

## Ombudsman's Determination

Applicant	Mr D
Scheme	Transact Personal Pension Plan ( <b>the Plan</b> )
Respondent	Transact, operated by Integrated Financial Arrangements Ltd ( <b>Transact</b> )

## Outcome

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

## Complaint summary

3. Mr D has complained that Transact should not have transferred his pension into the Bobins Pension Scheme.

## Background information, including submissions from the parties

4. On 23 May 2007, Mr D transferred his pension from the Local Government Pension Scheme (**LGPS**) to the Plan. He was advised to do so by Fallon Financial Services Ltd (**Fallon Financial**). The sum transferred was £231,907. Mr D then took his Tax Free Lump Sum of £57,979. The remaining funds, on an unsecured pension basis, were invested in the Castleton Growth Fund.
5. On 13 August 2007, Mr D received a maximum income withdrawal of £10,093.
6. On 13 December 2007, Fallon Financial wrote to Transact and requested the relevant forms required to enable Mr D to transfer his fund to another scheme.
7. On 15 December 2007, Fallon Financial requested that Mr D's investment in the Castleton Growth Fund be sold and the funds held in cash.
8. On 28 January 2008, Transact received a transfer request from Tudor Capital Management Ltd (**Tudor Capital**) to transfer Mr D's fund to the Bobins Pension Scheme, of which it was the administrator. Included with the transfer request were the following documents: -

- A Transact Pension Transfer Out Warranty requesting a transfer to the Bobins Pension Scheme, signed by Mr D on 18 January 2008.
  - A Pension Transfer Application, drafted by Tudor Capital and signed by Mr D on 18 January 2008. A “Transferring Scheme Declaration” signed by Tudor Capital, but which it appears ought to have been signed by the transferring scheme, Transact.
  - A screen print confirming the registration of the Bobins Pension Scheme with HMRC and its Pension Scheme Tax Reference (**PSTR**). This confirmed that the Bobins Pension Scheme had been registered on 23 January 2008.
9. On 29 January 2008, Transact transferred £138,698 to the Bobins Pension Scheme.
  10. On 24 April 2008, Transact wrote to Mr D confirming he had £790 remaining in the Plan.
  11. On 7 October 2010, Transact paid the residual cash within the Plan to Mr D.
  12. Over the course of 2010 and 2011, The Pensions Regulator (**TPR**) issued a series of Determinations prohibiting Tudor Capital Management Ltd from acting as Trustee in relation to several small occupational pension schemes. It is unclear whether the Bobins Pension Scheme was one of those schemes.
  13. On 4 February 2015, Mr D’s financial adviser wrote to Transact and requested information on the Plan. On the same day, Transact responded to confirm the Plan had been transferred to Tudor Capital in 2008.
  14. On 20 March 2017, Mrs D called Transact to request information on the Plan. There is no evidence of a response to this call.
  15. On 11 April 2017, Mr D raised a complaint against Transact on the basis that it should not have transferred his pension. Since the transfer Mr D had lost track of his pension and it appears that his pension has been misappropriated. As a result he approached the Financial Services Compensation Scheme (**FSCS**) to claim compensation for losses arising from the advice he had received from the now dissolved Fallon Financial.
  16. During its investigation FSCS established the loss, had Mr D remained in the Local Government Pension Scheme, as £318,471.07. It paid Mr D the maximum compensation available for claims against financial advisers, £50,000.
  17. In pursuing the complaint against Transact, Mr D attributed the residual loss to its decision to make the transfer to the Bobins Pension Scheme.
  18. On 12 April 2017, Transact acknowledged the complaint and spoke with Mr D’s wife, Mrs D, to establish more details concerning his complaint.
  19. On 18 April 2017, Mrs D, made a Subject Access Report (**SAR**).

20. On 8 May 2017, Transact provided an update to Mr D by letter and spoke with Mrs D the following day.
21. On 11 May 2017, Transact requested Mr and Mrs D to confirm its understanding of the complaint, but no response was received.
22. On 1 June 2017, Transact provided its final response letter. It concluded that it was not responsible for the losses Mr D had incurred. Transact took the view that this was the adviser's responsibility and said it had acted on the instructions it had received without providing any advice to Mr D.

## **Adjudicator's Opinion**

23. Mr D's complaint was considered by one of our Adjudicators who concluded that no further action was required by Transact. The Adjudicator's findings are summarised briefly below:-
  - Mr D had received advice from Fallon Financial, a regulated financial adviser, and it was the adviser's responsibility to ensure the suitability of the transfer and in most cases meet any losses that may have stemmed from an unsuitable transfer. Fallon Financial was now in default and as such the FSCS was the appropriate route of redress for its actions. Mr D had received the maximum compensation possible from the FSCS.
  - Whilst an advised transfer is primarily the responsibility of the adviser, the transferring pension provider must also undertake certain checks before acting on a transfer request. Since February 2013 those checks have become more rigorous, but prior to that date, the checks were less stringent.
  - At the time of Mr D's transfer, Transact would be expected to check that the Bobins Pension Scheme was registered with HMRC and that it had provided a declaration that benefits would be paid in accordance with the relevant legislation. Beyond these checks, which Transact had satisfied, it was not required to do anything more. As such, Transact had acted in line with industry practice at the time.
  - Tudor Capital had completed one of its own forms in error. This form ought to have been completed by Transact. However, as this was not one of Transact's forms it would not have been relying on it and it would not have been sufficiently concerning for Transact not to have proceeded with the transfer. It could also have been easily put right by Tudor Capital had Transact queried it.
  - Whilst the Bobins Pension Scheme was registered with HMRC very shortly before the transfer was requested, and long before this was recognised as a risk factor associated with pension liberation, the knowledge of that risk factor could not be retrospectively applied to events in 2008 when it not highlighted as a risk factor.

- Transact operated on an execution only basis and received an instruction from Mr D and Fallon Financial to transfer. It was required to act on that instruction, and under current case law, where Mr D had a statutory right to transfer, it could not have unilaterally blocked it.
  - Although the losses were significant and the Adjudicator was sympathetic to Mr D's circumstances, there was no error on Transact's part.
  - The Adjudicator also acknowledged an offer of £200 made by Transact for the distress and inconvenience caused by it having not responded to a telephone call when the complaint was being brought to Transact's attention. The Adjudicator took the view that this error did not amount to significant distress and inconvenience and that the Ombudsman would not direct Transact to make an award, the minimum amount for which is £500.
24. Mr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr D provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr D for completeness.

### **Ombudsman's decision**

25. Mr D argues that the fact that a form was completed by Tudor Capital when it should have been completed by Transact shows that Transact failed to act diligently or act in Mr D's best interests. In his view this means the transfer should be voided. However, I do not agree that the matter is as straightforward as that, and I am not persuaded that this irregularity is significant. The form that was completed in error was a Tudor Capital form, and it was Tudor Capital's mistake. It is often the case that a transferring scheme, Transact in this case, will only seek to rely on their own forms being completed correctly, and in this case they had been.
26. Additionally, if Transact had challenged this, Tudor Capital would, on the balance of probabilities, have just arranged for a new form to be submitted. This would not have changed the underlying advice Mr D had received to transfer. Therefore, even if this had been queried, it is more likely than not the transfer would have gone ahead, albeit delayed by a matter of days.
27. Although Mr D may disagree, it is not appropriate for me to apply knowledge of the risk factors associated with pension liberation that we are aware of today to events in 2008.
28. Mr D has questioned how Transact could have blocked the transfer if the current case law implies that it could not have unilaterally acted in that way. The position is not that Transact could have, had it identified sufficient indicators of pension liberation or fraud, cancelled the transfer. Instead, if there was reason(s) to think the transaction was a risk to their customer, under today's standards, I would expect Transact to

have contacted Mr D to inform him of those risks and invite him to confirm he still wished to transfer in light of them.

29. However, even if Transact had concerns that the transfer was fraudulent or linked to pension liberation, under the current case law, if Mr D had a statutory right to transfer and still wished to transfer despite the risks, it could not have blocked that right. That being said, the issue of a statutory right to transfer is not relevant to Mr D's position as Transact had no reason to doubt the legitimacy of the transfer under the standards of the day.
30. Mr D has referred to comments from the FSCS to the effect that a transfer from an occupational pension scheme into a personal pension scheme, then back to an occupational pension scheme is illegal and a scam. Whilst such circumstances are rarely suitable for an individual, they are not illegal or necessarily a scam. However, the question of assessing whether it was suitable fell to Fallon Financial, not Transact.
31. There may have been a failure in customer service in 2017, when Transact responded to the complaint, however, it otherwise met the regulatory requirement for responding to a complaint, and I am not persuaded that its single error amounted to significant distress and inconvenience. Transact has made an offer that Mr D views as insufficient. It is up to him whether he wishes to accept it, and if he does, he should contact Transact directly.
32. In respect of the transfer, I can see no fault on Transact's part. Whilst I have the utmost sympathy for the situation he finds himself in, in the absence of any error on Transact's part, I cannot attribute any losses suffered by Mr D to its actions.
33. Therefore, I do not uphold Mr D's complaint.

**Anthony Arter**

Pensions Ombudsman  
3 May 2018