

Ombudsman's Determination

Applicant	Mr R
Scheme	Legal & General Personal Pension Plan (the Plan)
Respondent	Legal & General Assurance Society (L&G)

Outcome

1. I do not uphold Mr R's complaint and no further action is required by L&G.

Complaint summary

2. Mr R has complained that L&G failed to carry out sufficient due diligence before transferring his benefits under the Plan to another pension scheme. He says he has suffered financial loss as a consequence, for which he should be compensated.

Background information, including submissions from the parties.

3. Mr R had two personal pension plan policies with L&G. In 2014, he received an unsolicited approach from a financial adviser working for First Review Pension Services (**First Review**), a firm not regulated by the Financial Conduct Authority (**FCA**). The adviser recommended that Mr R should transfer his benefits to a small self-administered pension scheme, to take advantage of wider investment opportunities.
4. On 2 May 2014, First Review sent Mr R's signed letter of authority to L&G and asked it to provide details of Mr R's pension benefits under the Plan, including the current transfer value. L&G replied on 6 May 2014, providing details of both policies.
5. The Lydney Close 1969 Limited Pension Scheme (**the Scheme**) was established as a single member occupational pension scheme by a trust deed dated 24 July 2014. The Scheme was to be administered by Cantwell Grove Limited (**Cantwell Grove**), a professional pension administrator that specialised in small self-administered schemes. Under the Scheme's trust deed, the Scheme's sponsoring employer was Lydney Close 1969 Limited (sole director: Mr R) and Mr R was appointed as sole trustee of the Scheme.
6. On 7 August 2014, Cantwell Grove sent a letter to L&G, enclosing Mr R's signed request to transfer from the Plan to the Scheme. Mr R had also signed a letter

confirming that he was aware of pension liberation issues and had carefully considered his decision to request a transfer. A copy of a letter from HM Revenue & Customs (**HMRC**) was enclosed, confirming that the Scheme was a registered pension scheme with effect from 29 July 2014, together with a copy of the Scheme's trust deed and rules.

7. Cantwell Grove stated that it had sent The Pensions Regulator's leaflet "Predators stalk your pension" (**the scorpion warning**), first published in February 2013, to Mr R and explained it to him. It also said that Mr R had "confirmed that no cash inducement or other incentive has been offered and that no access whatsoever is being sought prior to age 55".
8. An attached Q&A document stated that the Scheme trustee (Mr R) was taking investment advice from Sequence Financial Management Limited, a FCA regulated firm, and that two investments were being considered: discretionary fund management provided by Parmenion Investment Management, and a commercial property investment provided by The Resort Group PLC. Cantwell Grove asked L&G to complete and return Part C of the transfer form and make the transfer payment to the Scheme bank account.
9. L&G sent the paperwork to Mr R on 12 August 2014. Its covering letter referred to The Pensions Regulator's leaflets contained within its original transfer pack, and said that L&G had several concerns:-
 - Mr R may not have received advice from a financial adviser authorised by the FCA;
 - the Scheme's trust deed stated that a proportion of the investment may be made outside the UK; and
 - any overseas investment would not be protected by the Financial Services Compensation Scheme (**FSCS**).
10. On 26 August 2014, Mr R signed a form of discharge and a declaration form supplied by L&G. This confirmed that Mr R, having read the letter of 12 August 2014, which outlined the concerns L&G had regarding his transfer request, still wished to proceed with his request and declared and confirmed that he:-
 - was exercising his statutory right to transfer;
 - had read and understood the scorpion warning;
 - discharged L&G from liability upon making the transfer payment;
 - was aware of the risks, and would not hold L&G responsible for any losses or fees, or seek any compensation;
 - had received financial advice in relation to the transfer; and
 - acknowledged that L&G, in making the transfer payment, was not endorsing the suitability of the receiving scheme or any of its investments.

11. Mr R also signed a member declaration provided by Cantwell Grove which stated that he was responsible for any financial decisions relating to the Scheme's assets.
12. L&G informed Mr R and Cantwell Grove on 1 September 2014 that it had paid cash equivalent transfer values, totalling nearly £36,000, into the Scheme.
13. It is understood that most of the money transferred was subsequently invested in hotel accommodation in Cape Verde. On 11 July 2016, BBC's Panorama television programme featured investment scams involving properties in Cape Verde. Mr R said later that he had watched that programme and became concerned that he had been the victim of a scam.
14. In October 2017, a claims management firm, The Financial Repayment Service (**TFRS**) (now trading as Owl and Fox Law) contacted Mr R to ask if he had transferred his pension, saying he might be due compensation for any mis-selling. Mr R explained what had happened and signed a letter of authority for TFRS to represent him in December 2017.
15. Mr R completed a questionnaire for TFRS on 22 June 2018. This confirmed that he had selected the Scheme investments following advice from an agent of The Resort Group. The questionnaire included the following comments on his attitude to financial risk:

"I would describe myself as cautious at times but can be gullible especially where money is concerned particularly when I'm convinced that it's a good idea to invest in this scheme because of the interest rates and returns I would get...My agent told me that in 15 years I would treble my investment."
16. On 14 November 2018, TFRS sent a formal complaint to L&G, in which it stated that L&G had allowed Mr R to transfer out "without undertaking the due diligence advised by your regulator". TFRS said that Mr R had suffered a serious loss through L&G's negligence. TFRS sought Mr R's full reinstatement in the Plan within eight weeks. TFRS pointed out that Mr R had received an unsolicited call from a financial adviser for a free pension review, but Mr R did not realise at that time that the adviser was unregulated.
17. To support its case, TFRS cited the Pensions Ombudsman's Determinations in cases PO-12763 and PO-3809. TFRS also said that before making the transfer, L&G should have engaged verbally with Mr R and warned him of the risks. TFRS observed that L&G had not followed the guidance in the scorpion warning and had failed to point out any warning signs.
18. L&G responded to the complaint on 27 November 2018, saying that it did not agree that it was responsible for Mr R's losses. L&G said that the paperwork that it had received from Cantwell Grove reassured it that Mr R had carefully considered the transfer proposal and explained his reasons for going ahead. Mr R had confirmed that he was aware of the risks involved and had signed a declaration discharging L&G from any liability once the transfer was made.

19. When TFRS first contacted The Pensions Ombudsman's Office (**TPO's Office**) on behalf of Mr R, it said that he first became aware of the problem on 13 December 2017.
20. TFRS informed TPO's Office subsequently that Mr R's awareness of the problem dated from 11 July 2016, when he watched BBC's Panorama programme.
21. Following a transfer of business from L&G to ReAssure Limited (**Reassure**), Reassure sent its response to the complaint.
22. It appears that Mr R has also made a claim to the FSCS in August 2019, although it is unclear which party this claim is against.

Adjudicator's Opinion

23. Mr R's complaint was considered by one of our Adjudicators who concluded that no further action was required by L&G. The Adjudicator's findings are summarised below:-
 - Mr R had a statutory right to a cash equivalent transfer of his benefits under the Plan, and he had exercised his right by requesting L&G to make two transfer payments to the Scheme.
 - Under the Scheme's trust deed and rules, Mr R was the sole trustee of the Scheme. Scheme investment was a responsibility of scheme trustees, taking such professional advice as they considered appropriate. It was therefore Mr R's decision alone how the money received from L&G should be invested.
 - It appeared that most of the money had been invested in hotel accommodation in Cape Verde. The current value of that investment had not been disclosed, and Mr R had not shown that this investment had caused him to suffer a financial loss.
 - Sequence Financial Management Limited had subsequently entered into administration and it may be that Mr R could make a claim to the FSCS in connection with any investment advice it gave to him.
 - Even if Mr R had not been appointed as the trustee of the Scheme, the transfer forms he signed in 2014 made quite clear that he was responsible for his financial decisions, and he had discharged L&G from any further liability. It was clear that he had been given sufficient warnings about pensions liberation and the risk of scams. He had also stated that he had read and understood the scorpion warning. L&G had acted in accordance with his express instructions.
 - While L&G had not spoken to Mr R to reiterate warnings about the risks of making the transfer, it was more likely than not he would have proceeded with his transfer request even if L&G had telephoned him. Not only had he received sufficient written warnings and chosen to proceed, but when he had completed the questionnaire for TFRS in 2018, Mr R had said that he had been convinced that

the transfer was a good idea because of the investment returns he was expecting to obtain.

24. L&G accepted the Adjudicator's Opinion. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
25. Mr R provided his further comments which do not change the outcome. He says that:-
 - Although the Adjudicator says he was sole trustee and fully understood what he was signing, he was advised that he had to sign all the documentation for the transfer to go ahead.
 - If this was not a scam but a very good investment, why, soon after the Panorama programme which exposed this investment, did the company that advised him, First Review, suddenly stop taking any further investments and was subsequently dissolved?
26. I agree with the Adjudicator's Opinion and note the additional points raised by Mr R.

Ombudsman's decision

27. This complaint is concerned with the level of information that Mr R was provided with regarding pension liberation and the level of due diligence carried out by L&G. Mr R contends that L&G did not provide him with sufficient information on the possibility of pension liberation scams and that if he had been provided with that information, he would not have transferred to the Scheme. Furthermore, he says that if L&G had carried out sufficient due diligence checks, it would not have allowed the transfer to proceed.
28. The questions I must consider are, did L&G give sufficient warnings to Mr R and, did it carry out sufficient checks on the Scheme? Also, if L&G had given any further warnings to Mr R, is it possible that he would not have proceeded with the transfer?
29. I have reviewed the information that L&G gave to Mr R, and note that there were some specific concerns it raised regarding the transfer. Mr R had previously signed a letter confirming he was aware of pension liberation issues and had carefully considered his decision to request a transfer. Cantwell Grove had confirmed that it had sent the scorpion warning to Mr R and had explained it to him. It had also confirmed that no incentive had been offered to Mr R and that no access to his fund was being sought prior to age 55.
30. Mr R confirmed that he had read L&G's letter and still wished to proceed with his transfer request. He confirmed that: he had read and understood the scorpion warning; was aware of the risks; had received financial advice; and would not hold L&G responsible for any losses or fees, or seek compensation.

31. While I sympathise with the position that Mr R now finds himself in, I find that L&G did provide him with sufficient information through warnings contained in its letter of 12 August 2014 and the scorpion warning, for him to be aware of the possibility of pension liberation and the consequences of this. I am not persuaded that, had L&G also telephoned Mr R to discuss its concerns, his decision to transfer would have been any different.
32. I appreciate that Mr R is not a pension expert and that he says that he was simply signing forms to enable the transfer to go ahead. But sufficient warnings were provided by L&G and he chose to disregard them. He does have to take some responsibility for his actions and if he was unclear on the implications of what he was being asked to sign, he ought to have asked sufficient questions to satisfy himself before proceeding.
33. Mr R's claimed losses arise from the investment of much of his fund in an overseas commercial property investment provided by The Resort Group PLC. L&G pointed out the risks associated with overseas investment, but it was not L&G's role to advise or otherwise comment on the suitability of this specific investment.
34. I acknowledge Mr R's comments about the failure of First Review, but the advice to invest in commercial property was given to him by Sequence Financial Management Limited, a FCA regulated firm that has since failed. My understanding is that the FSCS is accepting claims against this company. It may be that Mr R can pursue a claim through the FSCS regarding the investment advice he received if he has not already done so.
35. I do not uphold Mr R's complaint.

Anthony Arter

Pensions Ombudsman
22 March 2021