

## Ombudsman's Determination

Applicant	Mr Y
Scheme	Legal & General Pension Plan ( <b>the Plan</b> )
Respondent	Legal & General Assurance Society ( <b>L&amp;G</b> )

## Outcome

1. I do not uphold Mr Y's complaint and no further action is required by L&G.

## Complaint summary

2. Mr Y has complained that L&G, the former Plan provider, failed to carry out sufficient due diligence checks when transferring his benefits to the Tennyson Close 1957 Limited Scheme (**the Scheme**).

## 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. Mr Y is represented by Owl and Fox law (**the Solicitor**) in connection with his 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. In August 2014, Mr Y has said that he received an unsolicited call from an unregulated financial adviser who proposed an opportunity to transfer his Plan benefits into the Scheme, allowing him a greater control over the investment of his pension benefits.
10. In September 2014, Mr Y was advised, possibly by the unregulated adviser, to setup a limited company, which he did on 18 September 2014, under the name of Tennyson Close 1957 Limited (**the Company**). He was then told he could transfer his pension benefits into the Scheme, which was a Small Self-Administered Scheme (**SSAS**). The Company would then act as the sponsoring employer for the Scheme, of which Mr Y was the sole member and Trustee.

11. On 9 October 2014, Cantwell Grove Limited (**Cantwell**), the Scheme's Administrator, wrote to L&G and said that Mr Y wished to transfer his Plan benefits into the Scheme. It also said that:-

- It was aware of, and supported, TPR's recommendations to perform a greater level of due diligence in response to the increase in pension liberation scams.
- Between August and September 2013, it had its business model vetted by HMRC, subsequently receiving confirmation that it was operating legitimately.
- It understood, and supported, the importance of the Scorpion Leaflet and said that:

"We can confirm that the [Scorpion Leaflet] 'Predators Stalk Your Pension' has been explained and sent to [Mr Y] by us. You will also see that the enclosed confirmation letter from the member confirms both an understanding of the pension liberation issue, and also that this transaction is in no way connected to pensions liberation."

12. Cantwell provided: copies of transfer declaration forms, signed by Mr Y, to proceed with the transfer; a confirmation letter from Mr Y agreeing to the transfer (**the Member Letter**); a signed transfer in form for the Scheme; a copy of the Scheme's Trustee Deed and Rules; confirmation of the Scheme's registration details with HMRC, under the Pension Scheme Tax Reference Number (**PSTR**) 00816819RZ, newly registered as of 30 September 2014; and a Scheme Q&A document (see Appendix 1).

13. The Member Letter included the following statements from Mr Y:

"From guidance I have received in connection with this decision I appreciate that there has recently been a significant rise in cases of "pensions liberation" fraud. As a result there is increased concern and scrutiny around transfer requests being made, to ensure members fully understand the implications of making a transfer.

I therefore wish to confirm that the transfer request is being made in order that I can take advantage of investment opportunities available under the Scheme, none of which are in any way connected to pensions liberation. I have received detailed information about the Scheme, how it operates, who administers it and the risks associated with taking a transfer out of my existing pension arrangement.

In making this transfer I am not seeking to access my pension benefits before age 55 and I am aware of the potentially significant tax liabilities that would arise were I to attempt to do so. Indeed the trust deed and rules of the Scheme do not permit benefits to be taken prior to age 55, except in circumstances of ill health which meet HMRC requirements. I also confirm that

I have not been offered any cash or other incentive by any person as part of my decision to transfer my pension to the Scheme.”

14. On 14 October 2014, L&G wrote to Mr Y and said that it had several concerns about the Scheme that it wanted to raise with him, which were:
  - it was unsure whether he had received advice from an independent financial adviser, regulated by the Financial Conduct Authority (**FCA**);
  - the Scheme’s trust deed and rules provided that funds could be invested in overseas investments; and
  - electing overseas investment options meant that he was unlikely to be protected by the Financial Services Compensation Scheme if anything went wrong.
15. L&G suggested that Mr Y should review the Scorpion Leaflet and transfer information that was originally provided to him with his transfer declaration forms. Despite the Scheme being registered with HMRC, this did not mean L&G agreed that it was suitable for his own personal circumstances. If he wished to proceed with the transfer, he should complete and return the enclosed member discharge and declaration form (**the Risk Form**). However, it strongly suggested that he should obtain independent financial advice before returning the Risk Form.
16. On 19 November 2014, Mr Y returned the signed and completed Risk Form. In signing the Risk Form Mr Y agreed that:
  - he was exercising his right to a statutory transfer;
  - he had read and understood the Scorpion Leaflet and understood the examples of pension liberation fraud;
  - he would not hold L&G accountable, or seek redress, if the Scheme incurred any unexpected fees, charges or losses arising from the transfer; and
  - L&G proceeding with the transfer did not mean that it was endorsing the suitability of the Scheme, or any investments made in relation to it.
17. On 21 November 2014, L&G transferred £20,345.98 to the Scheme.
18. Upon receipt of the transfer from L&G, Cantwell invested the majority of the funds into the Resort Group PLC (**TRG**). TRG was a holiday resort that SSAS members could invest funds in. The investors would then receive returns after the deduction of management charges and fees.
19. In August 2015, Mr Y claimed a pension commencement lump sum from the Scheme and received a payment of £13,833.84.
20. Between 2015 and 2019, Mr Y received quarterly statements from TRG. The statements made it clear that, after the removal of management charges and fees,

the returns were minimal. Mr Y is unable to withdraw his remaining investment with the TRG unless another individual purchases the unit in which his funds are invested.

21. On 19 November 2019, The Solicitor submitted a formal complaint to L&G on behalf of Mr Y. The Solicitor said:-

- In 2014, Mr Y received an unsolicited call about transferring his Plan benefits into the Scheme.
- L&G should have been reasonably aware that its members were financially unsophisticated. Nor were its members able to determine whether advice received was from a regulated or unregulated source.
- L&G had failed to carry out sufficient due diligence on Mr Y's transfer request which had exposed him to an unsuitable pension arrangement.
- The Pensions Ombudsman's (**TPO**) Determination PO-12763<sup>1</sup> provided that regulated bodies, such as L&G, had a duty of care to protect the interests of its members.
- Mr Y had suffered a financial loss of his Plan benefits through no fault of his own. If L&G had undertaken sufficient due diligence, and engaged verbally with Mr Y about the transfer, it would likely have determined that the Scheme was not suitable for Mr Y.
- In February 2013, TPR issued guidance and information about the serious nature of pensions scams. So, L&G would have been aware of the potential risks associated with allowing Mr Y to transfer to the Scheme.

22. On 29 November 2019, L&G responded to the Solicitor. It did not uphold the complaint and explained that:-

- Cantwell said that it specialised in the administration of SSAS schemes and that, in 2014, it was vetted by HMRC, who confirmed that they were operating legitimately.
- L&G received confirmation that the Scheme was registered to provide tax relief, with HMRC. The Member Letter also made it clear that Mr Y had carefully considered the risks associated with a transfer and pension liberation fraud.
- Mr Y had completed the Risk Form which discharged L&G from any liability regarding fees, charges and losses associated with the transfer. By signing the Risk Form he had also agreed that he read, and understood, the Scorpion Leaflet.

---

<sup>1</sup> <https://www.pensions-ombudsman.org.uk/decision/2018/po-12763/police-pension-scheme-po-12763>

- It had carried out the necessary level of due diligence required at the time. Further, it could not be held responsible for transferring Mr Y's pension benefits to the Scheme, which was all in line with his instructions and wishes.

## Adjudicator's Opinion

23. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by L&G. The Adjudicator's findings are summarised below:-

- Mr Y's case was not comparable with that of a previous determination, PO-12763, as the circumstances surrounding each case differed. In PO-12763, the transfer was carried out 18 months after TPR issued its updated guidance. The Ombudsman found that the respondent failed to issue the Scorpion Leaflet and carry out sufficient due diligence checks, despite multiple warning signs.
- The Adjudicator believed that Mr Y's cases was similar to another complaint that the Pensions Ombudsman had determined in PO-16475, which stated:

“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.”

- At the time of Mr Y's transfer the guidance in place at the time was TPR's awareness campaign as of 14 February 2013. If one or more warning signs were identified then it was recommended that the ceding scheme's Trustee/administrator should contact the member directly about the transfer and the receiving scheme.
- The Adjudicator reviewed the due diligence checks carried out by L&G and noted the following:
  - The Scheme's sponsoring employer was Mr Y's Company and the address for Mr Y and the Company were the same. The Company was geographically close to Mr Y, and he shared a connection with both the Company, as the owner, and the Scheme as the Trustee.
  - The Scheme was only registered with HMRC on 30 September 2014. However, the Scheme was only established as a SSAS for the sole purpose of a transfer and Mr Y was the only member. The date the Scheme was

registered with HMRC was unlikely to be a cause for concern given the nature of the transfer and receiving scheme.

- According to the Scheme Q&A document, while Cantwell was not registered with the FCA, it was registered with both HMRC and the Association of Member-Directed Pension Schemes (**AMPS**). Mr Y and Cantwell had taken investment advice from Sequence Financial Management Limited (**Sequence Financial**), a financial advisory firm, who, at the time, were regulated by the FCA to provide investment advice. Sequence Financial is no longer regulated by the FCA.
  - Mr Y was aged 57 at the time of the transfer, so he was not trying to access his pension benefits any earlier than he was eligible to.
  - A copy of the Scheme's trust deed and rules was provided alongside the completed transfer declaration forms.
- L&G wrote to Mr Y on 14 October 2014 to outline a number of concerns it wanted to make him aware of about the Scheme and its suitability for him. Mr Y returned the Risk Form and confirmed that he read and understood the Scorpion Leaflet, the pensions liberation information provided, and he understood L&G's concerns.
  - In signing the Risk Form, Mr Y exercised his right to a statutory transfer. So, the extent to which L&G could delay or refuse the transfer of his pension rights within the Plan to a pension arrangement which had met HMRC requirements, such as the Scheme, was limited.
  - The provision of the member letter made it clear that Mr Y understood the risks associated with the transfer despite the rise in pensions liberation activity in recent years. Mr Y also confirmed that he had not been offered any incentives to proceed with the transfer. The Adjudicator took the view that it was reasonable for L&G to assume that Mr Y had been sufficiently warned of the dangers of pensions scams.
  - Despite confirming that he read and understood the Scorpion Leaflet, Mr Y did not inform L&G that he had received an unsolicited call which started the process of the transfer. Nor did he mention the unsolicited call to L&G when he returned the Risk Form. It was not reasonable to hold L&G accountable for something that it could not have been aware of at the time.
  - The Adjudicator concluded that the due diligence carried out by L&G was reasonable based on the requirements at the time. There was no evidence that the Scheme was a high-risk pension scam or unsuitable for Mr Y. L&G engaged with Mr Y to verify that he understood the potential risks. So, it was reasonable for L&G to proceed with the transfer.
24. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y has provided his further comments which do not change the outcome.

I agree with the Adjudicator's Opinion concerning the outcome and note the additional points raised by Mr Y.

25. Mr Y said that, in 2011, he was registered as visually impaired, and, at the time of the transfer, he was adjusting to life while being visually impaired. He has said that, after receiving the unsolicited call, an adviser came to his house to help him complete any necessary transfer forms, which he duly signed and returned to L&G. He believes that he may have been misled into signing the transfer forms, based on an incomplete understanding of what the transfer paperwork said.

### **Ombudsman's decision**

26. I understand that Mr Y has inferred that, because he is registered as visually impaired, it is possible that he was misled into signing transfer forms that he otherwise may not have done had he been in a position to read the contents of the forms more adequately.
27. I appreciate the position Mr Y found himself in at the time of the transfer, however, if his inference is that he was provided with misleading information or was actively misinformed about the contents of what he was signing, this amounts to fraud. Fraudulent activity of this particular nature is beyond the scope of my jurisdiction, and I am unable to investigate the matter any further. If Mr Y believes that he is the victim of this type of fraud, he should contact the police to report the matter.
28. I have considerable sympathy for Mr Y, who appears to have been the victim of a pension liberation scam and is not able to access his 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 to my Determination.
29. The complaint that was accepted for investigation by my office is regarding the level of due diligence undertaken by L&G 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 L&G directly contact Mr Y about the receiving scheme.
30. The stage one checks under TPR's 2013 guidance state that as the Scheme was recently established, within a year of the transfer, then L&G should have directly contacted Mr Y to enquire about the Scheme. L&G did contact Mr Y directly, as there were some reservations about the transfer because of the type of investments that the Scheme would allow Mr Y to make, namely overseas funds.
31. L&G has no remit to comment on the suitability or potential of the investments that Mr Y could, and did, make through the SSAS, and whether they were appropriate. L&G was only able to make Mr Y aware of the potential implications of an overseas investment which I note that it did by providing him with the Risk Form to help explain the implications of an overseas transfer. This was in addition to providing him with a copy of the Scorpion Leaflet and additional pensions liberation information.



32. I find that the provision of the Risk Form, the Scorpion Leaflet, and the pensions liberation materials, provided sufficient information for Mr Y to consider his choice of overseas investment. By signing and returning the Risk Form, Mr Y confirmed that he understood the risks and wished to proceed regardless. L&G cannot be held responsible for the decision that Mr Y made.
33. I agree that it was reasonable for L&G to believe that Mr Y was suitably aware of the risks of pensions scams, and that he would have contacted L&G if he had any concerns, given what he had stated in various correspondence. Also, Mr Y was aware, from the information he had received from L&G, that receiving a cold call about the Scheme was a warning sign, and yet he did not make L&G 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 Mr Y was aware of this before the transfer.
34. Despite the checks carried out by L&G, upon receipt of the completed Risk Form, Mr Y exercised his right to a statutory transfer of benefits. Subsequently, L&G had a statutory and contractual duty to transfer Mr Y's funds. It was required to act upon this duty when it received Mr Y's transfer forms, unless there were any indications of why the transfer should not go ahead, such as those indicating pension liberation fraud. In Mr Y's case, there was little indication that pointed to TRG being a pensions liberation vehicle and given that it was a statutory transfer L&G had fulfilled its responsibility under the 2013 pension scam guidance
35. It is regrettable that the transfer of funds from L&G has not transpired to be in Mr Y's best financial interests. But L&G 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.
36. In conclusion, I do not find that L&G failed in its due diligence obligations in respect of the transfer.
37. I do not uphold Mr Y's complaint.

**Anthony Arter CBE**

Deputy Pensions Ombudsman  
21 February 2023

## Appendix 1

### Key Scheme Details

#### Q&A

0. **Who is the Scheme's sponsoring employer?**

The Scheme's sponsoring employer is Tennyson Close 1957 Limited.

1. **What is the name of the receiving scheme?**

Tennyson Close 1957 Limited SSAS

2. **What is the structure of the receiving scheme?**

An occupational, [SSAS].

3. **Who is the pension scheme administrator?**

The Scheme administrator is [Cantwell].

4. **What is the administrator's HMRC ID reference number?**

The HMRC ID reference number is A0126431.

5. **What is the administrator's information Commissioner's Office (ICO) registration number?**

The administrator's ICO registration number is ZA009320.

6. **[Cantwell] is a full member of the Association of Member-Directed Pension Schemes (AMPS)**

AMPS Membership number: AMPS302.

7. **Is the receiving scheme registered with the Pensions Regulator?**

The Scheme is not registered with the regulator on Exchange as it is a single member scheme.

8. **What is the scheme's PSTR number as issued by HMRC?**

The scheme's PSTR number is 00816819RZ.

9. **Who is the Scheme's proposed investment provider(s)?**

As per the requirement under section 36 of the Pension Act 1995, the trustee of the Scheme is taking and considering appropriate advice on whether the proposed investment(s) are satisfactory for the aims of the scheme.

The appropriate advice is being taken from Sequence Financial Management Limited (an Independent Financial Adviser, FCA Register number 528196), and under consideration are the following investments:-

CAS-46114-K5R2

A discretionary fund management service provided by the Parmenion Investment Management (a trading name of Parmenion Capital Partners LLP, FCA Register number 462085). Please see enclosed 'Parmenion Due Diligence' document for information.

A commercial property investment provided by the Resort Group PLC ([www.theresortgroupplc.com](http://www.theresortgroupplc.com)). Please see enclosed a 'Key Features' document for information."