

Ombudsman's Determination

Applicant	Mr N
Scheme	BT Pension Scheme (BTPS)
Respondent	BT Pension Scheme Trustee (the Trustee)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by the Trustee.

Complaint summary

2. Mr N has complained that, following his application, the Trustee transferred his funds from the BTPS to the Trillium Rafael Ltd Pension Scheme (the **Trillium Scheme**) without sufficient due diligence and the duty of care it owed him.
3. He says that the transferred funds were used to operate his own business and deployed as working capital over the course of two or three years. This was done in the expectation that the business could reach its financial goals, which did not occur. As a result those funds are now lost.

Background information, including submissions from the parties

4. 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.
5. Mr N had joined British Telecom in August 1986 and had been a member of the BTPS from that date. It appears he was persuaded to opt out of the BTPS in March 1992, switching instead to a personal pension. In August 1994 he opted back in to the BTPS and transferred his personal pension fund into the BTPS. In April 1998, he was paid redress by the personal pension provider, under the Securities and Investments Board pensions mis-selling review, in recognition of the incorrect advice he had received. He resigned from BT on 28 March 2002 and left the BTPS.
6. Mr N says he was looking to invest money in his business in 2011. He was advised by a friend that Mulbury Hamilton Tax Chambers (**Mulbury Hamilton**), which was classed as a wealth management and tax consultancy, might be able to help him. Mulbury Hamilton appears not to have been authorised or regulated by the Financial

Conduct Authority (**FCA**), although a similarly named firm was regulated. It dissolved on 18 January 2020.

7. Mulbury Hamilton advised him to establish a new pension scheme, the Trillium Scheme, into which he could transfer his benefits from the BTPS and from there into his business.
8. In 2011, the BTPS was administered by Accenture on behalf of the Trustee. On 1 July 2011, Mr N telephoned Accenture to request a transfer value quotation. Accenture issued this to him on 5 July 2011.
9. On 7 October 2011, Mr N emailed Accenture to request a new transfer quotation as the previous one had expired on 4 October 2011.
10. On 10 October 2011, Mulbury Hamilton wrote to Accenture. It enclosed the completed pension transfer form together with a copy of the Trillium Scheme's HMRC registration notice and contracting out certificate. The HMRC notice showed that the scheme had been registered with HMRC on 25 July 2011 and that the Pension Scheme Tax Reference (**PSTR**) was 00772016RA. The pension transfer form showed that the Trillium Scheme was an Occupational Pension Scheme.
11. Also enclosed with the letter was a Transfer Out Acceptance signed by Mr N and dated 13 July 2011. The expiry date was shown as 4 October 2011. The Acceptance showed that Mr N had chosen to transfer his pension entitlement under the BTPS but did not name the receiving plan. It included the following statements:

“If the transfer is to an Occupational Scheme:

 1. I confirm that at the time of the transfer or while this was being negotiated, I was employed and participating to the current scheme / plan (named above).

I confirm the following:

 1. I have been advised of the alternative benefits payable under the Rules of the receiving scheme(s) / plan (named above)
 2. I have chosen to transfer all my accrued benefits. I understand that once this has been completed neither myself, any spouse, children or other dependents will have any further entitlement under the rules of the current scheme / plan (named above).”
12. On 13 October 2011, Accenture wrote to Mr N. It said that it was not its policy to provide transfer details to third parties. It enclosed a new transfer quotation, with an expiry date of 12 January 2012, for him to pass to his new pension provider.
13. On 18 October 2011, Mulbury Hamilton wrote to Accenture. It enclosed the completed pension transfer form and confirmed acceptance of the transfer. The pension transfer form showed the receiving scheme as the Trillium Scheme. The form was signed by Mr N and dated 14 October 2011.

14. Also enclosed was a copy of the HMRC certificate and contracting out certificate for the Trillium Scheme. The Transfer Declaration showed the receiving scheme was approved under Chapter 2 of Part 4 of the Finance Act 2004. It also declared that the receiving scheme was able and willing to accept Mr N as a member and that the rules allowed the acquisition by him of transfer credits.
15. On 31 October 2011, Accenture wrote to Mr N to confirm that his benefits under the BTPS were being transferred to the Trillium Scheme. The total transfer value was £222,954.97.
16. On 18 September 2018, Mr N's solicitors wrote to Accenture. They said that Mr N had instructed them to investigate the financial advice given to him regarding the transfer of his pension from the BTPS.
17. On 1 March 2019, Mr N complained to Accenture through his solicitors. In the letter his solicitor said that the Trustee had wrongly permitted a transfer into the Trillium Scheme and that it appeared that Mr N had lost his entire fund. He had been charged £48,020.54 by Mulbury Hamilton and a further £114,100.24 was being claimed by HMRC in tax as a result of the transfer.
18. The solicitor asserted that the Trustee had failed to carry out sufficient due diligence and to discharge the duty of care it owed Mr N. It said that had the Trustee obtained basic information about the Trillium Scheme and the individuals advising Mr N it would have enabled the Trustee to consider the risks associated with either blocking or allowing the transfer. In its argument the solicitor referred to current guidance issued by the Pensions Regulator (**TPR**).
19. Accenture responded on 3 June 2019. It concluded that the Trustee had acted reasonably in processing Mr N's transfer in line with his instructions and the Trustee's obligations at the time of the transfer. It said that at the time of the transfer Mr N had a statutory right to transfer his benefits under the Pension Schemes Act 1993. The Trustee was therefore legally required to process a request which satisfied the requirements of the legislation. The legislation and guidance available at the time required the Trustee to check that the receiving scheme was properly registered with HMRC and had a PSTR. These details were obtained and so the Trustee had acted reasonably in processing Mr N's transfer.
20. On 7 June 2019, Mr N wrote through his solicitor to ask that his complaint be considered under the BTPS Internal Dispute Resolution Procedure (**IDRP**). He said that the Trustee had failed to carry out appropriate due diligence and engage properly with him in relation to the transfer.
21. It was the role of BT Pension Scheme Management, as Secretariat to the Scheme (**the Secretariat**), to consider Mr N's complaint under Stage 1 of the IDRP.
22. In its response dated 23 September 2019, the Secretariat set out the sequence of events and said that it had to consider the Trustee's legal obligations at the time of processing Mr N's transfer. It said that Mr N had the right to transfer his benefits out

of the BTPS and, as the Trustee had received completed versions of the transfer forms and the Trillium Scheme's HMRC registration certificate, his benefits were transferred in line with his request and in line with the Trustee's obligations.

23. The Secretariat continued that at the time of the transfer industry understanding of pension scams was less developed and that it was not until 2013 that TPR issued its guidance on how pension scheme trustees could identify potential scams. It concluded that reasonable basic checks were carried out in relation to Mr N's transfer and that the Trustee was not liable for any loss Mr N had suffered as a result of his transfer.
24. Being unhappy with the conclusion of his Stage 1 complaint Mr N complained under Stage 2 of the IDRPs on 30 September 2019, again through his solicitor.
25. The Trustee delegated decisions made under Stage 2 of the IDRPs to an IDRPs Committee (**the Committee**) made up of three Trustee Directors.
26. In its Stage 2 response, dated 30 January 2020, the Committee decided that Mr N's complaint should not be upheld. It said that general awareness of scams and the expectation of pension schemes to check for potential concern was very different in 2011. The checks and due diligence carried out were far less rigorous. In particular it noted that the transfer had taken place before TPR had issued its detailed guidance in relation to the additional checks which pension trustees should carry out in relation to potential scams. The transfer had taken place on the basis of the Transfer Out Acceptance form signed by Mr N, the Transfer Declaration and the receiving scheme's HMRC registration certificate.
27. The Committee noted that Mr N's case differed from typical pension scam cases in that the purpose of the transfer was to release cash from his pension to invest in his own business, even though he had not reached the minimum pension age. As a result there had been tax consequences which the Committee considered were as a result of Mr N's use of the transferred funds rather than the transfer itself.

Mr N's position

28. While the Trustee notes in its final response that the point of change for good industry practice was not until February 2013, the industry was aware of the risks of pension liberation and scams prior to this.
29. The Trustee refers to the High Court's judgment in *Hughes v The Royal London Mutual Assurance Society* [2016] in support of its assertion that there is little that providers can do to stop a transfer where an individual has a statutory right to transfer. Notwithstanding this judgment, scheme trustees are still under an obligation to warn scheme members of any potential risks associated with the pension transfer and to take the necessary steps set out in guidance provided by the Regulator.
30. The Trustee has suggested that sufficient checks were carried out before effecting the transfer, namely that Accenture obtained a copy of the HMRC registration

certificate for the Trillium scheme. This did not go far enough in discharging the Trustee's statutory duty under section 99(1) of the Pension Scheme Act 1993, as set out in Mr N's Letter of Complaint dated 1 March 2019.

31. The Trustee also contends that Mr N is not an unsophisticated investor due to him being a director of a financial services company and previously holding a senior position at BT. This is an incorrect assumption. Mr N's roles within BT were in business development, sales and marketing and therefore, none of the roles which he held with BT were defined financial roles nor were they in the financial sector. At the material time, Mr N had never made any investments of any kind nor has he ever given any financial advice.
32. The Trustee has also asserted that Mr N was determined to proceed with the transfer so he could utilise the funds to support his business and therefore, he would have gone ahead with the transfer notwithstanding any concerns raised. On the contrary, Mr N says that had the Trustee undertaken appropriate due diligence and engaged with him, he would not have gone ahead with the pension transfer. He says that there was no pressing need for the capital for his business and that the original strategy was to use referral partners in order to build the business. The company also carried no debt. He says that no investors were ever approached to inject equity into the company nor did it apply for any business loans.
33. Mr N is concerned that, at the material time, BT was financially motivated to permit transfers out with limited due diligence given that the Section C scheme and its associated benefits were proving very costly. This can be illustrated by BT's attempts to cut the value of Section C members' pensions.

Adjudicator's Opinion

34. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised in Paragraphs 35 to 50 below.
35. This case is similar to several cases we have Determined involving transfers to various pension liberation schemes which took place prior to February 2013. These can be found on our website, www.pensions-ombudsman.org.uk.
36. As can be seen, the view the Ombudsman has taken in those Determinations is that, as TPR issued guidance to providers about pension liberation and the danger of pension scams in February 2013 (which led to the 'Scorpion' leaflets warning members about the risks to their pensions), that could be regarded as a point of change in good industry practice, in terms of the due diligence expected.
37. That is not to say that there was no awareness of pension liberation before then, as Mr N's solicitor points out, it was in the Pensions Act 2004. But members have a statutory right to a transfer, so the extent to which providers could delay or refuse a

transfer is limited where, as in this case, the receiving scheme had met HMRC's requirements.

38. The level of due diligence expected since 2013 has been commented upon in detail in various Determinations (e.g. Stobie PO-3105, Kenyon PO-1807).
39. The High Court judgment in *Hughes v Royal London* also indicated that there was very little providers could do to stop a transfer, where a statutory (or other) right existed, even if they had serious concerns about the destination of the money or the nature of the receiving scheme.
40. The Adjudicator had not seen any evidence that the Trustee should have been aware of any concern at the time concerning the transfer to the Trillium Scheme sufficient for it to refuse to transfer Mr N's benefits.
41. Mr N had argued that the Trustee did not go far enough in discharging its statutory duty under section 99(1) of the Pension Scheme Act 1993 (**PSA 1993**). In the Adjudicator's view this argument was misconceived. Section 99(1) of PSA 1993 reads as follows:-

"Trustees' duties after exercise of option

(1) Where—

(a) a member has exercised the option conferred by section 95; and

(b) 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 to which the cash equivalent related except, in such cases as are mentioned in section 96(2), to the extent that an obligation to provide such guaranteed minimum pensions or give effect to such protected rights continues to subsist".

42. In the Adjudicator's opinion, the intended purpose of this wording is that once a member has exercised the option to transfer the trustees need to carry out his instructions. He did not agree that it implies some form of requirement on the Trustee to carry out additional due diligence before carrying out those instructions.
43. In this case, the Trustee was faced with a member who wished to exercise his legal rights, and a receiving scheme that was properly registered with HMRC and had provided the appropriate declarations and information. Also, Mr N could not be deprived of a statutory right by regulatory or other guidance (and there is no suggestion otherwise from the Pensions Regulator). To the extent that the Trustee had a duty of care to Mr N, it would have been overridden by a statutory obligation to make the transfer and simply met by doing as he apparently wished. The same is true of its regulatory responsibilities to him.
44. Mr N chose to invest his funds into his business which was incorporated in 2007. He says that he was not aware that this was a high risk venture. He has put forward the

argument that he was not a sophisticated investor but, in the Adjudicator's view, as a businessman he must have been aware of the financial position of a business he had established four years previously and the inherent risks in investing any funds, let alone his pension fund, in that business.

45. But regardless, the Trustee would not have been aware of his intentions, nor was it the Trustee's role to advise him, in fact it was not authorised to do so.
46. Mr N also argues that had the Trustee provided warnings about the risks involved in transferring he would not have gone ahead. He says that there was no pressing need for the capital for his business and that the company carried no debt. However, the company accounts reveal a business that was struggling to make a profit, a fact that Mr N himself confirms. Furthermore, he says the business bank account was subsequently closed by Barclays due to the account being overdrawn for a significant period of time.
47. Mr N has suggested that BT may have been financially motivated to permit transfers out with limited due diligence. But there is no evidence to substantiate this. There is no indication that BT was eager for Mr N to transfer his funds. There was no enhancement or incentive offered to him to transfer and the original value quoted had expired with no pressure brought to bear on Mr N to accept the quote.
48. However, the position in October 2011 was that: Mr N was entitled to a statutory transfer; 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 to provide benefits to Mr N. That was sufficient for the Trustee to allow the transfer.
49. Current levels of knowledge and understanding of pension liberation/scams or present standards of practice could not be applied to a past situation. It is understandable why Mr N now wishes the Trustee had done more to prevent him transferring, but by the standards of the day, it did not do anything wrong in complying with his instructions. It was not put on notice of a problem with the receiving scheme and reasonably believed it was required to comply with his instructions.
50. In hindsight, it was not a suitable decision for Mr N to transfer his pension, but it was his choice to do so. Any subsequent loss he suffered was not due to the Trustee's maladministration in allowing the transfer to proceed in accordance with his statutory rights and his clear instruction.
51. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
52. Mr N provided his further comments which do not change the outcome. He says that:-
 - The Adjudicator has said in his Opinion that as a businessman, Mr N should have been aware of the risks inherent with the investment. Mr N has never made an investment of any kind and was entirely unaware that the business was a high-risk

venture. He was reliant upon the advice he received from Mulbury Hamilton and he was not made aware of any risks, by them. Further, the Trustee failed to issue any risk warning about receiving and relying upon advice from an unregulated firm.

- The Adjudicator remarks in his Opinion that there were no apparent concerns surrounding the Trillium Scheme at the material time of transfer. This is entirely the point. Adequate and frankly, straightforward enquiries were not made by the Trustee such that they failed to note that the scheme was set up only weeks prior to transfer, was a dormant company and had no other shareholders or employees, other than Mr N.

Ombudsman's decision

53. As the Adjudicator opined, while pension liberation was a known threat prior to TPR's guidance in 2013, present standards of practice cannot be applied to a past situation.
54. Whether or not it had always been Mr N's intention to invest his pension fund into his business is unclear, but he has said that he was looking to invest money in his business and that a friend had advised him to approach Mulbury Hamilton. So it is clear that this was something that he had been considering and that he was not the victim of an unsolicited approach.
55. He has said that his impression of Mulbury Hamilton at the time, was that it was highly professional, supported by the fact that its advice was backed up by the opinion of Queen's Counsel lawyers. He says that it was not until April 2018 that he received a letter from HMRC stating that he owed £114,100.24 in tax as a consequence of the pension transfer. He says that he had no reason to suspect that there were any issues prior to this.
56. He says that had the Trustee undertaken appropriate due diligence and engaged with him, he would not have gone ahead with the pension transfer. He says that there was no pressing need to invest capital in his business. However, in a letter to HMRC dated 10 April 2018 he said, "In early 2011 I was considering looking for investment to keep my business, Jetstream Equity Limited, running."
57. It would appear from this statement that there was in fact a pressing need for further investment in his business and I consider it more likely than not that Mr N approached Mulbury Hamilton having already formed the idea of using his pension fund as a way of investing additional funds into his business.
58. Furthermore, the correspondence from HMRC shows that the tax charge was not as a result of the transfer, its concerns related to loans subsequently made from the Trillium Scheme to Mr N's business.
59. While the advice from Mulbury Hamilton may not have been appropriate or correct, it was not for the Trustee to question. To do so risked the Trustee entering in to the provision of financial advice itself, which it was not authorised to do.

60. There is no doubt that transferring his pension fund in order to invest it entirely in his business was a very high risk, and probably an unsuitable, strategy. But that was not something for the Trustee to have questioned or commented upon.
61. As to whether Mr N was an experienced investor is a moot point. He was looking to invest in his own business which appears to have required further funds to keep it running. I cannot accept that any prudent person would not have understood that this carried with it a high level of risk.
62. Unfortunately, it appears Mr N has lost much of his fund as a result, and he has my sympathies for that. But this was as the result of poor advice from Mulbury Hamilton combined with a high risk investment, and not as a consequence of any maladministration by the Trustee.
63. I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
20 June 2022