

Ombudsman's Determination

Applicant	Mr Joseph Winning
Scheme	Legal & General Personal Pension Plan
Respondent	Legal & General Assurance Society Limited (L&G)

Complaint Summary

Mr Winning complains that, following his application, L&G transferred his pension to the Capita Oak Pension Scheme without sufficient checks on the receiving scheme and he is now unable to locate his pension fund.

Background

Pension liberation

1. This case is indirectly connected to what is known as “pension liberation”. Currently the issue has a high profile in the UK pensions industry so this and other decisions concerned with the same matter will be of wide interest.
2. To begin with the basics: present tax legislation is designed to prevent access to pension funds before the age of 55 (other than in ill-health or as benefits following death) as part of the policy that encourages pension saving by giving tax advantages, with penalties if the advantages are abused by using funds other than for authorised purposes. There was also, at the material time, a limit on the amount that could be taken as cash at any age.
3. The practice of pension liberation involves a transfer away from a genuine pension scheme intended to allow access to a scheme member’s pension savings before the age of 55, or to more cash than would normally be allowed. It is recognised as being contrary to the broad policy of encouraging pension savings and is of concern to the regulatory and tax authorities and those responsible for national pension policy. The businesses active in persuading people to indulge in such arrangements are likely to be doing so with their own financial gain put before the long term interests of the people with whom they deal. Charges made by businesses for making such arrangements are high and significant tax penalties that a member is likely to suffer may not have been explained. Some transfers have been fraudulently diverted to the

advantage of the persons advertising the schemes and there is a suggestion of the involvement of organised crime in some pension liberation schemes.

4. Pension liberation is recognised in statute in sections 18 to 21 of the Pensions Act 2004, under which pension money is defined as having been liberated where a transfer value is paid from a pension scheme on the understanding that it would be secured to be used in an authorised way by the recipient, but it has not been. The Pensions Regulator is given power to make restraining and repatriation orders and the courts are given powers to order restitution.

The statutory right to a transfer value

5. Section 94 of the Pension Schemes Act 1993 (PSA93) 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.
6. Section 95(1) of PSA93 says 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 or
 - for acquiring rights under a personal pension scheme

which satisfies prescribed requirements in each case and where the trustees or managers of the scheme are able and willing to accept the transfer.

General obligations

7. Regulation of pension schemes is divided between the Financial Conduct Authority (FCA) and the Pensions Regulator under different statutory regimes. Before the FCA came into existence, the Financial Services Authority (FSA) had the same responsibilities and there are no material differences between the regulatory regimes of the FSA and the FCA.
8. The FCA’s jurisdiction broadly includes providers of all pension schemes other than occupational pension schemes (activities concerning which are excluded from being a “regulated activity” in the relevant legislation). The FCA expects all firms within its jurisdiction to act in accordance with certain principles, which include acting with integrity, due skill, care and diligence, and treating customers fairly. More specifically, in relation to retail investment business (which includes pensions) the FCA expects firms to “act honestly, fairly and professionally in accordance with the best interests of its client”.

9. Trustees and managers of occupational pension schemes have general obligations in law, which there is no need to rehearse here in depth, to act in the best interests of beneficiaries, with due care, etc. However, since, as stated above, managing an occupational pension scheme is not a regulated activity, business and persons managing such schemes are not required to be authorised by the FCA.

Mr Winning's case - Material Facts

10. Mr Winning has provided copies of information and forms that relate to the Scheme. I have not seen the signed and dated copies of all of them, but they will have been completed at around the same time. On 10 October 2012 Mr Winning signed a Form of Discharge on L&G headed paper confirming his intention to transfer his pension from L&G to the Capita Oak Pension Scheme. The Form said that signature would discharge L&G from all and any liability under the arrangement. I assume that a telephone call had been made before this, in all likelihood on behalf of the Capita Oak Pension Scheme, to request the transfer paperwork.
11. Mr Winning made similar contact with Scottish Widows in connection with a transfer of a further pension policy to the Capita Oak Pension Scheme. I mention that for the sake of completeness. This determination deals with the transfer from L&G only; the Scottish Widows transfer is dealt with in a separate decision of the same date as this. Mr Winning has not told me how he was introduced to the Capita Oak Pension Scheme but it is not material to my determination.
12. The discharge form was part of the paperwork then sent on by the Capita Oak Pension Scheme which was received by L&G on 21 November 2012. On the front page the pension scheme was said to be a defined contribution occupational pension scheme (which would mean that operating it and advising in connection with it would not be activities regulated by the FSA, now FCA), registered with HMRC and the registration number was provided. A separate sheet detailed the bank account to be used, which was in the name of Imperial Trustee Services Limited (the administrators of the Capita Oak Pension Scheme).
13. Also within the paperwork was a signed declaration from the Capita Oak Pension Scheme that it was willing to accept the transfer payment, which would be applied to provide benefits consistent with the HMRC scheme registration. The signature was dated 20 November 2012.
14. On 7 December 2012, Imperial Trustee Services Limited wrote to Mr Winning to confirm that his application to join the Capita Oak Pension Scheme had been processed. An Opening Unit Statement was enclosed, showing the receipt of £10,127.63 from L&G on 28 November 2012 and a 5% initial charge of £506.38 (The statement also showed a further transfer value receipt and charge, received a day earlier, from Scottish Widows). According to L&G's letter of 11 April 2014, they made the transfer on 21 November 2012.

15. On 31 March 2014, some 16 months later, Mr Winning telephoned L&G to complain that they had not made the necessary receiving scheme checks before completing the transfer. He wanted L&G to pay him the transfer value as redress. It appears that he had been having difficulties contacting the Capita Oak Pension Scheme and Imperial Trustee Services Limited and was worried about his money.
16. L&G replied to the complaint on 11 April 2014. They said that they were sorry to learn of the difficulties Mr Winning was experiencing but did not believe they were at fault. He had signed the relevant forms, the receiving scheme had confirmed its HMRC registration and there was no requirement for it to be FSA (now FCA) registered. As agreed in a telephone call of the same day, L&G contacted Capita Oak on Mr Winning's behalf to try and locate his money, without success.
17. Since then, Mr Winning has received a letter dated 21 October 2014 from an accountant named Mr Downs who said that he had been asked by one of the directors of Imperial Trustee Services Limited to conduct enquiries into the Capita Oak Pension Scheme because 'there had been a lot of bad publicity about it'. These enquiries, he said, indicated that Mr Winning's pension fund was invested in storage pods with a company called Store First Limited. Mr Downs said he had no reason to believe that anything untoward had happened to Mr Winning's investment but would report further in due course. However, there has been no further news and Mr Winning remains extremely concerned about his pension fund.
18. L&G say that the process in place at the time the transfer payment was sent to the Capita Oak Pension Scheme was proportionate and reasonable.
19. Mr Winning says that he would not have transferred his pension fund if L&G had brought the facts about pension liberation to his attention; and had HMRC not registered the Capita Oak Pension Scheme. He says the latter was the main reason he transferred – he thought the Capita Oak Pension Scheme must be legitimate if HMRC were involved and had registered it.

Conclusions

20. Mr Winning has transferred away from a reputable established scheme and there is little doubt that it was against his best interests to do so. He transferred to the Capita Oak Pension Scheme, which is of a type that is designed to avoid regulatory obligations that would limit scope for abuse and/or bad advice. I imagine that he did so in search of high investment returns and possibly with the inducement of a cash sum. I do not know what has happened to the assets he transferred. They may or may not be secure, though he is very rightly concerned that they are not.

21. However, I am not dealing with advice to transfer to the Scheme. I do not know what, if any, advice Mr Winning took in this regard but it is not suggested that L&G provided advice. If Capita Oak or an associated business advised him, that advice was unregulated. The question for me in relation to Mr Winning's complaint against L&G then is whether it was maladministration to make the transfer. And in considering whether there was maladministration I have to consider L&G's legal obligations to Mr Winning, and whether they acted consistently with good industry practice.
22. Mr Winning's transfer request was made in October 2012 and was completed on 21 November 2012. In paragraphs 5 to 8 above I describe the requirements for a statutory right to transfer. The transfer application appeared to comply with those requirements. The Capita Oak Pension Scheme was registered with HMRC on 23 July 2012. It purported to be an occupational pension scheme so FSA regulation was not relevant. The Capita Oak Pension Scheme confirmed it was willing to accept the transfer and that it would be applied to provide benefits consistent with the scheme registration with HMRC.
23. The Pensions Regulator did not issue guidance to providers about pension liberation and the danger of pension scams until February 2013. That could be regarded as a point of change in what might be regarded as good industry practice.
24. Given the current publicity both about pension liberation generally and certain schemes in particular, it is natural that Mr Winning feels upset about what has happened in his case. But I cannot apply current levels of knowledge and understanding of pension liberation/scams or present standards of practice to a past situation.
25. L&G were faced with a member who apparently wished to exercise legal rights, and a receiving Scheme that was properly registered with HMRC and had provided the appropriate declarations and information. And Mr Winning could not be deprived of a statutory right by regulatory or other guidance (and there is no suggestion otherwise from the Pensions Regulator). To the extent that L&G had a duty of care to Mr Winning, it would have been overridden by a statutory obligation to make the transfer and simply met by doing as he apparently wished. The same is true of their regulatory responsibilities to him at the time.
26. Even if Mr Winning was right that L&G should have carried out greater due diligence (though I do not find that he is) that would not necessarily lead to the reinstatement of his benefits with L&G. It is possible, though I have not needed to consider the point, that even if he had been warned that transferring was an unusual and/or risky step, he would have persisted. Indeed, Mr Winning says that the main reason he transferred was that he considered the Capita Oak Pension Scheme must be legitimate because it had been registered with HMRC.

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27. I have great sympathy for the position Mr Winning now finds himself in, but I do not consider that there was an administrative failure by L&G in complying with his transfer request. I therefore do not uphold his complaint.



Tony King

Pensions Ombudsman
17 April 2015