

Ombudsman's Determination

Applicant	Mr S
Scheme	Standard Life Stakeholder Pension Plan (the Plan)
Respondent	Standard Life Assurance Limited (Standard Life)

Outcome

1. I do not uphold Mr S' complaint and no further action is required by Standard Life

Complaint summary

2. Mr S has complained that Standard Life has refused to transfer his pension benefits in the Plan to another provider using due diligence as an excuse.
3. He says Standard Life has refused to contact HMRC with regard to the authenticity of the IHPS (**the receiving scheme**), that it is requesting copies of documents that do not exist, and that it is unlawfully confiscating his funds by denying him his right to a transfer value when requested.

Background information, including submissions from the parties

4. Standard Life's records show that Mr S initially made a request to transfer his benefits from the Plan on 25 June 2018. A transfer pack was issued to his online mailbox the same day.
5. On 30 June 2018, Mr S completed a Transfer Application Form (**the Application**) requesting Standard Life to transfer the benefits he had in the Plan to the receiving scheme.
6. The Application said, under the heading "Guidance notes for filling in this form":-
"Along with this form you should also provide the following if you are intending to transfer to an occupational pension scheme or Small Self-Administered Scheme:
 - Evidence you are in receipt of earnings. If you are employed, please provide copies of your last 3 months' payslips and a copy of your latest P60. If you are self-employed, please provide a letter from a certified accountant evidencing your last 3 months' income and a copy of your latest tax return.

This is needed to help us establish whether you have a statutory right to a Cash Equivalent Transfer Value.

- A copy of correspondence from HMRC confirming the Receiving Scheme's Pension Tax Reference (PSTR) number. The Receiving Scheme Trustee/Scheme Administrator will be able to provide you with this.
- The Scheme's Trust Deed and Rules from inception of the Scheme to date, and any other Deeds, e.g. Deeds of Appointment and Retirement of Trustees.
- A letter from the provider of the Pensions Schemes Trustee Account or the Pension Scheme Administrator Account. This letter must be, on letter headed paper, confirming the full name of the account, the account sort code, the account number and the names of the accounts authorised signatories.

Upon receipt of the complete requirements we will assess your request with a view to completing the transfer. However, we do reserve the right to ask for additional information where it is deemed necessary".

7. Under the heading "Receiving Scheme Details", Mr S had ticked two boxes to show the receiving scheme, as both an occupational pension scheme and a personal pension. He had also shown himself as the Scheme Administrator and signed the Application as such.
8. Standard Life wrote to Mr S on 17 July 2018, to ask him to provide a screenshot of the relevant pages from HMRC's online services showing the scheme name, approval (PSTR) number, and the scheme administrator. It said this must be electrically date stamped and taken within one month to be valid. The screenshot he had provided did not show the name of the Administrator of the Scheme.
9. It also asked him to confirm the type of receiving scheme and to provide a copy of the scheme rules and trust deeds.
10. Mr S responded by email on 19 July 2018. He attached a copy of the HMRC screenshot. He pointed out it said the receiving scheme was established by contract which he said meant it was not regulated and therefore was not a usual personal pension or SSAS and that no scheme rules or trust deed were required as HMRC rules solely applied.
11. Mr S also provided a letter from Santander confirming details of the account for the S Pension Trustee Account and a portfolio investment statement for the IHPS.
12. Standard Life requested a copy of the HMRC rules to which Mr S had referred or a link to the relevant page on the HMRC website. It also asked for a copy of the contract establishing the receiving scheme.

13. Mr S responded by saying the rules were available from the HMRC website and that the other documents did not exist. He also asked if Standard Life had contacted HMRC about the validity of the receiving scheme.
14. Standard Life said it had not contacted HMRC as it does this at the conclusion of its due diligence if concerns remain about the receiving scheme. In this case it had been unable to conclude its due diligence as Mr S had not sent any scheme related documents or say which HMRC rules governed the receiving scheme.
15. Standard Life says its position remains that if it is unable to carry out any of its checks on the receiving scheme due to the provider/administrator being unable to provide any documentation as to how the scheme was established, or as to how it is governed and operated, it cannot complete the reasonable checks that form part of its transfer request due diligence process.

Adjudicator's Opinion

16. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by Standard Life. The Adjudicator's findings are summarised below:-
 - The Plan is a personal pension scheme. Within Chapter IV of Part 4ZA of the Pension Schemes Act 1993 (PSA 1993), section 93 sets out that the following conditions apply, in relation to any member of a personal pension scheme:-
 - they have accrued rights to benefit under the scheme;
 - their pensionable service must terminate at least one year before normal pension age; and
 - no crystallisation event has occurred.
 - Section 94 of PSA 1993, provides that a member of an occupational or personal pension scheme has a right to a "cash equivalent transfer value" of any benefits which have accrued under the transferring arrangement.
 - Section 95(1) of PSA 1993, states that a cash equivalent transfer value can be taken by making an application in writing to the managers of the transferring arrangement requiring them to use the cash equivalent in one of several ways set out in subsequent paragraphs. In summary, and so far as relevant, they are: for acquiring "transfer credits" in an occupational pension scheme which satisfies prescribed requirements and where the trustees or managers of the scheme are able and willing to accept the transfer.
 - Mr S has met the conditions under s93 PSA 1993. He has accrued rights to benefits under the Plan; no crystallisation event has occurred; and he has ceased to accrue such rights at least one year before his normal pension age. So, Mr S

has acquired a right to take the cash equivalent of those benefits, s94(2), in accordance with Chapter IV of Part 4ZA.

- Since 2013, scheme trustees and administrators have been expected to carry out due diligence on proposed transfers in order to counter pensions liberation. On 14 February 2013, The Pensions Regulator (the Regulator) published guidance on pensions liberation fraud directed at pension professionals. This is commonly referred to as “the Scorpion Guide” due to the imagery used within, and is entitled “Pension liberation fraud – The predators stalking pension transfers.”
 - The Scorpion Guide includes several indicators trustees and administrators should look out for as part of their due diligence process before making a transfer payment.
 - However, it is clear this list was not intended to be exhaustive and it is largely left up to the trustee/administrator to decide the level of due diligence they wish to undertake in order to comply with the expectation.
 - As part of its due diligence process Standard Life has decided it requires sight of the receiving scheme’s documentation in order to satisfy itself the transfer is to a bona fide pension arrangement.
 - Mr S has provided a copy of the HMRC registration and says this is sufficient to authenticate the receiving scheme.
 - However, whilst the scheme may be registered and it may have been given a contracting-out certificate, it is reasonable for Standard Life to ensure that the cash equivalent requirements are met.
 - Standard Life wants to be certain the transfer is for acquiring transfer credits in accordance with PSA 1993, and as Mr S has been unable to provide satisfactory evidence to this effect, its refusal to transfer when it cannot establish anything about the scheme beyond that it is registered with HMRC and had a contracting-out certificate is reasonable.
 - Mr S argues Standard Life should have reported to HMRC and that it has not done so. However, there is no need to report as Standard Life is not suggesting there is anything to evidence the receiving scheme is being used for pensions liberation fraud, but simply that it is unable to complete the transfer without being certain that the transfer value will be used to acquire transfer credits in accordance with PSA 1993.
16. Mr S did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider.
17. Mr S 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 main points made by Mr S for completeness.

18. The following points were made by Mr S:-

- What did Standard Life need to enable the transfer to take place?
- It was agreed the IHPS is an approved registered pension scheme but Standard Life does not acknowledge this.
- What would happen if funds were transferred from IHPS to Standard Life? How could Standard Life accept a pension transfer from IHPS which they do not acknowledge as legitimate?
- By not allowing the transfer he is suffering from what he says is Standard Life's poor investment returns.
- Standard Life can refuse to make the legitimate transfer because it wants to know how his company manages pension schemes. Would it ask this of other schemes?
- How does he prove that the transfer value will be used to acquire transfer credits in accordance with PSA 1993? Surely this is the responsibility of the Scheme Administrator and should be of no concern to Standard Life.
- He could get an unnecessary Trust Deed and Rules produced but this will cost thousands of pounds. Who would meet the cost?
- Standard Life has caused him unnecessary stress and inconvenience for which he would like to be compensated.

Ombudsman's decision

19. I do not intend to answer each of Mr S' comments individually as they all relate, directly or indirectly, to Standard Life's refusal to transfer funds to what Mr S describes as a legitimate scheme.
20. The issue is not one of the "legitimacy" of the receiving scheme, whether Standard Life would accept a transfer from the IHPS is immaterial. The issue is whether Standard Life can be satisfied that the legal requirements relating to cash equivalents have been met in order to make the transfer.
21. Standard Life need to establish whether the IHPS is an occupational pension scheme, or a personal pension scheme, in order to determine the requirements to be satisfied in respect of the receiving scheme under s96 of PSA1993. Regardless of the type of scheme, the transfer payment will have to result in Mr S acquiring transfer credits or rights "under the rules" of the receiving scheme.
22. It is difficult to categorise what type of scheme the IHPS is in the absence of any documentation establishing the scheme. At different times, Mr S has referred to the IHPS as being both an occupational and personal pension scheme, and as a contract.

23. Documents provided by Mr S include a contracting-out certificate for a Contracted-Out Money Purchase (**COMP**) scheme, which would indicate the IHPS is an occupational pension scheme. To have requested the certificate, Mr S would have needed to complete a form requiring him to confirm that the scheme rules included a specific provision. This would suggest that a set of scheme rules should exist. The contracting-out requirements are separate to HMRC's requirements.
24. Mr S did not confirm, when asked, if he was registered under the Financial Services and Markets Act 2000 (**FISMA**), which he would need to be for the IHPS to meet the definition of a personal pension scheme, and can be registered with HMRC under section 154(1) of the Finance Act 2004.
25. So, on balance, the IHPS is probably intended to be an occupational pension scheme which has been set up to provide benefits for one or more employees, although there is conflicting information in that the portfolio valuation, provided by Mr S, refers to the IHPS as being a Self-Invested Personal Pension (**SIPP**).
26. Mr S has said that there is no scheme documentation as HMRC rules "solely" apply. HMRC's expectations are set out in the Pension Tax Manual (PTM031200):
- "In addition to the document establishing the scheme there will be a set of rules covering:
 - the type of benefits that are to be provided through the scheme
 - how these are to be funded
 - when they may be paid
 - to whom they may be paid
 - how funds may be invested."
27. Whilst not all schemes have to be set up under trust, it is not clear how a scheme can be set up without any documentation as many of the legal requirements necessitate a documentary record of the scheme's establishment. For example, PTM031200 says:
- "The scheme documentation must make provision for the appointment of a scheme administrator, as this is a requirement of the definition of who is a scheme administrator.
 - To be registered, the scheme documentation cannot entitle any person to unauthorised payments. When the scheme administrator applies for registration of the scheme they have to make a declaration to this effect."
28. Mr S has said that scheme rules are only required when there is more than one member so that the scheme assets can be used for each member accordingly. I am unable to find any statement to this effect in pensions tax legislation and Mr S has either been unable or unwilling to show clearly where this is stated.

29. Section 95(3) PSA 1993, requires that a cash equivalent is transferred to either, an occupational pension scheme, or a personal pension scheme. As part of its due diligence checks, Standard Life also requires sight of the instruments or agreements giving rise to the benefits, to confirm that the receiving scheme is an occupational pension scheme, and that Mr S will receive transfer credits under its rules in respect of the transfer payment. Failure to establish this before making the transfer could result in fines for Standard Life if it was later found that it had made an unauthorised payment.
30. Standard Life is therefore making a reasonable request. Mr S has said, on several occasions, that the scheme has been set up under HMRC rules and that there is no further documentation. Due to the lack of documentary evidence available against which Standard Life can make an objective assessment of whether the legal requirements are met, my view is that Standard Life is entitled to refuse to make the transfer.
31. I do not uphold Mr S' complaint.

Anthony Arter

Pensions Ombudsman
26 March 2020