

Ombudsman's Determination

Applicant	Mr D
Scheme	Edge Group Pension Fund
Respondents	Pension Practitioner.com (PP.com)

Outcome

1. I do not uphold Mr D's complaint and no further action is required by PP.com.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr D has complained that PP.com did not carry out sufficient due diligence to prevent the loss of his pension fund assets.

Background information, including submissions from the parties

4. In December 2011, PP.com was contacted by a Mr Parrington of Anthony James Hall (**AJH**), an unregulated adviser, to set up a SSAS for Mr D. PP.com stated that AJH said that Mr D was interested in making a loan to his existing company by using monies from a policy he had with Skandia which he wished to transfer to the new SSAS.
5. PP.com sent AJH the documents to set up a SSAS. Included in the documents was a letter to Mr D setting out how the SSAS would operate and a statement that PP.com was not a signatory to any investments or bank accounts and do not recommend any investment products or give investment advice. Mr D was also provided with a bank account mandate to open an account with Investec which provided him with sole authority to operate the bank account.
6. In April 2012, PP.com received the completed forms to establish the SSAS. PP.com said they also discussed the transfer from Skandia with Mr D and completed the necessary transfer forms. Skandia subsequently paid a transfer of £228,367 into the Investec bank account.
7. In June 2012, PP.com wrote to Mr D's accountant requesting information regarding the financial strength of the company in relation to the pension scheme loan. In July

2012, AJH confirmed with PP.com that that the employer was not seeking a pension scheme loan at that time.

8. Mr D was subsequently introduced to SJL Risk by AJH, and proceeded to make investments in carbon credits which have subsequently proved to be worthless. Mr D said that he did not sign the application forms to invest in carbon credits and his signature was forged by AJH.
9. Mr D says that he should have been told by PP.com that it was advisable to appoint a second trustee such as PP.com. He is a layman and he could not be expected to understand the possible pitfalls that could befall him. To allow the pension scheme to operate on the basis of one signature only is a serious dereliction of responsibility.
10. PP.com say that it is not necessary to appoint a third party trustee to a SSAS and this does not give any safeguards as to the suitability of an investment. If Mr D has been the subject of a fraud by AJH this should be reported to the police. PP.com was not a signatory to the account and was not aware of the investment in carbon credits until after the event.
11. PP.com also made it clear, in the SSAS literature, and the terms of business, that it does not provide investment advice and that Mr D was free to choose his investments subject to certain limitations. If PP.com had been told that the purpose of setting up the SSAS was to invest in carbon credits and not for making a loan to the employer, then it would have requested Mr D to obtain regulated financial advice.

Adjudicator's Opinion

12. Mr D's complaint was considered by one of our Adjudicators who concluded that no further action was required by PP.com. The Adjudicator's findings are summarised briefly below:-
 - It appears that Mr D has been the victim of a pension scam, which over recent years has become much more prevalent within the UK pensions industry. In essence it usually involves the transfer away from a genuine pension scheme to another arrangement with investment promising high returns which often prove to be worthless. Mr D's funds were diverted by AJH into carbon credits, via SJL Risk which is the subject of a police investigation, but it is unlikely that Mr D will recover his investment.
 - Mr D, not unnaturally, is seeking to recover those funds by whatever means possible and is seeking to place a moral responsibility on PP.com. The adjudicator did not consider that PP.com could be held responsible for the loss of Mr D's funds which, it is alleged, were fraudulently diverted into carbon credits. PP.com made it clear, in the SSAS literature, that it provided only administration and tax compliance services and not investment services.

13. Mr D also raised a supplementary issue regarding the bank account held with Investec, that it should have reported the investment transaction to PP.com. Investec stated that under the bank mandate that Mr D set up there was no obligation to inform PP.com of any transactions on the account. Although Mr D may believe that there should have been some reporting mechanism between Investec and PP.com the Adjudicator did not agree as this would not be possible without his specific instruction. Mr D was the sole signatory of the bank account and it was not Investec's responsibility to report on how he operated that account to a third party.
14. Mr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr D 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 key points made by Mr D for completeness.
15. Mr D says that after he found out that his pension money had been used to buy carbon credits, PP.com informed him that AJH was not FCA accredited. Why was he not told this beforehand?
16. Furthermore, the FCA Regulations require all personal pension providers to be FCA authorised and comply with the rules set out in the FCA handbook, including the conduct of business sourcebook (**COBS**). The COBS rules include the following:-
 - Acting honestly, fairly and professionally in accordance with the best interests of its client (COBS 2.1.1) PP.com did not comply with this rule,
 - Taking reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable for its client (COBS 9.2.1). It looks as if PP.com opted out of every bit of their responsibility so that their client could be scammed.

Ombudsman's decision

17. Mr D has asked why did PP.com not inform him that AJH was an unregulated adviser. I do not find the fact that PP.com failed to inform Mr D that AJH was an unregulated adviser suspicious. AJH had approached PP.com about setting up a SSAS to be used as a pensions vehicle for arranging a loan to Mr D's company. There were no indications that AJH was acting other than on behalf of Mr D. It was for Mr D to carry out his own due diligence on his adviser AJH.
18. Mr D has also referred to the provisions of the FCA handbook and COBS rules regarding the suitability of investments for a client in respect of his claim against PP.com. But I find that this element of the COBS rules cannot be applied in the circumstances of Mr D's loss. He has said that the investment in carbon credits was made fraudulently by AJH, and PP.com was not aware of the investment until after the investment had been made.

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19. Although I have every sympathy for the position that Mr D finds himself in I do not find that PP.com can be held liable for a fraudulent act committed by another party. Therefore, I do not uphold Mr D's complaint.

Anthony Arter

Pensions Ombudsman
27 November 2017