognise pension liberation, it was only in relation to giving TPR power to make restraining and repatriation orders, and for the courts to be given powers to order restitution.

- In July 2010, TPR and the Financial Services Authority issued a joint statement, but it was about enhanced transfer value exercises and was primarily aimed at financial advisers giving advice to transferring members.
 - In February 2012, TPR published a warning and factsheet about pension liberation. However, it was designed to raise public awareness about pension liberation rather than introduce new steps for transferring schemes to follow.
 - TPR did not issue guidance to providers about pension liberation and the danger of pension scams, including the “Scorpion” warning leaflet, until February 2013. This was generally regarded as a point of change in what might be considered to be good industry practice. But, the Transfer payment was made on 7 September 2012, well before this guidance was issued.
 - Mr I’s representative submitted that Standard Life should have provided advice to Mr I, comparable to that in the “Scorpion” warning leaflet, but the Adjudicator disagreed. It was not reasonable to apply more recent standards of practice of pension liberation and scams to a past situation. This was consistent with the position that the PO had taken in other cases, including PO-6388³, which had close similarities to Mr I’s complaint and was Determined in June 2015.
 - While the Adjudicator accepted that the handwriting for Standard Life’s address and Mr I’s details was different to the name under his signature, there could be a plausible explanation for this. For example, it would be reasonable for a bona fide financial adviser to help a client draft and write an instruction letter. So, the Adjudicator did not agree that Standard Life should have treated the different handwriting as a warning sign.
 - Mr I’s representative also said that Standard Life should have contacted Mr I in order obtain more details. But Standard Life did not receive any information to raise concerns about the Transfer, the receiving scheme or to doubt Mr I’s intentions, so there was no need to contact Mr I for more information. Also, there was no legal obligation to do so, and it was not industry standard practice at the time. So, the Adjudicator did not agree that Standard Life was required to contact Mr I.
 - The due diligence carried out by Standard Life was in accordance with that which would be expected for transfers processed prior to the issue of TPR’s guidance in February 2013.
33. Mr I did not accept the Adjudicator’s Opinion. He asserted that Standard Life was careless in carrying out its due diligence on the DM Plan, and then went ahead with the Transfer. The complaint was passed to me to consider.
34. Mr I’s comments do not change the outcome. I agree with the Adjudicator’s Opinion.

³ <https://www.pensions-ombudsman.org.uk/sites/default/files/decisions/PO-6388.pdf>

Ombudsman's decision

35. I sympathise with Mr I, as it is apparent that, unfortunately, he was a victim of a persuasive cold caller, which resulted in fraud. He was most likely told that the DM Plan could offer him better returns than the Plan, and the incentive of receiving £1,000 in addition to the doubling of his pension pot on death or terminal illness, were sufficiently compelling for him to agree to proceed with the Transfer. While there is a chance that Dalriada will eventually recover some of the DM Plan's assets, it is more likely than not that Mr I will have lost most, if not all, of the value of his pension.
36. However, in this complaint I need to consider whether Standard Life's decision to accept Mr I's transfer request was reasonable at the time he submitted it. The fact that the transfer payment was made on 7 September 2012, is important, as it was not until February 2013, when TPR issued guidance to providers about pension liberation and the danger of pension scams. This event was a turning point for good industry practice in dealing with transfer requests. So, I cannot measure Standard Life's actions in Mr I's case against TPR's guidance published in February 2013. This is consistent with the position taken in previous Determinations where transfers also took place before TPR's guidance was published.
37. Standard Life obtained confirmation that the receiving scheme was properly registered with HMRC and that the DM Plan was an occupational pension scheme. So, as it had received Mr I's request to transfer in writing and the Administrator's communications indicated that it was able and willing to accept the transfer, Standard Life carried out Mr I's request. I accept that this was inadequate for the purposes of detecting the possibility that the DM Plan was not all that it seemed, but the process Standard Life followed was industry standard practice at the time. Furthermore, Standard Life did not receive any information to raise concerns about the Transfer, so did not undertake any further checks before making the payment.
38. I find that Standard Life's due diligence was appropriate for a transfer carried out before TPR issued its guidance on these matters in February 2013.
39. I do not uphold Mr I's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
5 March 2024