

Ombudsman's Determination

Applicant	Mr N
Scheme	Zurich SIPP (the SIPP)
Respondents	Zurich and Curtis Banks Ltd (Zurich/CB)

Outcome

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

Complaint summary

3. Mr N has complained that Zurich/CB has refused to transfer his pension benefits in the SIPP to another provider and as a result he has missed out on the gains he would have made on the investment in the new pension scheme.

The statutory right to a transfer value

4. Within Chapter IV of Part 4ZA of the Pension Schemes Act 1993 (**PSA 1993**), section 93 sets out that the following conditions apply, in relation to any member of a personal pension scheme: - (i) they have accrued rights to benefit under the scheme (ii) their pensionable service must terminate at least one year before normal pension age; and (iii) no crystallisation event has occurred.
5. Section 94 of PSA 1993 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 PSA 1993 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 which satisfies prescribed requirements and where the trustees or managers of the scheme are able and willing to accept the transfer.
7. The prescribed requirements under section 95(1) in relation to transfers from personal pensions are in the Personal Pension Schemes (Transfer Values)

Regulations 1987. The relevant requirement being that where the transferring scheme is registered under section 153 of the Finance Act 2004 the receiving scheme should also be registered under that section.

Background information, including submissions from the parties

8. Mr N has a SIPP with Zurich which is administered by CB.
9. In late January 2017 Mr N contacted Zurich/CB and asked to transfer the benefits he had in the SIPP to the RCJ Management Ltd Pension Scheme (**the RCJ Scheme**).
10. Zurich/CB issued the discharge forms on 1 February and received these back from Bentley House Trustees (**BHT**), the trustee to the RCJ Scheme on 8 February. The paperwork submitted by BHT to Zurich/CB included a copy of an HMRC Notification of Registration for the RCJ Scheme from 16 August 2013.
11. Zurich/CB say that as the receiving scheme was a SSAS it carried out additional due diligence checks including seeking confirmation of the current registration status of the RCJ Scheme from HMRC and requesting additional information from BHT. It also sent Mr N an additional questionnaire on 13 February 2017, which was completed and returned on 17 February 2017.
12. On 3 March 2017 Zurich/CB received a response letter from HMRC. The letter says:

“You asked for confirmation of the registration status of the pension scheme named above.

We only confirm the registration status when both of the following conditions apply:

 - The transferee scheme is registered with HMRC and is not subject to a deregistration notice;
 - At the present time the information held by HMRC does not indicate a significant risk of the scheme being set up or being used to facilitate pension facilitation.

At this time, one or both of these conditions do not apply. Therefore, we are unable to provide the confirmation you requested about the pension scheme.”
13. On 9 March Zurich/CB contacted Mr N to inform him that it would not be progressing the transfer to the RCJ Scheme because of the letter it had received from HMRC and other concerns it had.
14. Those other areas of concern they have highlighted during our investigation are:-
 - The name of the RCJ Scheme is the same as a limited company which was dissolved on 12 August 2014;

- The principal employer (Zemaplan) had 58 current directors of varying occupations and locations;
 - The principal employer had other business support services with Standard Industrial Classification listing at Companies House;
 - The principal employer had no website or listing on directories;
 - The principal employer as trustee and employer had no ICO data certificate;
 - Mr N became a director only on 26 January 2017;
 - Mr N was unable to provide payslips or an employment contract to confirm his relationship with the principal employer;
 - A Companies House confirmation statement was overdue;
 - The Trust Deed and Rules for the RCJ Scheme were set up after the RCJ Limited Company was dissolved;
 - The scheme administrator did not respond to a request for supporting information to undertake further due diligence. Zurich/CB say it is its understanding that Mr N told them not to do so;
 - Mr N's responses to the questionnaire;
 - Forum comments on Money Saving Expert;
 - Links to the Incartus Scheme – which failed their due diligence (and had independent trustees appointed by the Pensions Regulator);
 - A Deed of Appointment shows Zemaplan as a new trustee from 16 November 2016, removing Bentley House but correspondence continued from the latter;
 - The address listed for administration is a flat with multiple companies and directors registered there; and
 - Mr N aggressively chasing the transfer.
15. Mr N did not accept Zurich/CB's decision and brought a complaint to this office. Mr N is also seeking compensation for the loss on the investments he would have made if the transfer had been completed, and for the distress and inconvenience he has experienced. Mr N also took a decision to transfer his benefits in the SIPP to Scottish Widows.
16. Mr N has responded to the above concerns as follows:
- He has a statutory right to the transfer;
 - He is a high net worth individual operating in the financial services sector with extensive experience of investment vehicles and therefore better placed than Zurich/CB to know what is in his best interests regarding his pension fund;
 - He offered to sign a disclaimer absolving them of any liability;
 - They have still not provided sufficient evidence to prove the RCJ Scheme to be invalid despite repeated requests;
 - Their Compliance Manager declined to make contact to discuss the above;
 - It is not unusual for a principal company to have no website or directory listing. He has other companies without such listings because he chooses not to advertise;

- He is unsure how an overdue Companies House confirmation statement can be seen as a major negative;
- He categorically did not instruct Bentley House UK not to respond to requests for further information, in fact he instructed the opposite;
- He is unable to see how any of his responses to the questionnaire could be seen as negative;
- The information on Money Savings Expert is at least 5 years out of date and is, in any event, a posting on a website chat room so questions the genuineness and correctness of it;
- He can find no evidence in the pack relating to Incartus and any alleged link;
- HMRC did not provide a negative response – they merely stated that they could not provide any additional information. Proof of HMRC (original) registration has previously been supplied; and
- He takes offence at any accusation that he aggressively chased the transfer.

Adjudicator's Opinion

17. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by Zurich/CB. The Adjudicator's findings are summarised briefly below:-
 - As HMRC were unable to provide the necessary confirmation regarding the status of the RCJ Scheme then Zurich/CB was unable to proceed with the transfer. The Adjudicator did not consider that the stance taken by Zurich/CB was unreasonable and did not consider the complaint could be upheld.
 - The Adjudicator also considered that in view of the position outlined above and the view that it was reasonable for Zurich/CB to decline the transfer then it would not be possible to uphold any claim for compensation in respect of a perceived investment loss or an award for distress and inconvenience.
18. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments which, as I will explain below, do not change the outcome.
19. Mr N says that the Adjudicator has taken on face value the notification provided by HMRC which from his own research is untrue. Also, the Adjudicator has failed to view this in the light of his statutory legal right to transfer his pension as backed up by noted legal precedents. Zurich/CB have acted unreasonably by its decision not to transfer his pension.
20. Mr N also says the Adjudicator failed to consider his status as a sophisticated high net worth investor working in the financial sector. In short, he knows what he is doing with his money and is willing to take any perceived risks and he even offered to sign a disclaimer absolving Zurich/CB of any liabilities.

21. Mr N also wishes to draw to my attention the appalling way Zurich/CB communicated (or more accurately) failed to communicate with him by refusing to take his calls and dismissing them as a waste of time.

Ombudsman's decision

22. The issue to be decided is a relatively narrow one. Mr N says that he has a statutory right to transfer. But HMRC will not confirm the RCJ Scheme registration status.
23. Therefore, the question I must consider is whether Zurich/CB can refuse Mr N's transfer request, on the basis that the RCJ Scheme cannot establish its registered status.
24. Mr N has met the conditions under s93 PSA 1993. He has accrued rights to benefits under the SIPP; no crystallisation event has occurred; and he has ceased to accrue such rights at least one year before his normal pension age. So, Mr N has acquired a right to take the cash equivalent of those benefits, s94(2), in accordance with Chapter IV of Part 4ZA.
25. Section 95 PSA 1993, sets out how a member is entitled to take his cash equivalent transfer. In Mr N's case the relevant provision is s.95(3)(a)(ii): acquiring transfer credits allowed under the rules of an occupational pension scheme which satisfies prescribed requirements. Regulation 2(1)(a) of the Personal Pension Schemes (Transfer Values) Regulations 1987, provides that the prescribed requirements include the requirement that the receiving scheme (if not a QROPS or a retirement annuity contract) is registered with HMRC.
26. It is my view that s.94 PSA 1993 is subject to s.95 PSA 1993, i.e. there is no abstract right for a member to take a cash equivalent transfer under s.94 PSA 1993. The right under s.94 PSA 1993, is a right to take the cash equivalent transfer in accordance with the requirements of Chapter IV of Part 4ZA, which includes s.95 PSA 1993.
27. Accordingly, Zurich/CB is entitled to treat the RCJ Scheme, which cannot establish its registered status, as having failed to comply with the prescribed requirements of s.95 PSA 1993, namely regulation 2(1)(a) of the transfer regulations. It follows that because the RCJ Scheme cannot establish its registered status, Mr N has no statutory right to take a cash equivalent transfer under s.94 PSA 1993, and Zurich/CB is justified in refusing his request.
28. The decision in *Hamar v Pensions Ombudsman* [1996] PLR 1, supports my view. In that case, a member of a SSAS had applied to exercise his statutory right to transfer the cash equivalent of his benefits to a pension scheme which had, at the time of the application, yet to be approved by the Inland Revenue under the Income and Corporation Taxes Act 1988. The prescribed requirements which had to be complied with for the purpose of taking a right to a cash equivalent transfer under s.95 included the Inland Revenue approval of the receiving scheme.

29. In the High Court, Collins J said:

*“It is perfectly clear from section 95(1) and (2)(a) that the [cash equivalent transfer] option can only be exercised if there is another existing occupational pension scheme to which the money can be transferred and which must be a scheme **which itself satisfies prescribed requirements** ... [my emphasis]”*

30. It was common ground before the High Court (and Court of Appeal in *Hamar v French* [1998] PLR 321), that the transfer payment could not be made by the SSAS trustees to an unapproved scheme. Although the Court of Appeal overturned the High Court’s decision, it agreed that there was no valid application under s.95 PSA 1993 with which the SSAS trustees were bound to comply.
31. To conclude, I find therefore that no statutory cash equivalent right has arisen because the RCJ Scheme cannot establish its registered status. I do not uphold Mr N’s request for compensation for what he says is the loss on gains in investments in the RCJ Scheme.
32. Mr N has raised many issues in relation to the handling of his request to transfer the benefits in the SIPP to the RCJ Scheme. The Pensions Regulator and HMRC have both issued guidance to help prevent pension liberation and pension scams. The Pensions Liberation Industry Group, has also published a code of good practice that sets out due diligence processes to combat pension scams.
33. Zurich/CB’s actions in relation to seeking to verify the registration status of the RCJ Scheme are in line with this. Such guidance could not override any statutory right Mr N might have had, however I have found here that no statutory cash equivalent right has been established.
34. In view of my finding, I do not need to resolve the other concerns Zurich/CB had (listed at paragraph 15). However, I note that these were formed as a result of the due diligence carried out by Zurich/CB. Mr N has been advised of these points and has responded to a number of them. It may be that those responses will have allayed some of those particular concerns. In my view, this demonstrates the proper operation of the transfer process. As outlined in our previous determinations in this area (see for example PO-1837, PO-3105, and PO-3809), we expect providers to try as far as possible (noting there may occasionally be ‘tipping off’ issues) to explain their reasons and concerns to members and allow a reasonable opportunity for these to be rebutted or jointly worked around.
35. The type of concerns identified by Zurich/CB potentially link to an important part of the statutory transfer assessment process, that the transfer value must be used to obtain transfer credits in a receiving scheme. If there were serious doubts about that, then it could have been that the statutory cash equivalent right would, on that basis, not have been established.

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36. Mr N commented that Zurich/CB, or the Adjudicator, had not taken account of his status as a sophisticated high net worth individual working in the financial sector. Mr N may well be a sophisticated high net worth individual but that does not make him immune from pension liberation or pension scams, and so does not eliminate or reduce the need for the level of due diligence that Zurich/CB undertook.
37. Mr N also sought an award for the distress and inconvenience he has experienced. Mr N has drawn my attention to what he says is the appalling way Zurich/CB communicated (or more accurately) failed to communicate with him by refusing to take his calls and dismissing them as a waste of time. I have reviewed the file of papers that Zurich/CB has provided and I do not find that there has been any lack of communication. Zurich/CB completed its due diligence on the transfer request in a timely manner and communicated its decision to Mr N. It appears that Mr N was unwilling to accept this decision and has expended a great deal of time in trying to change that decision. I do not find that there has been any maladministration by Zurich/CB.
38. Therefore, I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
11 June 2018