

Ombudsman's Determination

Applicant	Ms I
Scheme	Abbey Life Personal Pension Plan (the Plan)
Respondents	Abbey Life

Outcome

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

Complaint summary

2. Ms I complained that Abbey Life transferred her benefits in the Plan to Bodmin Stincher Retirement Scheme (**the Scheme**) without carrying out sufficient due diligence, and that as a consequence her pension funds have been lost.

Background information, including submissions from the parties

3. Ms I had three personal pension policies within the Plan which was administered by Abbey Life. After receiving a request, Abbey Life sent a transfer pack which included a Cash Equivalent Transfer Value (**CETV**) and transfer discharge forms to Ms I's Independent Financial Adviser (**IFA**) on 5 October 2012.
4. On 9 January 2013, Marley Administration Services Limited (**Marley**), the Scheme's administrator, sent a letter to Abbey Life enclosing the transfer discharge forms which had been completed by Ms I and Marley. Marley also said that the Scheme was authorised by HMRC and provided the registration number.
5. In January 2013, Abbey Life completed the transfer of Ms I's three separate policies from the Plan and paid a total transfer value of £96,943.44.
6. On 14 February 2013, the Pensions Regulator (**TPR**) launched a new awareness campaign regarding pension liberation scams. TPR said that members who were thinking of transferring should be provided with an information leaflet (**the Scorpion Leaflet**), which contained a number of warnings about potential scams.
7. The Scorpion Leaflet included examples of real-life pension scams and explained that the warning signs of a potential scam could be that the: -

- receiving scheme was not registered, or only newly registered, with HM Revenue & Customs;
 - member was attempting to access their pension before age 55;
 - member has pressured trustees/administrators to carry out the transfer quickly;
 - member was approached unsolicited;
 - member had been informed that there was a legal loophole; and
 - receiving scheme was previously unknown to you, but now involved in more than one transfer request.
8. On 25 March 2019, Ms I's representative, Owl and Fox Law Limited, issued a formal complaint to Abbey Life on Ms I's behalf. It said Abbey Life failed to carry out sufficient due diligence tests on the transfer request and failed in its duty of care to Ms I. Abbey Life had a fiduciary duty of care to Ms I and a breach in that duty of care arose when Abbey Life sent the transfer payment to the Scheme. The Pension Ombudsman decision PO-12763 was referenced to evidence this duty of care. The summary of the complaint is as follows:
- Ms I was contacted by an adviser who was unregulated.
 - As Abbey Life knew that many of their members could be financially unsophisticated and potentially unaware of whether advice from a regulated adviser was required or how to ascertain whether an adviser was regulated Abbey Life should have conducted necessary due diligence in order to protect the members' interests.
 - It quoted the Pensions Ombudsman decision PO-3809 in which a member wished to transfer but Aviva rejected the transfer due to the principal concern of compliance with the regulatory requirements in the FCA Handbook.
 - If Abbey Life had acted with the proper due diligence and engaged verbally with Ms I, warning her of the risks, it is highly unlikely that the transfer would ever have happened.
 - In 2013, the regulator put all schemes on notice that pension scams were a serious problem which all schemes should be aware of.
 - These principles should have been applied and the hierarchal principles should be addressed in this complaint. The court case of *Berkeley Burke Sipp Administration Limited v Financial Ombudsman Service Limited* [2018] EWHC 2878 was quoted and Ms I's representative stated that the judge in that case makes this point clearly.
 - Abbey Life had a duty under the overarching principles of the Financial Services and Markets Act 2000.

9. On 4 April 2019, Abbey Life responded to the complaint. It stated that it did not agree with the complaint and that due diligence was made in line with their process and regulations.
- Abbey Life had provided the transfer pack to Ms I's IFA which it required to be completed for any transfer.
 - It was provided with the HMRC registration number which it used to check that the Scheme was authorised.
 - It included the following declarations in the transfer pack and required them to be signed:

‘We declare that the information given in Section B is true and correct. We confirm that the Transfer Value will be applied to provide relevant pension benefits that are consistent with HM Revenue & Customs conditions of approval.’
 - It was aware that Ms I was working with an independent financial adviser.

Adjudicator's Opinion

10. Ms I's complaint was considered by one of our Adjudicators who concluded that no further action was required by Abbey Life. The Adjudicator's findings are summarised below:-
- The Pensions Ombudsman decision PO-12763 was not particularly relevant to quote in comparison with Ms I's case due to their factual differences. The main difference being that the transfer in the quoted case took place in August 2014, which was a year and a half after the TPR guidance was issued. The case was therefore considered not directly comparable with Ms I's case.
 - The Pensions Ombudsman decision PO-3809 was also not directly comparable as the transfer was rejected due to various concerns about pension liberation. These concerns included the fact that it was the members third attempt to transfer to a scheme which Aviva had concerns about, there was pressure from the receiving scheme to complete the transfer as soon as possible, the documentation and the administration company did not pass due diligence tests and finally the member did not have a statutory right to transfer which enabled Aviva to hold the transfer.
 - The Adjudicator considered that it would be inappropriate to judge a historical matter using the standards that were applied after Ms I's transfer took place. Reference to the TPR guidance is made with the benefit of hindsight and the complaint should be considered against the industry standards that applied when the transfer was made.

- At the time of transfer, Ms I had a statutory right to transfer. The law regarding a statutory right to transfer is set out in the Pension Schemes Act 1993. Section 93A stated that Ms I had a right to a statement of entitlement, setting out the cash equivalent transfer value from her pension (**See Appendix One**).
- To have this statutory right, Section 95(1) states that Ms I had to make an application in writing, this requirement was complied with on 9 January 2013 upon return of the completed transfer pack (**See Appendix Two**). Also, as part of the transfer process, Abbey Life satisfied itself that the receiving scheme was registered with HMRC by obtaining the receiving scheme's registration number via the form contained in the transfer pack. Abbey Life had no right to refuse Ms I's request to transfer.
- Although Abbey Life may have known that some of its members would be financially unsophisticated, it would have been assured by the fact that Ms I had an independent financial adviser, who it had sent the transfer pack to for consideration. There was no requirement at the time for Abbey Life to check if an adviser was regulated.
- The Adjudicator stated that at the time of the transfer, Abbey Life carried out an appropriate level of due diligence which was in line with the guidance at the time. Due to this, the Adjudicator stated that it cannot be said that Abbey Life was negligent when agreeing to transfer Ms I's benefits.
- The Adjudicator stated that although Abbey Life may not have warned Ms I against the transfer and the potential risks involved, there is no evidence or guarantee that, if it had, Ms I would have taken that advice and refrained from transferring as a result of the warning. In any case, at that time, there was no requirement for Abbey Life to have warned Ms I about the transfer.

Ms I did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms I did not provide any reasons why she disagreed with the Adjudicator's Opinion. I agree with the Adjudicator's Opinion.

Ombudsman's decision

11. Ms I complained that Abbey Life transferred her benefits in the Plan to the Scheme without carrying out sufficient due diligence, and that as a consequence her pension funds have been lost.
12. Ms I had a statutory right to transfer and, provided the transfer fulfilled the limited legislative requirements at the time (for example, that it was a 'recognised transfer' for the purposes of the Finance Act 2004), Abbey Life could not withhold the transfer into the Scheme. It is also noted that at the time of the transfer there were no overt signs that indicated the Scheme was a pension liberation arrangement.

13. At the time of transfer, the level of due diligence expected was much less than is now required or expected. Indeed, as one of my predecessors said in PO-5799, "*the Pensions Regulator did not issue guidance to providers about pension liberation and the danger of pension scams until February 2013. That could be regarded as a point of change in what might be regarded as good industry practice.*" Ms I's transfer can only be judged by the industry practices and guidance at the time of the transfer. The TPR guidance cannot be applied retrospectively.
14. As the Scheme was registered with HMRC and did not appear on any warning lists, I am satisfied that Abbey Life carried out a sufficient level of due diligence required under the regulations in place at the time of transfer.
15. Although I sympathise with Ms I's circumstances, I find that Abbey Life acted appropriately before allowing the transfer.
16. I do not uphold Ms I's complaint.

Dominic Harris

Pensions Ombudsman

27 March 2024

Appendix One

93A Salary related schemes: right to statement of entitlement

(1) The trustees or managers of a salary related occupational pension scheme must, on the application of any member, provide the member with a written statement (in this Chapter referred to as a “statement of entitlement”) of the amount of the cash equivalent at the guarantee date of any benefits which have accrued to or in respect of him under the applicable rules.

(1A) In subsection (1), the reference to benefits which have accrued does not include benefits which are attributable (directly or indirectly) to a pension credit.

(2) In this section—

“the applicable rules” has the same meaning as in section 94;

“the guarantee date” means the date by reference to which the value of the cash equivalent is calculated, and must be—

(a) within the prescribed period beginning with the date of the application, and

(b) within the prescribed period ending with the date on which the statement of entitlement is provided to the member.

(3) Regulations may make provision in relation to applications for a statement of entitlement, including, in particular, provision as to the period which must elapse after the making of such an application before a member may make a further such application.

(4) If, in the case of any scheme, a statement of entitlement has not been provided under this section, section 10 of the Pensions Act 1995 (power of the Regulatory Authority to impose civil penalties) applies to any trustee or manager who has failed to take all such steps as are reasonable to secure compliance with this section.

Appendix Two

The Pension Schemes Act 1993, Section 95(1)

95 - Ways of taking right to cash equivalent

1. A member of an occupational pension scheme or a personal pension scheme who acquires a right to a cash equivalent under this Chapter may only take it by making an application in writing to the trustees or managers of the scheme requiring them to use the cash equivalent to which he has acquired a right in whichever of the ways specified in subsection (2) or, as the case may be, subsection (3) he chooses.