

Ombudsman's Determination

Applicant	Mr E
Scheme	Liberty SIPP (the SIPP)
Respondents	Embark Services Limited t/a Liberty SIPP Limited (Liberty)

Outcome

1. Mr E's complaint is upheld and to put matters right Liberty shall, within 28 days of the date of this Determination, pay an amount equal to the transferred sum, £18,500, to the SIPP. To compensate Mr E for loss of investment opportunity, Liberty shall add interest at the base bank rate for the time being quoted by the Bank of England for the period from 1 April 2017 to the date of payment inclusive.

Complaint summary

2. Mr E has complained that Liberty did not carry out enough due diligence checks when transferring part of his benefits from the SIPP to the Dawson Metals Ltd Retirement Benefits Scheme (**the Dawson Scheme**) in March 2017. Mr E is concerned that this money has now been lost or misappropriated.

Background information, including submissions from the parties

3. Mr E established his SIPP with Liberty in February 2012, when he transferred to it £97,105.64, representing his pension benefits from the Royal Mail Pension Plan.
4. On 5 March 2017, Mr E completed and signed a Letter of Authority (LOA) requesting Liberty to provide information relating to his SIPP to Estuary Administration Ltd (**Estuary**). Notes in the footer of the LOA say Estuary does not provide financial or investment advice and is therefore not regulated by the Financial Conduct Authority (FCA).
5. The documents provided by Liberty show Mr E submitted a request, dated 8 March 2017, to transfer the full value of his SIPP to the Dawson Scheme.
6. This request was sent under cover of a letter from Estuary dated 8 March 2017. The letter shows that, in addition to the transfer form, a HMRC scheme registration acknowledgement confirmation certificate, screen prints, a certified copy of the Trust Deed, Scheme Rules and the LOA were enclosed.

7. The letter said the Dawson Scheme was a Small Self-Administered Occupational Pension Scheme, fully approved and legally able to accept transfer monies.
8. However, a subsequent letter from Estuary dated 28 March 2017 enclosed an amended transfer request, dated 29 March 2017, showing Mr E wanted to transfer just part of his SIPP, amounting to £18,500, to the Dawson Scheme. Again, the additional documents appear to have been included.
9. Although it is not clear from the evidence provided, there appears to be no dispute the transfer took place shortly thereafter.
10. Mr E says that Liberty failed to put in place the necessary procedures to reflect the industry guidance on pension liberation fraud and wants to be put back in the position he would have been in had the transfer not taken place.
11. Liberty say that Mr E was determined to push the transfer through and that it was unable to refuse to carry out a transfer. In the circumstances, and given Mr E's enthusiasm for the transfer, there appeared nothing out of the ordinary with the transfer to a small self-administered scheme (SSAS).
12. Liberty say it carried out the usual checks on all parties involved and received the requisite information about the Dawson Scheme's status with HMRC.

Adjudicator's Opinion

13. Mr E's complaint was considered by one of our Adjudicators who concluded that further action was required by Liberty. The Adjudicator's findings are summarised below:-
 - Previous determinations have referred to the guidance issued by the Pensions Regulator to providers in February 2013 as being a point of change as to what might be regarded as good industry practice. Mr E's transfer took place more than four years after that guidance was issued.
 - Several determinations, for example Jerrard PO-3809, set out the type of due diligence expected of transferring schemes. Paragraphs 25-36 of Jerrard goes through the action pack provided by the Pensions Regulator to pension professionals. It identifies a number of specific risks or 'red flags' and says where these are identified the member should be asked, for example, why he is transferring to a scheme sponsored by an employer who does not employ the member and how he became aware of the receiving scheme.
 - Whilst Liberty obtained a copy of the Trust Deed and Rules for the Dawson Scheme, it did not appear to have carried out any due diligence on the employer, sponsor, or the connection with Mr E. If this risk had been identified then Liberty could have asked Mr E some questions about this.

- There is no evidence that any such dialogue took place between Liberty and Mr E, or whether Liberty even identified any of these issues. If such a dialogue had taken place it may well have given Mr E the opportunity to reflect on whether he wished to transfer to the Dawson Scheme.
 - Although, Liberty could not give advice about the transfer it could have given warnings to Mr E and, if necessary, delayed the transfer until it obtained further information.
 - The Pensions Regulator's guidance recommends that Liberty should have:
 - "Contacted the member to establish their understanding of, for example, the type of scheme they'll be transferring to. You may also want to direct the member to the Pensions Advisory Service (**TPAS**), who can help them understand the potential tax consequences of the transfer if any part of the arrangement is deemed as unauthorised..."
 - The guidance continues:
 - "Communicating with the member may also allow you to establish answers to more of the questions above, where you've been unable to answer them with the information you have available. If your concerns remain then you should alert the relevant authority ..."
 - Had Mr E been contacted by Liberty then, on the balance of probabilities, it is more than likely that he would have reflected on his decision and possibly contacted TPAS and made a decision not to transfer. But Liberty failed to contact Mr E and simply progressed the transfer payment to the Dawson Scheme.
 - The Dawson Scheme is known to the Pensions Regulator and it has appointed Dalriada Trustees Limited (**Dalriada**) to take over the trusteeship of the scheme and to see if it can recover any of the monies invested.
 - It is accepted that, at the time of the transfer, the Dawson Scheme was registered with HMRC and able to accept transfers. Even had Liberty carried out a full due diligence exercise at the time, it would have been unlikely that it could categorically have stated that the Dawson Scheme was being used as a scam vehicle. This only became apparent sometime later. However, there were enough known risk factors for Mr E to have been dissuaded from transferring.
 - Liberty, as pension professionals, should have paid greater adherence to the Pensions Regulator's guidance and should have contacted Mr E and given him warnings of its concerns and thus avoided the transfer payment proceeding.
14. Liberty did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

15. Liberty provided further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the main points made for completeness.
16. Liberty has reiterated that it did complete adequate due diligence and that there were no specific reasons to alert it to the fact the Dawson Scheme was potentially a scam.
17. It says there were no 'red flags', specifically:-
 - The Dawson Scheme was not recently registered with HMRC.
 - There was nothing to indicate Mr E was looking to access his pension before age 55.
 - Mr E applied no more pressure to complete the transfer than it would normally have expected.
 - There was nothing to indicate Mr E had been approached unsolicited.
 - There was no mention of a legal loophole
18. Liberty said it was unable to provide advice to Mr E and therefore had to act on his instructions.
19. Liberty also said it would not have been able to raise concerns about the Dawson Scheme without proof. There was nothing to indicate that Mr E would not have transferred if warnings had been given.
20. Liberty added that it was unclear what Mr E knew about the Dawson Scheme and that he should bear some responsibility for any loss, as should Estuary. It said Mr E should bring his complaint against Estuary.

Ombudsman's decision

21. By the time of this transfer the threat of pension liberation and scams was well known throughout the pensions industry. Guidance had been issued by the Pensions Regulator (**the TPR guidance**) more than four years previously. It is disappointing that a professional pension provider appears to be so unaware of the requirements placed on it to protect the interests of its customers.
22. A Small Self Administered Scheme (**SSAS**) is a pension scheme normally set up by a limited company on a defined contribution basis. A SSAS is primarily set up by private and family run businesses for the benefit of the owner directors and family employees.
23. The members are appointed as trustees to have control and flexibility over the scheme's assets and investment choices. If all members are trustees, a SSAS benefits from many exemptions from pension legislation applicable to other pension

schemes, and so permits a greater range of investments and fewer administrative requirements than other occupational schemes

24. Mr E lives in Hereford whereas Companies House records show Dawsons Metals Ltd, as being registered in Romford. The Certificate of Incorporation shows Dawsons Metals was incorporated as a limited company on November 2016.
25. The Dawson SSAS was registered on 12 May 2014. The registration certificate shows Estuary as the administrator. Estuary is not authorised by the Financial Conduct Authority.
26. Contrary to what it now says, in its response to Mr E's complaint, dated 23 February 2018, Liberty pointed out that this was his sixth attempt to transfer funds away and it also referred to the fact he was 'insistent' and put pressure on its staff to push the transfer through.
27. In addition to the possible 'red flags' referred to by Liberty, the TPR guidance shows that the following questions should be considered by the transferring scheme manager:
 - Is the scheme to which the member wishes to transfer...
 - Sponsored by a newly registered employer?
 - Sponsored by an employer that is geographically distant from the member?
28. And further questions should be asked of the member:-
 - Has the member...
 - Taken no advice?
 - Pressured the trustees/administrators to carry out the transfer as quickly as possible?
 - Not received documentation from the new scheme?
29. Had Liberty contacted Mr E to ask the above questions, there is no doubt his answers should have alerted Liberty to question the validity of the transfer and to have provided suitable warnings to him.
30. Liberty has questioned whether such warnings would have dissuaded Mr E from transferring funds to the Dawson Scheme. But that is missing the point. It was Liberty's responsibility to put Mr E in a position where he could make an informed decision and it failed to do so.
31. Liberty has also suggested Mr E should accept some responsibility and questioned what he knew about the Dawson Scheme. There is no evidence to show that Mr E is financially sophisticated. He is a postal worker and there is nothing to indicate he has anything other than a layman's knowledge of pensions or investments. Mr E has also

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confirmed he was not offered, nor has he received, any financial inducement to transfer.

32. I uphold Mr E's complaint.

Directions

33. Within 28 days of the date of this Determination Liberty shall:

- pay an amount equal to the transferred sum, £18,500, to the SIPP.

34. To compensate Mr E for loss of investment opportunity, Liberty shall add interest at the base bank rate for the time being quoted by the Bank of England for the period from 1 April 2017 to the date of payment inclusive.

35. Liberty shall also ensure that Mr E enters into an agreement to return any monies that may be recovered by Dalriada Trustees from the Dawson Scheme.

Anthony Arter

Pensions Ombudsman
20 March 2020