Case study: Pension

Unauthorised pension payment to fraudsters

Themes: pension, mismanagement, fraud

This complaint concerned Mr P’s pension. He held a personal pension administered by a Guernsey trust company, Company R, and had money withdrawn from his pension fund fraudulently on two separate occasions.

In March and April 2015, Company R was tricked into making two payments from Mr P’s pension fund to fraudsters who had hacked Mr P’s email account. Both times, Company R received an email from Mr P’s email address, and subsequently received by post signed written requests to withdraw funds that were later found to have been forged. The fraud was only revealed on 1 June 2015.

The representatives of Mr P suggested that Company R had been grossly negligent. Company R denied it had been grossly negligent (gross negligence was the legal test to establish liability under Guernsey law) and claimed that, in allowing his email account to be hacked, Mr P should bear some responsibility. When Mr P’s complaint was not upheld by Company R, he referred his complaint to CIFO, seeking refund of the two fraudulent withdrawals and compensation for the alleged negligent transfer of his pension funds.

CIFO decided that the complaint should be upheld as Company R had not acted reasonably according to the standard expected in that industry. The Ombudsman pointed out in the final decision that, while noting the test for liability in local law, CIFO has the ability to apply a broader fairness and reasonability test and that, in these circumstances, Mr P’s complaint should be upheld.

CIFO concluded that it would not be fair and reasonable for Mr P to have to suffer the losses incurred as Company R had not taken sufficient care in acting on the fraudulent withdrawal requests. CIFO considered that there were several unusual aspects to the fraudsters’ withdrawal requests that should have raised Company R’s suspicions: the different bank accounts, the different content of the emails, and the nature of the withdrawals showed discrepancies when compared to Mr P’s usual withdrawal requests and communication patterns. In addition, in recent discussions Mr P had confirmed to Company R that he did not wish to make any withdrawals. Given a 2015 warning about such scams issued by the relevant financial regulator, Company R should have been on guard and called Mr P to verify the withdrawals so as to apply a reasonable standard of due diligence when handling the pension funds of an individual. CIFO thought that the fraud could have been prevented had Company R called Mr P, especially when it had already used that method of communication with him in the past. There was no evidence that Mr P had contributed to the fraud by allowing his email account to be hacked.

Company R was made to pay a total of £124,418, which included a refund of the fraudulent payments and 8% interest on the funds fraudulently taken from Mr P’s pension fund to the date of resolution.