

Ombudsman's Determination

Applicant	Mr N
Scheme	RHM Pension Scheme (the RHM Scheme)
Respondent	Trustees of the RHM Pension Scheme (the Trustee)

Outcome

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

Complaint summary

2. Mr N's complaint concerns the transfer of his benefits from the RHM Scheme to the Incartus Investments Pension Scheme 2 (**the Incartus Scheme**). He said that the Trustee undertook insufficient due diligence, and he is concerned that his funds have been misappropriated.

Background information, including submissions from the parties and timeline of events

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 N is represented by his solicitors, Hugh James.
5. Mr N was a member of the RHM Scheme. Following the cessation of his pensionable service on 11 September 1998, his benefits were deferred.
6. In 2006, Mr N explored the possible transfer of his benefits in the RHM Scheme to the Social Housing Pension Scheme. The administrator of the receiving scheme was not willing to accept the transfer without a gender equalisation indemnity. As a result, the transfer did not proceed.
7. In September 2012, Mr N requested a transfer value while receiving advice from Wallwood Independent Financial Advisers. The information was provided, but the transfer did not progress.
8. Mr N says that, in late December 2014 or early 2015, an agent of a company called GoBMV visited him at his home. He says he was told that his benefits in the RHM

Scheme were not performing, and he could earn greater interest if he transferred these benefits to the Incartus Scheme where they would be more secure.

9. On 5 December 2014, Blue Ocean Financial Services Limited (**Blue Ocean**) contacted the administrators of the RHM Scheme, Aon Hewitt, to request a transfer pack. It provided a letter of authority (**LOA**) signed by Mr N. This request was rejected as the spelling of Mr N's surname was incorrect.
10. On 8 January 2015, Foreman Financial Services (**FFS**) contacted Aon Hewitt to request a transfer pack. It included a LOA signed by Mr N.
11. On 22 January 2015, Aon Hewitt wrote to FFS (**the Letter**) to provide the information requested. A transfer value of £22,502 was quoted. The Letter said:

“Before deciding to transfer, the member should get independent financial advice. The following websites may be helpful to the member when making their decision ...”

12. The Trustee subsequently confirmed that the standard procedure at the time was for a copy of the ‘Predators stalk your pension’ leaflet (**the Scorpion Leaflet**) to be enclosed with such communications. Also, for a copy of the response to be sent to the member (as well as to, in this case, FFS).
13. Mr N signed an undated application to join the Incartus Scheme which included the following statements:

“I accept that I have not received any advice on transferring my Pension fund to the Scheme ...”

and:

“I understand that I cannot influence the investment decisions of the Trustee in any way. I understand that the anticipated investment is a loan to Incartus Investments Limited (“Incartus”) and that Incartus’s ability to service the debt will depend on the success of its underlying investments. I understand the risks associated with this investment.”

14. On 19 March 2015, the administrators of the Incartus Scheme, AFM Administrators (**AFM**), wrote to Aon Hewitt to request that the transfer from the RHM Scheme to the Incartus Scheme be completed. It enclosed the transfer paperwork which included:

- the ‘Receiving Scheme Warranty’;
- the ‘Member Application to the Trustees’ signed by Mr N which included the statement:

“I confirm: [...]

- c) that I am transferring to an occupational pension scheme of which my current employer is a scheme employer.

d) I have read the enclosed leaflet “Predators stalk your pension” and understand that there could be serious tax consequences for my pension benefits if I transfer to a scheme or arrangement that is later deemed to have committed Pension Liberation Fraud.”;

- A copy of HM Revenue and Customs’ (**HMRC**) certificate confirming the Incartus Scheme’s registration on 6 June 2014; and
 - An up-to-date print out of HMRC’s online registration form.
15. On 7 April 2015, Aon Hewitt asked Mr N for proof of identity. It subsequently received his passport which it returned to him on 13 April 2015.
 16. On 5 June 2015, £22,502 was transferred to the Incartus Scheme. Aon Hewitt wrote to Mr N and AFM to confirm that the transfer had been completed.
 17. On 10 January 2017, The Pensions Regulator (**TPR**) appointed Dalriada Trustees Limited (**Dalriada**) as independent trustee of the Incartus Scheme.
 18. On 23 March 2020, Hugh James raised a complaint with the Trustee on behalf of Mr N. In summary, it said:-
 - GoBMV was not regulated by the Financial Conduct Authority at the time of the transfer.
 - There was no evidence of appropriate due diligence having been undertaken apart from Mr N signing the transfer documentation stating that he had read the Scorpion Leaflet. The Trustee did not engage directly with Mr N to flag the risks of pension liberation.
 - The Trustee should have obtained basic information about the Incartus Scheme which would have revealed a number of red flags (see Appendix 1 for further details).
 - The Trustee’s maladministration had resulted in the loss of Mr N’s pension pot.
 - Mr N was seeking to be put back to the position he would have been in had the transfer not taken place.
 19. On 12 June 2020, Linklaters LLP contacted Hugh James on behalf of the Trustee. It requested further information including:-
 - Confirmation of why Mr N would have acted differently had the due diligence it claimed should have been undertaken been done. Also, what Mr N would have done differently.
 - The amount of Mr N’s loss and how it was calculated.
 - Evidence that the loss was not irreversible and why it considered that the Trustee should have reasonably foreseen the loss.

- An explanation of why Mr N did not complain sooner and what steps he planned to take to mitigate the loss.

20. On 7 July 2020, Hugh James provided its response. In summary it said:-

- Mr N did not recall receiving any written advice concerning the transfer.
- Mr N was not aware of the risks of the Incartus Scheme being associated with pension liberation or the misappropriation of his funds. Nor did he know how his funds would be invested.
- Dalriada was not in a position to value Mr N's investments in the Incartus Scheme. It was likely that the majority of his funds, if not all, were lost.
- In March 2017, Mr N had contacted AFM to query the status of his fund. He was informed that he was unlikely to get his money back. He had no reason to ask earlier.

21. On 19 November 2020, the Trustee provided its response to the complaint of 23 March 2020 which it had considered under the RHM Scheme's internal dispute resolution procedure. In summary, it said:-

- It understood that Mr N took financial advice, initially from Blue Ocean and then from FFS.
- Mr N had confirmed that he had read the Scorpion Leaflet.
- Mr N made multiple transfers to the Incartus Scheme around the same time as the transfer from the RHM Scheme. In particular, transfers from the Social Housing Pension Scheme and Prudential.
- Mr N had previously requested a transfer of his benefits in the RHM Scheme to the Social Housing Pension Scheme around August 2006 with the intention of consolidating his pension savings.
- In addition, Mr N had requested a transfer value quotation in 2012, while receiving advice from another financial adviser.
- In the light of this, on the balance of probabilities, Mr N would have proceeded with the transfer of his benefits in the RHM Scheme to the Incartus Scheme regardless of any further checks that Hugh James has alleged were required.
- In an announcement dated June 2018, Dalriada stated:

“As of 7 June 2018, Incartus has repaid £6.09m to the Schemes out of a total owed of approximately £21m. As commented above, Incartus had originally estimated full repayment of the loans by the summer of 2018, but it has now revised its proposals and extended the estimated final repayment date to the end of 2018 and possibly into 2019.”

- Mr N had failed to demonstrate what loss, if any, he had suffered and what steps were being taken to mitigate the alleged loss.
22. Following the complaint being referred to The Pensions Ombudsman (**TPO**), Hugh James and the Trustee made further submissions that have been summarised below.
23. Hugh James made the following additional submissions on behalf of Mr N:-
- A subsequent announcement from Dalriada indicated that Incartus had failed to meet the repayment terms which had been put forward, and that Dalriada was taking steps to enforce repayment of the loans that had previously been made.
 - The documentary evidence did not support the Scorpion Leaflet being sent to either FFS or Mr N. Mr N does not recall receiving the Scorpion Leaflet. He says that, had he received it, he would have made further enquiries.
 - The Trustee's duty of care was not overridden by a statutory obligation to make the transfer. It was under an obligation to carry out adequate due diligence.
24. The Trustee made the following additional submissions:-
- The events relating to this case occurred around nine years ago, outside the usual time limits for cases to be considered by TPO.
 - Aon Hewitt had carried out adequate due diligence based on the guidance from TPR that was in place at the time of the transfer. A list of the checks the Trustee said were undertaken can be found in Appendix 2.
 - It was not obliged to carry out the additional checks identified by Hugh James. In particular:-
 - In relation to establishing an employment link between Mr N and the Incartus Scheme, it had no reason to doubt the information provided by Mr N in the 'Member Application to the Trustees'. Furthermore, a genuine employment link was not required for Mr N to have a statutory right to transfer.
 - The transfer value was less than £30,000, so it was not obliged to check that Mr N had received appropriate independent advice.
 - It was not qualified to give any financial or investment advice, so could not investigate the suitability of the underlying investments.
 - Mr N received warnings concerning unsolicited approaches but decided to proceed with the transfer anyway.
 - The Scorpion Leaflet was enclosed with the Letter as part of its standard process at the time. It was not part of its process to upload it to the member's record when the Letter was uploaded.

Adjudicator's Opinion

25. Mr N'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 in paragraphs 26 to 38 below.
26. The Trustee suggested that the time that had elapsed since the transfer took place was outside TPO's usual time limits for considering complaints. In cases such as Mr N's, what needs to be considered is when applicants first reasonably ought to have become aware of any potential problems with the receiving scheme. Hugh James has said that this was when, in March 2017, Mr N was told during a telephone conversation that there would be little possibility of getting the funds back. This was within three years of him making his complaint to TPO. While Mr N had earlier received a communication from Dalriada, the Adjudicator's view was that this would not have raised adequate concerns about whether the transfer should have gone ahead. So, the Adjudicator's opinion was that Mr N's complaint was within TPO's jurisdiction.
27. The Trustee said that Aon Hewitt's initial checks did not provide any indication that the transfer requested by Mr N was a high-risk transfer.
28. In 2015, the Pensions Scams Industry Group published its 'Combating Pensions Scams – a Code of Good Practice' guide (**the 2015 Guide**) which came into force from 16 March 2015. While the Adjudicator noted that the 2015 Guide was available at the time that Mr N's transfer took place, it had been in place for less than a week when AFM returned the completed transfer paperwork to Aon Hewitt. Furthermore, it had been in place for less than three months when the transfer took place. In the Adjudicator's view, it was reasonable to allow the Trustee the necessary time to implement any changes arising from the publication of the 2015 Guide.
29. The Adjudicator took the view that it would not be reasonable to expect the Trustee to have fully allowed for the 2015 Guide when transferring Mr N's benefits. In the Adjudicator's opinion, it was the earlier guide, TPR's publication 'Pension liberation fraud – The predators stalking pension transfers' (**the 2013 Guide**) that should be considered when reviewing Mr N's complaint.
30. The Adjudicator reviewed the 2013 Guide and the due diligence that the Trustee said was undertaken, as detailed in Appendix 2. He also considered the fact that the 2013 Guide was not a legislative document. So, pension providers had discretion to develop their own, proportionate, due diligence process in the light of the information in the 2013 Guide. In the Adjudicator's opinion, the factors considered by Aon Hewitt were the factors that were appropriate before deciding whether further investigation was required.
31. The Incartus Scheme was registered with HMRC on 6 June 2014 and the registration had been in place for over nine months before the transfer application was received from AFM on 19 March 2015. In addition, Mr N was not attempting to access his pension before age 55 and he had not applied pressure to have the transfer

completed early. Mr N had not indicated to the Trustee or Aon Hewitt that he had been approached unsolicited or that he had been told of a legal loophole he could benefit from. Furthermore, the Incartus Scheme was not one that was previously unknown to Aon Hewitt and was involved in more than one transfer request at the time.

32. Hugh James said that Mr N was approached unsolicited. The Adjudicator took the view that a more robust approach for this part of the checks would have been for Aon Hewitt or the Trustee to have directly asked Mr N how he had found out about the Incartus Scheme. Having acknowledged that this did not happen, the Adjudicator reviewed whether any warnings were given to Mr N in this respect.
33. The Scorpion Leaflet contained warnings about being approached unsolicited. While Mr N said that he did not recall receiving the Scorpion Leaflet, he did sign the Trustee's 'Member Application to the Trustees' confirming that he had read the Scorpion Leaflet. Furthermore, the Trustee maintained that it was its standard procedure, at the time, to include it with the transfer information that was sent to FFS in January 2015 and that such correspondence would have also been copied to the member. It also said that the Scorpion Leaflet was not scanned to member records.
34. Hugh James said that there was no documentary evidence that Mr N was sent the Scorpion Leaflet. However, the Adjudicator said that he had no reason to disbelieve the Trustee's assertion that the Scorpion Leaflet was issued to Mr N. This was backed up by Mr N's statement at the time that he had read it. So, the Adjudicator took the view that, on the balance of probabilities, the Scorpion Leaflet was issued to Mr N, and he had access to the information that it contained.
35. So, the Adjudicator was of the opinion that Mr N had been warned of the dangers of being approached unsolicited. Even if Mr N had notified Aon Hewitt or the Trustee and it had discussed this with him, it was difficult to see what might have been said that would have led him to change his mind about transferring. Mr N had previously made requests to investigate the transfer of his benefits out of the RHM Scheme, including an attempt to transfer these benefits to the Social Housing Pension Scheme. In the Adjudicator's view, Mr N was determined to consolidate his pension arrangements into one.
36. Having taken all of the above into account, the Adjudicator was of the view that the due diligence checks carried out by Aon Hewitt were reasonable. There were no indicators, at the time of the transfer, that the Incartus Scheme was high risk.
37. Hugh James said that the Trustee should have sought further information as detailed in Appendix 1. However, it was only if the initial analysis threw up some concerns that the 2013 Guide recommended that further checks were undertaken, otherwise the transferor could consider proceeding to payment. In the Adjudicator's opinion, there was no requirement for the Trustee to investigate these aspects of the transfer.

38. Furthermore, in view of the checks that were carried out, the Adjudicator took the view that it was reasonable for the Trustee to make the transfer payment to the Incartus Scheme.
39. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Hugh James provided further comments on behalf of Mr N in response to the Opinion. These are summarised below:-
- The 2015 Guide came into force on 16 March 2015 and Mr N's transfer to the Incartus Scheme took place on 5 June 2015, nearly three months later. It considered that three months was an excessive period to allow the Trustee to facilitate the implementation of the 2015 Guide.
 - There would have been consultation regarding the 2015 Guide prior to it being published, and it was part of the Trustee's responsibilities to be aware of upcoming changes. A leading law firm had published an article regarding the 2015 Guide the day after it came into force.
 - A maximum period of one month should be allowed to put in place new checks. A number of previous Determinations by the Pensions Ombudsman referred to a one-month period being considered reasonable when implementing the 2013 Guide. A similar, or lesser grace period was appropriate for the 2015 Guide as the groundwork for implementing checks was already in place.
 - The Trustee failed to provide any evidence of the due diligence checks that it said were undertaken.
 - The Letter recommended that Mr N seek independent financial advice before proceeding with the transfer. It also provided a list of websites that may have been helpful to Mr N when making his decision. This information should have been shared directly with Mr N.
 - There was no direct evidence to support the contention that Mr N or FFS were sent the Scorpion Leaflet. The Letter had a list of four enclosures which included "Predators Stalk Your Pension". However, when the Trustee provided it with a copy of the Letter and enclosures, this particular enclosure was not included. As a matter of good record keeping, had the Scorpion Leaflet been issued with the Letter, it would have been retained on record with the Letter.
 - Mr N signed the paperwork that he was presented with and did not understand the potential implications of what he was signing. He had a very limited understanding of pensions and English was not his first language. He was reliant on the advice he was given. He would not have proceeded with the transfer had the risks been explained to him.
40. I have considered the additional points raised by Hugh James; however, they do not change the outcome. I agree in the most part with the Adjudicator's Opinion.

Ombudsman's decision

41. I have considerable sympathy for Mr N, who appears to have been a victim of pension liberation fraud and has lost his pensions investments.
42. However, this matter cannot be viewed with the benefit of hindsight, and it is the circumstances at the time of transfer which are of importance.
43. Essentially, the Trustee had a statutory and contractual duty to transfer Mr N's funds. It was required to act upon this duty when it received his transfer paperwork, unless there were any indications of why the transfer should not go ahead, such as those indicating pension liberation fraud or a pensions scam.
44. Hugh James maintained that it is the 2015 Guide that I should be considering in relation to the suitability of the due diligence checks undertaken by Aon Hewitt – pointing out that I generally allow one month to put in place new procedures following changes in the regulatory landscape. In general terms, that is correct, although I look at each case on its merits. In this particular case, the key interactions took place before and during that one-month period. For example, on 19 March 2015, Aon Hewitt received the request from AFM for the transfer to proceed, together with the completed transfer paperwork. This was only three days after the introduction of the 2015 Guide and was the likely point at which Aon Hewitt would have commenced its due diligence checks. Later interactions culminated in the letter from Aon Hewitt on 7 April 2015, asking for proof of identity, with the passport provided in answer to that being returned on 13 April 2015, which were again within the one-month period.
45. While I acknowledge the past Determinations that Hugh James has brought to my attention, it is important that I assess each case on its own merits.
46. So, it is the 2013 Guide, and its 2014 relaunch by TPR as 'Pensions scams – A lifetime's savings lost in a moment', that I have considered to be of most importance in informing my analysis of Mr N's complaint.
47. Hugh James said that the Trustee failed to provide evidence of the due diligence checks that it said were undertaken, as documented in Appendix 2. While I have noted this comment, I have found no reason to question the information the Trustee has provided. For the reasons stated by the Adjudicator in paragraphs 30 and 31, I find that the checks undertaken by Aon Hewitt were adequate in the circumstances.
48. Hugh James said that the information in the Letter recommending that Mr N seek independent financial advice, together with a list of helpful websites, should have been shared directly with Mr N. I note that the Letter was addressed to FFS. However, the Trustee has confirmed that it was Aon Hewitt's standard procedure at the time for a copy of the Letter to have been sent to Mr N. I have no reason to doubt that Aon Hewitt followed its standard procedure in the case of Mr N.

49. Hugh James maintained that Mr N did not receive a copy of the Scorpion Leaflet. It suggested that the Scorpion Leaflet would have been retained on record with the Letter had it been issued to Mr N at the time, and this was not the case.
50. It is not uncommon for scheme administrators to manually insert the Scorpion Leaflet into communications as it is a physical document. For the reasons stated by the Adjudicator in paragraphs 33 and 34, on the balance of probabilities, I find that Mr N was sent a copy of the Scorpion Leaflet.
51. It is unfortunate if, as Hugh James has suggested, Mr N signed paperwork without understanding the potential implications. However, I do not believe that the Trustee can be considered to have been at fault if it had relied on that paperwork when considering whether the transfer should proceed. For example, I find it reasonable for the Trustee to have believed that Mr N had read the Scorpion Leaflet and was aware of the risks of pensions scams because of the declaration he signed.
52. It is regrettable that the transfer has not transpired to be in Mr N's best financial interests, however, I do not find that the Trustee failed in its due diligence obligations in respect of the transfer.
53. I do not uphold Mr N's complaint.

Dominic Harris

Pensions Ombudsman
31 May 2024

Appendix 1

Basic information that Hugh James considers that the Trustee should have obtained and the red flags it said that this information would have revealed

Hugh James said that the Trustee should have obtained the following basic information about the Incartus Scheme:

- the type and legal status of the scheme;
- the date the scheme was established;
- the location of the scheme and its administrators;
- details of the employment link between the scheme and Mr N;
- the marketing methods used during the transfer process;
- details of any cash payments offered to Mr N;
- the investments underlying the scheme;
- the provenance of the scheme; and
- details of who provided Mr N with advice to transfer his benefits and whether there were any fees for this advice.

It went on to say that such enquiries would have revealed the following red flags:

- the Incartus scheme was newly established;
- the Incartus scheme was not linked to Mr N's employment;
- Mr N did not live in the same area as the sponsoring employer;
- Mr N was under age 55 at the time of the transfer and had no pressing need to transfer;
- the transfer came about after an unsolicited approach to Mr N;
- Mr N was not advised on either the underlying investments, or the transfer, by an authorised individual; and
- Mr N was an unsophisticated investor.

Appendix 2

Due diligence checks

The Trustee advised that the following due diligence checks were undertaken at the time of the transfer of Mr N's benefits to the Incartus Scheme:

- the Incartus Scheme was not newly registered with HMRC. Its registration had taken place on 6 June 2014, long before Mr N's transfer application was received in March 2015;
- there was no suggestion of Mr N attempting to access his benefits before age 55. He had a protected pension age of 50 under the RHM Scheme and was already age 52 at the time of the transfer;
- Mr N had applied no pressure to have the transfer completed quickly;
- the documents it received gave no indication that Mr N had been approached unsolicited. Also, it was not the first time he had considered transferring his benefits;
- there was nothing to suggest that Mr N had been informed of a legal loophole;
- Aon Hewitt was not processing an unusually high number of requests relating to the Incartus Scheme at the time of Mr N's transfer;
- there was nothing to suggest that it was an overseas transfer;
- Mr N confirmed he had read and understood the warnings in the Scorpion Leaflet;
- Mr N confirmed he was aware of the benefits he could expect in the Incartus Scheme;
- Mr N said he was transferring to an occupational pension scheme with his current employer;
- no communications were received from parties chasing the transfer; and
- Mr N raised no concerns or questions, despite its invitation to "get in touch" if there was anything he wanted to know. He could have paused the transfer process when asked for evidence of his identity.