

Ombudsman's Determination

Applicant	Mr N
Scheme	Social Housing Pension Scheme (the SH Scheme)
Respondent	TPT Retirement Solutions (TPT)

Outcome

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

Complaint summary

2. Mr N's complaint concerns the transfer of his benefits from the SH Scheme to the Incartus Investments Pension Scheme 2 (**the Incartus Scheme**). He says that TPT 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 the solicitors, Hugh James.
5. On 29 November 2004, Mr N started employment with Look Ahead Care and Support Limited, and he joined the SH Scheme on 1 December 2004. The SH Scheme is a final salary occupational pension scheme.
6. On 20 October 2011, Mr N left active service and became entitled to deferred benefits in the SH Scheme.
7. On 4 December 2014, Only Consultancy Ltd (**OCL**) sent a fax to TPT requesting a transfer pack in respect of Mr N. A signed authority from Mr N was provided.
8. On 17 December 2014, TPT sent OCL the requested transfer pack. An illustration showing a cash equivalent transfer value (**CETV**) of £48,073.27 was provided.

9. On the same day, TPT wrote to Mr N to confirm that the transfer pack had been issued to OCL. It included a note: 'Important Notes – Inducement Offers', the contents of which can be found in Appendix 1. It also said:

“... we would suggest that you seek Independent Financial Advice before deciding whether or not to transfer your benefits. I have attached a form with the title 'Where to Get Help' which may assist you in finding further advice.”

10. In late December 2014 or early 2015, GoBMV made an unsolicited contact with Mr N and one of its agents (**the Agent**) subsequently visited him at his home.
11. In March 2015, an Incartus Scheme application form (**the Form**) was completed by Mr N and sent to TPT. The Form confirmed that he wanted to transfer his benefits from the SH Scheme, together with benefits from two other arrangements, to the Incartus Scheme. It also provided notification that Mr N was planning to pay £100 a month to the Incartus Scheme. The intermediary details section of the Form listed the Agent as the consultant involved in the transfer. Mr N had ticked a box on the Form stating that: “I accept that I have not received any advice on transferring my pension fund to the Scheme, or making contributions to the Scheme.” The following wording was also present:

“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.”

12. The Form went on to say:

“I understand that the Scheme is established for the purpose of providing lump sum and pension benefits on my attaining the age of 55 (or at such later date as I may request), and on my death.”

13. Later that month, TPT acknowledged receipt of the Form and asked for confirmation of the contracting out number and start date of the Incartus Scheme.
14. On 18 and 20 March 2015, the administrators of the Incartus Scheme, AFM Administrators (**AFM**), sent further transfer paperwork to TPT. This paperwork included a copy of the Incartus Scheme’s HM Revenue & Customs (**HMRC**) registration certificate. This showed that the Incartus Scheme had been registered on 6 June 2014 with a pension scheme tax reference of 00811508RR. AFM also confirmed that the Incartus Scheme’s reference number with the Pensions Regulator (**TPR**) was PSR12009347.
15. On 19 March 2015, Mr N signed a transfer request form in respect of one of the other two transfers to the Incartus Scheme that he was considering at the time. The form included the wording:

“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.”

16. On 15 April 2015, TPT wrote to AFM and Mr N to confirm that Mr N’s benefits in the SH Scheme had been transferred to the Incartus Scheme. It confirmed that the CETV of £48,073.27 had been paid on 13 April 2015.
17. On 23 April 2015, the Agent confirmed to AFM that Mr N no longer wished to make regular contributions to the Incartus Scheme.
18. On 10 January 2017, Dalriada Trustees Limited was appointed by TPR to act as Trustee for the Incartus Scheme. Mr N was notified of this in May 2017.
19. On 17 March 2020, Hugh James raised a complaint with TPT on behalf of Mr N. It said:-
 - Mr N had been advised by the Agent that his pension in the SH Scheme was not performing well. He was told that a transfer to the Incartus Scheme would be more secure, and he could receive greater returns. He was also told that Incartus was a reputable company.
 - At the time, GoBMV was not authorised or regulated by the Financial Conduct Authority to provide advice. The paperwork also indicated the involvement of OCL, another unregulated firm.
 - TPT recommended to Mr N that he seek financial advice and provided a document ‘Where to Get Help’. However, it did not engage directly with Mr N in relation to the risks of pension liberation.
 - See Appendix 2 for a summary of the information about the receiving scheme, and those advising Mr N, that TPT should have obtained, together with a number of red flags it should have investigated. TPT had not made these enquiries, nor had it identified the risks nor engaged with Mr N in relation to the red flags.
 - Had TPT provided adequate warnings, Mr N would not have transferred his pension as he was not actively seeking to do this.
 - Mr N wanted TPT to put him back in the position that he would have been had the transfer not taken place.
20. On 15 July 2020, TPT provided its response. It said:-
 - It did not accept that inadequate due diligence had been undertaken.
 - Hugh James’ letter to it suggested that the Agent had advised that Mr N’s existing benefits were not performing well. It maintained that he was also told that, if he were to transfer his benefits to the Incartus Scheme, his pension would be more secure. Hugh James also said that the Agent had made assurances that Incartus

was a reputable company and Mr N's pension would perform well. So, it was the Agent that Hugh James should be pursuing for redress.

- In its letter of 17 December 2014, it had strongly recommended that Mr N very carefully consider the information provided and compare the benefits resulting from each option available to him. It also suggested that Mr N take financial advice. From the Form, it was clear that Mr N had not done this.
- TPT carried out the due diligence checks in place at the time, including requesting evidence of whether the Incartus Scheme was registered with HMRC. The Incartus Scheme had been registered on 6 June 2014, meaning that it was not newly created. The Incartus Scheme's TPR reference number had also been provided.
- It did not agree that the transfer included all the warning signs typical of pension scams at the time. So, there was no reason to expect any illegality. In particular:-
 - In relation to no member copy of documentation being a warning sign, it received Mr N's handwritten form, which he had signed and partially completed himself. It was not unusual for members to partially complete transfer forms.
 - There had been no attempt to speed up the transfer. It had not been chased by anyone and the transfer proceeded at a normal pace.
 - There was nothing to suggest that the Incartus Scheme was an overseas scheme.
 - There was no evidence that Mr N was being encouraged to take his pension early. At the time of the transfer, he was age 53. Furthermore, Mr N had a protected pension age of 50 under the SH Scheme so he could have taken his pension at any time.
- From the evidence available, Mr N would more likely than not have proceeded with the transfer, irrespective of whether a warning had been given to him. The transfer was part of a concerted effort by Mr N to consolidate his pension pots. It was not aware if any of the other schemes which were also involved in the transfer of Mr N's benefits to the Incartus Scheme had raised concerns about it.

21. Mr N and Hugh James made the following additional submissions:-

- The Agent had told Mr N that, if he transferred his benefits to the Incartus Scheme, his pension would grow by between eight and 10 per cent a year. Mr N did not know at the time that the Agent was unregulated. He did not undertake any background checks on the Incartus Scheme as he trusted the Agent.
- Mr N was not offered any incentives to proceed with the transfer, apart from the growth he had been promised.

- Mr N could not recall whether he received the 'Predators stalk your pension' leaflet (**the Scorpion Leaflet**). He does not think that TPT made direct contact with him to discuss the transfer.
- At the time of the transfer, Mr N was struggling financially as he had to pay bills and his mortgage and had to provide for his family. He was a health care assistant earning between £18,000 and £21,000 per annum and had been sick around that time.
- Following the transfer of his SH Scheme benefits, and benefits from other arrangements, to the Incartus Scheme, Mr N was left with a pension with NEST worth around £17,000.

22. TPT made the following additional submissions:-

- While it could not point to a specific letter sent to Mr N, a copy of the Scorpion Leaflet was routinely sent to members seeking to transfer out at the time it was processing Mr N's transfer. It issued this literature when dealing with schemes with which it was unfamiliar, or which had certain characteristics. As the literature was included as and when required, it was not referred to in covering letters. Nor were copies scanned back to member records.
- It did not know that Mr N was approached unsolicited, or whether he was informed of a legal loophole he could benefit from.
- At the time of Mr N's transfer, it had not made any previous transfers to the Incartus Scheme and, to the best of its knowledge, had no previous involvement with Incartus.

Adjudicator's Opinion

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

- The Adjudicator said that this complaint was concerned with the level of due diligence that TPT was required to carry out at the time that a request was made to transfer Mr N's benefits to the Incartus Scheme. The Adjudicator agreed it was similar in context to the complaint that the Pensions Ombudsman determined in PO-26967. He was also aware of another complaint that was similar, PO-16475 and he said that it was worth repeating here paragraphs 40 and 41 of that Determination:

"However, as highlighted by the Adjudicator, this matter cannot be viewed with the benefit of hindsight and it is the circumstances at the time of transfer which are of importance.

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 paperwork, unless there were any indications of why the transfer should not go ahead, such as those concerning pensions liberation. The page preceding the Checklist in the Scorpion Guide provided an outline of potential warnings 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."

- In this instance, TPT had received Mr N's request for a transfer to the Incartus Scheme. It had a statutory duty to transfer his funds unless it had any indications that the Incartus Scheme was being used as a pension scam or for pension liberation. TPT said that its initial checks did not provide any indication that the transfer requested by Mr N was a high-risk transfer.
- It maintained that this was the case because the Incartus Scheme was registered with HMRC and the registration had been in place for over ten months before the transfer took place. In addition, Mr N was not attempting to access his pension before age 55 and he had not pressured to complete the transfer early. Mr N had not indicated to it 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 it and was now involved in more than one transfer request.
- 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 month. In the Adjudicator's view, it was reasonable to allow TPT the necessary time to implement any changes arising from the publication of the 2015 Guide. In previous Determinations by the Pensions Ombudsman a three-month period had been considered a reasonable timeframe in which to do this.
- The Adjudicator took the view that it would have been unreasonable to expect TPT to have fully followed the 2015 Guide when transferring Mr N's benefits. In the Adjudicator's opinion, it was the previous 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.
- The Adjudicator reviewed the 2013 Guide, and, in his opinion, the factors considered by TPT were the factors that were appropriate before deciding whether further investigation was required.
- In fact, Mr N had been approached unsolicited by the Agent, but this information had not been passed to TPT by Mr N. The Adjudicator took the view that a more robust approach for this part of TPT's checks would have been for it 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.

- The Scorpion Leaflet contains warnings about being approached unsolicited. While Mr N was unable to recollect whether he received the Scorpion Leaflet, TPT maintained that it was routinely sent to members at the time that it was processing Mr N's transfer. In particular, it said that it was issued when dealing with schemes with which it was not familiar. As the Scorpion Leaflet was not issued when dealing with a scheme that it was familiar with, TPT maintained that it was not referred to in its standard letters. Nor was it scanned to the member records.
- The Adjudicator maintained that he had no reason to disbelieve TPT's assertion that, in cases like Mr N's where TPT was not familiar with the receiving scheme, the Scorpion Leaflet was issued to the member. So, he 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.
- 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 TPT and it had discussed this with him, it is difficult to see what it might have said that would have led him to change his mind about transferring. He was aware that the Agent had made an unsolicited approach to him and yet he had decided to proceed with the transfer anyway.

24. The Adjudicator went on to summarise his views on the checks undertaken by TPT and consider the additional areas that Hugh James had said should have been investigated:-

- Having taken this into account, the Adjudicator was of the view that the due diligence checks carried out by TPT were reasonable. There were no indicators, at the time of the transfer, that the Incartus Scheme was high risk.
- Hugh James asserted that TPT should have sought further information in relation to:-
 - The location of the Incartus Scheme and AFM.
 - Details of any employment link between the Incartus Scheme and Mr N.
 - The marketing methods used by those involved in the transfer.
 - The suitability of the underlying investments.
 - Full details of the provenance of the Incartus Scheme.
 - Details of who provided Mr N with advice in relation to the transfer and whether there were any fees paid for the advice.

- However, it was only if the initial analysis throws up some concerns that the 2013 Guide recommends that further checks were undertaken, otherwise the transferor could consider proceeding to payment. In the Adjudicator's opinion there was no requirement for TPT to investigate these aspects of the transfer.
- Furthermore, in view of the checks that were carried out, the Adjudicator took the view that it was reasonable for TPT to have made the transfer payment to the Incartus Scheme.

25. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

26. Hugh James provided some further comments in response to the Opinion. In summary, it said:-

- There was no direct evidence to support the contention that Mr N was sent the Scorpion Leaflet. No cover letter or other record of it being issued had been provided.
- Mr N said that he did not recall receiving the Scorpion Leaflet, which was very memorable given the image of a scorpion on the front. It seemed very likely that Mr N would have recalled seeing it if he had been sent it.
- Given the lack of evidence in relation to Mr N being provided with the Scorpion Leaflet, any presumption should be drawn in favour of Mr N.
- Mr N advised that, had he received the Scorpion Leaflet, then he would have made further investigations prior to transferring his benefits out of the SH Scheme.
- Mr N knew that he had been approached unsolicited, but TPT had not warned him that this was a significant risk factor for pension fraud and scams.
- A previous case determined by the Ombudsman, PO-12763, bore a number of similarities to Mr N's case. In particular, there was no evidence of the Scorpion Leaflet being sent and the transfer would not have gone ahead had the applicant been alerted to the risks. The Determination found that the Trustees should have done more, even in circumstances where the scheme was not a new one.
- The other possible red flags that it had previously identified should have been considered by TPT.

27. TPT provided some further comments. In summary, it said:-

- In common with the practices of many pension schemes, the Scorpion Leaflet was included in the transfer pack sent to Mr N. So, there would be no separate reference to it.

- Hugh James appeared to be viewing the position with the benefit of hindsight. In particular, it was suggesting how Mr N might have acted if he had been aware of the eventual outcome of the transfer at the time the transfer took place.
- It did not agree that the case referred to by Hugh James and Mr N's case were similar. In Mr N's case it had carried out an appropriate level of due diligence and Mr N was advised to seek independent financial advice before the transfer was completed.

28. I have considered the additional points raised by Hugh James and TPT, however they do not change the outcome, I agree with the Adjudicator's Opinion.

Ombudsman's decision

29. I have considerable sympathy for Mr N, who appears to have been a victim of pension liberation fraud and is not able to access his funds.
30. 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.
31. Essentially, TPT 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.
32. The 2013 Guide provided an outline of potential warning signs which could suggest pension liberation fraud activity was taking place. However, there is no indication that TPT had any reason for concern.
33. Hugh James maintained that there was no direct evidence to support the contention that Mr N had access to the Scorpion Leaflet. I note that, on 19 March 2015, Mr N signed a transfer request form in respect of one of his other transfers to the Incartus Scheme. By signing this form, he acknowledged that he had read the Scorpion Leaflet.
34. It was not until 13 April 2015 that Mr N's benefits were transferred out of the SH Scheme. So, Mr N had ample time, having read the Scorpion Leaflet, to have contacted TPT to ask it to cancel the transfer.
35. Hugh James has said that, had Mr N received the Scorpion Leaflet, he would have made further investigations. I do not agree that this is the case. Mr N had access to the Scorpion Leaflet before the transfer took place and there is no evidence of him undertaking these investigations. Furthermore, Mr N chose to proceed with the other transfer that he requested on 19 March 2015 despite having read the Scorpion Leaflet.
36. Hugh James has acknowledged that Mr N knew that he had been approached unsolicited, but he had not been warned that this was a significant risk factor. I find

that this was not the case as this warning was present in the Scorpion Leaflet that he had confirmed that he had read.

37. Hugh James has brought to my attention a previous case that I Determined where I upheld the complaint. It said that this case bore a number of similarities to Mr N's case. There are a number of factors that need to be considered when determining cases of this type. It is usually a combination of these factors that leads me to come to my conclusion.
38. While I acknowledge that these two cases are similar, I do not agree that they are identical. For example, in the case mentioned by Hugh James, there is no evidence of the Scorpion Leaflet being sent to the applicant. In the case of Mr N, while there is some doubt as to whether he received the Scorpion Leaflet from TPT, he has confirmed that he received a copy from another source. So, there is good reason why these two cases do not have identical outcomes.
39. Hugh James has listed a number of additional checks that it says that TPT should have undertaken. I do not agree. The 2013 Guide identifies some initial checks that need to be undertaken before considering whether further checks are required. In the case of Mr N's transfer, these initial checks did not indicate any red flags. So, TPT was not obliged to undertake any additional checks.
40. It is regrettable that TPT's decision to proceed with the transfer has not transpired to be in Mr N's best financial interests. However, it fulfilled its due diligence obligations with the information it held at the time.
41. In conclusion, I do not find that TPT failed in its due diligence obligations in respect of the transfer.
42. I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
2 November 2022

Appendix 1

Copy of the “Important Notes – Inducement Offers” document

“The following information may not apply to you, however, it is important that you read this if your employer has offered an inducement or incentive to transfer your pension benefits to another scheme.

Employers sometimes offer inducements, also called incentives, to members of Defined Benefit (DB) pension schemes to persuade them to give up certain pension benefits or rights. Alternatively, an inducement might be used to get members to agree to transfer their benefits out of the DB scheme to an alternative pension scheme. In either case this is usually, though not always, because the employer believes it will make a financial saving.

Examples of inducements or incentives include the offer of a cash payment, an increase to a transfer value offered, or both of these.

The Trustee of the Pensions Trust has a legal duty to act in the best financial interests of scheme members. It must also be satisfied that members are given all the information they may need to be able to make an informed choice about any inducement offer made to them. There may also be protections under scheme rules and pensions law for the Trustee to take into consideration.

If you are offered an inducement to transfer out of a DB pension scheme, you need to consider the following:

- whether the transfer value that you have been offered represents good value in exchange for your DB pension benefits.
- the type and likely amount of the benefits the transfer value will secure in the new scheme and how secure the benefits are in that scheme, and
- the value to you of the cash inducement.

In a DB scheme, the employer is largely responsible for ensuring that you receive the pension benefits promised, but in DC schemes the member bears all of the risk, e.g. if the value of your pension fund were to fall this would have a direct impact on your pension.

If you are offered a cash inducement or increased transfer value to transfer out of a DB scheme, you should let The Pensions Trust know. We can then establish the details of the inducements being offered.

Given the complexities involved, we would strongly recommend that if you are offered a cash inducement, you should take independent financial advice. Your employer may offer assistance with this; alternatively, details of how to

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find an Independent Financial Adviser in your area can be found on the 'Where to get help?' sheet included with this letter.

The Pensions Regulator has also issued guidance for members and this can be found on the website: www.thepensionsregulator.gov.uk/docs/inducement-offers-guidance.pdf

Appendix 2

Summary of Hugh James' comments on the information TPT should have obtained and the red flags it should have investigated

43. Hugh James said that TPT should have obtained information about the receiving scheme and those advising Mr N, including:

- the type and legal status of the Incartus Scheme;
- the date the Incartus Scheme was established;
- the location of the Incartus Scheme and AFM;
- details of any employment link between the Incartus Scheme and Mr N;
- the marketing methods used by those involved in the transfer;
- details of any cash payments being offered to Mr N;
- the investment choices that were being made;
- the provenance of the Incartus Scheme; and
- details of who provided Mr N with advice in relation to the transfer and whether there were any fees paid for the advice.

44. It said that these enquiries would have raised a number of red flags including:

- the Incartus Scheme was only newly registered;
- 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 the age of 55 and had no pressing need to transfer his benefits;
- the transfer came about after an unsolicited approach to Mr N;
- Mr N was not being advised on either the investment choices or the proposed transfer by an authorised individual; and
- Mr N was an unsophisticated investor.