

The complaint

Mr R complains that FIL Life Insurance Limited (FIL) unnecessarily delayed the transfer of his group personal pension to a small self-administered pension scheme (SSAS). Mr R believes the delays caused missed opportunities for his pension to grow

What happened

Mr R was a member of a group personal pension administered by FIL. He first requested a pension transfer around 11 October 2022.

Having sent Mr R a transfer pack, FIL received his transfer out questionnaire in late October 2022. Mr R confirmed, amongst other things, the name of the SSAS he intended to transfer his pension to and that the sponsoring employer was his own limited company. He provided a letter from HMRC to show that the SSAS was registered in early October 2022 along with confirmation from government records to show the SSAS was open. As it was a new account, no statements had been issued yet. Mr R also confirmed he hadn't taken FCA regulated advice, as he was familiar with pensions.

FIL needed more information from Mr R. So, it sent him a transfer application questionnaire to fill in on 2 November 2022, enclosing a leaflet developed by The Pensions Regulator (TPR) entitled "*Predators stalk your pension*". It explained there had been problems in recent years involving members being persuaded to transfer their pension savings to unsuitable or fraudulent schemes as part of a scam. Therefore, whilst Mr R had a statutory right to transfer his pension, certain conditions had to be met. FIL asked Mr R a series of questions, including what led to him wanting to transfer his pension. And it explained (in the form of a checklist) the evidence it needed Mr R to produce – such as a letter from his employer confirming its sponsorship of the SSAS along with proof of Mr R's earnings and pension contributions in the previous three months. It also wanted to see bank statements showing that a salary had been paid.

FIL received Mr R's response around 14 November 2022. He enclosed confirmation from his employer that he'd taken up employment as of 7 October 2022 on a flexible contract. It also confirmed that Mr R was the only member of the pension scheme. Contributions were to be made monthly by Mr R and his employer via the November 2022 payroll. Mr R added a handwritten note to say that his employee/employer information had raised a 'red flag' with another provider when requesting a transfer in relation to a different pension. So, as advised by that provider, he'd sought MoneyHelper guidance. The transfer then went ahead.

According to FIL's timeline, having assessed the additional information Mr R provided, it requested further information from him in late November 2022 concerning an employment link. It received some of the information it needed around 28 November 2022 and completed further checks the following day. It asked Mr R for additional information (a HMRC screenshot and bank statement) around 5 December 2022 and received a response a week later. It then sent the transfer request to its technical team to review on 19 December 2022.

Mr R complained to FIL during November 2022 about its delays.

The technical review was completed on 29 December 2022 at which point FIL told Mr R that he'd need to seek guidance from MoneyHelper as his transfer application had triggered some amber warnings. Those mainly concerned his employment links, but FIL also felt Mr R's intended investment structure was unclear.

FIL subsequently received confirmation that Mr R had already sought guidance from MoneyHelper.

In a response dated 16 January 2023 (to the complaint that Mr R made in November 2022) FIL said the MoneyHelper guidance Mr R had produced was being checked by its technical team. However, it later told Mr R that as the guidance pre-dated its request, it wasn't acceptable in line with the regulations.

Mr R sought MoneyHelper guidance in relation to the FIL transfer and it received this confirmation (according to FIL's complaint response) on 9 February 2023. It updated the transfer checklist on 8 March 2023 and sent it back to the technical team to review the same day. The transfer was approved on 9 March 2023 and the transfer team were told to disinvest Mr R's funds around the same time. However, due to a 'full scheme blackout' whilst a fund restructure took place, FIL couldn't process the transfer until after 16 March 2023. According to FIL's timeline, Mr R's funds were disinvested on 20 March 2023 (roughly two working days later).

FIL wrote to Mr R on 22 March 2023 to confirm that his transfer request met the conditions of the Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021. It said it would send a payment of £51,330.10 to the receiving scheme imminently.

Mr R complained to the Financial Ombudsman Service as he wasn't happy about the time FIL took to complete his pension transfer. He said a similar request to another company took a maximum of four weeks to process. Mr R felt FIL's communication had been poor and its information requests piecemeal. He said the "*final straw*" came when he was asked to make an appointment with MoneyHelper, even though he'd already provided evidence to show he'd sought guidance in relation to a transfer request to a different provider.

One of our Investigators looked into Mr R's complaint. He was satisfied that FIL was required to carry out additional checks in line with changes to the regulations. However, he felt that, overall, FIL could have done things more quickly and had likely caused a delay of about thirty days. He set out what FIL should do to put things right and recommended that FIL pay £100 compensation for the inconvenience caused to Mr R by its avoidable delays.

FIL didn't accept the Investigator's assessment. It said there are no set timescales for completing the various checks as each case has to be considered on its merits. Overall, it pointed out that the transfer took just over four months, which it thought reasonable in the circumstances. As no agreement could be reached, the matter was referred to an Ombudsman. It's been passed to me to decide.

My provisional findings

I sent Mr R and FIL my provisional decision on 29 February 2024. I've included the relevant extracts below:

"Part of Mr R's concern stems from the fact that a different business was apparently able to process a similar transfer request within a matter of weeks. Whereas it took FIL several months to approve Mr R's transfer. I can appreciate why he might be concerned given that comparison."

But my role here is to say, based on the evidence I've seen, whether FIL acted fairly and reasonably overall. In doing so, I'll have regard to the legislative and regulatory environment that FIL operates within. Specifically (but not limited to) what's set out within The Pensions Schemes Act 2021 relating to transfers and The Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021.

As I understand things, the backdrop to the regulations I've mentioned above was that there had been an increasing number of scams concerning pension transfers. Therefore, the regulations dictated that certain conditions had to be satisfied before a statutory pension transfer could take place.

In practical terms that meant businesses like FIL were required to complete additional checks with the aim of ensuring, as far as they were able to, that the member wasn't at risk of losing their pension through a scam. The regulations weren't intended to impose additional burdens on businesses, or to impact on standard business practices. Any additional steps taken were expected to be reasonable and proportionate. Where a right to a statutory transfer exists, businesses are generally expected to complete the transfer in six months where possible. However, the measures I've described above are also intended to act as a safeguard and give businesses the power to act where they had concerns.

So, that's the context within which I've considered Mr R's complaint.

One of the checks that businesses need to perform here is whether the receiving scheme is one listed in the transfer regulations. The kinds of scheme mentioned include a public service pension scheme; an authorised master trust/ collective defined contribution scheme. Mr R's SSAS wasn't one of those schemes. Neither was it on a 'clean list' meaning that further checks weren't needed. Therefore, in those circumstances, FIL had to carry out further checks.

Having established that Mr R's SSAS wasn't one of the schemes listed in the transfer regulations, FIL needed to be satisfied there was an employment link between Mr R and the SSAS, so it asked Mr R for more information and explained why it needed it. The types of evidence businesses would be expected to gather here would be confirmation from the employer of the member's continuous employment along with evidence to show their earnings and pension contributions made on their behalf. That's because, as I understand things, SSAS' had in some instances been set up specifically to facilitate pension scams, often to enable unsuitable or risky investments to be made. The regulations state that if the business isn't able to establish an employment link, that constitutes an amber flag. And in those circumstances, they'd be expected to direct the member to seek guidance from MoneyHelper.

Mr R couldn't provide earnings or pension contribution information because he'd only recently taken up employment with the company and was yet to receive a payslip. As far as I can tell, this was exactly the type of situation that had the potential to trigger an amber flag meaning that MoneyHelper guidance needed to be sought.

Nevertheless, I've thought carefully about whether it was reasonable for FIL to ask Mr R for more information about this during November and December 2022 given the responses he'd already provided. And on balance, I think it was. Mr R's employer told FIL that Mr R wasn't due to be paid until November 2022. Therefore, by the time of FIL's additional information requests in November and December 2022, Mr R should have been able to produce at least one payslip. Given that, I think it was reasonable for FIL to ask for more information at that time to help with its checks. I think it was in Mr R's interests for FIL to make sure it had asked the right questions and probed sufficiently – to at least make sure that when it completed its technical reviews, it had as much information as possible. And I don't think it

would be reasonable to expect all information requests to have been made at the same time. Until FIL assessed the responses it had, I don't think it could have anticipated what other information it might need.

It took just over four weeks from receiving Mr R's response in mid-November 2022 to sending the transfer request for a technical review. Given the responsibilities that FIL had when handling Mr R's transfer request, I didn't find that timeframe unreasonable. Likewise, it took the technical team about seven days (allowing for the festive period in between) to review the application and conclude that Mr R needed to seek MoneyHelper guidance. I'm satisfied that's a reasonable timeframe too.

I can appreciate that Mr R might have felt it unnecessary for FIL to say he should seek MoneyHelper guidance again and should simply have accepted what he'd already provided. But, I'm satisfied that the regulations require MoneyHelper guidance to post-date the business' request for it to be sought. So, I don't think FIL acted unreasonably here. According to its complaint response to Mr R, FIL received that evidence from Mr R on 9 February 2023.

For all of the reasons I've set out here, I think FIL went about things in a fair and reasonable way up to receiving Mr R's MoneyHelper guidance on 9 February 2023. However, I'm not persuaded that things were plain sailing from thereon in. And for the reasons I'll now set out, I think FIL did cause a delay leading to the transfer approval being delayed as was the disinvestment of Mr R's funds.

As I said earlier, businesses are generally expected to complete statutory transfers within six months. So, I agree with FIL to the extent that, overall, Mr R's transfer was completed within that timescale. But that doesn't mean it's reasonable for transfers to take longer if the evidence suggests they could have been completed sooner.

In response to our Investigator, FIL made a number of points to demonstrate why it didn't think it could have completed the transfer request and disinvestment any sooner. Those included that it had resource issues between 10 February 2023 (around the time it received the MoneyHelper confirmation) and 28 February 2023 (when the full scheme blackout took effect) which caused a backlog of cases that needed to be worked through. It also pointed out that its technical team doesn't have specific timeframes within which to review cases, as each case has to be considered on its merits. Therefore, it thought it reasonable to assume that even if it had been at full capacity resource wise, the checks may always have taken longer to complete – especially as the SSAS would have raised additional flags.

I've thought carefully about FIL's position here. And having done so, I'm not persuaded by the arguments made.

As far as I can tell, FIL had completed the majority of its checks, including any specifically triggered by the fact Mr R was transferring to a SSAS, before it asked him to provide confirmation he'd sought MoneyHelper guidance. And FIL hasn't given me any persuasive evidence to suggest that any checks it did need to complete on receipt of Mr R's MoneyHelper evidence raised any particular issues. Similarly, it's evident that the technical team completed its review within a day of the transfers team forwarding on the application for review. So, there's nothing to suggest the technical team experienced any particular difficulties either. On balance, it seems more likely that the delay in sending the transfer application to the technical team was due to the resource issues FIL has alluded to. And whilst I appreciate that presented its own challenges for FIL, I don't think it would be fair to say that's something that Mr R should simply have to accept. I say that because all of the evidence points to the fact that the transfer could have been approved before the scheme blackout period kicked in.

I think it's reasonable here to assume that the transfer could have been sent to the technical team within about a week of the MoneyHelper guidance being received. So, I think FIL could have sent it on around 16 February 2023. Assuming that the technical team could have completed its checks within a similar timeframe, I think it would likely have approved the transfer on 17 February 2023 and told the transfer team to disinvest funds. Again, assuming it would have taken a similar amount of time to actually disinvest funds as it did in March 2023 (at the end of the scheme blackout period) I think it could have disinvested funds within about two working days. So, realistically, had things happened as they should, I think Mr R's funds could have been disinvested by about 21 February 2023. The fact that didn't happen means that the value of Mr R's pension may well have suffered as a result. For the reasons I've set out, I'm intending to uphold this part of the complaint.

Redress

To put things right now, I'm intending to say that FIL should take the steps I've set out below. I don't know exactly how Mr R invested once his funds were transferred. But I think the benchmark I've included below is a reasonable method to calculate potential investment loss/growth for an investor who was willing to take some risk, as Mr R seemed to be. FIL should:

- Calculate the difference between the value of Mr R's pension as at 21 February 2023 when it could have been disinvested and transferred to the new scheme and 20 March 2023 when disinvestment actually happened. If the value is higher at 21 February 2023 than it was on 20 March 2023, that means Mr R has suffered a loss that needs to be put right.*
- In addition, FIL needs to calculate the notional investment loss/growth from the above step from 21 February 2023 until the date FIL is told that my final decision has been accepted.*
- The presumed investment loss/growth is based on this benchmark: the FTSE UK Private Investors Income total return index (prior to 1 March 2017, this was called the FTSE WMA Stock Market Income Total Return Index).*
- The total compensation amount (if applicable) from the above steps, should, if possible, be paid into Mr R's pension. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension if it would conflict with any existing protection or allowance.*
- If Mr R hasn't taken any tax-free cash from his pension, 25% of the loss would be tax free and 75% would be taxed according to Mr R's likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.*
- 8% simple interest per year should be added from the date of my final decision to the date of settlement if compensation is not paid within 28 days of the business being notified of Mr R's acceptance of my final decision.*
- FIL should explain its calculations in a clear format.*
- I appreciate that this matter has caused Mr R some inconvenience. So, I'm intending to say that FIL should pay him compensation of £100 in recognition of that".*

Responses to my provisional decision

Neither Mr R nor FIL have provided further comments or evidence for me to consider.

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.

Given that neither Mr R nor FIL gave me further comments or new evidence to consider, I see no reason to change the findings I set out in my provisional decision.

My final decision

I uphold this complaint in part. FIL Life Insurance Limited should put things right as set out in my provisional decision - as referred to above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 24 April 2024.

Amanda Scott
Ombudsman