DRN-5049005

## The complaint

Mrs P wanted to transfer her personal pension with Vanguard to a new Small Self-Administered Scheme (SSAS), sponsored by her long-time employer, in order to invest in commercial property with her husband who was also a member of the SSAS. She started this process in June 2022. She says she's provided everything requested by Vanguard but they have halted the transfer.

Mrs P would like a reassessment of her transfer request and for this to be fulfilled – noting that a transfer of her husband's pension from a different provider to the SSAS has proceeded without similar issues.

## What happened

On 30 May 2022 Vanguard received a request from Mrs P for transfer out forms. I've been unable to establish from the information Vanguard has provided whether it actually issued the forms, as the evidence suggests it also had an outstanding query with Mrs P about the name of the destination scheme.

On 14 June 2022 the receiving scheme says it contacted Vanguard with a copy of its trust deed, HMRC approval letter and employment link evidence for Mrs P. Although I can see it was in possession of other information by, or soon after, this point, It's not clear whether Vanguard received the trust deed or rules at this time (but I have seen these, dated 8 February 2022). It appears that either the receiving scheme or Mrs P emailed Vanguard again on 29 June 2022, and it provided transfer forms the same day.

Vanguard received the transfer forms back from the receiving scheme on 4 July 2022, constituting Mrs P's request to transfer. The scheme referred back to its email of 14 June and the following documents appear on Vanguard's file:

- Vanguard's transfer form gave Mrs P's husband's details as the scheme administrator (although the application was supported by a SSAS practitioner); gave the SSAS's bank account information; confirmed Mrs P hadn't taken regulated advice but decided on the transfer based on personal research; and knew that her savings would be invested in commercial property and index funds. Her main reason for transferring was *"To pool pension funds in a SSAS in order to invest in commercial property".*
- The receiving SSAS's HMRC registration details, a copy of its Pension Scheme Tax Reference (PSTR) certificate, and a recent printout from the HMRC website.
- The name of the sponsoring employer, which could be verified as a company established in 2005 and trading as a going concern; confirmed that Mrs P had been continually employed by it since 2005; at a salary of £758 for each of the last three months. (This was above the Lower Earnings Limit for National Insurance.)
- Bank statements confirmed that double these amounts (presumably the salaries of both Mr and Mrs P) had gone into their bank account on 3 May, 31 May and 30 June.
- A contribution schedule was populated with "n/a" in all columns, as the letter said "*The receiving scheme is a SSAS and there is no requirement that either us or the transferring member has to make contributions to the scheme. We confirm that no*

*contributions have been made by either us or the transferring member in the last three months."*

Ten working days later on 22 July 2022, Vanguard emailed Mrs P explaining that before it could proceed, it needed to verify with her it was a genuine transfer request and that someone would call her. A call was attempted, but as Mrs P wasn't available Vanguard asked Mrs P to call back, after which it would carry out checks *"which will take no longer than 72 hours to complete".* In its message Vanguard also encouraged Mrs P to read the Pensions Regulator's (TPR's) booklet about pension scams.

Mrs P spoke to Vanguard on 3 August. However there are no further notes until 22 August – where an internal message asked if further due diligence had been performed yet.

On 26 August Vanguard asked her to review a 'Pensions Consumer Leaflet'. (This leaflet may well be the same or a similar document to the TPR booklet previously mentioned.) Mrs P confirmed on 31 August she had read the leaflet and had spoken with the government's guidance service Pension Wise. She asked Vanguard to continue with the transfer. Vanguard noted on 6 September that its due diligence was *"still underway".*

It appears it was only Mrs P's chase for an update on 14 September that prompted Vanguard into calling her, unsuccessfully. It emailed explaining the transfer was on hold until she called back so that Vanguard could cover some further questions with her. A conversation took place on 15 September 2022. Vanguard then emailed Mrs P a *"SSAS scam warning letter"* on 20 September.

It explained the details needed to complete the request – which included a transfer out due diligence questionnaire, details of the scheme rules, trust deed, policy terms and conditions and details of the investment provider. The questionnaire asked Mrs P to again review scam warning material from both regulators covering pensions (TPR and FCA). Vanguard also explained it had contacted HMRC as part of its due diligence checks to get confirmation of the registered status of the receiving scheme. It further wanted to establish that she had a statutory right to transfer her pension under the legislation[1], so asked Mrs P to provide evidence of her employment link by sending the following:

- *A letter from your employer confirming that they are the sponsoring employer of the receiving scheme, that you are employed by them and the date from which you have been in their continuous employment.*
- *Payslips for the previous 3 months showing the salary paid to you from the sponsoring employer of the receiving scheme.*
- *A schedule of contributions, or a payment schedule, showing pension contributions made on your behalf by the sponsoring employer to the receiving scheme for the previous 3 months.*
- *Copies of personal bank statements showing the deposit of salary from the sponsoring employer for the previous 3 months.*

Mrs P completed and uploaded the questionnaire to Vanguard on 28 September 2022. Her answers were that:

- She hadn't been advised to make the pension transfer
- She received no unsolicited contact
- She was aware of how her money would be used/invested – in commercial property investments
- The new investments were not subject to any exit penalty or lock in period
- She knew what the costs and charges were, including *'relevant property solicitor and*

[1] The Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021

*surveyor costs'* and a flat fee to the SSAS practitioner.

The acknowledgement she received said it had been forwarded to the relevant team that day, however it's not until 12 October that Vanguard's internal notes are updated to say *"Due Diligence Questionnaire returned - SIPP Tech notified"*. The following day Vanguard emailed Mrs P suggesting it hadn't received an answer to its email of 20 September. It also chased the receiving scheme for the documents needed.

On 17 October 2022 Mrs P reminded Vanguard that she'd already uploaded the completed questionnaire, and asked what other information was required. She received an acknowledgement but no further clarification. A 24 October note on the timeline confirms scheme documents were received on 17 October, but this may be a reference to the questionnaire Mrs P had already returned – and added as an update as Mrs P also chased Vanguard again on 24 October.

A subsequent note on Vanguard's system said *"With SIPP Technical for Due diligence checks – unable to proceed without permission from them".*

It appears that it was only on 10 November that Vanguard realised it hadn't responded to Mrs P's request for an update. It again explained to her what documentation it would require as evidence of an employment link (stated above). Mrs P replied on 21 November with a letter from her employer confirming the same information as it had previously provided, and asked for an update. Vanguard acknowledged the documents and advised it would review.

On 28 November Vanguard emailed Mrs P about the employer letter. It said its interpretation of the legislation relating to pension transfers meant that contributions to the scheme should be made and evidenced through a schedule of contributions. As it noticed Mrs P had already spoken to Pension Wise, it also asked her if she had an appointment reference number for MoneyHelper (which offered a specific pension safeguarding guidance service offered to people making pension transfers). Notably, during this time, Vanguard may still have been waiting for HMRC to confirm the registration status of the new scheme as a result of an enquiry it had made.

Mrs P responded the next day with evidence of a MoneyHelper appointment and also questioned what Vanguard had said about contributions. She said:

*"Whilst it is understandable that you identify no contributions as a risk indicator for the transfer, you do need to understand that the receiving scheme is a SSAS, set up generally for the owners of the business or the directors. It is common that owners/directors may not make contributions to the scheme in the early years, as they may prefer their remuneration in different formats such as dividends or even no remuneration package until the company is making sufficient profits. This is not sufficient reason to halt the transfer, it is not a red flag but an amber flag under the new transfer guidance.*

*Please refer to the PSIG* [Pension Scams Industry Group] *guidance, page 43…It does explain that SSAS's have genuine exceptions…The only requirement under the Pension Regulator guidance is that a schedule of contributions or payment schedule is provided…A schedule confirming that no contributions are due, is therefore perfectly acceptable under this guidance…"*

Vanguard emailed Mrs P on 9 December 2022 letting her know it was looking into her comments and seeking input from 'other sources'. It told her on 19 December that it had revisited the contribution requirements, but its view hadn't changed, and it didn't see any exemptions within the legislation (as opposed to the guidance surrounding the legislation). It clarified that where no contributions had been paid it would expect the schedule to reflect

future contributions.

Mrs P responded on 5 January 2023 attaching the schedule of contributions and employer letter, which were both unchanged from those provided on 30 June 2022. She also attached a separate schedule of contributions confirming no future contributions were expected. Mrs P again referred to the PSIG guidance page 43 and said if Vanguard still didn't think this was acceptable to its requirements, it should raise an amber flag under the legislation (which required her to attend a guidance appointment with MoneyHelper).

After Mrs P chased it again, Vanguard responded on 18 January 2023 that the part of the PSIG guidance Mrs P quoted was about a member of the SSAS who was not employed by the company, so this wasn't relevant to her situation. The legislation it was required to follow included that *"there is an employment link between the member and the receiving scheme where the trustees or managers of the transferring scheme decide that: …*

- *contributions to the receiving scheme have been paid by, or on behalf of, the sponsoring employer, or by, or on behalf of, both the sponsoring employer and the member, during the relevant employment period."*

From this point onwards both parties were, essentially, retreading old ground. Although Vanguard didn't say its position had changed, it did then ask Mrs P on 26 January 2023 to attend a meeting with MoneyHelper if she wanted to proceed with the transfer.

Having evidently not heard from Mrs P, Vanguard also emailed her on 21 February 2023 saying her transfer request had been cancelled because there were circumstances present which removed the statutory right to transfer as she was at risk of being scammed. If she wished to transfer, she would need to submit a new request.

Coincidentally, it appears, Mrs P had just attended a MoneyHelper session that day and received her confirmation of this from MoneyHelper straight away, uploading it to Vanguard's online portal as requested. The following day Vanguard said it would look into whether a transfer could now proceed. On 27 February it updated her as follows:

*"Our team have confirmed the reasons why your case was rejected:*
*- No schedule of contributions received. Legislation confirms this is required*
*(4) A schedule of contributions or payment schedule showing—*
*(a) separate entries for the amounts of pension contributions (excluding additional voluntary contributions) to the receiving scheme that were due to be paid for the relevant employment period by, or on behalf of, the member and the employer, or the employer only, in respect of that member; and*
*(b) the dates on which those contributions were due to be paid.*
*- 1 bank statement for May only received. We require 3 months' worth and need to be the three months leading up to transfer request."*

Mrs P complained on 13 March about how her transfer had been declined. In particular, she argued that the statutory legislation shouldn't be applied to SSAS as strictly as it was to other occupational schemes, as they were exempt from various regulatory requirements. She further said that *"Uploaded to My Documents section of my Vanguard account are THREE bank statements showing mine and my husband's (fellow SSAS trustee and company director) combined salaries from our limited company, the SSAS's sponsoring employer."*

As Vanguard didn't resolve the complaint to Mrs P's satisfaction she referred it to our service on 19 April 2023. Vanguard told our investigator that TPR's guidance was effectively just its interpretation of the underpinning legislation, so it was up to Vanguard to take its own interpretation, which in its view was that pension contributions *had* to have been made in the

three months leading up to the transfer request. The timescale taken to communicate to Mrs P that her transfer was unsuccessful was a product of the enquiries required, the time Mrs P took to respond to them, and the further due diligence they necessitated.

It referred to the definition of an 'employment link' in the legislation[2], which required the transferring scheme to be satisfied of four things (the use of the word 'and' which I've highlighted making clear it is all four):

*"(a) the member's employer is a sponsoring employer of the receiving scheme;*
*(b) the member is in employment with the sponsoring employer and this employment has lasted for a continuous period of at least 3 months ending with the date the request to make the transfer was received by the trustees or managers of the transferring scheme;*
*(c) the member's employment during the period of 3 months ending with the date the request to make the transfer was received by the trustees or managers of the transferring scheme ("the relevant employment period") has met the minimum salary requirement specified in paragraph (7);* ***and***
*(d) contributions to the receiving scheme have been paid by, or on behalf of, the sponsoring employer, or by, or on behalf of, both the sponsoring employer and the member, during the relevant employment period."*

The legislation further sets out what constitutes evidence of each of the above. This refers at section (4) to a schedule of what contributions are payable, and at (3) to a letter from the employer confirming that those contributions on the schedule have been paid.

Vanguard therefore made clear its position was that contributions *had* to be made to the receiving scheme as set out above, for there to be a statutory right to make a transfer. It didn't consider TPR's supporting guidance to the legislation, nor PSIG's guidance (which wasn't in any event updated to reflect the new legislation until March 2023) to be as relevant. It said it was concerned as to where liability would sit if it was 'forced' to allow the transfer to take place.

I issued a Provisional Decision on this complaint on 3 September 2024. In this, I essentially agreed with our investigator that Mrs P had provided Vanguard sufficient to demonstrate that there was an employment link, when read against the TPR guidance. And there wasn't an issue with Mrs P 'failing to respond' to Vanguard's requests (which could otherwise amount to a 'red flag' and no statutory right to transfer). At most, the difficulties Vanguard saw in the evidence Mrs P provided should only have constituted a yellow flag and prompted it to ask Mrs P to attend a MoneyHelper appointment (which she had already done). I therefore said my intention was to direct Vanguard to reconsider the transfer request.

Mrs P responded saying she had no further points to add. After an extension was granted, Vanguard responded on 26 September 2024. It said that it considered its decision to reject the transfer at the time was an appropriate application of the *"statutory guidelines as outlined in the legislation"*.

However, it recognises that the process has not been as transparent as it ought to have been for Mrs P, so it is reviewing its approach to such transfers. Vanguard therefore confirms that it will reconsider the transfer request if Mrs P submits it again and look at the intent behind the legislation. It also accepted my proposal to pay Mrs P £500 for the distress and inconvenience caused.

As there is general agreement with my finding that Vanguard should reconsider the transfer

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[2] https://www.legislation.gov.uk/uksi/2021/1237/made – regulation 11 section (1). As of the date of this decision, there were no pending amendments to this legislation.

request, I'll give a summary of why I reached that finding below.

**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.

Firstly, I should reiterate that Vanguard's entire argument appears to rest on a technicality of whether Mrs P has or hasn't met the definition of an employment link so that she can exercise her *statutory* transfer right. This is a separate right to those she has under the terms of her existing contract with Vanguard. So, while I'll consider that statutory transfer right in the rest of this decision, I need to point out that if Vanguard maintains that there is no statutory transfer right, it must also explain to Mrs P why she cannot exercise her contractual right to transfer under the terms and conditions of the policy - or why it is unwilling to exercise discretion to allow her to transfer.

The existence of the statutory right guarantees that members of most pension schemes can transfer (subject to certain conditions) even where the terms and conditions of the existing scheme didn't allow for this. But Mrs P's scheme do appear to provide for a contractual right.

After all, there are a number of benign situations where no statutory transfer right would exist, including where the member is already drawing down benefits. I assume Vanguard isn't saying it wouldn't prevent someone who is in drawdown (a facility I note it allows) from transferring their pension. So this indicates that the contractual transfer right in its policy terms doesn't necessarily hinge entirely on there also being a statutory right.

*The statutory right to transfer*

Part 4ZA, Chapter 1 of the Pension Schemes Act 1993 sets out at Section 95 that Mrs P may make an application to use the value of her personal pension to acquire transfer credits under an occupational pension scheme (such as a SSAS) which satisfies prescribed requirements. The new requirements in law (which applied at the time of Mrs P's transfer request and are unchanged) are set out in the Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021.

Where the First Condition (a transfer to a public service, Master Trust or collective money purchase scheme) doesn't apply – as is the case here – the regulations set out a set of red and amber flags which it's necessary for the transferring scheme to assess in order for the Second Condition, allowing a transfer, to apply. The criteria are that no red flags (regulation 8, sections 4 and 5) can apply. Or if an amber flag (regulation 9, sections 2-5) applies, the member must be referred to MoneyHelper and confirm they have received appropriate guidance before transferring.

As Vanguard has declined Mrs P's transfer, even though she has provided evidence of a MoneyHelper appointment, it's evident that it considers a red flag applies. The only relevant one that appears to apply on the evidence we have at present is that at regulation 8, section 4(a): "*the member has failed to provide a substantive response to a request for evidence or information in respect of the Second Condition made in accordance with regulation 10(1) or (3);"*

Before I cover regulation 10, I should also say that regulation 6(3)(a)(i) clarifies that when deciding that the above red flag is present, Vanguard *"must decide beyond reasonable doubt that it is present"*. And at the end of regulation 8, it says (with my emphasis) *"substantive response means one that provides* ***at least part of the evidence or information***

***requested,*** *so that the trustees or managers of the transferring scheme can either reach a decision that* ***part of the employment link … is demonstrated…”*****.**

The enquiries Vanguard must make in accordance with regulation 10, for an occupational pension scheme, are those necessary to demonstrate an ‘employment link’. This is defined at regulation 11 in the way Vanguard has already stated (and I quoted above – with the use of ‘and’ indicating that all four conditions, including pension contributions having been paid, are to be satisfied).

However, I think that Vanguard has relied on that definition of what constitutes an employment link exclusively, and to the detriment of, what is elsewhere said in regulation 8. As I’ve quoted above, the red flag would apply not because the employment link isn’t demonstrated, but where Mrs P has failed to substantively respond.

I agree with the investigator that Vanguard is far from being able to demonstrate that Mrs P didn’t substantively respond to its request, given that she provided evidence that she had been continually employed by a company that was the sponsoring employer, met the minimum salary requirement and no contributions had been made simply because none were due to be made. It certainly wasn’t in a position to decide ‘beyond reasonable doubt’ that Mrs P failed to substantively reply, given the very clear definition which I’ve given above of what a substantive response meant. Mrs P plainly did evidence part of the employment link – and in fact the only part she could evidence, bearing in mind there was no secret about the fact that no contributions were planned to the SSAS.

What Vanguard should have been considering is whether Mrs P’s ability to satisfy only part of the employment link constituted an amber flag under regulation 9, sections 2-5. It would seem plainly consistent with the available evidence, and why Vanguard asked Mrs P to attend a MoneyHelper appointment, that section (4) applied, with **my emphasis**:

*“(4) There is an amber flag present where the trustees or managers of the transferring scheme decide that all of the evidence required to be provided by the member in accordance with one of the sub-paragraphs of regulation 10(1) has been provided but the evidence does not demonstrate—*

(a) *the employment link,* ***which includes where the evidence does not show employer contributions to the receiving scheme*** *required in accordance with regulation 11(1)(d), or where it shows that the member’s average gross weekly salary is below the minimum salary required in accordance with regulation 11(1)(c) and (7)”*

There are also other reasons, listed in section (5), concerning the proposed investments or charges, which can sometimes lead to the same decision to refer a member to MoneyHelper. But there is no need for me to consider these as Mrs P already accepted there was a need to go to MoneyHelper and willingly did so.

In my view, the only thing that might change whether Mrs P had a statutory right is if another red flag is identified, which ***isn’t*** that she had failed to substantively answer its questions relating to the employment link. It is for Vanguard to establish, if it wishes to do so, whether another of those red flags would apply. If not, then it goes without saying that a statutory right to transfer would exist. And as Mrs P seems to have already been warned of the regulators’ views on the risks of making such a transfer, if she wishes to proceed with it I can’t fairly say that Vanguard’s concerns about being held liable in future would be justified.

I haven’t referred to the PSIG Code or TPR’s supporting guidance in reaching my decision because it wasn’t necessary to do so. In particular, whilst I’m aware that there has been some criticism in the industry that the TPR guidance conflicts with the underlying legislation,

that criticism has mainly revolved around the nature of the investments being made and what features of those investments constitute an amber flag. That is of little relevance to this case given that Mrs P has attended a MoneyHelper appointment.

Ultimately I consider Vanguard was wrong to conclude that the issue affecting Mrs P's transfer (employment link) was actually one where the underlying legislation was at odds with the TPR guidance in the first place. As the investigator has explained, the TPR guidance *also* suggests the situation it identified with Mrs P was an amber flag.

*Distress and inconvenience*

My Provisional Decision took into account that Mrs P's funds remained invested during the period of delay, but I concluded that Vanguard should pay her £500 for the unnecessary distress and inconvenience – that is, above the level which is inevitably caused by it having to implement regulations that are more stringent than there have been in the past.

I reminded Vanguard that, whilst the requirement for providers to conduct their business with due still, care and diligence and act in the client's best interests may make it necessary to delay transfers where there is a material risk of a scam, there is also an expectation coming from those same regulatory rules and principles that transfers between pension arrangements should happen without unreasonable delay. So Vanguard should not unduly delaying transfers for which the government has already determined an amber flag should apply (and where the member proceeds to take the necessary guidance).

Even allowing for the time Mrs P took to reply, I found that Vanguard sat on her responses for much longer than it should have done, and it had to be chased several times to move matters forward. Its ultimate solution of blocking the transfer despite requiring Mrs P to attend a MoneyHelper appointment suggested to me that even at the end, it still wasn't sure what to do with it. The new legislation had been in force since the end of November 2021, so I thought Vanguard should have got to grips with this much sooner than it did.

Vanguard is now prepared to pay this sum, which fairly recognises the inability for Mrs P to proceed with her investment plans with her husband, whose funds did arrive in the SSAS.

## My final decision

I uphold Mrs P's complaint and require Vanguard Asset Management, Ltd trading as Vanguard Personal Investor to pay her £500 for the distress and inconvenience caused and reconsider a fresh request Mrs P is entitled to make to transfer her policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 25 October 2024.

Gideon Moore
**Ombudsman**