

Ombudsman's Determination

Applicant	Ms T
Scheme	Ladbrokes Pension Plan (the Plan)
Respondents	The Trustee of the Ladbrokes Pension Plan (the Trustee)

Outcome

1. I do not uphold Ms T's complaint and no further action is required by the Trustee.

Complaint summary

2. Ms T complained that the Trustee failed to carry out sufficient due diligence checks when transferring her benefits to the Boothbridge Pension Trust (**BPT**).

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. Ms T is represented by Hugh James in connection with her complaint.
5. On 14 February 2013, The Pensions Regulator (**TPR**) launched a new awareness campaign regarding pension liberation schemes. Part of this campaign involved issuing cautionary documentation informing members about the potential risks of pensions scams. This comprised of:
 - a two-page warning note, which TPR wanted administrators and pension providers to 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.
6. Page 8 of the fraud action pack provided a number of warning signs/red flags that pension providers should be on the lookout for:

- the receiving scheme is not registered, or is only newly registered, with HM Revenue and Customs (**HMRC**);
 - the member is attempting to access their pension before age 55;
 - the member is pressuring the Trustee or administrator to carry out the transfer quickly;
 - the member was approached unsolicited;
 - the member being informed that there is a legal loophole; and
 - the receiving scheme was previously unknown, but is now involved in more than one transfer request.
7. If any of these red flags were present, then it was recommended that direct contact should be made with the member to query the receiving scheme and how they came to know of it.
8. The Scorpion Leaflet included examples of real-life pension scams and explained that the warning signs of a potential scam could be;
- receiving an unsolicited call about a free pensions 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 quickly.
9. Ms T says that, in January 2013, she received an unsolicited call from an unregulated financial adviser who proposed an opportunity to transfer any pension benefits into the BPT.
10. On 27 June 2013, Ms T signed a letter of authority (**LOA**) and appointed Fastrack Synergie Ltd as her financial adviser (the **Adviser**). The Adviser wrote to Hymans Robertson LLP, the Plan's former administrator, and requested a Cash Equivalent Transfer Value (**CETV**) and the necessary transfer declaration forms.
11. On 23 July 2013, Hymans Robertson sent the Adviser, and Ms T, an illustration of a CETV with a value of £36,136.14, guaranteed until 23 October 2013, and the transfer declaration forms. The illustration, sent to Ms T, included a copy of the Scorpion Leaflet and pensions liberation information.
12. On 8 August 2013, Craighead Administration Ltd (**Craighead**), BPT's administrator, wrote to the Trustee and said:-

- Ms T wanted to transfer her benefits into BPT, an occupational arrangement.
 - Ms T was not an employee of the BPT's sponsoring employer. However, Cathcart Management Ltd (**Cathcart**), BPT's Trustee, had accepted Ms T as a non-employee member of the BPT.
 - Enclosed were: the completed transfer declaration forms; a copy of BPT's Member Booklet; Ms T's original birth certificate; confirmation of BPT's Pension Scheme Tax Reference (**PSTR**); and a copy of BPT's registration details with HMRC confirming that it was registered for tax relief purposes on 12 April 2013.
13. On 19 September 2013, the Trustee discussed Ms T's transfer request during its discretions sub-committee meeting. It was decided that advice should be sought from its legal counsel before making a decision on whether to proceed with the transfer.
 14. On 21 October 2013, Ms T's transfer request was again discussed during the Trustee discretions sub-committee meeting. Its legal counsel noted that Ms T was not employed by, or linked to, any company associated with BPT. So, the Trustee should ensure that it followed TPR's updated guidance. A transfer out could not be unreasonably delayed.
 15. On 27 November 2013, the Trustee decided that, despite some reservations, the transfer of Ms T benefits should proceed if Ms T still wished to transfer. However, the transfer could not proceed until confirmation had been received that BPT was registered with HMRC.
 16. On the same day, Hymans Robertson wrote to HMRC and requested confirmation that BPT was a legitimate pension arrangement.
 17. In early January 2014, the Trustee and Hymans Robertson submitted an application to TPR for an extension on the statutory deadline to pay Ms T's transfer. This was because it was unlikely that the transfer would be completed by 23 January 2014, six months after the CETV's guarantee date of 23 July 2013. In support of its extension application, Hymans Robertson explained that it had reason to believe that BPT could possibly be connected with pensions liberation activity.
 18. On 21 January 2014, Hymans Robertson telephoned Ms T to discuss the transfer. According to Hymans Robertson's telephone note, the representative asked if Ms T still wished to proceed with the transfer, to which she said she did. The representative noted that they did not ask Ms T if she was aware of pensions liberation. However, the Scorpion Leaflet and pensions liberation information were sent to her again.
 19. On the same day, Hymans Robertson emailed Ms T and said:-
 - The Trustee was required to administer the transfer in accordance with TPR's updated guidance. Consequently, this meant that there would be a delay in her transfer while it sought confirmation from HMRC about BPT's registration status.

- If she did not wish to proceed with the transfer, she was eligible to claim her Plan benefits anytime from age 55. Her yearly pension was £1,061.59.
 - Signs of pensions liberation scams were pension loans or cash incentives, which were used alongside misleading information. She should read the enclosed Scorpion Leaflet, and pensions liberation information, before making a definitive decision about the transfer.
 - She should confirm whether she still wished to proceed with the transfer.
20. Hymans Robertson telephoned the Action Fraud helpline, in accordance with TPR's updated guidance, about Ms T's transfer. The Action Fraud representative explained that if TPR was aware that BPT was connected with liberation activity, then Hymans Robertson should contact Action Fraud again, and it would provide a fraud reference number. Action Fraud would then contact Ms T to inform her that BPT was a potential scam vehicle.
21. On 22 January 2014, Hymans Robertson telephoned HMRC for an update regarding its request for confirmation of BPT's registration status. HMRC explained that it could take several months before a response was sent.
22. On 24 January 2014, Ms T emailed Hymans Robertson and said that she wished to proceed with the transfer.
23. On 14 February 2014, Hymans Robertson sent Ms T a secondary transfer discharge form (the **secondary transfer form**) to complete in order for the transfer to proceed. However, the transfer would not be made until HMRC provided confirmation that BPT was a registered pension arrangement.
24. The secondary transfer form included the following statements:
- "I have read the information on pensions liberation provided by the Plan, including the leaflet of pension liberation produced by the Pension Regulator. I understand that I may incur a tax charge of 55% of the total transfer payment as well as any fees charged by the Receiving Scheme or an agent, if I transfer my pension to a scheme that involves me in a pension liberation fraud...
- I understand that the Trustee may delay the transfer until they have received confirmation from HMRC that the Receiving Scheme is registered and that HMRC do not have reason to believe that the Receiving Scheme is a pension liberation vehicle."
25. On 18 February 2014, HMRC told Hymans Robertson that it was not yet in a position to provide confirmation about BPT's registration status.
26. On 19 February 2014, Ms T completed and returned the secondary transfer form to proceed with the transfer.

27. On 5 March 2014, TPR informed Hymans Robertson that it had received its application for an extension on the statutory deadline for Ms T's transfer. The application was referred to TPR's determination panel to review. Once a decision was reached, it would be in touch.
28. On 20 March 2014, HMRC sent Hymans Robertson confirmation that BPT was a registered pension scheme.
29. On 27 March 2014, Hymans Robertson transferred £36,136.14 to BPT and notified TPR that the payment had been made. However, Craighead informed Hymans Robertson that BPT's bank details had recently changed and provided the updated bank details.
30. On 14 April 2014, Hymans Robertson transferred £36,136.14 to BPT, and notified TPR that the transfer payment had been made.
31. In April 2014, TPR telephoned Hymans Robertson to explain that there was a delay in reviewing its extension application. However, as the transfer payment had already been made, TPR said that the extension application did not need to be reviewed by the determination panel. It explained that because the application was made before the statutory deadline of 23 January 2014, Hymans Robertson was not in breach of its statutory duties.
32. On 5 September 2016, Cathcart wrote to Ms T and explained that:-
 - Recent pensions freedom legislation had increased the level of pension benefits, and transfers, being paid out by BPT. This had placed considerable strain on BPT.
 - There was also a problem with disinvesting additional funds from one of BPT's chosen products. This was because the product provider had placed funds into an incorrect product which made disinvesting funds difficult.
 - Because of the continued and unresolved problems, the product provider had entered into liquidation. This had a direct impact on her benefits because the value of her benefits would not be known until the insolvency practitioner had completed the liquidation process with the product provider.
 - Cathcart had not received any fees for a considerable period of time and was unable to pay its overheads, so it was now deemed to be insolvent and was entering into liquidation. Consequently, Cathcart was unable to act as the Trustee and the appointment of a new Trustee, by TPR, was pending.
33. On 10 July 2019, Hugh James contacted the Trustee and asked for any, and all, information it held in relation to Ms T's transfer in 2014. The Trustee provided Hugh James with a bundle of information to review.
34. On 27 August 2019, Hugh James submitted a complaint, on behalf of Ms T, and said that the Trustee had failed to undertake sufficient due diligence before transferring Ms T's benefits to BPT. It said that:-

- Ms T had not received any statements or updates from BPT about its value since the transfer was completed. Cathcart and Craighead had not responded to any communications, so she was unaware of BPT's current value,. It was likely her benefits were now lost.
 - In reviewing the transfer paperwork it was clear that the Trustee had concerns about BPT. This was evidenced by the Trustee seeking confirmation from HMRC about BPT's registration status, and obtaining guidance from its legal counsel.
 - The Trustee's legal counsel advised it to ensure that TPR's checklist was followed. However, despite the apparent red flags, neither the Trustee nor Hymans Robertson directly contacted Ms T about the transfer.
 - It was open to the Trustee to block the transfer, but, instead, it sent Ms T additional pensions liberation information before proceeding with the transfer.
 - Other than the 25% tax free lump sum that she claimed after the transfer was complete, Ms T had now lost all of her benefits because the Trustee failed to protect her from a pensions liberation scam.
 - The Trustee should put her back into the position she would have been in had the transfer not gone ahead, that is by reinstating her membership in the Plan .
35. On 11 November 2019, the Trustee responded under stage one of the Plan's Internal Dispute Resolution Procedure (**IDRP**). The Trustee did not uphold Ms T's complaint and explained that:-
- Ms T had a statutory right to a transfer of benefits; that is, she was no longer a contributing member of the Plan, and her benefits were uncrystallised.
 - At the time of the transfer there was no requirement for Ms T to have obtained independent financial advice. This requirement, for defined benefit transfers in excess of £30,000, was only introduced by the Pension Scheme's Act 2015 (**the 2015 Act**).
 - The Trustee had suggested that Ms T should consider obtaining independent financial advice before making a decision on the transfer. Hymans Robertson had contacted Ms T directly by email and telephone regarding the transfer and suggested that she obtain financial advice.
 - Over the course of the transfer Ms T was provided with pensions liberation information and the Scorpion Leaflet on 24 July 2013 and again on 21 January 2014. By returning the secondary transfer form, in February 2014, Ms T agreed that she had read and understood the pensions liberation information and the Scorpion Leaflet.
 - Hymans Robertson followed TPR's guidance by contacting the Action Fraud helpline to seek guidance and to see whether it had received any previous reports

concerning BPT. To ensure appropriate time was available to investigate BPT, it had requested a statutory deadline extension from TPR.

- Confirmation about BPT's registration status was sought, and received, from HMRC.
 - Ms T confirmed independently and directly to Hymans Robertson that she wished to proceed with the transfer.
 - Appropriate levels of due diligence had been undertaken before agreeing to transfer Ms T's benefits to BPT. (A summary of the due diligence steps taken by the Trustee and Hymans Robertson can be found in the Appendix).
36. On 14 November 2019, Hugh James asked for Ms T's complaint to be investigated under stage two of the Plan's IDR. It said that while Hymans Robertson did contact Ms T directly, it did not engage properly with her to ensure she understood the potential risks.
37. On 6 January 2020, the Trustee provided its stage two IDR response and said:-
- The CETV illustration sent to Ms T in July 2013 said that Hymans Robertson was unable to provide advice regarding transfers; however, it was recommended that she obtain independent financial advice. It provided her with details for Unbiased, a website that could help Ms T locate a financial adviser.
 - Despite the telephone note, there was no way of knowing what exactly was discussed during the telephone call of 21 January 2014. However, Ms T was directly contacted and given the opportunity to voice any concerns or ask any questions she may have had. It had also followed up the telephone call with additional pensions liberation information and a copy of the Scorpion Leaflet.
 - There was some initial cause for concern about the transfer. However, after receiving appropriate legal advice, adhering to TPR's updated guidance and repeated instructions from Ms T, it found that there was no compelling reason why the transfer should not proceed.

Adjudicator's Opinion

38. Ms T's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised below:-

- Ms T's complaint was similar in context to a previous Determination by the Ombudsman under PO-16475:

"Essentially, Prudential had a statutory and contractual duty to transfer Mr T's funds which it was required to act upon when it received his transfer paperwork, unless there were any indications of why the transfer should not

go ahead, such as those concerning pension liberation fraud. The page preceding the Checklist in the Scorpion Guide provided an outline of potential warning signs which could suggest pension liberation fraud activity was taking place. However, there is no indication that Prudential had any reason for concern and accordingly, it did not make any of the further enquiries suggested in the Checklist.”

- The Adjudicator said that Ms T’s complaint should be considered against the industry standards that applied at the time of the transfer, which was TPR’s 14 February 2013 guidance. That is, if there were several warning signs present during the transfer, it was recommended that the ceding scheme’s trustee/administrator should contact the member directly about the requested transfer and the receiving scheme.
- The Adjudicator noted the following red flags:
 - Cathcart exercised its discretion, as the Trustee, to grant Ms T membership in BPT. Ms T was not employed, or in any way connected, to BPT’s sponsoring employer.
 - BPT was established on 12 April 2013, at the time of the transfer it had only been registered with HMRC for little more than a year.
 - The Adviser and Craighead were not authorised, or regulated, to provide advice on pensions transfers or investments.
- Due to concerns over the transfer, the Trustee contacted the Action Fraud helpline to see if BPT had been reported in the past, which it had not. HMRC provided, at the Trustees request, confirmation that BPT was a legitimate pension arrangement on 20 March 2014. This allowed the Trustee to verify the HMRC confirmation letter provided by Craighead. Hymans Robertson directly contacted Ms T through email and a telephone call on 21 January 2014, and recommended that she obtain financial advice.
- The Trustee carried out an appropriate level of enhanced due diligence before it paid the transfer. The Adjudicator was satisfied that the Trustee had complied with TPR’s updated guidance as of 14 February 2013. It is a pity that, during Hymans Robertson’s telephone call with Ms T, she was not directly asked if she was aware of pensions liberation scams. However, even if Ms T had been made aware of the term pensions liberation during the call, it was likely that she would still have proceeded with the transfer in any event given the information that had already been made available to her.
- Ms T was provided with pensions liberation information and the Scorpion Leaflet on two separate occasions. Once with the CETV illustration in July 2013 and again in January 2014. Ms T also completed the secondary transfer discharge form, and in doing so, made clear that she had read and understood the pensions scams information and the Scorpion Leaflet. So, it was reasonable for the Trustee

and Hymans Robertson to believe that Ms T was aware of pension scams and their potential warning signs despite not being directly asked if she was aware during the call with Hymans Robertson.

- Ms T was aware, from the information she had received, which included the Scorpion Leaflet, that receiving a cold call about BPT was a warning sign. Despite several opportunities to inform Hymans Robertson or the Trustee about this, she did not, and proceeded with the transfer. There was no evidence to suggest that Hymans Robertson should have been aware, or were aware, that Ms T had received a cold call/unsolicited advice from an unregulated adviser. Hymans Robertson cannot be expected to act on information of which it had no knowledge.
- The Adjudicator was mindful that in order for Hymans Robertson to conduct a sufficient level of due diligence, it submitted an application to TPR for an extension to the statutory deadline to pay the transfer. This allowed for confirmation to be received from HMRC about BPT's registration status.
- Once confirmation was received from HMRC, coupled with Ms T's instruction in 2014 for the transfer to proceed, there was little more the Trustee could do. This was because Ms T had a statutory right to transfer. So, the extent to which the Trustee could delay or refuse a transfer of Ms T's pension rights in the Plan to a pension arrangement which had met HMRC requirements, such as BPT, was limited.
- The Adjudicator concluded that the due diligence checks carried out by the Trustee were reasonable, at that time. In view of the approach taken by the Trustee, ensuring compliance with TPR's guidance at the time, and given Ms T's statutory right to a transfer, the Trustee was right to make the transfer payment to BPT.

39. Ms T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms T provided her further comments which I have considered but they do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Ms T, which were:-

- The telephone call of 21 January 2014 was not used to properly engage with her about pensions scams and pensions liberation vehicles. Nor was she asked if she properly understood the risks associated with a transfer.
- The purpose of the telephone call was to query whether she wished to proceed with the transfer. The representative should have relayed that the Trustees had contacted the Action Fraud helpline and taken legal advice on the matter. If she was aware of these steps having been taken, she would not have proceeded with the transfer.
- She did not recall reading the Scorpion Leaflet, nor was she aware of the risks she faced in proceeding with the transfer. The onus was on the Trustees to sufficiently discharge its duty of care to her, which she did not feel that it had.

Ombudsman's decision

40. I have considerable sympathy for Ms T, who appears to have been the victim of pension liberation fraud and is not able to access her pension funds. However, this matter cannot be viewed with the benefit of hindsight, and it is the circumstances at the time of the transfer which are of importance.
41. Ms T's complaint concerns the level of due diligence undertaken by the Trustee at the time of the transfer. The transfer guidance in force, at the time, was TPR's awareness campaign of 14 February 2013. That is, if more than one warning sign is identified, it was recommended that the Trustee should directly contact Ms T about the receiving scheme.
42. The stage one checks under TPR's 2013 guidance state that as BPT was recently established, within a year of the transfer, then the Trustee should have directly contacted Ms T to enquire about BPT. Upon receipt of the completed transfer forms, it became apparent to the Trustee that BPT was an occupational arrangement, of which Ms T was in no way connected with the sponsoring employer. Subsequently, the Trustee choose to employ additional due diligence checks on Ms T's transfer and sought advice from its legal counsel.
43. In accordance with the advice of its legal counsel, the Trustee contacted the Action Fraud helpline, regarding BPT, and Hymans Robertson directly contacted Ms T. However, I note Ms T's point of contention that the Hymans Robertson representative did not directly ask her if she was aware of the risks of pensions liberation.
44. I agree that it is unfortunate that the Hymans Robertson representative did not refer directly to pensions liberation scams. However, I note that Ms T was provided with the Scorpion Leaflet and pensions liberation information, before, and after, the telephone call, in July 2013 and again in January 2014. Ms T was also aware that the Trustee would not allow the transfer to proceed until HMRC confirmed that BPT was a registered pension scheme. So, even had pensions scams been directly discussed during the call, I find, on the balance of probability, that it would have been unlikely this would have resulted in Ms T cancelling the transfer, as she has suggested, given the information she had already received.
45. I note that Ms T has said she does not recall reading the Scorpion Leaflet. Hymans Robertson emailed Ms T a copy of the Scorpion Leaflet and pensions liberation information straight after the telephone call in January 2014. I can see no reason why Ms T would not review the materials she was provided with in connection with her own transfer. In any event, Ms T signed and returned the secondary transfer form indicating that she had read and understood the Scorpion Leaflet. Thereafter, there would be no cause for the Trustee to query whether she had read the Scorpion Leaflet or pensions liberation literature.
46. I find that the provision of the secondary transfer form and the Scorpion Leaflet provided sufficient information to allow Ms T to carefully consider her decision to transfer to BPT. By signing and returning the secondary transfer form, Ms T

confirmed that she understood the risks and wished to proceed regardless. The Trustee cannot be held responsible for the decision that Ms T made.

47. I agree that it was reasonable for the Trustee to believe that Ms T was suitably aware of the risks of pensions scams, and that she would have contacted Hymans Robertson if she had any concerns, given that she had signed to say she had read and understood the secondary transfer discharge form and other supporting material. Also, Ms T was aware, from the information she had received from the Trustee and the Scorpion Leaflet, that receiving a cold call about the BPT was a warning sign, and yet she did not make the Trustee or Hymans Robertson aware of this. Normally, I would expect the question to be asked by the transferring scheme. Though, I do not find that it would have made any difference in this case as Ms T was aware of this before the transfer.
48. Despite the checks carried out by the Trustee, upon receipt of the completed secondary transfer form, Ms T exercised her right to a statutory transfer of benefits. Subsequently, the Trustee had a statutory duty to transfer Ms T's funds. It was required to act upon this duty when it received Ms T's transfer forms, subject to the completion of sufficient due diligence. In Ms T's case, upon receipt of HMRC's confirmation that BPT was a registered pension scheme, there was little more that the Trustee could have done as this was a statutory transfer. I agree that the Trustee fulfilled its responsibility under the 2013 pension scam guidance.
49. It is regrettable that the transfer of funds from the Plan has not transpired to be in Ms T's best financial interests. But the Trustee has fulfilled its due diligence obligations with the information it held at the time and the action that it took in respect of that information.
50. In conclusion, I do not find that the Trustee failed in its due diligence obligations in respect of the transfer
51. I do not uphold Ms T's complaint.

Anthony Arter CBE
Deputy Pensions Ombudsman

25 April 2023

Appendix

Summary of the due diligence carried out by the Trustee

- “providing Ms T with a copy of the transfer pack that had been issued to [the Adviser], which included TPR’s Scorpion Leaflet and then providing her with a further copy of this before asking her to confirm again that she wished to proceed with the transfer;
- seeking a formal extension from [TPR] to the time period for implementing the transfer so as to facilitate [Hymans Robertson] carrying out additional checks (in line with [TPR’s] checklist) as a result of concerns being flagged internally on receipt of a completed transfer request form;
- seeking independent confirmation from HMRC, that the receiving scheme was a registered pension scheme, so that the HMRC letter could be verified;
- contacting Action Fraud to seek guidance on whether any concerns with the receiving scheme had previously been raised;
- contacting [Ms T] directly by telephone and email to discuss the transfer and encouraging her to seek independent financial advice; and
- Asking [Ms T] to complete two-member discharge forms, the second of which requiring her to expressly confirm that she had read and understood the information provided in TPR’s Scorpion Leaflet and that she indemnified the Trustee against any future claim arising as a result of the transfer.”