

Due diligence and pension transfers

Matthew Swynnerton looks at a determination from the Pensions Ombudsman about due diligence in relation to transfers

In recent years the Pensions Ombudsman (PO) has considered a number of complaints from applicants who are concerned that their benefits may have been lost following a transfer and who argue that the transferring scheme did not complete adequate due diligence before making the transfer. A determination issued in August relating to such a complaint is particularly notable because the PO upheld the complaint and directed that the applicant's benefits be reinstated in the transferring scheme.

Background

After receiving a cold call in 2013, the applicant agreed to a review of her pension arrangements and she completed and signed a transfer request form in September 2013. The transferring scheme was a defined benefit public service pension scheme and the applicant was a deferred member. The receiving scheme was stated to be an occupational defined contribution scheme. As part of the transfer process, the respondent to the complaint (the relevant Council) sent her a copy of The Pensions Regulator's 'scorpion' pack. The declaration section of the transfer request form signed by the applicant included confirmation that the applicant had read the leaflet and that, on payment of the transfer value, she would have no further benefits from the fund in respect of the rights to which the transfer related. The transfer was made

in November 2013 but in late 2015 the applicant became concerned about her benefits.

PO's conclusions

The PO noted that, as stated in a number of previous determinations, February 2013 (when The Pensions Regulator published its 'scorpion' leaflet) marked a point of considerable change in the level of due diligence expected of trustees and administrators when considering transfer requests.

The PO noted that some of the points raised in the respondent's defence are based on the premise that it could not refuse to implement the transfer because the applicant had a statutory right to transfer. However, the PO concluded that this was incorrect. The PO stated that legislation provides that the transfer must be used to acquire 'transfer credits' which are defined as rights allowed to an 'earner', and whilst a 2016 High Court judgment held that the earnings do not need to come from the receiving scheme's employer, there do need to be some earnings from employment. In this case the applicant had no employment earnings at the relevant time and the PO concluded that this meant that she was not an 'earner' and did not have a statutory right to transfer.

As there was no statutory right to transfer, the respondent had a discretion whether to make the transfer. The PO thought that the respondent should have made enquiries of the applicant before

deciding whether to allow the transfer, but it failed to do so. The PO concluded that, had the respondent realised that it had a discretion, it seems likely that it would have noticed several 'red flags', for example, that the applicant was approaching normal retirement age and living on the south coast but the employer of the receiving scheme was a steel stockholding company based several hundred miles away.

Noting evidence which suggests that the applicant was not financially aware, the PO concluded that it seems more likely than not, on the balance of probabilities, that had the applicant received cautionary information from the respondent, she would have withdrawn her request.

The PO concluded that the respondent's failure to contact the applicant, express the risks and its concerns and enquire into the matter further constituted maladministration. The PO directed the respondent to reinstate the applicant's accrued benefits in the transferring scheme (adjusting for any revaluation and allowing for a lump sum she received from the receiving scheme) and to pay the applicant £500 in relation to distress and inconvenience.

Action points

This case demonstrates the importance of having appropriate processes in place for dealing with transfer requests. Trustees and administrators should ensure that their processes are suitable and, when assessing this, may find it useful to consider the industry Code of Good Practice on Combating Pension Scams, which sets out an industry standard for dealing with transfer requests.



Written by DLA Piper pensions partner Matthew Swynnerton

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