

Ombudsman's Determination

Applicant	Mr Z
Scheme	Sun Life Financial of Canada Personal Pension Plan (the Scheme)
Respondent	Sun Life Financial of Canada (SLOC)

Outcome

1. I do not uphold Mr Z's complaint and no further action is required by SLOC

Complaint summary

2. Mr Z has complained that SLOC did little due diligence when he was approached by an unregulated adviser in 2013 and advised to transfer his pension fund from the Scheme. Mr Z is concerned that his pension fund has now been lost or misappropriated. Mr Z would like to be put back into the position he would have been in had the transfer not taken place.

Background information, including submissions from the parties

3. Mr Z says that in 2013 he was approached via an unsolicited call from an adviser offering to carry out a 'free pension review'. Unknown to Mr Z, the adviser was unregulated.
4. Mr Z was advised to set up a limited company, which he did on 25 February 2013, and to transfer his pension fund into a Small Self-Administered Scheme (**the SSAS**). The adviser persuaded Mr Z to transfer a total of £31,899.42 from the Scheme into the SSAS.
5. Mr Z considers that SLOC had a duty of care to protect the interests of its members. He says it was incumbent on SLOC to conduct the necessary due diligence before agreeing to transfer his pension fund.
6. He points out that two of his four pension providers refused to transfer funds as they had concerns about the SSAS.
7. Further, he refers to previous Ombudsman determinations in PO-12763 and PO-3809 in support of his claim.

8. On 14 February 2013, The Pensions Regulator had published guidance on pensions liberation fraud directed at pension professionals. This set out the details of an increased level of due diligence required of trustees and administrators when processing a transfer request.
9. SLOC has provided a copy of its file. This shows that:-
 - On 21 November 2012, Mr Z telephoned SLOC regarding pension liberation as he had been approached by a company claiming to allow him access to his pension before age 55. The telephone note shows SLOC explained that such companies are unregulated and the payments may be subject to a large tax bill as they could be classed by HMRC as unauthorised payments.
 - On 25 January 2013, Mr Z telephoned SLOC to request transfer forms. A policy value and transfer pack were issued to him the same day. The covering letter included a paragraph suggesting he consider seeking financial advice and recommending the www.unbiased.co.uk website.
 - The completed forms requesting the transfer were received on 1 March 2013. These included a letter from Greenchurch Capital, the administrators of the SSAS, and a copy of the HMRC notice confirming the SSAS was a registered scheme.
 - The forms provided details of the SSAS and confirmed it was able to accept the transfer value.
 - The transfer value was paid on 5 March 2013 and a letter confirming this sent to Mr Z.
 - On 9 April 2013, Mr Z telephoned SLOC to ask what checks it undertook on receiving schemes as other providers he was transferring funds from were taking much longer to complete their checks into Greenchurch Capital. He was told that SLOC checked to ensure the receiving scheme is approved by HMRC.
10. SLOC says it had appropriate procedures and controls in place that had to be adhered to before a transfer being approved. It also says it is important to note that Mr Z had a statutory right to transfer his pension with which SLOC had to comply.
11. On receipt of the completed transfer forms it conducted full verification of Mr Z as the plan owner and checked the forms had been completed correctly. It says it asked Mr Z if he intended to take his benefit immediately and that, as he did not confirm this was the case, it concluded its earlier warnings had been understood.
12. SLOC adds that it confirmed the SSAS was registered with HMRC, this meeting its regulatory requirement at the time, and that it did not appear on SLOC's internal 'watch-list' of schemes which required additional verification.
13. SLOC concludes by saying there was no evidence Mr Z had been pressured or was unable to make an informed decision.

Adjudicator's Opinion

14. Mr Z's complaint was considered by one of our Adjudicators who concluded that no further action was required by SLOC. The Adjudicator's findings are summarised below:-

- The Pensions Regulator had issued guidance in February 2013 which included a checklist for trustees and administrators to help identify pension liberation fraud. The action pack also set out that trustees and administrators had a duty to carry out a member's transfer request where the legislative requirements are met.
- This transfer took place over the period from 25 January 2013 to 5 March 2013 which spans the time when the Pensions Regulator issued its guidance in February 2013. As Mr Z found, different providers implemented the new procedures at varying times, but that is not to say those which took a little longer should necessarily be criticised. The Ombudsman has said in previous Determinations that it was reasonable to allow a period of time for providers to consider and implement the guidance and introduce appropriate procedures.
- The High Court judgment in *Hughes v Royal London* also indicated 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.
- Mr Z has referred to the Ombudsman's determinations in PO-12763 and PO-3809. However, each of these cases involved specific issues which do not apply here.
- It appeared, from notes of the telephone conversation on 21 November 2012, that Mr Z was either aware of pensions liberation or was at least made aware during that conversation. He was also warned about the possible tax consequences of any release of funds prior to age 55.
- Mr Z should, therefore, have been alert to the dangers of pensions liberation and unregulated providers from that conversation. Furthermore, the transfer pack issued by SLOC recommended he took professional financial advice and pointed him to a website giving details of regulated advisers. It seems he chose to ignore that advice.
- There is no evidence to suggest that, at the time of transfer, and given the initial information provided by SLOC on pension liberation, Mr Z would not have chosen to transfer his pension had he received further warnings.
- At the time of Mr Z's transfer request, the checks undertaken by SLOC were reasonable. The transfer paperwork was in order, the receiving scheme was registered with HMRC and it had confirmed that it was willing to accept the transfer and provide benefits to Mr Z.

- Mr Z wished SLOC had done more to prevent him transferring, but by the standards of the day, it did nothing wrong in complying with his instructions. It was not on notice of a problem with the receiving scheme and reasonably believed it was required to comply with his instructions.
 - In hindsight, it was not a suitable decision for Mr Z to transfer his pension, but it was his choice to do so. There was not maladministration by SLOC in allowing the transfer to proceed, in accordance with Mr Z's statutory rights and his clear instruction.
15. SLOC accepted the Adjudicator's Opinion. Mr Z did not accept the Adjudicator's Opinion and made the following comments:-
- He had requested the funds from four different pension providers be transferred. Two other providers did not approve the transfers due to concerns about where the funds were to be invested.
 - Based on this inconsistency, Mr Z does not believe SLOC followed strict enough due diligence processes.
16. 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 points made by Mr Z for completeness.

Ombudsman's decision

17. I have considerable sympathy for Mr Z, who appears to have fallen victim to a scam as a result of which he may have lost his funds
18. The specific circumstances surrounding his complaint are understandably particularly frustrating for Mr Z, in that at the same time, two very different decisions were made on the transfer of his funds.
19. In his complaint, Mr Z says that SLOC should have done more in the way of due diligence before transferring his funds. His argument is that it should have applied the Pensions Regulator's guidance. However, this matter cannot be viewed with the benefit of hindsight and it is the circumstances at the time of transfer which are of importance.
20. SLOC confirmed that the receiving scheme was registered with HMRC and that it did not appear on its own 'watch-list' of schemes which required additional verification.
21. I have considered whether SLOC ought to have done more to alert Mr Z to the risks of the transfer. Although, the transfer took place shortly after the Pensions Regulator's guidance was issued, I deem it reasonable to allow SLOC, as a provider, the necessary time to implement any changes arising from this. In line with previous Determinations, I consider a three-month period, from 14 February 2013, a reasonable timeframe to do so. Accordingly, I do not consider that SLOC made an

administrative error in not making further enquiries about Mr Z's reasons for requesting the transfer.

22. SLOC had a statutory and contractual duty to transfer Mr Z's funds which it was required to act upon when it received his transfer paperwork, unless there were any indications of why the transfer should not go ahead.
23. Although, it is regrettable that SLOC's decision has not transpired to be in Mr Z's best interests, it fulfilled its due diligence obligations with the information it held at the time.
24. Further, although two other providers had established reason for concern regarding the proposed transfer, this does not, in itself, mean that there was an administrative error made by SLOC, as each provider holds its own data depending on internal processes and the transfer requests received.
25. In conclusion, I do not find that SLOC failed in its due diligence obligations at the time of the transfer.
26. I do not uphold Mr Z's complaint.

Anthony Arter

Pensions Ombudsman
26 June 2020