PO-29578

Ombudsman's Determination

Applicant	Mr S
Scheme	Flexible Pension Plan (**the Plan**)
Respondent	Scottish Equitable t/a Aegon **(Aegon)**

Outcome

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

Complaint summary

2. Mr S has complained that Aegon failed to carry out sufficient due diligence before transferring his benefits under the Plan to the Optimum Retirement Benefit Plan (the **Optimum Plan**). Mr S is very concerned that, as a consequence, all his pension funds have been lost, and he wants to be put back into the position that he would have been in if the transfer had not been made.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.

4. On 30 June 2015, the Optimum Plan was registered with HM Revenue & Customs as an occupational pension scheme. It was administered by Optimum Financial Solutions Limited (**Optimum**), a company regulated by the Financial Conduct Authority (the **FCA**).

5. On 21 July 2016, Mr S completed a Letter of Authority (**LOA**) permitting Aegon to provide information about the Plan, including its transfer value, to Optimum. The LOA was sent to Aegon by Optimum under cover of a letter dated 1 August 2016.

6. On 11 August 2016, Aegon responded to Optimum quoting a transfer value of £51,854.27. It enclosed discharge forms as had been requested and said that these needed to be returned together with a copy of the receiving scheme's HM Revenue & Customs (**HMRC**) registration certificate.

7. On 30 August 2016, Optimum replied to Aegon. It enclosed the completed documentation and a copy of the Optimum Plan's HMRC certificate. The Optimum

Plan documentation stated that it was a defined contribution, occupational pension scheme registered by HM Revenue & Customs, and that the transfer value would be applied to provide relevant pension benefits consistent with its registration.

8. Enclosed within the documentation was an instruction (**the Transfer Instruction**) for Aegon to pay the transfer value, signed by Mr S and dated 25 August 2016.

9. On 9 September 2016, Aegon paid the transfer value of £52,047.61 direct to Optimum.

10. On 16 September 2016, Optimum wrote to Mr S to confirm that the transfer value had been received from Aegon. Enclosed with the letter was a copy of the Member's Booklet for the Optimum Plan.

11. In February 2018, Optimum was wound up in court following confidential investigations carried out by the Insolvency Service. Further investigations by the Official Receiver established that Optimum had failed to keep adequate records, did not provide information to the tax authorities and was derelict in its duty to provide Optimum Plan members with up to date information, such as personal statements.

12. The sole director of Optimum claimed that he was not personally involved in the promotion of the Optimum Plan. However, the Pensions Regulator (**TPR**) published a report in June 2018 that proved Optimum did play a role. Furthermore, despite being regulated to deal with insurances and mortgages, the director confirmed that neither he nor anyone else at Optimum had permission to talk to potential clients about pension schemes.

13. TPR's report also highlighted that the Optimum Plan was not being run in an appropriate manner and there were serious concerns over the status of members' funds. On 13 February 2018, TPR exercised its statutory powers to appoint Dalriada as trustee of the Optimum Plan. It appeared that the previous trustee had used the assets to make several high-risk investments that were now worthless.

14. On 11 February 2019, Mr S complained to Aegon through a claims management firm, The Financial Repayment Service (**TFRS**). TFRS said that Mr S had suffered serious financial loss due to Aegon's negligence.

15. It said that Mr S had received an unsolicited telephone call from an adviser who was unregulated, although Mr S did not know that at the time. It alleged that inadequate due diligence had been carried out by Aegon. To support its case, TFRS cited two Determinations by The Pensions Ombudsman, PO-12763 and PO-3809. TFRS also referred to the case of Berkeley Burke Sipp Administration Ltd v Financial Ombudsman Service Limited [2018] EWHC 2878.

16. Aegon says:-

- When it received the LOA, it validated the details in the letter against its records. It also checked the FCA register and identified that Optimum was authorised and had been since 3 October 2011.

- Having satisfied itself that the LOA had come from Mr S and that Optimum was FCA authorised it responded to Optimum, on 11 August 2016, enclosing a transfer quote, transfer forms and a copy of TPR's 'Scorpion' pensions scams leaflet (**the Scorpion leaflet**). It expected Optimum, as the Optimum Plan administrator, to forward the Scorpion leaflet to Mr S along with the discharge paperwork.

- On 31 August 2016, it received a further letter from Optimum confirming that the Optimum Plan was a registered occupational pension scheme and enclosing the completed transfer forms.

- The request to transfer out was considered and processed in accordance with its due diligence checks at the time, including:

    - whether the Optimum Plan was on its internal list of high risk schemes;

    - the receiving scheme's HMRC certificate;

    - whether Mr S' financial adviser, the receiving scheme or the scheme administrator were authorised by the FCA; and

    - whether the scheme or employer had been established within the last 12 months as TPR had identified risks associated with newly registered companies and schemes.

17. Having completed these checks and found nothing which identified the Optimum Plan as posing a high risk, it completed the transfer.

Adjudicator's Opinion

18. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by Aegon. The Adjudicator's findings are summarised in Paragraphs 19 to 34 below.

19. TPR has the power to appoint a trustee under section 7 of the Pensions Act 1995 where it is reasonable to do so:

    - to secure that the trustees as a whole have, or exercise, the necessary knowledge and skill for the proper administration of the Scheme;

    - to secure that the number of trustees is sufficient for the proper administration of the Scheme;

    - to secure the proper use or application of the assets of the Scheme; or

    - otherwise to protect the interests of the generality of the members of the Scheme.

20. TPR had appointed Dalriada in this capacity, so there can be little doubt that there were serious issues with the Optimum Plan.

21. The underlying investments of the Optimum Plan appeared inappropriate for a pension arrangement and Dalriada was in negotiation to recover as much of the assets as possible.

22. Furthermore, Optimum was in liquidation, and it was clear there were serious irregularities in the way in which it had administered the Optimum Plan.

23. However, this had all taken place some 18 months after Mr S had transferred his pension benefits and Aegon would not have been aware of any of this at the time.

24. Mr S had a statutory right to a cash equivalent transfer of his benefits under the Plan, and he exercised his right by requesting that Aegon make a transfer payment to the Optimum Plan.

25. TFRS had argued on Mr S' behalf that, had Aegon undertaken sufficient due diligence, it would have discovered that it should not have proceeded without Mr S taking advice and had said that Aegon failed to warn him of the consequences of transferring his pension.

26. In previous Determinations the Pensions Ombudsman had referred to the guidance issued by TPR to providers in February 2013 as being a point of change as to what might be regarded as good industry practice with regard to the level of due diligence required when making a transfer. This guidance was commonly referred to as "the Scorpion Guide" due to the imagery used within and was entitled "Pension liberation fraud – The predators stalking pension transfers."

27. As part of this guidance, TPR recommended that transferring scheme managers issued warnings to customers about the dangers of pension liberation fraud, or 'scams'. The most common way of doing this was to include the Scorpion leaflet with the transfer pack.

28. Aegon had said that it included the Scorpion leaflet with the transfer pack it issued to Optimum. There was no clear evidence to confirm this but, given that this transfer took place nearly four years after TPR's guidance was first issued, the Adjudicator considered it is more likely than not that a leaflet was included with the transfer pack.

29. While it could not be said for certain that Optimum forwarded the leaflet to Mr S, it was evident that other documents in the transfer pack were forwarded to him as he had signed and dated them. The Adjudicator also considered it not unreasonable for Aegon to have expected Optimum, as an FCA authorised firm, to have forwarded the Scorpion leaflet to Mr S.

30. Page 8 of the Scorpion Guide issued to providers, says:

> "Looking out for pension liberation fraud

When processing a transfer request, trustees and administrators may be in a position to identify the warning signs that suggest that pension liberation fraud is occurring. If you are a trustee or administrator, and any of the following criteria apply to a transfer request you have received, then you may be about to transfer a member's pension to a scheme designed to liberate their funds.

Here are some of the things to look out for:

- Receiving scheme not registered, or only newly registered, with HM Revenue & Customs;
- Member is attempting to access their pension before age 55;
- Member has pressured trustees/administrators to carry out transfer quickly;
- Member was approached unsolicited;
- Member informed that there is a legal loophole;
- Receiving scheme was previously unknown to you, but now involved in more than one transfer request.

If any of these statements apply, then you can use the check list on the next page to find out more about the receiving scheme and how the member came to make the request."

31. While the list was not intended to be exhaustive, the Adjudicator's view was that in this case there was nothing to raise any concerns:-

- The Optimum Plan had been registered in June 2015, some 15 months before the transfer took place.
- The transfer followed the normal course expected with no undue pressure being placed on Aegon to complete the transfer quickly.
- There was nothing to indicate that Mr S had received an unsolicited approach.
- Mr S was aged 56 at the time of the transfer and so could have accessed his pension at any time.
- The transfer was to Optimum, which was FCA regulated. Although we now know that was of small comfort it would no doubt have served to reassure Aegon at the time.

32. Mr S had since said that he received an unsolicited approach from an unnamed adviser that he now understood was unregulated. But that would not have been apparent to Aegon at the time. The transfer request contained no details of any adviser involvement other than Optimum.

33. Aegon had confirmed that the Optimum Plan did not appear on its list of high risk schemes. It was not until sometime later that problems became apparent, with the consequent appointment of Dalriada.

34. In summary, Mr S had a statutory right to transfer his benefits from the Plan. Aegon was not able to advise Mr S and he appeared to be dealing with an FCA regulated firm of some years' standing. All Aegon was expected to do was consider the information as presented to it and decide if there was a legitimate reason to refuse the transfer. In the Adjudicator's opinion, there was nothing which was apparent to Aegon that could reasonably be expected to have led it to raise any questions.

35. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

36. Mr S provided his further comments. He says that:-

- He did not request a transfer to move his pension. An adviser from Optimum arranged to meet his wife some time in 2016 to discuss her pension. His wife also gave the adviser details of Mr S' pension. Mr S never met the adviser, so he did not know he was unregulated.

- The signature on the instruction, dated 25 August 2016, for Aegon to pay the transfer value was not his.

- There was no transfer of funds mentioned. The adviser had told his wife that he would see if it would be worth moving the pensions. Consequently, Mr S was not offered any incentives to transfer as there was no transfer involved.

37. In response to Mr S' comments Aegon has said:-

- There does appear to be some variation in Mr S' signatures on various documents which is to be expected. Signatures change over time and can vary depending on many factors including the age of the writer, the surface the writer is writing on, the type of pen used and the haste with which the signature is written.

- The signature on the LOA bears a strong resemblance to Mr S' other signatures on file and yet he says that he never engaged with Optimum or its representatives and so, by extension, he presumably denies that this is his signature also. How had Mr S' signature and national insurance number been obtained by Optimum?

- Aegon considers that when presented with the signatures on the LOA and transfer paperwork, received from a FCA regulated firm, it was reasonable for it to accept these as genuine instructions from Mr S.

- Mr S says he never personally spoke to or instructed Optimum or any party on its behalf and that they only spoke to his wife. In the original letter of complaint, TFRS said that Mr S "was approached via an unsolicited call from an adviser who, unbeknownst to Mr S, was unregulated". This seems to contradict what Mr S has now said, firstly that he actually spoke to the adviser (either on the telephone or in person) and that the party involved in those conversations was unregulated.

- The LOA received from Optimum, which was a regulated firm, shows that Aegon was unaware of the involvement of an unregulated introducer.

- There is no record on Aegon's files of a complaint or any contact from Mr S regarding a transfer of his pension fund without his permission. In the circumstances outlined by Mr S, it would have expected Mr S to make contact as soon as he became aware of the transfer, in 2016, to enquire why the transfer had proceeded without his permission.

38. I note the additional points raised, but these do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

39. Mr S has complained that Aegon failed to carry out sufficient due diligence before transferring his benefits under the Plan to the Optimum Plan.

40. I acknowledge there are some inconsistencies between the original complaint brought by Mr S and what he now says. I consider that this may be due to the fact that his original complaint was brought through TFRS. Complaints submitted in this manner often follow a set template whereas the actual circumstances of each case will vary.

41. The Pensions Scams Industry Group's 2015 publication "Combating Pensions Scams - a Code of Good Practice" (**2015 Practice Guide**) was in force at the time of the transfer in September 2016. This set out a two-stage due diligence process. The first stage is to check whether there are any factors that would indicate a pension liberation or scam risk.

42. It was only if the initial analysis threw up some concerns that the 2015 Practice Guide recommended that further checks were undertaken, otherwise the transferor could consider proceeding to payment.

43. Aegon says that its initial checks did not provide any indication that the Optimum Plan was a high-risk transfer. It did not appear on its internal list of high-risk schemes; it was registered with HMRC and the registration had been in place for more than a year. Furthermore, Optimum was authorised by the FCA and this would have given Aegon some comfort that it would behave in a professional manner.

44. Having taken all of the above into account, I agree that the due diligence checks carried out by Aegon were reasonable and in view of those checks there was no apparent reason for Aegon not to make a transfer payment to the Optimum Plan.

45. Mr S disputes the signature found on the Transfer Instruction is his. Without claiming to be a handwriting expert I agree there does seem to be a difference between this

and other signatures held on file for Mr S. I consider it is possible that this is not Mr S' signature.

46. The question is whether Aegon acted reasonably on receipt of the LOA and Transfer Instruction.

47. Aegon's position is that signatures will vary and, furthermore, that it is acceptable that in its dealings with Optimum it relied to some extent on Optimum's regulated status. This status requires the financial adviser to be a 'fit and proper' person under the FCA's regulatory regime. It is therefore reasonable that LOAs and documentation from regulated financial advisers can be relied upon.

48. Although I have some misgivings about the decision not to check the authenticity of signatures, the LOA contained: Mr S' correct name; address, email address and telephone number; policy number; date of birth; and national insurance number. Optimum at the time was FCA regulated and, on balance, the combination of details are such that I agree it was reasonable for Aegon to have accepted this as Mr S' authority to deal with Optimum and to provide details of the Plan, including the transfer value of Mr S' benefits.

49. Subsequently, on face value there was nothing untoward about the transfer request which followed that would have alerted Aegon to the fact that anything was amiss. I consider it was reasonable for it to have acted on receipt of the Transfer Instruction without further question.

50. Mr S says that he had not agreed to transfer his pension. He says that, when he received Optimum's letter of 16 September 2016, he telephoned Optimum to ask how it had obtained his money when he had not authorised any such transaction. He says that he asked for proof of his authorisation for the transfer to go ahead, so he clearly managed to make contact. It appears that he never received a response from Optimum and he says he was subsequently unable to contact Optimum again. Yet it seems he did not attempt to pursue the matter with Aegon until he raised his complaint through TFRS on 11 February 2019. I find it difficult to understand why he would not do so. Had he done so immediately, it is possible that the transaction could have been reversed, but for whatever reason he did not raise it.

51. I have considerable sympathy for Mr S, who appears to have been a victim of pension liberation fraud and is not able to access his funds. 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.

52. Essentially, Aegon had a statutory and contractual duty to transfer Mr S' funds. It was required to act upon this duty when it received his transfer paperwork, unless there were any indications of why the transfer should not go ahead, such as those concerning pension liberation fraud.

53. As explained in Paragraph 41 above, the 2015 Practice Guide provided an outline of potential warning signs which could suggest pension liberation fraud activity was

taking place. However, in this case there is no indication that Aegon had any reason for concern and, accordingly, it did not make any further enquiries.

54. It is regrettable that Aegon’s decision to proceed with the transfer has not transpired to be in Mr S’ best interests. However, it fulfilled its due diligence obligations with the information it held at the time.

55. In conclusion, I do not find that Aegon failed in its due diligence obligations at the time of the transfers.

56. I do not uphold Mr S’ complaint.

Anthony Arter

Pensions Ombudsman
21 June 2022