

Ombudsman's Determination

Applicant	Mrs N
Scheme	SCA UK Pension Plan (the Plan)
Respondent	SCA Pension Trustees Limited (the Trustee)

Complaint Summary

1. Mrs N complains that the Trustee blocked the transfer of her pension to a Qualifying Recognised Overseas Pension Scheme (**QROPS**) in Malta because it required two legal opinions to start the transfer process. Mrs N did not provide the legal opinions and instead transferred her pension to a UK Self Invested Personal Pension (**SIPP**) and then to her chosen QROPS.
2. Mrs N is claiming financial loss of £1,200 due to the cost of transferring her pension to a UK SIPP, £6,000 for financial advice costs and loss of potential investment growth.

Summary of the Ombudsman's Determination and reasons

3. The complaint is not upheld against the Trustee and because:-
 - 3.1. The legal opinions requested as a condition of making the transfer to the QROPS were reasonable as the Trustee needed to be satisfied, as a matter of explicit regulatory requirement, that the receiving scheme met the conditions for a statutory transfer under Section 95 of the Pension Scheme Act 1993 (**PSA**).
 - 3.2. There is no basis on which the Trustee could be liable to Mrs N for the cost of setting up the UK SIPP, the financial advice or any investment loss arising from delay. I find the Trustee acted reasonably throughout and I find no maladministration or breach of duty.

Detailed Determination

Material facts

4. The administration of the Plan was carried out by the SCA UK Pension Plan administration team (**the Administrator**) at the time. It acted on behalf of the Trustee.

5. The Plan is a defined benefit pension scheme, structured to provide a guaranteed income for life.
6. On 7 August 2020, Mrs N requested a Cash Equivalent Transfer Value (**CETV**) quotation from the Administrator.
7. On 6 October 2020, the Administrator posted a transfer pack to Mrs N relevant for a UK registered scheme, which included a CETV quotation (**the October CETV quotation**) that was guaranteed for three months.
8. On 26 January 2021, during a telephone call Mrs N's Independent Financial Adviser (**the IFA**) informed the Administrator that the transfer was to a QROPS. At this point, the guarantee period of the October CETV quotation had expired so the Administrator agreed to extend the guarantee period to 8 February 2021.
9. On 1 February 2021, the Administrator posted a new transfer pack containing the relevant forms for an overseas transfer to the IFA, including a Pension Scam Form and Questionnaire (**the Questionnaire**). Relevant parts of transfer pack are included in the Appendix. The transfer pack also included a cover letter and an Overseas Scheme statement, which stated:-

"Before the Trustee can consider whether the transfer may proceed, all of the following information and forms are required:

...

2. The 2 legal opinions referred to at Section 8 of the Overseas Scheme Statement from an independent law firm or firms.

...

8. This Overseas Scheme Statement is accompanied by a confirmation addressed to the Trustee of the Plan from a law firm or law firms qualified to advise on English law and on the law in the jurisdiction where the Receiving Scheme is established, on the firm's or firms' headed notepaper that in their opinion:

8.1 the statement at 1.1 or 1.2 above, as applicable, is correct, and

8.2 the statements at 3.1 and 3.2 above are both correct.

Note: Please note that these confirmations are an important part of the Trustee's checks as to the QROPS status of the receiving scheme. The Trustee will not be in a position to proceed with the transfer if these confirmations are not provided.

9. We understand that, if the confirmation referred to in 8. above is not provided, or is not in form or substance satisfactory to the Trustee of the Plan, then the transfer will not proceed.

Note: You may wish to supply a draft of the proposed confirmation to the Trustee of the Plan for review before it is then issued by the law firm or law firms in question.”

10. On 3 February 2021, the IFA asked the Administrator if it would accept the transfer paperwork via email as the deadline was approaching and it would follow up with the originals via post. The Administrator responded on the same day and confirmed it would be accepted.
11. On 4 February 2021, the IFA emailed the Administrator to inform it that the transfer pack had not arrived and asked for it to be sent via email. The Administrator responded on the same day and said it was unable to email all the forms.
12. On 5 February 2021, the Administrator emailed the transfer pack which explained the guarantee period had been extended until 15 February 2021.
13. On 12 February 2021, the IFA sent the transfer pack to the Administrator, however, it did not contain the two legal opinions that had been requested.
14. On 16 February 2021, the Administrator explained to the IFA that the Trustee required the legal opinions for it to comply with its legal duties. As the CETV guarantee period expired on 15 February 2021, the Administrator explained that if Mrs N requested a second CETV quotation and provided the requested information in accordance with the new timeframe then it would waive the £250 charge that would normally apply to a second CETV quotation made in any 12-month period.
15. On 17 February 2021, Mrs N emailed the Administrator to request a second CETV quotation.
16. On 22 February 2021, the Administrator provided a new CETV quotation to Mrs N which was guaranteed for three months from 22 February 2021. It confirmed that it would treat the completed forms that had been received previously as applying to Mrs N's new application. It also highlighted the requirements for two legal opinions on the QROPS status of the receiving scheme, and outlined the Trustees reasons for requesting these opinions.
17. From 12 February 2021 to 30 April 2021, there were email exchanges between the IFA and the Administrator where the IFA disputed the requirement for the two legal opinions and the costs associated with providing them. In the end, Mrs N did not provide the legal opinions to complete the transfer to a QROPS.
18. On 13 May 2021, Mrs N sent completed transfer discharge forms to the Administrator, confirming her election to transfer her pension funds to a UK SIPP.
19. On 26 May 2021, the Administrator transferred her CETV from the Plan to the UK SIPP.
20. On 25 June 2021, Mrs N transferred her pension funds from the UK SIPP to a QROPS.

21. On 4 September 2021, Mrs N raised a formal complaint against the Trustee. Mrs N included two articles to support her argument that the legal opinions were not a mandatory requirement. These were: -
 - Pension scams industry group – Combating pension scams.
 - Combating pensions scams – Code of good practice (**the Code**)
22. On 8 September 2021, Mrs N requested information on the Plan's Internal Dispute Resolution Procedure (**IDRP**).
23. On 22 November 2021, the Administrator responded to Mrs N's complaint raised on 4 September 2021 and explained the response was not under the IDRP as she had not made an application using the prescribed format. In summary, it stated that whilst there was no regulatory requirement to obtain two legal opinions, there was an onus on the Trustees to take extra care to ensure the transfer was genuine. This was reinforced by the legal advice it sought, which supported the requirement for these legal opinions for all QROPS transfers.
24. On 26 November 2021, Mrs N responded stating she was not informed she needed to resubmit her complaint under IDRP. Mrs N requested a copy of the legal advice the Administrator had received and asked it to point out where it stated in the Plan Rules and the new regulations that legal opinions were required to be sought and paid for by members.
25. On 17 December 2021, the Administrator responded and explained that the IDRP had not been invoked but it responded outside of the IDRP to address the complaint. It explained that Mrs N was not entitled to receive copies of the legal advice provided as it was privileged, and it further stated she would be required to cover the associated costs of her chosen transfer. It further reiterated that the request for two legal opinions was a reasonable and proportionate request to perform its due diligence and any delay in the transfer process as a result of not providing these opinions would not be the fault of the Administrator.
26. Following the complaint being referred to The Pensions Ombudsman (**TPO**), Mrs N and the Trustee made further submissions that have been summarised below.

Summary of Mrs N's position:-

27. Mrs N believes the Administrator blocked her statutory right to transfer to a QROPS, by requiring two legal opinions at her own expense.
28. The Administrator refused to provide evidence of this requirement in the Plan Rules or evidence of the legal advice it received. Mrs N believes this information was not provided because it does not exist.

29. Mrs N incurred additional costs resulting from transferring to a UK SIPP and then to a QROPS. She wants to be reimbursed the cost of transferring out of the Plan and to be compensated for the distress and inconvenience caused.

Summary of the Trustee's position:-

30. Its due diligence process which requires two legal opinions to complete the transfer is a reasonable and proportionate means to ensure it has discharged its legal obligations, and to protect members from pension scams.
31. It acknowledged the presence of the QROPS on HM Revenue & Customs' (**HMRC**) Recognised Overseas Pension Scheme (**ROPS**) list; however, it states that presence on this list is not a guarantee of legitimacy because HMRC does not certify, approve or recommend any overseas pensions schemes that believe it has QROPS status.
32. It does not agree that it is its responsibility to pay for legal opinions. Such costs are the responsibility of the member, on the basis that they are associated with a transfer unilaterally chosen by the member, and should only be incremental.
33. Any personal or financial loss that Mrs N suffered was not caused by the Trustee but by Mrs N's refusal to provide the information and documentation for the Plan's legitimate due diligence that the Trustee required to discharge its obligations and to mitigate the risks to the Plan and to Mrs N of her requested transfer.

Conclusions

34. Mrs N believes the Administrator, acting on behalf of the Trustee, blocked her statutory transfer request. A member's right to transfer is set out in the PSA. Section 93 outlines the conditions that a member must meet to qualify for a statutory transfer. Having reviewed these conditions, it is clear that Mrs N had a statutory right to transfer, which the Trustee accepted. Section 95 of the PSA sets out how a member may exercise their statutory right. It provides that they may do so by requiring the trustee to pay the CETV, amongst other options, to an overseas scheme.
35. Section 95(2)(d) provides that a member of an occupational pension scheme that is not an unfunded public service defined benefits scheme may only take a cash equivalent by making an application in writing to the trustees or managers of the scheme requiring them to use the cash equivalent in one of the ways referred to and which include, at section 95(2)(d):
- “for subscribing to other pension arrangements which satisfy the prescribed requirements.”
36. Under Regulation 12 of the Occupational Pension Schemes (Transfer Values) Regulations 1996 (the “**Transfer Regulations**”), the prescribed requirements referred to in section 95(2)(d) of the PSA include that the pension arrangement to which it is proposed to subscribe:
- “(a) is an overseas arrangement;

(b) if the cash equivalent is or includes the cash equivalent of accrued section 9(2B) rights, is one to which a transfer payment in respect of such rights may be made in accordance with regulation 11 of the Contracting-out (Transfer and Transfer Payment) Regulations 1996; and

(c) if the scheme from which rights are transferred is registered under section 153 of the Finance Act 2004, is a qualifying recognised overseas pension scheme as defined in section 169 of the Finance Act 2004”

and “overseas arrangement” is defined for this purpose in the Contracting-out (Transfer and Transfer Payment) Regulations 1996.

37. As such, the Trustee needed to determine that the requirements of section 95 of the PSA had been met. If the intended receiving scheme was an overseas arrangement, it needed to be satisfied, as a minimum, that it was a QROPS within the meaning of section 169 of the Finance Act 2004 and that all other conditions of Regulation 12 of the Transfer Regulations were met. If the receiving scheme did not meet these requirements, the Trustee was not under any legal obligation to pay the transfer to it and indeed paying the CETV to such a scheme might not discharge its obligation to provide benefits under the Scheme.
38. The Trustee also needed to obtain sufficient information to determine whether an overseas transfer charge was payable in respect of the transfer and make the appropriate deduction from the transfer. If the receiving scheme did meet the Regulation 12 requirements, then the Trustee (and the Administrator on its behalf) were under a statutory obligation to make the transfer.
39. The Code was also in place at the time of the transfer. The Code advocates that the key items for the Scheme to consider are the rationale for moving funds offshore, and the likelihood that the receiving scheme is a ROPS. It contains a warning about relying on a legal opinion, particular in respect of the risk of limited instructions or restricted or caveated views and the risk that scammers instruct reputable lawyers to prepare opinions to suggest legitimacy.
40. Mrs N argued that the Trustee’s due diligence was excessive. This was in relation to its request for two legal opinions from a law firm or law firms qualified to advise on English law and on Maltese law in this instance. Mrs N has claimed that she was forced to transfer her pension to a UK SIPP due to the Trustee’s stance in relation the information required. She has incurred a cost to set up the UK SIPP of £1,200 and a cost for the financial advice she received of £6,000. Mrs N has also claimed that she has suffered a potential loss of investment growth due to the delays in the transfer of her pension funds.
41. The only issue in the case seems to me whether requesting two legal opinions from a law firm or law firms qualified to advise on English law and on Maltese law in this instance and to be provided at Mrs N’s expense was permissible and reasonable as a precondition to paying the transfer.

42. I find that the legal opinions requested as a condition of making the transfer to the QROPS are reasonable because the Trustee needed to be satisfied, as a matter of explicit regulatory requirement, that the receiving scheme met the conditions under Regulation 12 in order to be satisfied that the conditions for a statutory transfer under Section 95 of the PSA were met.
43. So, it was necessary for the Trustee to be reasonably certain that the receiving scheme was a QROPS. Determining whether a scheme is a QROPS is not straightforward. At the relevant time, HMRC maintained a list of schemes which had notified that they were “recognised overseas pension schemes” and capable of being QROPS. However, the list cannot be relied on as HMRC may not verify that the listed schemes do in fact meet the requirements to be recognised overseas pension schemes and may remove schemes from the list retrospectively.
44. The conditions for qualifying as a recognised overseas pension scheme or as a QROPS include how the scheme is regulated in its country of establishment, whether it is open to residents of that country, whether it is registered with the country’s tax authority as a pension scheme and whether there is a system to tax personal income and give tax relief on pensions which apply to the scheme. An overseas transfer charge will also apply if the transferring member is not a resident or intending to become a resident of the same country in which the scheme is established.
45. Having regard to the above requirements, the status of the QROPS, its country of establishment, whether this was in fact Malta, the status of the scheme in Malta, and the income tax and pension tax relief rules applicable in Malta are not reasonably matters which are within the expertise or responsibility of the Trustee or Administrator but are matters on which they were required to satisfy themselves as a condition of paying Mrs N’s CETV to the QROPS. I find that it was entirely legitimate for the Trustee to ask Mrs N to provide the two legal opinions on English and Maltese law in order to provide evidence that the QROPS met the requirements under Regulation 12 and to enable it to be satisfied that the transfer would be a permitted exercise of Mrs N’s statutory right under section 95 of the PSA (and to determine any tax charges payable).
46. I conclude that it was entirely proper for the Trustee to ask for the legal opinions as a condition of transferring to the QROPS because it could not otherwise know whether the transfer met the requirements of under Section 95 of the PSA and related regulations: in other words, without the legal opinions, it would be difficult for it to have a reasonable view as to whether or not it could or should pay her CETV to the QROPS.
47. There does not appear to be any restriction or obligation under general law or legislation which requires the Trustee to obtain such legal opinions at the expense of the Scheme or prevents or restricts it from requesting that Mrs N provide such legal opinions at her cost. So, I do not find that the Trustee was in breach of any obligation in asking Mrs N and her IFA to provide such legal opinions.

48. I note that, in the event, rather than providing the requested legal opinions, Mrs N requested her CETV be paid to a UK SIPP and the transfer was paid accordingly in May 2021. By making the payment of the CETV to the UK SIPP, the Administrator discharged the Trustee's obligations to Mrs N in respect of her CETV including its duty in respect of her statutory right under Section 95 of the PSA.
49. This CETV was a second CETV issued in February 2021, and the Administrator waived the charge that would normally apply in respect of a second CETV within 12 months. This was after the Administrator had offered two extensions in respect of the October CETV. I find the Administrator acted reasonably throughout and I find no maladministration or breach of duty.
50. Mrs N is seeking compensation in respect of the cost of setting up the UK SIPP (£1,200) and the cost of the financial advice she received (£6,000). Mrs N has also claimed that she has suffered a potential loss of investment growth due to the delays in the transfer of her pension funds.
51. I see no basis on which the Trustee could be liable to Mrs N for the cost of setting up the UK SIPP, the financial advice or any investment loss arising from delay. The Trustee is under an obligation to administer the Scheme with skill and care, and this extends to paying statutory transfers in accordance with relevant legislation. But as I have found above, the Trustee and the Administrator on its behalf were required to be satisfied that the receiving scheme selected by Mrs N qualified as a receiving scheme for the purposes of Section 95 of the PSA and it was reasonable for them to ask Mrs N to satisfy them of this by providing legal opinions, I find no duty was breached. Mrs N's decision to instead nominate an alternative UK SIPP as a receiving scheme was her own decision and I see no basis for the Trustee, the Scheme or the Administrator to bear the cost of establishing the UK SIPP to receive her CETV. I also see no basis for the Trustee, the Scheme or the Administrator to indemnify her for the cost of the financial advice she obtained.
52. I also do not find that any of the delays that arose were caused by maladministration by the Trustee or any breach of its obligations to administer the scheme with skill and care and to comply with statutory provisions and time-limits in respect of statutory transfers under the PSA. The Administrator, acting on behalf of the Trustee, offered extensions to assist Mrs N and her IFA in relation to the October CETV and promptly provided a second CETV free of charge in February 2021 well within statutory time-limits. The Administrator paid the transfer to the UK SIPP promptly following receipt of Mrs N's application in respect of the second CETV and again well within the statutory time-limits.
53. As such, and whether or not the Trustee might be liable for any investment loss if it had caused delays, I find that it did not breach any duty to Mrs N in respect of any delays in the administration of her transfer to the UK SIPP or the initially requested transfer to the QROPS and have no liability in respect of any possible investment loss incurred in respect of any delays.

CAS-83019-G2S0

54. I do not uphold Mrs N's complaint.

Camilla Barry

Deputy Pensions Ombudsman
25 November 2025

Appendix

Overseas Transfer Pack of 28 January 2021

OVERSEAS SCHEME STATEMENT

To: The Trustee of the SCA UK Pension Plan

The “Transferring Member”:

The “Receiving Scheme”:
(Insert name of Receiving Scheme)

In consideration of the Trustee of the SCA UK Pension Plan (the “**Plan**”) facilitating the processing of the Transferring Member’s application to transfer pension rights under the Plan to the Receiving Scheme, we hereby confirm to you (and understand that you will be relying on these confirmations) as follows:

1. The Receiving Scheme is: **Tick which box applies**

1.1 an occupational pension scheme (as defined in Annex A) and an overseas scheme (as defined in Annex A), or

☐

1.2 not an occupational pension scheme (as defined in Annex A) but is an overseas arrangement (as defined in Annex A).

☐

Note: One box (only) must be ticked

2. If the Receiving Scheme is established under trust, we are the trustees of the Receiving Scheme (and, if the Receiving Scheme is not set up under trust, we are the managers of the Receiving Scheme).

3. The Receiving Scheme:

3.1 meets the requirements to be a recognised overseas pension scheme (as defined in Section 150(8) of the Finance Act 2004, and the requirements as prescribed under the Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006), and

3.2 meets the requirements to be a qualifying recognised overseas pension scheme (as defined in Section 169(2) of the Finance Act 2004, and the requirements as prescribed under the Pension Schemes (Information Requirements - Qualifying Overseas Pension Schemes, Qualifying Recognised Overseas Pensions Schemes and Corresponding Relief) Regulations 2006), and

3.3 has been issued by Her Majesty's Revenue and Customs with a QROPS reference, which is

(Insert HMRC QROPS reference)

Appendix

Extracts from the Pension Schemes Act 1993

Part 4ZA – Transfers and Contribution Refunds, Chapter 1 – Transfer Rights: General

Section 95 Ways of taking right to cash equivalent

- (1) A member of a pension scheme who has acquired a right to take a cash equivalent in accordance with 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 in one of the ways specified below.

...

- (2) In the case of a member of an occupational pension scheme that is not an unfunded public service defined benefits scheme, the ways referred to in subsection (1) are—

...

- (d) for subscribing to other pension arrangements which satisfy prescribed requirements.

Appendix

The Occupational Pension Schemes (Transfer Values) Regulations 1996

PART IV: RECEIVING SCHEMES, ANNUITIES AND ARRANGEMENTS

Requirements to be met by receiving schemes, annuities and arrangements

12.—

...

(5) The prescribed requirements referred to in section 95(2)(d) of the 1993 Act (cash equivalent to be used for subscribing to pension arrangements not mentioned in section 95(2)(a) to (c)) are that the pension arrangement to which it is proposed to subscribe—

...

(c) if the scheme from which rights are transferred is registered under section 153 of the Finance Act 2004 is a qualifying recognised overseas pension scheme as defined in section 169 of the Finance Act 2004.