CAS-110116-G1N5

Ombudsman’s Determination

Applicant	Mr G
Scheme	Asda Group Pension Scheme (**the Asda Scheme**)
Respondents	Asda Group Pension Scheme Trustees Limited (**the Trustee**)
	The Asda Pensions Team (**the administrator**)

Outcome

1. I do not uphold Mr G’s complaint and no further action is required by the Trustee or the administrator.

Complaint summary

2. Mr G complained that the Trustee and administrator failed to follow guidance issued by the Pensions Regulator (**TPR**), before transferring his benefits from the Asda Scheme to a Qualifying Recognised Overseas Pension Scheme (**QROPS**). Assets were subsequently invested with an investment manager who has not responded to requests to sell Mr G’s holdings, so he believes that he has lost his pension.

3. Mr G wanted to be put back into the same position he would have been in if he had not transferred his benefits to the QROPS.

4.

Background information, including submissions from the parties

5. Mr G was initially represented by Owl & Fox Law Limited (**the Representative**). During the process of submitting his complaint to The Pensions Ombudsman (**TPO**), Mr G replaced the Representative with his son, Mr N.

Mr G also submitted a similar complaint to TPO against Mercer and Booker Pension Trustees Limited in respect of a pension transfer from the Booker Pension Scheme (**the Booker Scheme**) to the Global Pensions Administration Limited Plan (**the Plan**). This complaint was dealt with in a separate Adjudicator’s Opinion. However, where relevant, evidence from the Booker Scheme transfer has been considered in Mr G’s complaint against the Trustee and the administrator.

In March 1991, Mr G became a deferred member of the Asda Scheme, a contracted-out defined benefit pension arrangement. The administrator is an inhouse pension team.

In February 2013, TPR launched a new awareness campaign regarding pension liberation schemes. Part of this campaign involved issuing cautionary documentation
6. informing members about the potential risks of pensions scams. This comprised of:

- a two-page warning note, which TPR suggested administrators and pension
7. providers include in the information they provided to members who requested a transfer;
- an information leaflet (**the Scorpion Leaflet**), which contained a number of warnings directed at potential members who were thinking of transferring; and
- a "fraud action pack" for pension professionals (**the 2013 Fraud Action Pack**).

The Scorpion Leaflet included examples of real-life pension scams and highlighted to individuals that the signs of a potential scam could be:

8.

- receiving an unsolicited call about a free pension review;
- the promise of accessing a pension before age 55 through the provision of an advanced loan payment, or cash bonus, upon the completion of the transfer;
- the promise of a unique investment opportunity in overseas property, which would make it harder to trace the transfer; and
- the use of a courier service to pressure members into signing transfer documents
9. quickly.

Mr G has said that in 2014, he received an unsolicited telephone call from a pension adviser. He did not recall the name of the adviser. During the telephone call, the adviser suggested that Mr G would be better off if he transferred his benefits from the
10. Asda Scheme. He was offered a free pension review. Mr N said that the adviser visited Mr G at his home.

On 26 May 2014, Mr G signed a Letter of Authority (**LOA**) giving the administrator
11. permission to provide information about his benefits to Bailfort & Associates, an adviser authorised and regulated by the Financial Services Commission (Gibraltar) but not authorised by the Financial Conduct Authority (**FCA**).

On 29 May 2014, Aspinal Chase Limited (**Aspinal**), an unregulated adviser, emailed the LOA to the administrator and requested a Cash Equivalent Transfer Value (**CETV**) illustration and transfer documentation for Mr G.

On 4 June 2014, the administrator sent two covering letters, a CETV illustration, a transfer information pack, and a retirement illustration to Aspinal. The Trustee has said that a copy of the Scorpion Leaflet was included in the transfer information pack. At the bottom of the two covering letters, it said that it had cc'd Mr G. The administrator has said that a copy of the two covering letters and the enclosed documents were also sent to Mr G.

12. The CETV was £32,692.88.

At the same time, on 17 June 2014, Mercer, the Booker Scheme's administrator, wrote to Mr G (**the Booker Letter**) with the following points:-

13.
- Information about transferring his benefits had been sent to Aspinal.

14.
- It recommended that he should be cautious if he was transferring due to a website promotion, cold call or advert encouraging him to transfer to access a cash payment or loan.
- The Scorpion Leaflet, which was enclosed, explained the warning signs and provided examples of scams.
- It stated:

  "Please read this leaflet, and if you have any concerns do not proceed further with the transfer."

15. In the Booker Scheme's Transfer Request and Discharge Form, Mr G confirmed that he had read the enclosed "Predators stalk your pension leaflet", the Scorpion Leaflet.

16. In July 2014, TPR updated the "fraud action pack" (**the 2014 Fraud Action Pack**).

- On page three, it described the types of scams to look out for. Common features of pension scams were:
  - phrases like 'one-off investment opportunities', 'free pension review', 'legal loopholes', 'cash bonus', 'government endorsement';
  - victims were approached out of the blue over the phone, via text messages or in person door-to-door;
  - transfers of money or investments overseas;
  - access to a pension pot before age 55;
  - no member copy of documentation; and
  - victims were encouraged to speed up transfer of their money to the new scheme.

- If any of these features applied, there was a checklist of warning signs that pension providers should look out for (**the Fraud Action Pack Checklist**). This could be used to find out more about the receiving scheme and how the member came to make the transfer request.

- The Fraud Action Pack Checklist was set out in pages four and five and is included in the Appendix.

- Page nine provided further steps for pension providers in the event of concerns being raised as follows:-

  (i) Contact the member to establish whether they understood the type of scheme they were transferring to and send them the pension scams booklet.

  (ii) Speak to the member at risk over the telephone, via e-mail or letter.

  (iii) Direct the member to Action Fraud if the pension provider believed it was a scam, or The Pensions Advisory Service to discuss the potential consequences of the transfer.

  (iv) If the member insisted on proceeding with the transfer, and the pension provider was still concerned, it should alert Action Fraud.

17. On 5 August 2014, Global Pensions Administration Limited (**GPA**), based in Gibraltar, wrote to the administrator and requested the transfer of Mr G's benefits to the Plan. GPA was the Plan's administrator, and Gnat Holdings Limited was the Plan's trustee. The following documents were enclosed:-

- The Asda Scheme's "Request for transfer of pension benefits" form (**the Transfer Form**) signed by Mr G on 21 July 2014 and by GPA on 31 July 2014. It confirmed that the receiving scheme was a QROPS established and registered in Gibraltar. Mr G agreed to the following statement on the Transfer Form:

  "I accept that, compared to the guaranteed benefits under the Asda Scheme, the value of benefits could be less if I transfer them to a Personal Pension Plan, Stakeholder Plan, QROPS or Buy Out policy. Nevertheless, I am prepared to take that risk and wish to transfer. I agree that on payment of the transfer value in accordance with the request, I surrender all right to any benefits whatever from the Asda Group Pension Scheme, and I hereby indemnify the Trustees against claims arising from my membership of the scheme."

- A copy of Mr G's passport and address verification.

- A HM Revenue and Customs (**HMRC**) QROPS confirmation letter for the Plan, dated 8 July 2013.

- A HMRC APSS263 form for transferring to a QROPS, signed by Mr G on 21 July 2014.

- Page four of a HMRC APSS262 form for transferring UK tax-relieved pension assets to a QROPS, completed by GPA as the receiving scheme.

- A HMRC National Insurance contributions CA1890 tear-off form (**the CA 1890 Form**), signed by Mr G on 21 July 2014. Mr G agreed to the following statement on the CA 1890 Form:

  "I confirm that I understand and accept the risks involved in the transfer."

- Bank account details.

In August 2014, the administrator verified that the Asda Scheme's transfer out payments checklist (**the Transfer Checklist**) had been completed. There was no information recorded as being outstanding on the Transfer Checklist.

18. On 2 September 2014, the administrator transferred Mr G's benefits to the Plan, amounting to £32,692.88 (**the Transfer**).

19. In November 2014, Mr G received advice from Aktiva Wealth Management (**Aktiva**),
also known as Square Mile Financial Services. Aktiva was regulated by the Central
20. Bank of the Czech Republic. It advised Mr G to transfer his benefits from the Plan to
the Optimus Retirement Benefit Scheme No 1 (**the Optimus Scheme**), also a
QROPS arrangement but registered in Malta on 24 June 2014. The trustee of the
Optimus Scheme was Integrated Capabilities (Malta) Limited.

21. On 19 January 2015, Aktiva wrote to Mr G (**the Aktiva Letter**) and recommended he invest his benefits in the Optimus Scheme with Blackmore Global PCC Limited (**Blackmore**), a company registered on the Isle of Man but not regulated by the Isle of Man Financial Services Authority or the FCA.

22. In November 2020 and January 2021, the Representative complained to the administrator under the Asda Scheme's Internal Dispute Resolution Procedure (**IDRP**) with the following points:-

- The administrator did not carry out the required due diligence on the Transfer, and did not identify the following warning signs:
  - the receiving scheme was not registered or was newly registered with HMRC;
  - Mr G was attempting to access his pension before age 55;
  - Mr G pressured the trustee/administrator to carry out the transfer quickly;
  - Mr G was approached unsolicited;
  - Mr G was informed that there was a legal loophole; and
  - the receiving scheme was previously unknown to it but was now involved in more than one transfer request.

- Mr G had received advice from an unregulated financial adviser.
- The Asda Scheme should have checked that the advice was regulated, and that Mr G had received a suitability report.
- Asking Mr G for more information would have identified a loss of protection.

On 8 January 2021, Mr G received a valuation statement for his benefits in the Optimus Scheme. It said that the value of his holdings with Blackmore was £66,302.05. This included the amount invested from the Booker Scheme.

In January and April 2021, the administrator and the Trustee responded to the
23. Representative's complaints under the IDRP with the following points:-

- 24. It had received the required paperwork which met the statutory requirements to transfer Mr G's benefits.
- At the time of the Transfer, it was not a requirement for Mr G to receive financial advice from a regulated independent financial adviser. TPR's guidance was to apply a check for regulated advice if there were pension scam warning signs identified. As there were no warning signs, there was no reason to apply the regulated advice check. There was also no requirement to check for a suitability report.
- It commented on the warning signs as follows:-
    - The receiving scheme was registered with HMRC, and it was not a newly registered scheme.
    - There was no indication that Mr G was attempting to access his pension before age 55.
    - There was no pressure to complete the transfer quickly.
    - There was no indication that Mr G had been approached unsolicited or that he had been informed that there was a legal loophole.
    - The Plan was not previously known to them, and it had not received any other member requests to transfer to the Plan.
- As due diligence checks had been completed and no warning signs had been identified, there was no requirement to contact Mr G for more information.
- 25. As the Transfer was to a QROPS not an occupational pension scheme, there was no requirement for Mr G to have an employment status within the receiving scheme.
- Mr G's complaint was not upheld.

Since January 2021, Mr N had attempted to sell Mr G's investments with Blackmore. Mr N has said that he has not received a response from the company.

26. Following the complaint being referred to TPO, Mr N and the Trustee made further submissions that have been summarised below.

27. Mr N's further submissions:-

- Mr G was clearly influenced by malpractice and criminal activity in order to steal his pension. The Trustee should have realised this. It was concerning that the Trustee probably knew this but made no real effort to prevent the Transfer going ahead. The Trustee and the administrator had failed in their duty of care and should have done more to prevent the Transfer.

- There was no evidence that the Scorpion Leaflet had been issued.

- Mr G was warned by his adviser to look out for the Scorpion Leaflet and to ignore it.

- It should have been clear that Mr G was vulnerable and not capable of understanding the implications and risks of the transfer. He had no pension or investment knowledge.

- The administrator should have:-

    - Attempted to speak to Mr G or a family member to make sure that he fully understood the risks.

    - Issued a retirement illustration. If Mr G had been aware of his benefits in the Asda Scheme, there would have been a significantly higher chance that it would have improved his understanding of the Transfer, and he would not have proceeded. This was encouraged by industry standards at the time as supported by page nine of the Scorpion Leaflet.

- It was strongly encouraged, as set out on page nine of the Scorpion Leaflet, that members should receive advice from an adviser regulated by the FCA, and this should have been a red flag.

- The Trustee was negligent in its failure to read the Aktiva Letter. It contained incorrect information and advice, and any pension professional would have identified it as fraud.

- The Blackmore funds were fraudulent, and Mr G had lost all of his pension. At the time of the Transfer, this and the transfer from the Booker Scheme were his entire life savings.

- Mr G was not intending to access his pension before age 55.

- Mr G did not live overseas at the time of the transfer, and he had no intention of doing so.

The Trustee's further submissions:-

28.
- Although the 2014 Fraud Action Pack had just been published in July 2014, the 2013 Fraud Action Pack applied to Mr G's transfer. This was because the Pensions Ombudsman (**the PO**) had, it said, given trustees a three-month grace period to implement new guidance in previous Determinations.

- None of the warning signs on page eight of the 2013 Fraud Action Pack were identified.

- At the time of the transfer, TPR's website stated:

  "When processing a transfer request, trustees and administrators may be in a position to identify the warning signs that suggest that pension liberation fraud is occurring. You may want to take steps to make members aware of the consequences of pension liberation fraud. This could include providing members with our awareness leaflet which sets out the dangers of pension liberation fraud. We would also like to see the use of the pension liberation fraud insert in transfer packs for members become best practice."

- The Transfer Checklist had been complied with.

- The receiving scheme had been registered as a QROPS more than a year prior to receipt of Mr G's transfer request. As the PO had previously held that "newly registered" meant in the 12 months prior to the transfer request, the Plan could not be described as "newly registered".

- As the Scorpion Leaflet had been included in the transfer information pack sent to Aspinal, Mr G was warned about the risks of pension liberation, but he still wanted to go ahead.

- There was no evidence that even if the Trustee had undertaken additional enquiries, it would have identified a sufficient number of warning signs to merit contacting Mr G directly or caused him to act differently. It was not the administrator's practice or the industry's in general to speak directly with members about a transfer.

- Neither the administrator nor the Trustee were appropriately qualified or regulated to "second guess" the adequacy of any suitability advice provided to a member. The PO had previously held that the trustee could not provide advice or be seen to be actively discouraging a transfer.

- In completing the necessary application forms, Mr G had confirmed the following:

  - compared to the benefits under the Asda Scheme, the value of his benefits could be less following a transfer to a QROPS;

  - nevertheless, he was prepared to take the risk and proceed with the transfer;

- he surrendered all rights to any benefits from the Asda Scheme on transfer;
- the receiving scheme may not be regulated by UK law; and
- he accepted the risks involved in the Transfer.

- The Trustee was satisfied that Mr G had received the relevant risk warnings, but that he chose to either ignore them or give them little weight.

Adjudicator’s Opinion

29. Mr G’s complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or the administrator. The Adjudicator’s findings are summarised in paragraphs 30 to 43.

30. Mr G’s complaint was solely based on the question of whether the Trustee and administrator carried out sufficient due diligence on the original Transfer. Whatever happened subsequently, and the information that had since come to light, could not influence the outcome.

31. The Plan was registered as a QROPS with HMRC, and GPA confirmed that it was willing to accept the transfer. So, Mr G’s transfer application appeared to comply with the requirements in Section 95(1) of the Pension Schemes Act 1993. On this basis, the administrator was presented with a member who apparently wished to exercise his legal rights, and a receiving scheme that was properly registered with HMRC and had provided the appropriate declarations and information.

32. However, the administrator was also responsible for issuing the Scorpion Leaflet and checking Mr G’s transfer in accordance with TPR’s guidance at the time. While Mr N intimated that the administrator did not send the Scorpion Leaflet to Mr G, the two letters sent to Aspinal on 4 June 2014 were cc’d to Mr G, and the Trustee confirmed that the transfer documents, including the Scorpion Leaflet, were enclosed. The Adjudicator also needed to take into account the fact that on 17 June 2014, Mercer also wrote to Mr G about his transfer from the Booker Scheme and enclosed a copy of the Scorpion Leaflet.

33. The Trustee has submitted that as Mr G’s transfer request was received in August 2014, it was too soon after the publication of the 2014 Fraud Action Pack in July 2014 for it to need to comply with the updated guidance. Instead it followed guidance in the 2013 Fraud Action Pack, which had been issued in February 2013. In support of this, the Trustee said that in previous Determinations, the PO had given trustees a three-month grace period to implement new TPR guidance.

34. While the Adjudicator accepted that the then PO had allowed trustees a three-month grace period, in a more recent Determination, in March 2021, PO-24554[1], the then PO also said the following:

> "I am not bound by previous Determinations I have made, and each case is assessed on its individual facts. I have taken the opportunity to review the facts, further evaluate the evolving regulatory position and the cases I have previously Determined. Having done so, I consider that a period of approximately one month would generally be sufficient for a provider to put in place any procedures necessary as a result of the Regulator's new guidance….Should this timeframe not be met by any provider, I would expect it to consider temporarily suspending transfers while it makes the necessary arrangements or contacting The Regulator to request an extension on the stipulated transfer deadlines."

35. So, given the timing of Mr G's transfer request, the administrator should have been following guidance in the 2014 Fraud Action Pack, not the 2013 Fraud Action Pack, and this amounted to maladministration.

36. While one of the example scenarios in the 2013 Fraud Action Pack mentioned "transferring overseas" as a potential pension scam warning sign, it was not one of the six criteria for an administrator to look out for, and if present, take further action. However, the transfer of money or investments overseas was introduced as a specific criterion in the 2014 Fraud Action Pack. If any of the six updated criteria applied, an administrator could use the Fraud Action Pack Checklist to find out more about the receiving scheme and how the member came to make the transfer request.

37. The administrator should have treated the fact that the receiving scheme was a QROPS, and therefore that money would be transferred overseas, as one of the pension scam criteria identified in the 2014 Fraud Action Pack. On this basis, the administrator should then have used the Fraud Action Pack Checklist to contact Mr G and ask for more information. This would likely have identified that Mr G had been cold called and had received advice from a non-regulated adviser and would have resulted in the administrator informing him of these warning signs. The Adjudicator noted that Mr G was not intending to access his pension before age 55, he did not receive a cash bonus or loan, and was not told that there was a legal loophole, which could have been other warning signs.

38.

Following that, the question the Adjudicator then needed to consider was whether Mr G would have refrained from going ahead with the Transfer if the administrator had told him about the warning signs.

[1] https://www.pensions-ombudsman.org.uk/decision/2021/po-24554/scottish-motor-auctions-ltd-group-personal-pension-plan-po-24554

The Adjudicator accepted that there was a possibility that a telephone call or letter to Mr G explaining the warning signs would have resulted in him reconsidering transferring his benefits. However, on balance, the Adjudicator was not persuaded that it would have stopped him from going ahead with the Transfer for the following reasons:-

39.

- He had already been informed about the warning signs and pension scams when he received the two copies of the Scorpion Leaflet. The relevant warning signs were: receiving an unsolicited call and transferring overseas. So, it is reasonable to expect that he was aware that these were warning signs of a pensions scam, and he knew that he had been cold called and that the receiving scheme was overseas.
- Separately, but at the same time, Mercer had specifically pointed out to Mr G in the Booker Letter to be cautious if he had been cold called.
- By signing the Transfer Form he had acknowledged and accepted to take the risk that the value of the QROPS could be less than the Asda Scheme.

40. The Adjudicator accepted that Mr G's adviser may have told him to ignore the Scorpion Leaflet. However, given that both the Asda Scheme and the Booker Scheme had sent him copies of the Scorpion Leaflet, a reasonable action for someone in Mr G's circumstances would have been to read the document.

41. So, on the balance of probabilities, Mr G would still have gone ahead with the Transfer even if the administrator had contacted him about the warning signs. On this basis, the administrator had no right or relevant reason to refuse Mr G's transfer, and the maladministration did not result in him incurring financial loss.

42. The following was also noted in response to Mr N's further submissions:-

- The Adjudicator did not accept that the Trustee should have realised that there was criminal activity. The receiving scheme was a genuine QROPS registered with HMRC more than 12 months ago. Furthermore, the Trustee was not made aware of how the assets would be invested in the Plan, which is the real cause of Mr G's complaint. Indeed, the Adjudicator did not see evidence to show that the transfer payment from the Asda Scheme to the Plan was ever invested in assets but were transferred as cash several months later to the Optimus Scheme, after which the investment with Blackmore was alleged to have taken place.
- The Adjudicator accepted that Mr G may have been vulnerable, but not that this would have been clear to the Trustee. While Mr G may not have been capable of understanding the implications and risks of the Transfer, he signed the Transfer Form which stated that he did, and he received the Scorpion Leaflet which warned him about scams. It was reasonable for the Trustee to accept Mr G's declaration on the Transfer Form. The Trustee would not have known that Mr G had no pension or investment knowledge.

- The Adjudicator accepted that the administrator should have contacted Mr G, as set out in paragraph 37 above. However, it was not a requirement for an administrator to contact a family member.

- The administrator issued a retirement illustration to Aspinal and Mr G on 4 June 2014, so he should have been aware of the value of his benefits in the Asda Scheme before deciding to transfer.

- The Scorpion Leaflet did encourage members to obtain advice from an FCA regulated adviser, but it was not a requirement to do so.

- The Trustee did not read or indeed receive a copy of the Aktiva Letter because it was written after the Transfer had been completed.

43. While the possible loss of Mr G's pension had caused him to suffer significant distress, it was not caused by the Trustee's or the administrator's maladministration. So, the Adjudicator could not suggest an award to Mr G for any distress and inconvenience he has suffered.

44. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N's comments are summarised below:-

- Mr G had no real understanding of the situation and was highly vulnerable to scams.

- The Transfer was wrong, and Mr G had been misled by his adviser.

- While Mr G had signed the Transfer Form and received the Scorpion Leaflet, he clearly did not understand the risks at this stage as he had only received generic literature.

- The administrator should have done more to protect Mr G by carrying out further due diligence and asking him the following questions:-

    - Why did he want to transfer his benefits?

    - Did he plan to move abroad in the future?

    - Had he been misled about tax advantages?

    - What documentation had he received?

    - How had been approached by the adviser?

- As Mr G was not intending to access his pension before he reached age 55 and had no intention of moving abroad, a transfer to a QROPS did not make any sense. The administrator should have found this out.

- The Adjudicator had made his decision based on the balance of probabilities, but he was “drastically” underestimating the impact of Mr G being specifically contacted about the warning signs. As the questions would have been specific to Mr G’s transfer, Mr N believed that they would have significantly impacted Mr G’s ability to understand the risks, and ultimately resulted in him deciding not to proceed.

I have considered Mr N’s comments, but they do not change the outcome. I agree with the Adjudicator’s Opinion in the most part.

45. ## Ombudsman’s decision

I sympathise with Mr G, as it is apparent that, unfortunately, he was a victim of a persuasive cold caller, which may have resulted in fraud. Despite the fact that Mr G had no intention of retiring abroad, he was most likely told about benefits of
46. transferring to a QROPS, and this was sufficiently compelling for him to agree to proceed with the Transfer. While there is a chance that he will eventually recover some of his investments with Blackmore, it is more likely than not that Mr G will have lost most, if not all, of the value of his pension.

However, this complaint is not directed against those who ‘advised’ Mr G or the
47. entities that received the Transfer. Rather, in this complaint I need to consider whether the transferring Trustee’s decision to accept Mr G's transfer request was reasonable at the time he submitted it. The initial request for a CETV was made in May 2014, which resulted in a transfer pack being issued in June 2014. At this time, TPR’s 2013 Scorpion Leaflet and the 2013 Fraud Action Pack were still the relevant documents to consider – and so the Scorpion Leaflet was, correctly, sent to Mr G. For the purposes of due diligence, the fact that the transfer request was submitted to the administrator on 5 August 2014 is important, as in the previous month, TPR updated its guidance on pension scams in the 2014 Fraud Action Pack. A period of around
48. one month should in most circumstances be sufficient time to allow an administrator to reflect the new guidance in its processes.

However, my understanding is that the 2014 Fraud Action Pack was not released until 24 July 2014[2]. On that basis a request to transfer received on 5 August 2014, with due diligence carried out shortly afterwards, would come within the one-month period of grace that I allow, in most circumstances, for administrative systems to be changed[3]. As a result, in my view, there is not maladministration in this particular case.

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[2] For example, see the Serious Fraud Office’s press release, on behalf of TPR, of that date, “A lifetime’s savings lost in a moment”: https://www.sfo.gov.uk/2014/07/24/a-lifetimes-savings-lost-in-a-moment/

[3] I am conscious that the eventual payment was not made until 2 September 2014. However, on the specific facts of this case, it is not clear that administrative due diligence activities continued after 24 August and, in the absence of that, on balance I am prepared to accept that it was not maladministration to fail to apply the 2014 Fraud Action Pack provisions to this transfer.

49. Whether or not there was a failure of due diligence, I cannot ignore the fact that Mr G was sent two copies of the Scorpion Leaflet and received a written warning from Mercer on behalf of the Booker Scheme. I accept that Mercer was acting on behalf of another transferring scheme, but Mr G was intending to transfer both Schemes to the same receiving scheme, so it would be reasonable for him to expect Mercer's warning to apply to both transfers and that his actions in respect of that transfer are a good indication of his likely decisions in respect of the transfer from the Asda Scheme. I appreciate that Mr N has submitted that the Scorpion Leaflet is generic literature, and Mr G may not have put much weight on its content. However, the Booker Letter was not generic. It specifically warned Mr G about deciding to transfer after receiving a cold call, which was relevant to his situation. The Booker Letter also referred Mr G to the Scorpion Leaflet and suggested he should read it.

50. I also note that by signing the declaration in the Booker Scheme's Transfer Request and Discharge Form, Mr G confirmed that he had read the Scorpion Leaflet. This leads me to believe that Mr G did read the Scorpion Leaflet, so he should have been aware of scam warning signs that were relevant to him.

51. On this basis, I find that even had the administrator contacted Mr G in accordance with guidance in the 2014 Fraud Action Pack, he would not have changed his mind about proceeding with the Transfer.

52. I do not uphold Mr G's complaint.

Dominic Harris

Pensions Ombudsman

7 August 2024

Appendix – checklist from TPR's "fraud action pack" – July 2014

Answering **yes** to any of these questions individually does not necessarily indicate a pension scam, but if several features are present there may be cause for concern.

The nature/status of the scheme	
Is the scheme to which the member wants to transfer:	**How to establish**
• newly or not registered for tax purposes with HMRC, whether it is an occupational or personal scheme (including SIPPs)?	• Check the scheme is registered with HMRC for tax purposes: ask the pension scheme in question for documentary evidence of their registration. You can also write to HMRC for confirmation (see p8)
• a personal pension (eg a SIPP) where the scheme operator is not authorised by the Financial Conduct Authority (FCA)?	• Check the scheme operator is authorised with the FCA (**www.fca.org.uk/register**)
• sponsored by a newly registered employer? • sponsored by a dormant employer? • sponsored by an employer that is geographically distant from the member?	• Obtain employer information from scheme in question • Check with Companies House for details of the employer status (**www.companieshouse.gov.uk**)
• sponsored by an employer that doesn't employ the member?	• Ask the member
• connected to an unregulated investment company?	• Ask the receiving scheme for details of their investment service providers • Check these providers with the FCA (**www.fca.org.uk/register**)

Description/promotion of the scheme	
Do descriptions, promotional materials or adverts:	**How to establish**
• include the words 'loan', 'savings advance', 'cash incentive', 'bonus', 'loophole', 'preference shares', 'one-off investment opportunties', 'free pension reviews' or 'government endorsement'? • allude to overseas investments? • hint at unusual, creative or new investment techniques?	• Ask the member for copies of promotional materials, emails or letters about the scheme • Ask the member about the way the receiving scheme has been described to them over email/text/phone

The scheme member	
Has the member:	**How to establish**
• been contacted by an 'introducer'? • been advised by a non-regulated adviser? • taken no advice? • decided to transfer after receiving cold calls, unsolicited emails or text messages about their pension?	• Ask the member about how he/she became aware of the receiving scheme • Check whether advisers are approved by the FCA at **www.fca.org.uk/register**
• pressured the trustees/administrators to carry out the transfer as quickly as possible? • mentioned that your pension scheme has transferred funds to this arrangement before?	• Check whether member has contacted trustees/administrators to hurry along transfer since first submitting request
• not received documentation from the new scheme?	• Check whether member has received documents
• been told they can access their pension before age 55? • been misled about the potential tax consequences?	• Review promotional material for receiving scheme
• been advised that there will be no contributions paid by themselves or the employer?	• Ask what the member has been told about contributions