DRN-4954722

The complaint

Mr P has complained about a transfer of his personal pension provided by Scottish Equitable Plc trading as AEGON to an occupational scheme in January 2013. Mr P's transferred pension money was largely invested in a storage pod scheme, offered by Store First Limited, that has since reduced in value dramatically.

Mr P says Scottish Equitable failed in its responsibilities when dealing with the transfer request. He says it should have done greater due diligence on the transfer, in line with the guidance he says was required of transferring schemes at the time.

What happened

Provisional decision

On 23 July 2024 I issued a provisional decision and invited the parties comments on it. First I explained why I thought this was a complaint the Financial Ombudsman Service had the power to consider. Second, why it was one I was not intending to uphold. For ease of reading I've copied the relevant extracts below.

"*What happened*

On 28 January 2013 Scottish Equitable received a request from Capita Oak Pension Scheme (the scheme) to transfer the value of Mr P's Scottish Equitable personal pension to it. It enclosed a signed instruction from Mr P authorising the transfer. It also enclosed confirmation from HMRC that the scheme was appropriately registered and gave its pension scheme tax reference (PSTR) number.

Two days later, on 30 January 2013, Scottish Equitable sent Capita Oak confirmation that it had transferred the £15,738.04 value of Mr P's pension to the scheme. I understand that Capita Oak then used those funds to invest in Store First's storage pod business.

In July 2015 the High Court ordered that the company providing the scheme's trustee services be wound-up.

In January 2017 The Pensions Regulator (TPR) appointed Dalriada Trustees Limited (DTL) as trustees of the scheme. In March 2017 DTL announced to scheme members that it was:

"… working towards taking exclusive control of the existing trustee bank accounts. In addition we are currently making investigations in order to gain a full understanding of all assets of the Scheme, including where and how they are held."

In May 2017 the Serious Fraud Office (SFO) announced that it was investigating Capita Oak and other companies concerning storage pod investments.

DTL issued a further announcement in March 2018. It said it was trying to find out where and how the scheme assets were held. It issued a further statement in February 2020. In that announcement it advised scheme members that, following a determination from the Pensions Ombudsman on a similar case, members might wish to consider complaining to *their previous pension provider. Since then DTL has sold the scheme's Store First assets. But in return it received only a small percentage (less than 5%) of the amount the scheme initially invested in Store First.*

In the meantime, in July 2020, Mr P complained to Scottish Equitable. He said it had failed to carry out sufficient due diligence when transferring his pension. Scottish Equitable didn't uphold Mr P's complaint. In the first instance it said that – given the provisions of the Limitations Act 1980 – he had brought his complaint too late.

Nevertheless, it said Mr P had a right to transfer and he'd signed the appropriate documents in order to do so. And it was satisfied it had carried out the due diligence required of it at that time.

Mr P brought his complaint to the Financial Ombudsman Service. Scottish Equitable didn't consent for us to consider the merits of the complaint as it believed Mr P had brought it out of time. One of our Investigators issued an opinion explaining why she felt Mr P had brought his complaint in time.

Scottish Equitable didn't agree with the Investigator's opinion. As such the complaint has been passed to me to decide if it's one we have the powers to consider.

We made some further enquiries of Mr P. Amongst other things he told us that he did recall completing an SFO questionnaire, but couldn't remember when this was. He also said he remembered receiving updates from DTL, which he thought were in 2019 and 2020. He said he didn't realise he had cause for complaint against Scottish Equitable until his representatives advised him to do so in 2020.

What I've provisionally decided – and why

<u>Time Limits</u>

Initially, I must consider whether Mr P has brought his complaint within the applicable timescales. What we can and can't look at is explained in our rules called the DISP rules, which are set out in the Financial Conduct Authority's Handbook. In interpreting and applying those rules, I am not bound by the provisions of the Limitation Act. Nonetheless, I have taken the position at law into account as a relevant consideration in the analysis below.

The relevant DISP rules say that, without the consent of the business involved – and Scottish Equitable has not provided that consent – we can't consider a complaint that is brought to us outside of set time limits.

Specifically, DISP 2.8.2 R says:

"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

…

(2) More than:

(a) Six years after the event complained of; or (if later)

(b) Three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

Unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and had written acknowledgement or some other record of the complaint being received;…"

In this case Mr P transferred his pension funds in January 2013. So, to be within the six years allowed above, he had until 2019 to put his complaint to Scottish Equitable or to the Financial Ombudsman Service. But he first complained to Scottish Equitable in July 2020. That is clearly outside of the six years allowed to bring a complaint under the first part of the rule set out above. So, I need to consider the second part of the rule. That is I need to decide when Mr P became aware, or ought reasonably to have become aware, that he had cause for complaint. And, whether this was more than three years before he referred his complaint to Scottish Equitable in 2020.

When applying the DISP Rules my task is to interpret the ordinary words set out in DISP 2.8. When doing so I must adopt a reasonable and common-sense interpretation of the rules and apply those fairly within the context of the statutory obligations.

To decide when the three-year clock starts ticking I need to consider when I think it's reasonable to say Mr P became aware:

- *broadly, that he had or might have suffered a loss;*
- *that the loss was as a result of some act or omission, and*
- *who was responsible for that act or omission causing the loss.*

The requirement in the third bullet point above is reflected in the definition of 'complaint' in the FCA handbook. So a person who has awareness of a cause for complaint is required to have a cause to refer:

'…any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service, claims management service or a redress determination, which:

(a) alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and

(b) ***relates to an activity of that respondent*** *[emphasis added], or of any other respondent with whom that respondent has some connection in marketing or providing financial services or products or claims management services, which comes under the jurisdiction of the Financial Ombudsman Service.'*

So, in order to start the clock ticking it would not be enough for Mr P to have become aware (or ought reasonably to have become aware) that he'd suffered a loss. He also had to be able to attribute that loss to the actions or inactions of Scottish Equitable.

Scottish Equitable's arguments have focused on when it believes Mr P ought reasonably to have become aware that he had likely suffered a loss. It's referred to what it's described as the extensive press coverage and Pensions Ombudsman decisions on the subject. In support of that, it has referred to some press coverage of the Capita Oak scheme and also of investigations into Store First. It's shown us some press articles published between November 2013 and May 2017. However, some of those were published in the financial press, aimed at those working in or who have a keen interest in the financial markets. But Mr P didn't work in that's sector, he wasn't a sophisticated or regular investor, indeed he told us he had no previous investment experience and I've seen no evidence he had particular interest in matters of finance. So I think it's unlikely he would have seen any of the articles *published in the financial press. Two other pieces were in the money pages of the Daily Mail. Another was published by the Guardian. And while those might have reached a wider audience none of the headlines mentioned Capita Oak and I think it would most likely be more luck than judgement had Mr P stumbled across those at the time. But I've seen no compelling evidence he did so.*

Scottish Equitable has also referred to Pensions Ombudsman decisions relating to six people who had invested in Capita Oak. The Pensions Ombudsman gave guidance that those similarly affected should, in the first instance, complain to their previous pension provider. And if Mr P had researched Capita Oak online there was a possibility that he could have read about the Pensions Ombudsman's decisions and realised at that point that he had cause for complaint against Scottish Equitable. But there's simply no evidence that happened around the time that the other scheme members complained to the Pensions Ombudsman.

Further, in two of the cases Scottish Equitable cited (PO-10600 and PO-11136) the Pensions Ombudsman has indicated that it was their representatives that advised them to complain against their previous providers. So it appears those members only became aware that they could put a complaint after being advised by informed representatives and not because they instigated those complaints themselves.

It's not clear in those cases what caused the members to consider complaining in the first place. But in two of the other cases Scottish Equitable cited it's apparent that the members began on their complaints journeys because Capita Oak failed to provide meaningful responses to enquiries. In other words, there were specific issues that caused those complaints to arise. And in one of those cases that was because the member was unable to transfer out of the scheme, rather than any action specific to the transfer into it. And I've seen no compelling evidence that Mr P had reason to contact Capita Oak or approach a representatives sooner. So I'm not persuaded that the fact that a handful of scheme members had put complaints to the Pensions Ombudsman is evidence that other scheme members ought reasonably to have become aware that they might have cause for similar complaints.

I've thought carefully about when Mr P ought reasonably to have become aware he might have had cause for complaint against Scottish Equitable. I'm aware DTL first wrote to scheme members like Mr P in March 2017. Although the content of its announcement only said that it was working to take control of the scheme's assets. It didn't indicate, at that time, that those assets were most likely lost or of little value. So I don't think that initial announcement should have given Mr P cause to realise he'd suffered a loss or had cause for complaint.

The SFO began asking scheme members to complete questionnaires in May 2017. Mr P does recall completing an SFO questionnaire but not exactly when that happened. I would have thought the involvement of the SFO would have raised a very clear red flag that something was amiss with the administration of the pension scheme. So, if Mr P wasn't already aware of issues with the scheme, I think he should have become aware at that point that there was cause for concern. However, prior to February 2020, there was nothing in the announcements made by DTL or the SFO which indicated that Mr P should have become aware that he might have cause to complain against Scottish Equitable.

Mr P also told us that, initially, he took some comfort from the involvement of DTL. He said he understood the investments in Store First were being "legally challenged". So he didn't *think he needed to take further action. It was only some time later, although Mr P hasn't been clear about when this was, the he realised his pension might have been "stolen".*

We asked Mr P when he first had concerns about his pension. He told us that was when he did not receive responses to his emails and could not locate the scheme website. But he's been anything but clear about when exactly that happened. However, even if that was more than three years before he eventually complained, as I've said above, that wouldn't automatically mean Mr P could reasonably attribute any concerns about a loss to Scottish Equitable's actions.

I'll explain that Mr P's explained that he was motivated to transfer because he was told that by doing so he would receive returns that were "much higher". He said an agent visited him who "seemed to have all the right credentials" and who convinced Mr P that transferring was the right thing to do. So at the point Mr P realised that his pension might have suffered a loss, I don't think he would automatically have realised he had a complaint against Scottish Equitable.

Deciding to transfer an entire pension pot to an alternative pension would not be, for most people, a decision to take lightly. So I think Mr P would no doubt recall that he had signed all the relevant papers to allow Scottish Equitable to transfer his funds to the scheme. After all this was a transfer he wanted to go ahead and which he thought would be the right thing for him to do. In other words, he'd instructed Scottish Equitable to transfer his pension and it had done what he wanted it to do. So, unless he had an understanding that Scottish Equitable could have prevented or delayed that transfer pending further enquiries into the scheme I don't think he'd have automatically realised that Scottish Equitable had potentially acted unfairly.

However, things changed when DTL said, in its February 2020 announcement that scheme members might be able to complain to their previous pension providers. In those circumstances I think that was the first point at which Mr P ought reasonably to have known he might have cause for complaint against Scottish Equitable. And as we now know it was around that time, or soon after, that Mr P approached representatives for help. And the representatives advised him to complain to Scottish Equitable.

It follows that I'm satisfied that Mr P only realised he had cause for complaint against Scottish Equitable around the time he sought the advice of representatives. And he made his complaint promptly after that.

So I think Mr P brought his complaint within the required timescales. Consequently, this is a complaint we do have the power to look into. In those circumstances I've gone on to consider its merits.

<u>The merits of the complaint</u>

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

When doing so I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The relevant rules and guidance

Before I explain my reasoning, it will be useful to set out the environment Scottish Equitable 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 fraudulent purposes was not new even at the time of this transfer. However, the obligation on the ceding scheme – in this case Scottish Equitable – was limited to finding out 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" which specifically 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, TPR published information on its website about pension liberation[1], designed to raise public awareness and remind scheme operators to be vigilant of transfer requests. The warnings highlighted that websites and cold callers were encouraging people to transfer in order to receive cash or access a loan.*

- *At the time of Mr P's transfer, Scottish Equitable 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 context, it's also worth noting that around two weeks after Scottish Equitable transferred Mr P's pension funds, on 14 February 2013, TPR launched its "Scorpion" campaign (so

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[1] *Pension liberation refers to a type of pension scam where consumers are persuaded to transfer their pensions to another scheme to enable them to be accessed in an unauthorised way (before minimum retirement age, for instance). This can leave victims paying punitive tax charges to HMRC and having to deal with the consequences of having their pension invested in an inappropriate way.*

called because of the imagery it contained). 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 FSA and others endorsed the Scorpion campaign. Clearly, it came after Mr P's transfer, but I highlight it here to illustrate that the industry's response to the threat posed by pension liberation was still in its infancy at the time of the transfer. So it wasn't until after Mr P's transfer that ceding scheme administrators had specific anti-liberation guidance to follow.

What did Scottish Equitable do and was it enough?

With the above in mind, at the time of Mr P's transfer personal pension providers had to make sure the receiving scheme was validly registered with HMRC. Scottish Equitable had the scheme's HMRC registration certificate and PSTR, so it could tell the scheme was an appropriately registered occupational pension scheme. So Scottish Equitable 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 should have been mindful of announcements the FSA and TPR had made about pension liberation, even those directed to 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.

I'm satisfied nothing along these lines would have been apparent to Scottish Equitable at the time of the transfer. Mr P's transfer papers didn't give any indication that his interest in transferring followed a cold call or internet promotion offering early access to pension funds. And, given the guidance in place at the time, there was no expectation for Scottish Equitable to contact Mr P to see how his transfer had come about. Further, I haven't seen anything that Scottish Equitable would, reasonably, have been aware of about the parties involved or the scheme itself which would have caused it concern.

Since submitting his initial complaint Mr P has provided further reasons for why he believes Scottish Equitable didn't do all that it should have done. I'll consider his key points below.

Mr P said that Scottish Equitable didn't ask him if he'd received financial advice to transfer and if a regulated financial adviser had provided that advice. But, at that time, there was no requirement for Mr P to receive regulated advice before a transfer could go ahead. So Scottish Equitable had no reasonable cause to question him on those points

Similarly, Mr P said Scottish Equitable didn't find out if he had been offered any financial incentive to transfer or what was motivating him to do so. But Mr P's transfer papers didn't give Scottish Equitable any indication of what was motivating him to transfer. And, given the guidance in place at the time, there was no obligation nor expectation for Scottish Equitable to contact Mr P to see how his transfer had come about.

It's important to recognise that the more extensive list of warning signs TPR issued in 2013 hadn't yet been published. So I don't think it would be fair to expect Scottish Equitable to act with the benefit of that guidance. Mr P also said, amongst other things, that Scottish Equitable didn't ask him about his intended investments, whether those matched his attitude to risk, or about the charges applying to the new scheme. But, Scottish Equitable wasn't responsible for the suitability of the chosen investments in the new scheme. And many of the points he argues Scottish Equitable should have questioned are not points raised in the Scorpion guidance. For example the Scorpion campaign didn't require ceding schemes to establish if proposed investments met a consumer's attitude to risk nor to find out about the new scheme's charging structure etc.

Also, as I've already said, there was nothing about the detail of the pension Mr P was transferring his pension to that should have caused Scottish Equitable to call the transfer into question. Mr P had given his valid authority for Scottish Equitable to transfer his pension to the scheme. And in the absence of any warning signs from which Scottish Equitable should have identified Mr P was putting his pension funds at risk, I don't think it did anything wrong in carrying out the transfer at that time."

Developments

Mr P, via his representatives, responded to the provisional decision. But he simply asked me to review the decision; he didn't make any substantive points or raise any specific objections to my provisional findings. Scottish Equitable didn't reply.

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.

As neither Mr P nor Scottish Equitable raised any objections to my provisional decision I see no reason to alter it.

My final decision

For the reasons given above I do not uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 5 September 2024.

Joe Scott
Ombudsman