

Ombudsman's Determination

Applicant	Mr R
Scheme	The Royal Bank of Scotland Group Pension Fund (the Scheme)
Respondents	The Royal Bank of Scotland plc (RBS) Liberty SIPP Limited (Liberty)

Outcome

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

Complaint summary

3. Mr R is unhappy with the administration of his request to transfer benefits, which caused the transfer value quoted to him to no longer be available.

Background information, including submissions from the parties

4. In 2016, Mr R made enquiries to RBS with regard to transferring benefits away from the Scheme.
5. On 1 November 2016, RBS sent Mr R a letter which stated the following:

"Thank you for your recent enquiry. I enclose the following:-

- A Statement of Benefits and Cash Equivalent Transfer Value
- A Transfer Out of Benefits Discharge Form
- Independent Financial Adviser Confirmation Form
- A leaflet about Pension Scams

If the transfer is to proceed, the discharge form must be returned, and all requirements mentioned in it met before the guarantee date (see overleaf). If the form and/or any of our requirements are received after the guarantee expires, the transfer value will be re-quoted.

In addition, if the receiving scheme is a Defined Contribution (DC) arrangement, you must get appropriate independent advice from an FCA authorised adviser. If the transfer is to proceed you must send us the attached

confirmation form signed by the adviser before the guarantee date (see overleaf).”

6. The Statement of Benefits and Cash Equivalent Transfer Value (**CETV**) which was included in the above cited a CETV of £893,490.58, guaranteed until 1 February 2017, and indicated that this was a final salary plan.

7. On 30 January 2017, Liberty emailed Mr R’s adviser (**the IFA**) saying that it was in the process of setting up Mr R’s details on its system and requesting the transfer. It said that where this was a defined benefit transfer, it required a letter completed by the IFA confirming that advice had been given.

8. A few hours later, the IFA sent Liberty a letter (**the adviser letter**) which stated the following:

“I would like to confirm that [Mr R] has been advised by Integrity Asset Management Limited to transfer his retained Royal Bank of Scotland defined benefit pension scheme to Liberty SIPP.

I trust this is satisfactory, but please me know should you require anything else at this time.”

9. Also, on this date, Liberty sent RBS paperwork to effect the transfer, by special delivery and email, and requested that it make payment to the Liberty Option SIPP.

10. On 2 February 2017, RBS sent Liberty the following email:

“Thank you for your email of 30 January with forms attached.

As the receiving scheme is a Defined contribution (DC) arrangement, [Mr R] must get appropriate independent advice from an FCA authorised adviser. If the transfer is to proceed we must receive the confirmation form signed by the advisor before the guarantee date.

As the date has now expired, once we receive the completed form the transfer value will be requoted.”

11. Liberty forwarded the above email to the IFA. Liberty then sent RBS an email in which it said:

“Please find attached the letter that we hold on file, signed by the adviser.

As the transfer forms were received on the guarantee date, can the transfer value be honoured with the attached letter?”

12. The same day, the IFA acknowledged Liberty’s email and commented that he had not seen any such request from the Scheme.

13. On 3 February 2017, Liberty sent RBS an email following its email the previous day, and said:

“Further to the email below, please can [sic] provide a response to the email as a matter of urgency?”

We note that this requirement was not a requirement in the transfer forms. If it was stated, the signed letter would have been provided.”

14. On 7 February 2017, RBS replied saying:

“If the transfer is to proceed, the discharge form must be returned, and all requirements mentioned in it met before the guarantee date. If the form and/or any of our requirements are received after the guarantee expires, the transfer value will be re-quoted.

As already mentioned in our email of 2 February, as the receiving scheme is a Defined Contribution (**DC**) arrangement, the member must get appropriate independent advice from an FCA authorised adviser. If the transfer is to proceed the member must send us the FCA Authorised Adviser Confirmation Form signed by the adviser before the guarantee date (which has now expired). The letter you have attached to your email is not sufficient, as there is a declaration that requires the advisers [sic] signature.”

15. On the same date, Liberty replied to RBS asking where in the transfer forms this was stated and highlighting that the IFA was not aware of this requirement.
16. Shortly after, RBS responded saying that the requirement was stated in its transfer pack of 1 November 2016 and cited the two relevant paragraphs from its letter of this date, as quoted above. It also quoted the adviser declaration in the FCA Authorised Adviser Confirmation Form (**the FCA form**).
17. On 9 February 2017, the IFA contacted RBS to query the information in the transfer pack.
18. On 13 February 2017, RBS said that the transfer quotations it issued were standard letters with member specific information automatically added by its administration team. It said it had a copy of the pack sent to Mr R and could confirm the FCA form was included. It said its letter advised that this must be signed; this was a requirement set by the FCA.
19. On 20 February 2017, the IFA emailed RBS with the following points:-
- The FCA form was not included in the discharge pack. Both he and Mr R had reviewed and made a copy of the pack. The Scheme should bear some responsibility for the FCA form not being submitted.
 - The instruction to complete the form was not included where it logically should have been, which was on the discharge form and highlighted in bold along with all the other requirements.

- RBS had said the guarantee would not be honoured as the FCA form had not been returned on time, but it now had the form, along with evidence provided by Liberty that advice had been given to Mr R prior to the guarantee date.
20. On 22 February 2017, the IFA asked Liberty if it could confirm that it had sent his FCA details to the Scheme. Liberty replied with a copy of what it had sent to RBS by post and email.
21. On 24 July 2017, the IFA asked RBS whether it would specifically require the FCA form, as opposed to a personal statement confirming that regulated advice had been provided.
22. On 26 July 2017, RBS replied saying the guidance it had been given when the regulations were introduced in 2015 was that it needed confirmation that advice had been provided as set out in its form. It said had that wording been received in a letter, it would not have insisted on the form.
23. On 12 September 2017, Liberty wrote to the IFA saying:-
- Upon receiving Mr R's application, it had emailed the IFA on 30 January 2017 regarding needing additional information. It then received a declaration on the IFA's advisory firm's letterhead indicating that Mr R had received advice. It sent this declaration to RBS by email and special delivery on 30 January 2017.
 - RBS had confirmed that according to its records, the FCA form had been completed on 13 March 2017.
 - Although the IFA was not happy that the FCA form was not included in the transfer pack, this was not the responsibility of Liberty.
24. The IFA replied the same day saying that in the conversation he had with Liberty at the time Mr R's application was being processed, he was assured that all documentation would be sent to RBS. He was subsequently told that the declaration was not sent to RBS because it was not listed on the discharge form.
25. After various exchanges, the IFA, on behalf of Mr R, formally complained to both RBS and Liberty respectively.
26. On 25 September 2017, Liberty provided its final response. In summary, it said the rules around an adviser declaration being required for such a transfer had been around for a number of years. It could not be held accountable for RBS not accepting a declaration on the IFA's letterhead when the correct declaration form on an RBS letterhead was not originally sent to it.
27. RBS's reply, under stage two of the Internal Dispute Resolution Procedure (**IDRP**), made the following points:-
- Section 48 of the Pension Schemes Act 2015, required the Trustee to check that a member had received "appropriate independent advice before" making a

transfer payment relating to a defined benefit pension to an arrangement that would convert their benefit into money purchase funds.

- The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice Regulations) (**the Regulations**), prescribed how this check must be carried out.
- Regulation 7 required “confirmation from the member...that appropriate independent advice had been received must be in the form of a statement in writing from the authorised independent adviser confirming (a) that advice has been provided which is specific to the type of transaction proposed...;(b) that the adviser has permission under Part 4A...;[and] (c) the firm reference number of the company or business in which the adviser works for the purposes of authorisation from the FCA...”.
- On receipt of this information and before making the transfer, the Trustee was required to check that the adviser had the appropriate permissions by checking the Financial Services Register.
- Had the FCA form not been included, the requirement to provide it was flagged in the covering letter and a second form could simply have been requested. Further, Mr R would have had time to contact it at any point during the guarantee period to confirm its requirements.
- The discharge pack returned on Mr R’s behalf did not include the FCA form and the adviser letter did not include the information required and, in any event, was sent on 2 February 2017. Liberty had said the adviser letter was returned in the discharge pack, but its records did not concur with this.

28. The complaint was subsequently referred to this Office for an independent review.

29. On 25 April 2018, Liberty sent this Office its formal response. This argued that the IFA had been contradictory in the statements he made throughout this matter in initially saying that RBS never received the IFA declaration form and now blaming Liberty for not sending it.

30. The IFA, who is representing Mr R, made the following comments on Liberty’s response:-

- He was not attempting to apportion blame on Liberty in this matter. However, somewhere between Liberty and RBS, the adviser letter had gone missing leading to Mr R being disadvantaged.
- Around the time of the guarantee period, there was a huge influx of pension transfers and it was known that turnaround times had increased significantly. The fact that the application was sent to Liberty three days prior to the guarantee date was irrelevant. Whilst not ideal, this was not unusual given the delays by ceding schemes to respond to requests for information.

- There was no legislative requirement which said that the ceding scheme needed the adviser declaration in advance of the guarantee date. However, the ceding scheme must satisfy itself that the adviser was qualified to give advice on the transfer before proceeding with it as transfers could often take several months after discharge papers had been received.
- It was upon processing the documentation and meeting Mr R that they both discovered the FCA form was missing, so they posted what they could to Liberty and were hopeful that they would receive a replacement form on 30 January 2017. As they could not obtain this, a substitute declaration was sent to Liberty (after the IFA had received an email from Liberty reminding it about this).

31. On 23 May 2018, RBS provided its formal response. The main points were:-

- Regulation 7 of the Regulations set out the advice requirements for such a transfer. Failure to comply with these provisions would result in civil penalties being imposed on the Scheme's trustees.
- It seemed unlikely that the FCA form was not included in the discharge pack. However, not wishing to doubt the IFA's account, the requirement to provide such a form was clearly flagged in the covering letter.
- In any event, the IFA should have been aware of the need for such a declaration/certificate.
- The transfer pack was returned at the very last moment in the guarantee period. Hence, there was no time to check that its requirements had been met and request the missing form before the guarantee period expired.

32. In response, the IFA commented that many schemes accepted the adviser declaration after the guarantee date. Further, RBS were taking two weeks to respond to queries so a replacement FCA form might not have arrived in time even if requested slightly earlier. Taking into account these points, he had hoped RBS would exercise its discretion and honour the transfer value rather than allow Mr R to be penalised by a loss of £78,000. Lastly, although RBS said Mr R could have contacted it earlier for the FCA form, RBS did not realise it was missing until a late stage.

Adjudicator's Opinion

33. Mr R's complaint was considered by one of our Adjudicators who concluded that no further action was required by RBS or Liberty. The Adjudicator's findings are summarised below:-

- There were two potential administrative errors at hand: RBS's purported omission of the FCA form in the transfer pack and Liberty's suggested failure to include the adviser letter in the paperwork it sent to RBS on 30 January 2017. In both instances, which remained highly disputed, it was not possible to say

without doubt what took place. RBS maintained that the transfer pack included the FCA form while Mr R and the IFA say it was not. Liberty said it forwarded the adviser letter to RBS while the latter said it did not receive this.

- Although, one could either make further enquires to try and ascertain what actually happened this point was superseded by the fact that RBS did not consider the adviser letter met its requirements. Even if RBS had received the adviser letter on 30 January 2017, which was within the guarantee period, it would not have honoured the value cited in the CETV as it did not consider that its criteria to allow the transfer had been fulfilled. Hence, the question of whether Liberty made an error in not forwarding this letter was irrelevant.
- Instead, it was appropriate to consider whether RBS would have been acting inappropriately in refusing the transfer at such a juncture, having received most of the required paperwork and one substitute document for that which was omitted. On 26 July 2017, RBS confirmed it would have accepted an alternative to the FCA form provided that the wording in the FCA form was included. Hence, it was applying a more pragmatic approach than the IFA had suggested.
- Having reviewed the adviser letter in view of the Regulations, this failed to confirm that the adviser had permission under Part 4A of the Financial Services and Markets Act 2000, and also did not contain the firm's FCA reference number. In earlier enquiries, the IFA asked Liberty if RBS had been sent his FCA details. The specific answer to this point was unclear but, in any case, it was not unreasonable for RBS to require this specific information to be stated in the adviser declaration.
- The IFA considered RBS to be needlessly stringent in its requirement for the FCA form and/or in its non-acceptance of the adviser letter on the basis of its content. However, such actions were not unreasonable or obstructive to the point of this amounting to an administrative error. RBS was entitled to follow the process it had set out in its transfer pack.
- RBS made its requirements sufficiently clear to those in receipt of its transfer pack. On reading its 1 November 2016 letter, it would be difficult to doubt the necessity of the FCA form if proceeding with the transfer.
- The IFA said there was no legislative requirement in which the ceding scheme needed the adviser declaration before the guarantee date and instead, it must satisfy itself that the adviser was qualified to advise on the transfer before proceeding. Whilst there was often a gap between when a scheme received the required paperwork and the point at which a transfer was enacted, RBS's requirement for the FCA form to be submitted was clear and not unreasonable.

34. The IFA, on behalf of Mr R, did not accept the Adjudicator's Opinion and made the following points:-

- The Adjudicator concluded she did not need to make a finding on whether the adviser letter was included in the paperwork sent by Liberty to RBS. This was unfair; the paperwork was sent by email to RBS therefore it should be relatively easy to confirm this and any decision on the matter would need to do so.
- On the basis that it was Liberty that highlighted that the adviser declaration was not present in the information he had forwarded to it, and as it did not revert after receiving the adviser letter, it would have been odd for it not to then forward this to RBS. This letter confirmed that the IFA was authorised, and that Mr R had received advice on the transfer. Hence, RBS was being unreasonable in its position.
- It was reasonable for RBS to need to know whether the adviser firm was regulated to provide the advice in question, however, his company's headed paper confirmed that it was authorised and regulated by the FCA. The purpose of the requirement of the adviser declaration form was to confirm that the client had received advice on the transfer by an appropriately registered individual. The adviser letter did so, therefore nothing turned on the FCA registration number. If this was significant, the FCA register could provide RBS with his firm's registration number in seconds and it would need to confirm the authenticity of details provided in the adviser declaration against the FCA register in any event.
- Hence, as long as the letter confirmed that advice had been given, he did not agree that RBS was not able to accept this alongside a check of the register. Had the required form been provided, RBS would also have needed to confirm the details on the register. Therefore, the outcome was the same.
- It was completely unreasonable for companies to have unnecessarily stringent requirements in place which allowed them to reject applications when non-compliance with these did not make a difference to the process. If Liberty did include the adviser letter, RBS would still be acting unreasonably in rejecting the application as this could have been verified in the days after the guarantee date.
- If it was to be maintained that strict compliance with purposeless requirements should be enforced on companies, his secondary position was that non-compliance was Liberty's fault. Liberty undertook a duty to Mr R to flag up the importance of the inclusion of the forms and its contents, therefore, the onus was on it to ensure a compliant form was included. Liberty was in breach of duty in not being clear that inclusion of the FCA number was critically important, or as a minimum, confirming that it could not advise on the compliance of the letter and RBS would need to be contacted separately for this.
- He expected any final determination to make a finding on what was included in the information sent by Liberty to RBS, and, whether this Office agreed that inclusion of the FCA number and a firm's permissions on a declaration form by

the guarantee date are critical to trustees proceeding, when this information is checked on the FCA register in due course in any event.

35. On 19 December 2018, the Adjudicator asked Liberty to provide a copy of the paperwork it had forwarded, by email and post, to RBS on 30 January 2017. Liberty sent us this information the following day.
36. In the scanned documentation Liberty provided in respect of what it sent by post to RBS (derived from its paper file), the adviser letter was included. However, in the email it provided from 30 January 2017, the adviser letter did not appear to be in the attachment forwarded to RBS.
37. The complaint has now been passed to me to consider. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by the IFA for completeness.

Ombudsman's decision

38. Following the further enquiries made into the paperwork sent by Liberty to RBS on 30 January 2017, I am not satisfied that the adviser letter was sent to RBS by email on this date. Although this letter was included in the paperwork sent by post the same day, RBS says it did not receive this until 2 February 2017, that is after the guarantee period. I see no reason to doubt this. Therefore, I find that the adviser letter was not received by RBS within the guarantee period.
39. The IFA has suggested that his provision of the adviser letter late in the guarantee period was due to the FCA form being omitted from the transfer pack. However, RBS's requirement of receipt of the FCA form before the guarantee date was clearly set out in its letter of 1 November 2016. If this was not included in the transfer pack (and should this not have been realised until a late stage) it would have been reasonable for the IFA to make enquires and take action to correctly fulfil this outstanding requirement.
40. Having had regard to the specific circumstances in this matter, I cannot find that RBS was unclear or unnecessarily stringent in its requirements. With regard to Liberty, although the adviser letter was not included in its email of 30 January 2017, it was sent by post, which was sufficient. It is of course unfortunate that RBS did not receive this on time, but there was no delay on Liberty's part in sending this. The IFA has suggested that Liberty had a duty to notify him of the non-compliance of the adviser letter, however, I cannot see why it should be responsible for the contents of his letter when the requirements for its compliance were clearly set out in the Regulations.
41. In conclusion, the process for the transfer had been unequivocally set out by RBS at the outset. Due to an array of reasons, the IFA had difficulties in following this, but I am not persuaded that this was due to any administrative errors on the part of RBS or Liberty.

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42. Therefore, I do not uphold Mr R's complaint.

Anthony Arter

Pensions Ombudsman
21 December 2018