

Ombudsman's Determination

Applicant	Mr R
Scheme	Northern Food Pension Scheme (the Scheme)
Respondents	Northern Foods Trustees Limited (the Trustee)

Outcome

1. I do not uphold Mr R's complaint and no further action is required by the Trustee.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr R has complained that, following his application, the Trustee transferred his pension to Capita Oak Pension Scheme (**the Capita Oak Scheme**) without performing adequate checks on the receiving scheme and the pension monies have now been lost.

Background information, including submissions from the parties

4. Mr R says that he was contacted by an individual who said that he was a representative of a company called Capita Oak. They were conducting pension reviews and said that they may be able to obtain a better return on his pension monies. Mr R agreed to allow Capita Oak to carry out the review.
5. Subsequently, on 21 March 2013, Mr R contacted the Scheme to request a transfer to the Capita Oak Scheme. A transfer quotation was sent to Mr R on 25 March 2013, and on 9 April 2013, Mr R returned the completed transfer forms to the Scheme. A transfer value of £67,589 was paid to the Capita Oak Scheme on 10 May 2013.
6. Much later, The Insolvency Service, on behalf of the Secretary of State for Business, Innovation and Skills, took action against the trustees and administrators of the Capita Oak Scheme, which led to their liquidation in June 2015.
7. According to Mr R's complaint form, he realised after contacting his representatives in April /May 2015 that the Trustee could be at fault for the loss of his pension monies on the basis that they failed to perform due diligence and/or make adequate checks

to ensure the Capita Oak Scheme was a genuine pension scheme before transferring his funds.

8. Mr R's representatives sent a complaint letter to the Trustee in May 2015. The complaint was rejected and Mr R has now brought his complaint to the Pensions Ombudsman.

Adjudicator's Opinion

9. Mr R'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 briefly below:-
 - This case is similar to one that the Pensions Ombudsman determined relating to Mr Hughes and Aviva (PO-6375), which concerned a transfer to the Capita Oak Scheme in March 2013. We have also determined several cases involving similar transfers from that time, relating to different receiving schemes which have met the same end. These can be found on our website, www.pensions-ombudsman.org.uk.
 - The view the Ombudsman has taken in those determinations is that as the Pensions Regulator issued guidance to providers on pension liberation and the danger of pension scams in February 2013. This led to the issue of 'Scorpion' leaflets warning members about the risks to their pensions, and was a point of change in good industry practice with regard to the due diligence expected. The Ombudsman has also said that it would be reasonable to allow a period of time for providers to consider and implement the guidance. There will clearly be some people who made their transfer applications during that period, and later wished that they had not and that the revised procedures had been in place a short time earlier.
 - That is not to say that pension liberation was not known about before then, 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. The level of due diligence expected since 2013 has been commented upon in detail in various determinations, see Stobie PO-3105 and Kenyon PO-1807.
 - The recent High Court judgment in *Hughes v Royal London*¹ also indicates that there is very little providers can do to stop a transfer, where a statutory, or other right exists, even if they have serious concerns about the destination of the money or the nature of the receiving scheme.

¹ *Hughes v The Royal London Mutual Insurance Society* [2016]

- There is no evidence that the Trustee was aware of any particular concern about the Capita Oak Scheme. In hindsight, it was not an appropriate location for Mr R to transfer his pension but it was his choice to do so and the Adjudicator did not consider there was any maladministration in allowing the transfer to proceed at the time that it did in accordance with his statutory rights and his clear instructions.
- It may be that Mr R can seek to take legal action against any of the advisors involved, although it is likely they are unregulated. He can also, if he has not already done so, contact the liquidators of the Capita Oak Scheme to register his claim.

Mr R and his representatives, TLW Solicitors (**TLW**), did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, although I have reached my finding taking into account some additional information which I have explained below.

Ombudsman's decision

10. TLW say that the transfer value was paid in May 2013, some three months after the guidance was issued to providers. The Scheme and Trustee clearly had sufficient knowledge of pension liberation risks but did not pass these on to Mr R, nor did they fully investigate the proposed transfer to Capita Oak.
11. The question I have to consider is if the Scheme and the Trustee had given warnings to Mr R is it possible that he would not have proceeded with the transfer?
12. The Regulatory guidance issued in February 2013, provided advice on areas for potential concern, flags and appropriate warnings. As I have said in previous determinations, it is reasonable to allow some time for providers to consider and implement the guidance and introduce appropriate procedures. However, there was a gap of some three months between the transfer request and payment and I find that this was an unreasonable delay.
13. The Trustee has said that the Pensions Regulator's 'Scorpion Pack' was listed for discussion at its Operations sub-committee meeting of 17 April 2013, and following this meeting the procedure for issuing scorpion packs was adopted. But it is clear that no action was taken to suspend transfers whilst a procedure was put in place, or to ensure that scorpion packs were issued to those transfers that were already being processed. I find that the failure to consider those transfers to be maladministration.
14. The question I have to consider is if the Scheme and the Trustee had given warnings to Mr R is it possible that he would not have proceeded with the transfer. Mr R has confirmed that when he was contacted by a representative of Capita Oak his financial circumstances were strained. He had entered an individual voluntary arrangement

with his creditors. He also received a return of 5% of the value of his pension six months after the transfer was paid to Capita Oak.

15. The scorpion leaflets are designed to raise awareness on the possibility of pension liberation and other pension scams; gives examples of things to beware of; and where to get advice. Among the warnings are such things as being cold called, offering guaranteed returns, or being able to access pension savings before age 55 through a legal loophole.
16. Mr R was cold called and presumably he was offered the chance to access some of his pension savings early as he was under age 55 at the time. It is true that if Mr R had received the scorpion leaflet he would have had the opportunity to rethink whether he wished to continue with the transfer. But given Mr R's then financial position I find, on the balance of probabilities, that it is more likely than not Mr R would have proceeded with the transfer even if he had received the scorpion leaflets.
17. A further question I have to consider is if the Scheme and Trustee had made additional enquiries on behalf of Mr R about Capita Oak, would they have been able to ascertain whether the Capita Oak Scheme was a legitimate scheme and the Trustee could have properly declined the transfer request.
18. The Trustee has pointed out it was not until October 2013 that HMRC changed its process for the registration of QROPS. Therefore, I do not find that there was any indications at that time that the Capita Oak Scheme was a scheme that the Trustee should be wary of. Also, the High Court judgment in *Hughes v Royal London* makes it clear that there was little the Trustee could do to refuse Mr R's transfer.
19. The Trustee has offered Mr R £1,000, in recognition of the distress Mr R has undoubtedly suffered. I consider this a reasonable sum in this case for failing to distribute the scorpion leaflets. If Mr R wishes to take up this offer he should contact the Scheme direct.
20. Therefore, I do not uphold Mr R's complaint.

Anthony Arter

Pensions Ombudsman
23 August 2017