DRN-3636494

The complaint

Mr D complained about a transfer from his personal pension with St James's Place UK plc (SJP), to a Self Invested Personal Pension (SIPP), in 2012.

The SIPP to which Mr D transferred was used to invest in two very high-risk investment funds. These funds then failed completely and Mr D lost all his money.

As I'll explain more about below, the firm operating the SIPP went out of business and has long since ceased trading. So, Mr D complained to the Financial Services Compensation Scheme (FSCS), a scheme to which consumers can turn when the financial firm they have used has gone out of business. Mr D received some financial redress as a result of this complaint.

However, Mr D also says he's still lost some money because SJP failed in its responsibilities when dealing with the transfer request to transfer to the SIPP. He says that SJP should have done more to warn him in 2012 of the potential dangers of transferring and should have undertaken greater due diligence on the transfer. Mr D implies he wouldn't have transferred - and therefore wouldn't have put his pension savings at risk - if SJP had acted as it should have done.

What happened

On 10 March 2012, Mr D signed a letter of authority allowing a firm I'll refer to as "Firm P" to obtain details, and transfer documents in relation to his personal pension held with SJP. On 12 March 2012 Firm P wrote to SJP, enclosing Mr D's letter of authority and an information request to establish the value of his pension. Firm P wasn't authorised to give financial advice.

Mr D can't say how his interest in transferring first came about. For example, he can't say whether it followed an unsolicited approach or whether he was attracted by the prospect of any form of incentive to transfer from SJP to another provider.

However, we know now that on 4 April 2012, a *"REQUEST TO TRANSFER TO A REGISTERED PENSION SCHEME"* form was signed by Mr D. This requested that Mr D's full pension balance on the SJP platform be transferred by cheque to *"CTTP SIPP"* and referenced to Mr D's name. It seems this was all further progressed on 2 July 2012 when SJP received CTTP SIPP's Pension Scheme Tax Reference (PSTR) number and other particulars which were included in the transfer papers. As Mr D's signed transfer discharge forms were all included, the transfer was completed on 4 July 2012. The transfer value was around £31,754 and Mr D was 50 years old at the time of the transfer.

In December 2020 Mr D complained to SJP. Briefly, his argument was that SJP carried out insufficient checks as to how or why the idea of transferring his pension ever came about. He also alleged that SJP failed to diligently check whether he had been offered any inducements to transfer his pension. Mr D's assertion was that these failures by SJP played a fundamental role in the losses he subsequently suffered.

SJP didn't uphold Mr D's complaint. It said Mr D had a right to transfer and that none of the information it had about the SIPP, or indeed Mr D's situation at the time, gave it cause for concern. It was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

So, Mr D referred his complaint to the Financial Ombudsman Service. One of our investigator's looked into it. And for the avoidance of doubt, SJP also gave our Service its consent to look into Mr D's complaint, even though it related to events from so long ago. However, when our investigator said they didn't think we should uphold his complaint, Mr D didn't agree with this and has asked for an ombudsman's final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I have also comprehensively considered Mr D's response to our investigator's 'view' and I address all the pertinent points below.

I'm sorry to disappoint Mr D, but I'm not upholding his complaint.

The relevant rules and guidance

Before I explain my reasoning, it will be useful to set out the environment SJP was operating in at the time with regards to pension transfer requests, as well as any rules and guidance that were in place. Specifically, it's worth noting the following:

- The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme if certain conditions are satisfied (and indeed they may also have a right to transfer under the terms of the contract). The possibility that this might be exploited for unsuitable or even fraudulent purposes was not new at the time of this transfer. However, the obligation on the ceding scheme was limited to ascertaining the type of scheme the transfer was being paid to and that it was a tax-approved scheme.

- On 10 June 2011 the Financial Services Authority (FSA) issued a warning about the dangers of "pension unlocking". Although not directly comparable to Mr D's situation, it's worth saying that this warning referred to consumers transferring to access cash from their pension before age 55. (As background to this, the normal minimum pension age had increased to 55 in April 2010.) The FSA said that receiving occupational pension schemes were facilitating this. It encouraged consumers to take independent advice. The announcement acknowledges that some advisers promoting these schemes were FSA authorised.

- At around the same time, The Pensions Regulator (TPR) published information on its website about pension liberation, designed to raise public awareness and remind scheme operators to be vigilant of transfer requests. The warnings highlighted some general examples where websites and cold callers were encouraging people to transfer in order to receive cash or access a loan.

- At the time of Mr D's transfer, SJP was regulated by the FSA. As such, it was subject to the Handbook, and under that to the Principles for Businesses (PRIN) and to the

Conduct of Business Sourcebook (COBS). There have never been any specific FSA rules governing pension transfer requests, but the following have particular relevance:

- Principle 2 – A firm must conduct its business with due skill, care and diligence;

- Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;

- Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and

- COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

For further context, it's also worth noting that on 14 February 2013, TPR launched its *"Scorpion"* campaign. The aim of the campaign was to raise awareness of pension liberation activity and to provide guidance to scheme administrators on dealing with transfer requests in order to help prevent liberation activity happening. The Scorpion campaign was endorsed by the FSA (and others). Of course, the campaign came *after* Mr D's transfer, but I highlight it here to illustrate the point that the industry's response to the threat posed by pension liberation was still in its infancy at the time of Mr D's transfer and that it wasn't until after his transfer that scheme administrators had specific anti-liberation guidance to follow.

What did SJP do and was it enough?

With the above in mind, at the time of Mr D's transfer personal pension providers had to make sure the receiving scheme was validly registered with HMRC. SJP had the SIPP scheme's HMRC registration certificate, and PSTR, and CTTP confirmed that it was an Individual Personal Pension Scheme, so SJP didn't need to do anything further in this respect.

There was also a need to remain vigilant for obvious signs of pension liberation or other types of fraud. Even though some of the regulators' warnings about the threat of pension liberation and wider scams were directed at consumers, I think it's reasonable to conclude that the sources of intelligence informing those warnings included the industry itself. Personal pension providers were therefore unlikely to be oblivious to these threats. And, even if they were, a well-run provider with the Principles in mind should have been aware of what was happening in the industry.

So, in adhering to the FSA's Principles and rules, I think a personal pension provider such as SJP should have been mindful of announcements the FSA and TPR had made about pension liberation, even those directed towards consumers. It means if a ceding scheme came across anything to suggest the request originated from a cold call or internet promotion offering early access to pension funds – which had both been mentioned by regulators as features of liberation up to that point – that would have been a cause for concern.

But from what I've seen in this case, I'm satisfied nothing along these lines would have been apparent to SJP at the time of the transfer. Mr D's transfer papers did not give any indication that his interest in transferring followed a cold call or internet promotion offering early access to pension funds. And Mr D himself can't provide any commentary or evidence as to why he instigated the transfer back in 2012. So, given the guidance in place at the time, there was no expectation for SJP to contact Mr D to see how his transfer had come about and I haven't seen anything that SJP would, reasonably, have been aware of anything about the parties involved in this transfer that would have caused it concern.

It's important to recognise that the more extensive list of warning signs issued in 2013 hadn't yet been published, and it wouldn't therefore be reasonable to use hindsight to expect ceding schemes to act with the benefit of that guidance. it means I don't expect SJP to have investigated, as a matter of course, the sponsoring employer's trading status, geographical location or connections to unregulated investment companies or the various parties connected to the transfer.
In a general sense, I'm also satisfied SJP didn't have to be alarmed at every contact it received from third parties, whether authorised by the FSA or not. This may only be of limited relevance to Mr D's case of course, but the FSA didn't regulate all receiving pension schemes, so SJP wouldn't have expected to find the parties running those schemes or helping to administer them (which may include liaising with a member about a transfer-in) to be authorised by the FSA. In any event, as outlined previously, the FSA announcement about pension liberation mentioned that some advisers it regulated were involved in this very activity. So that doesn't suggest to me that, at that time, it considered the adviser's regulatory status as being a clear determining factor of whether liberation was taking place.

Where accompanied by the consumer's valid authority, a personal pension provider might also receive requests for information from other parties that might be engaged in some legitimate aspect of a consumer's financial affairs (accountants, tax or legal advisers, credit brokers, debt charities, introducers to authorised financial advisers and so on). But none of these other activities were required to be authorised by the FSA at the time either. So sending information to Firm P and / or CTTP SIPP ahead of the transfer, which SJP did, wasn't problematic in itself.

I appreciate that once SJP knew it was making a transfer to another personal pension, it could be argued that the prior involvement of an unregulated third party would have looked more unusual. But I consider that expecting SJP to take a retrospective look at what contact it had prior to the transfer would have gone beyond the standard of reasonable due diligence at the time. There wasn't an expectation that SJP would need to make further contact with Mr D and without doing that, it would in any event have been at risk of making incorrect assumptions as to the involvement of Firm P.

I say that especially as when SJP received the transfer request itself, it came from the SIPP (or those administering it). So, I don't think Firm P's prior involvement was something it needed to be mindful of when it came to processing the transfer, by the standards of the time. I would expect an FSA-regulated personal pension provider at that time to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer request promptly (and in line with a member's legal rights).

Taking all of this into account, my view is that it wouldn't have been practicable for a personal pension provider at that time, to have either queried the regulatory status of every contact it had from third parties – or presume that there was a risk of harm from a third party involved in a pension transfer even if it was not FSA authorised (and assuming that third party was still involved).

Conclusion

At the time of Mr D's transfer, SJP would have been expected to know what type of scheme it was transferring to and that it was correctly registered with HMRC. I'm satisfied SJP had this information.

Beyond that, there was no requirement or expectation for it to have undertaken more specific, detailed, anti-scam due diligence. The FSA's Principles and COBS 2.1.1R meant

SJP still had to be alive to the threat of pension liberation, and other types of scam, and act accordingly when that threat was apparent. But I’m satisfied there weren’t any warning signs that SJP should reasonably have spotted and responded to.

My final decision

I do not uphold this complaint against St James's Place UK plc.

I do not require St James's Place UK plc to do anything.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr D to accept or reject my decision before 23 April 2024.

Michael Campbell
Ombudsman