

Ombudsman's Determination

Applicant	Mr H
Scheme	Debenhams Retirement Scheme (the Scheme)
Respondent	Debenhams Pension Trust Ltd. (the Trustee)

Outcome

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

Complaint summary

2. Mr H has complained that the Trustee did not carry out adequate due diligence when it processed and accepted his request to transfer to the Optimum Retirement Benefit Plan (the **Receiving Scheme**). He claims that had the Trustee done so, it would have stopped the transfer from proceeding and he would not have lost his pension funds. So, he would like the Trustee to restore the value of his fund or make an award, in recognition of its error.

Background information, including submissions from the parties

3. On 1 March 2002, Mr H joined the Scheme, which was a defined benefit occupational pension scheme. He was an active member of the Scheme until it closed to future accrual on 31 October 2006, although the salary link was maintained until Mr H left his employment on 12 June 2015.
4. In March 2016, Mr H transferred his other, defined contribution, benefits linked to this employment, to another pension scheme. He later explained that one of the reasons for doing so, was his desire to disassociate himself with Debenhams and its brand.
5. On 7 June 2016, Mr H telephoned the Debenhams Pensions Department (the **Pensions Department**). The Pensions Department had noted¹ that the telephone call related to a "transfer value to new employers Personal Pension arrangement".
6. On 14 June 2016, the Scheme issued a Cash Equivalent Transfer Value to Mr H, with a three-month guarantee start date of 30 June 2016. This included the following statements:

¹ The Trustee does not have any recordings of the telephone calls between the Pensions Department and Mr H.

“I have noted from your recent correspondence that you are interested in the possibility of transferring your pension benefits to a personal pension arrangement with your current employer.”

“Please note that, if the Transfer Value exceeds £30,000, legislation requires the Trustees of the Debenhams Retirement Scheme to check that appropriate independent financial advice has been taken within three months of a member applying to transfer their ‘safeguarded benefits’ to another pension arrangement providing ‘flexible benefits’.”

“We recommend that the Member seek independent financial advice if he/she is in any doubt about whether a transfer is the best option. We cannot give financial advice. The following organisations, however, may be able to assist [Financial Conduct Authority (**FCA**), The Pensions Regulator (**TPR**) and The Pensions Advisory Service (**TPAS**)].”

Declaration: “I understand the implications of transferring to a non-contracted-out scheme and that some protections which applied under the Debenhams Retirement Scheme may not apply after the transfer.”

7. On 21 July 2016, Mr H signed a letter of authority which enabled the Pensions Department to provide Optimum Financial Solutions (**OFSL**), the Receiving Scheme’s administrator, with information about his benefits. The Pensions Department received a copy of this letter on 24 August 2016.
8. On 30 August 2016, the Pensions Department telephoned Mr H as his transfer application, dated 23 August 2016, did not include details of the Receiving Scheme. It emailed a copy of this to Mr H on 30 August 2016, asking him to complete the details and reminded him of the requirement to obtain independent financial advice.
9. On 7 September 2016, Mr H emailed the Pensions Department, stating that he had sent back the forms by first class post that day. As there was too much to fill in, he wrote it at the bottom of the page and also included an attachment with the details.
10. On 22 September 2016, the Pensions Department emailed Mr H informing him that it had not received a written statement from an Independent Financial Advisor (**IFA**) with suitable authority, “on behalf of Optimum”, indicating that Mr H had received appropriate advice. It also required a copy of his application form relating to the Receiving Scheme.
11. On the same date, Mr H responded, stating that he had heard from “Optimum”, and it had said the documents had been sent “a little while ago now”. However, it would resend the information that afternoon.
12. On 23 September 2016, the Pensions Department emailed Mr H saying that it had since received a copy of the Receiving Scheme’s application form, but it stated that Mr H had not received advice and the Receiving Scheme had not completed the Financial Adviser Declaration. The Pensions Department advised that legislation

required the Trustee to check that appropriate independent financial advice has been given. So, it needed a written statement from Mr H's IFA. Unless it received this by 30 September 2016, it would be unable to proceed with the transfer.

13. Mr H responded on the same date, saying he had asked "them" to provide the details, but did not indicate if this meant the Receiving Scheme or his IFA. He also said the following:

"Worst case scenario [sic] is that if they delay it any longer I'll just pay the £180 for the revaluation as I do want to transfer this pension to a fund that benefits me in the longer term."

14. The Pensions Department replied to this on the same date, advising Mr H that if it became necessary to recalculate his transfer value, it would reduce as the transfer factors had recently been updated and were now less favourable.
15. On 27 September 2016, the Pensions Department received a telephone call from the Receiving Scheme. The Pensions Department advised that it required confirmation that Mr H had received relevant advice and that this was now urgent. It explained that if all transfer documentation was not received by 30 September 2016, Mr H would have to pay for another transfer value quotation and the value would go down as the Trustee had reviewed the factors.
16. On 29 September 2016, the Pensions Department received the required statements from Mr H's IFA, in a letter dated 22 September 2016. This stated that the advice had been provided by Richard Hardy of WJR Financial Solutions, who recommended that Mr H kept his benefits in the Scheme:

"I have provided advice solely in relation to a Transfer Value Analysis report in respect of [Mr H] and his deferred pension benefits held within the [Scheme].

[...]

Based on the information provided within the Transfer Valuation Report only, I have recommended [Mr H] does not transfer his benefits away from the [Scheme].

I have not provided advice relation to the receiving scheme.

My advice is based solely on providing [Mr H] with a Transfer Value Analysis report only and does not take into account his personal circumstances, aims and objectives, attitude to investment risk and capacity for loss."

17. The Pensions Department emailed Mr H on the same date to say that it had received a copy of the "advice letter" from the IFA, and pointed out that the transfer had not been recommended. However, it noted that Mr H had nevertheless confirmed that he wished to transfer.

18. Minutes after, Mr H replied, thanking the Pensions Department for supporting the transfer. It appears that Mr H used his work email address for these exchanges, which was unrelated to the Receiving Scheme. On at least two occasions, Mr H included his work signature in his email response to the Pensions Department, which demonstrated that his work was based in the West Midlands.
19. On 12 October 2016, Mr H's transfer to the Receiving Scheme completed. Prior to completion, the Pensions Department had checked the following as part of its due diligence:
 - the Receiving Scheme's terms and conditions, which were consistent with it being an occupational pension scheme;
 - its HMRC registration, which demonstrated that it was registered and had been since June 2015;
 - the FCA register for the IFA's firm and the IFA's permissions;
 - for the IFA's confirmation that Mr H had taken appropriate financial advice; and
 - its understanding that despite being advised against the transfer, Mr H wanted to continue with it.
20. On 4 June 2020, after receiving a communication from the TPR-appointed independent trustee of the Receiving Scheme, Mr H complained to the Trustee under the Scheme's IDR. He said, in summary:-
 - He explained his circumstances at the time he requested to transfer, and said that he was not really aware of what he was doing.
 - The Scheme had failed in its obligation to carry out any form of effective due diligence on the Receiving Scheme before transferring his funds. Had the Scheme done so, it would have been easily identifiable that the Receiving Scheme was a fraudulent scheme, which he stated was unregulated.
 - There were numerous warning signs that he did not know to look out for, but as an established pension provider, the following checks should have been carried out:-
 - There was no attempt to ascertain whether he was employed or ever employed by the sponsoring employer.
 - The fact that the sponsoring employer and the Receiving Scheme were not close to his home address.
 - The Receiving Scheme was unregulated, not backed by the FCA and had only been established 12 months before the transfer.
 - The Scheme did not highlight that he was in a final salary scheme which had protected benefits that would be lost if he transferred.

- He did not recall receiving a copy of TPR's 'Scorpion' pensions scams leaflet (the **Scorpion leaflet**) that should have been issued to him.
- Had the Scheme shared any findings from its due diligence, he would have been more cautious and would have asked to stop the transfer.

21. On 25 September 2020, the Trustee issued its one-stage IDRPs response. It said, in summary:-

- It outlined the steps it had taken regarding its due diligence.
- Mr H had a statutory right to transfer, so the Trustee was obliged to make the transfer if the conditions set out in the legislation were satisfied which, in Mr H's case, they were.
- It was standard practice for the Scorpion leaflet to be sent out with all transfer value quotations. All of the transfer documentation was reviewed by a second staff member before being sent, so it was unlikely it would have been omitted.
- It was the Pensions Department's standard practice to ensure that whenever it spoke to a member who was considering a transfer to a defined contribution pension scheme, the member was made aware of the guaranteed defined benefit pension benefits they would be giving up in exchange for benefits that carried no guarantees. The member of staff that dealt with Mr H's transfer said she spoke to Mr H and made sure he was made fully aware.
- Mr H was sent details of the defined benefits provided by the Scheme with the transfer quote attached to the letter from the Pensions Department dated 14 June 2016. This set out the amount of the deferred pension at the date of leaving, the revaluation rate and the rate of guaranteed increases on the pension in payment, the fact that a surviving spouse's pension was payable as well as a 5-year guarantee.
- Based on the evidence, it was the Trustee's view that the Pensions Department carried out a reasonable and sufficient level of due diligence and that there had been no maladministration.

Mr H's position

22. He does not believe that the Scheme carried out "complete" due diligence. Had it done so, it would have seen clear anomalies, and he would not have transferred out.
23. In particular, the 2015 version of the Pensions Scams Industry Group's publication "Combatting Pension Scams – a Code of Good Practice" (the **2015 Code of Good Practice**) contains clear ways to identify a scam scheme and highlights warning signs. In his view, the Scheme failed to ask him even the most basic question of how he had heard about the Receiving Scheme and whether he had received any sort of financial benefit for the transfer.

24. When he emailed the Pensions Department, his emails contained his signature that confirmed his job title and the location of his role. This should have been a warning sign, as it did not match the employer or the Receiving Scheme's names. He did not think the *Hughes v Royal London*² judgment was relevant to his case, as this related to a transfer from an occupational pension scheme to a private pension scheme.
25. He believes the transfer completed swiftly, with one telephone call from the Scheme to check whether he was still happy to transfer to the Receiving Scheme. He stated he said yes as he thought it was going to be "the final contact [he] ever had with Debenhams, and that [his] investment would now be with [the Receiving Scheme], which in [his] head was a better scheme and away from the company [Debenhams] that had hurt [him] a year or so earlier."
26. OFSL and the Receiving Scheme were registered in a small block of serviced, temporary rented offices. Had the Scheme reviewed this, it would have seen that the address showed a large number of businesses using the address, a number of which had been liquidated.
27. He does not recall ever seeing the advice from the IFA, but believes that this may have been in the documents he signed "en masse". He later submitted that he had never been in contact with or seen a copy of the advice from WRJ Financial Solutions. Had the Scheme checked he had seen this document or sent him a copy, it would have rung alarm bells. When asked why he did not question this at the time, he said he was under the impression this was something "in the transfer process that Optimum did for me."
28. He believes he skim read the email from the Pensions Department about the advice and, apart from the word "not", it could be read as if the transfer had been recommended.
29. The Receiving Scheme's application form contained an error. It made reference to auto-enrolment and a fee charged for this. Had the Scheme read the terms of the transfer, it would have seen this anomaly.
30. The Scheme should have explored:
 - the fact that there was no employment link;
 - he was in a final-salary defined benefit scheme with protected benefits but was transferring out to a defined contribution scheme;
 - the Receiving Scheme had not been established for a long time;
 - the geographic location of the Receiving Scheme and the employer were nowhere near his home; and

² *Hughes v Royal London Mutual Insurance Society Ltd* [2016] EWHC 319 (Ch)

- that he had been cold called and introduced to the Receiving Scheme.
31. He believes that the Trustee's view that it had to follow through with the statutory right to transfer is null and void. It did not have a "total statutory requirement" to transfer and it could have raised red flags/blocked the transfer.
32. Once The Pensions Ombudsman started its investigation, Mr H also added the following:
- He had signed the transfer paperwork without many of the sections filled in, at least a month before a copy of the advice had been sent to the Pensions Department.
 - In the Pensions Department's email dated 29 September 2016, it said "however you have confirmed that you wish to go ahead with the transfer." He believes this demonstrates a previous conversation about the transfer took place before he had been in receipt of the advice.
 - He would have expected the Pensions Department, when in receipt of advice against a transfer, to have used wording such as "I am concerned that the advice we received today states that you are not recommended to transfer out to this scheme". He also noted that there was no follow up question, asking him whether he was sure he wanted to proceed against this advice.
 - He does not believe OFSL had the necessary permissions to advise upon or arrange pension transfers. So, the Scheme ought to have checked this.

The Trustee's position

33. It had checked the Receiving Scheme's terms and conditions and its HMRC registration. It had reminded Mr H of the financial advice requirement and once this was received, it had checked that the IFA was on the FCA register, was qualified to advise on pension transfers, and checked the IFA's confirmation that Mr H had taken appropriate financial advice. Following this, it had emailed to confirm receipt and reiterated that Mr H wanted to continue with the transfer despite having received advice against it.
34. The Pensions Department's standard practice was to ask the member whether they were transferring to a scheme of their new employer when contacted about a transfer. On Mr H's record sheet, there is a manuscript note that states, "Transfer value to new employer's Personal Pension arrangement." So, the evidence is that this question was asked and he gave a reply. It would have been unusual for a scheme administrator to ask a member to provide evidence of employment if they had said they were transferring to their new employer's scheme.
35. The High Court in *Hughes v Royal London* made it clear that it was not necessary for a member to be employed by the sponsoring employer of the receiving scheme in order to have a statutory right to transfer. It is sufficient that they are an earner, even if their earnings are from another source.

36. The transfer process started on 7 June 2016 and concluded on 12 October 2016. The Pensions Department sent Mr H a transfer quote and details of the benefits payable from the Scheme on 14 June 2016. This reflected the efficiency of the Scheme, rather than the absence of due diligence.
37. The Pensions Department is a small team and the member of staff who dealt with Mr H recalls speaking with him on several occasions. While they cannot recall exactly what was said, they are confident Mr H would have been treated the same as any other member in that he would have been made fully aware of the risks of transferring and the defined benefits that he would be giving up. In addition, although a copy of the Scorpion leaflet is not on Mr H's file, it was standard practice for the Scorpion leaflet to be sent out with all transfer value quotations.
38. It was not the Trustee's or the Pensions Department's role to give financial advice. Mr H took advice from an IFA and signed a transfer form on 23 August 2016, agreeing to the declarations. The advice Mr H received was from WJR Financial Solutions, which was authorised by the FCA to carry on the regulated activity in 53E of the Regulated Activities Order. So, whether or not OFSL were regulated for giving pensions advice was not relevant.
39. In its view, Mr H was determined to proceed with the transfer and would have made the same decision regardless of any additional warnings that might have been given to him. It noted that the Scorpion leaflet was sent with his transfer quote, there were warnings contained in the transfer form that Mr H had signed, plus he received advice from an IFA, who recommended that he should not transfer. Despite this, Mr H decided to proceed with the transfer.
40. After being asked, the Trustee confirmed that there was no evidence of any third-party information requests prior to Mr H's initial transfer. It also stated that the reason for saying "however, you have confirmed that you wish to go ahead with the transfer" in its email dated 29 September 2016, is because it had received emails from Mr H, that post-dated the date of the advice, confirming that he wanted to transfer his pension to a fund that benefitted him in the longer term.
41. It also confirmed that there was no evidence that the Pensions Department asked Mr H any questions about the employment link. However, the Pensions Department were in direct contact with Mr H and had no reason to question his statement at the outset, that it was his new employer's scheme.

Adjudicator's Opinion

42. Mr H'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 43 to 48 below.
43. The Adjudicator reviewed the applicable transfer due diligence guidance available at the time of Mr H's transfer, which was TPR's February 2013 guidance and the

updated 2015 Code of Good Practice. The former recommended that transferring schemes issued a warning to members about the dangers of pension liberation fraud, or 'scams'. The most common way of doing this was to include the Scorpion leaflet with the transfer pack.

44. Although the Trustee did not have a copy of this on Mr H's file, the Adjudicator was not persuaded that this meant it was omitted for the following reasons:-
- The Trustee had said it was standard practice for a copy of the Scorpion leaflet to be included with every transfer value quotation. Given that the transfer request took place nearly three years after TPR's guidance had been first issued, this process would have been well established.
 - It was her understanding that a number of pension providers manually added the Scorpion leaflet to transfer correspondence at a later point, once the personalised transfer quotation had been printed.
 - The Trustee said that a second member of staff would have reviewed the paperwork before it was issued.
45. Page 8 of TPR's February 2013 guidance listed criteria that transferring schemes ought to "look out for". This included, but was not limited to:
- Receiving scheme not registered, or only newly registered, with HMRC;
 - Member is attempting to access their pension before age 55;
 - Member has pressured trustees/administrators to carry out transfer quickly;
 - Member was approached unsolicited;
 - Member informed that there is a legal loophole; and
 - Receiving scheme was previously unknown to the ceding scheme's administrator, but now involved in more than one transfer request.
46. The 2015 Code of Good Practice set out a two-stage due diligence process. The first stage was to check whether there were any factors that would indicate a pension liberation or scam risk. Only if this initial analysis threw up some concerns did the 2015 Code of Good Practice recommend further checks.
47. The initial analysis did not present a risk for pensions scams activity, nor had the Pensions Department received any information that indicated that Mr H had been cold called, incentivised into the transfer, misinformed about access to benefits or informed about a guaranteed rate of return/an overseas investment opportunity. So, it would not have needed to have carried out further due diligence.
48. While Mr H believed further checks should have been carried out and/or risks ought to have been identified as a result of specific information, the Adjudicator did not agree, for the following reasons:-

- It would not have been proportionate for the Pensions Department to have asked further information about the employment link. It appeared that Mr H had initially stated it was a transfer to his current employer and he had not questioned the statement that reflected this in the Scheme's correspondence dated 14 June 2016. So, there was little reason for the Trustee to doubt that this was the case.
- Mr H never confirmed the name or location of his employer, so although the Pensions Department received a number of emails from his work email address with his work signature, there would not have been a reason to notice or question this.
- In *Hughes v Royal London* the High Court decided that a person met the definition of "earner", for the purposes of a statutory transfer to an occupational pension scheme, if they had earnings from any source. So, the fact that Mr H was employed elsewhere would not have prevented the transfer from proceeding.
- The Receiving Scheme's status would not have indicated a risk as it was regulated by TPR and had been registered with HMRC for over a year at that point.
- The Pensions Department was communicating with Mr H directly, so it would not have needed to have checked OFSL's permissions. Further, Mr H had received advice from an IFA, not OFSL, so registered address checks would have been disproportionate.
- Mr H's protected benefits were outlined in the transfer paperwork issued to him on 14 June 2016. Further, it was reasonable for the Pensions Department to have believed that Mr H's IFA would have explained these benefits to him, considering the IFA had advised against the transfer.
- From the Pensions Department's point of view, there was nothing that indicated that Mr H had not received a copy of the IFA's advice. The advice was dated 22 September 2016, and Mr H had confirmed that he wanted to proceed with the transfer a day after this date. Further, when the Pensions Department had confirmed receipt of the advice to Mr H, and indeed noted that the transfer had not been recommended by the IFA, he did not inform the Pensions Department that he had not seen this. Although the advice was issued after he had signed the transfer paperwork, this would not have presented a risk, as Mr H had an opportunity to cancel his transfer request after receiving the advice.
- The Pensions Department did not need to question the reference to auto-enrolment, as this did not mean the Receiving Scheme was no longer an occupational pension scheme nor did it render the information inconsistent.
- The Pensions Department had reviewed salient information and had requested a completed application form and the relevant advice. Regardless of the speed or the advice received, Mr H wanted to transfer away from the Scheme for the reasons outlined in paragraph 25 above.

49. Mr H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr H provided his further comments which do not change the outcome.

50. In summary, Mr H said that:-

- To satisfy the due diligence guidance in the 2015 Code of Good Practice, the Pensions Department needed to have contacted him and asked him a series of questions. Had it done so, it would have known that he was cold called, had been offered an overseas pension fund alternative, that there was no employment link and that he lived far from the Receiving Scheme's location.
- Due to the size of the transfer and because he was transferring defined benefit pension benefits to an "unregulated scheme", he believes the Pensions Department had an obligation to ask him questions about the reasons for his transfer.
- He believes his complaint has similar or identical circumstances to a number of previous complaints that had been determined and upheld, so his should also be upheld.
- The emails sent from his work email address demonstrated that he had no employment link to the Receiving Scheme nor OFSL, which was meant to be his new employer. So, the Pensions Department should have questioned this.
- He never saw the advice from the IFA and, had he seen this, it would have made him worry. Given that he had said that the Receiving Scheme had sent the information a little while ago, on 22 September 2016, this suggested that he had thought everything had been done and completed at this point.
- Taking this, and the fact he had said that "Optimum" would be providing the advice from the IFA, into account, the Pensions Department should have questioned why he had said the documentation had been sent prior to 22 September 2016, when the advice from the IFA was dated 22 September 2016. Further, the Pensions Department should have thought it was odd that he did not provide the advice nor the IFA's contact details.
- He believes that as the Receiving Scheme was a new scheme that the Scheme had not dealt with before, it should have checked its name and address. Had it done so, it would have seen that the address was that of a set of serviced offices.
- He was in no desperate hurry to leave the Scheme. So, had the Pensions Department conducted complete due diligence and shared any concerns with him, he would have done his own research.

51. I note the additional points raised by Mr H, but I agree with the Adjudicator's Opinion.

Ombudsman's decision

52. I have considerable sympathy for Mr H, who appears to have been a victim of pension liberation fraud and is not able to access his 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.
53. The Trustee had a statutory duty to transfer Mr H's funds. It was required to act upon this duty when it received his transfer paperwork, unless there were any clear indications of why the transfer should not go ahead, such as those concerning pension liberation fraud.
54. The 2015 Code of Good Practice and TPR's February 2013 Guidance provide an outline of potential warning signs which could suggest pension liberation fraud activity was taking place. However, in this case there is no indication that the Trustee had any reason for concern and, accordingly, it did not take the next step of making further enquiries.
55. Based on the information the Trustee held, Mr H had requested to transfer to what he described as his employer's pension scheme, it could see that the Receiving Scheme had been registered with HMRC for over a year and, contrary to Mr H's current belief, it was regulated by TPR, as its 'terms and conditions' were consistent with it being an occupational pension scheme.
56. In addition, it did not proceed with the transfer until it had confirmation that Mr H had received appropriate advice, from an FCA-regulated IFA with the correct permissions, and had reconfirmed its understanding that Mr H wanted to proceed with the transfer, despite the advice against this.
57. I appreciate that the 2015 Code of Good Practice suggests that the member ought to be asked a number of questions as part of the initial analysis, but it also recognises that it is for a trustee to decide how to obtain the information it needs. I very much encourage trustees and providers to read and consider the useful processes set out in the Code of Good Practice, but it should be noted that it is not a statutory code, with the mandatory obligations that entails, and that trustees and providers are entitled to decide upon their own, proportionate due diligence processes.
58. In this case, I am satisfied that the Scorpion leaflet would have, more likely than not, been sent to Mr H directly. The Scorpion leaflet highlights key warning signs, such as unsolicited approaches to the member, overseas transfers and incentives being offered to transfer – similar to many of the warning signs and questions set out in the 2015 Code of Good Practice. So, in my view, having received the Scorpion leaflet, Mr H had the opportunity to raise the fact he had been, for example, cold called with the Trustee, yet he did not do so. Taking this into account, I do not agree that the Trustee's decision not to explicitly ask Mr H those questions in this case amounted to maladministration, given the absence of warning signs in the application made to the Trustee.

59. With regard to Mr H's points about the emails sent from his work email address, there was no information in the paperwork or the Receiving Scheme's governing documentation that highlighted that Mr H's new employer was going to be OFSL. In any event, following *Hughes v Royal London*, Mr H could have earnings from any source, so I do not find that his work emails should have alerted the Trustee to possible risk.
60. Similarly, I do not consider the wording in the email exchange on 22 September 2016 is clear enough for the Trustee to have questioned the date of the advice letter and raise concerns that should have been acted upon (on the basis, Mr H says, that the date of the advice letter was the same date as that email exchange, but he had been told it had already been sent "a little while ago"). This is because the Pensions Department made reference to a number of documents (also including the application form for the receiving scheme) in its email to Mr H, and in his response, he did not specify what documents had previously been sent. Further, Mr H failed to inform the Pensions Department that he had not been in receipt of any advice, despite it being listed as a requirement for the transfer to take place and despite the references made to it in the Pensions Department's emails dated 29 September 2016.
61. Mr H has brought to my attention a number of previous cases that have been determined by my predecessor. He has said that these cases contain similarities, but have been upheld. 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.
62. While I acknowledge there are similarities, I do not agree that these cases are identical to Mr H's. For example, in two of the cases, the transfer took place prior to the 2015 Code of Good Practice and the case of *Hughes v Royal London*. So, at the time, the two-stage due diligence process had not been established, and the pensions industry's understanding was that in order to satisfy the definition of "earner" for the purposes of a statutory transfer to an occupational scheme, the person requesting the transfer had to be employed by an employer associated with the receiving occupational pension scheme.
63. In the other case quoted by Mr H, there was, importantly, nothing to suggest that a hard copy Scorpion leaflet had been issued at the time of the transfer request. In addition, there were other factors known to the ceding scheme, such as the member's insistence and the number of previous transfer attempts, which indicated that further due diligence was necessary. I have to consider each case on its merits based on the evidence presented, and there is good reason why Mr H's case does not have an identical outcome.
64. It is regrettable that the decision to proceed with the transfer has not transpired to be in Mr H's best financial interests. However, I consider that the Trustee fulfilled its due diligence obligations with the information it held at the time.

65. In any event, even had I found that there had been a failing in the due diligence (which I have not), I am not persuaded that further due diligence would have prevented the transfer from taking place. This is because Mr H has had multiple opportunities to point out the issues he is now highlighting, yet he chose not to. He did not question the Pensions Department's reference to his "Company pension administrators" in the letter dated 14 June 2016, nor the reference to the advice from the IFA (which, the Pensions Department noted, did not recommend a transfer). Additionally, as explained in paragraph 58 above, I am satisfied that Mr H would have, more likely than not, received a copy of the Scorpion leaflet which included key risk factors to be aware of. Yet, despite having had the opportunity to raise the applicable transfer warning signs, in both the Scorpion leaflet and in other correspondence, he did not inform the Trustee.
66. Indeed, given that he had already transferred his defined contribution benefits and had explained that one of the reasons for doing so was in order to disassociate himself with his former employer, I find that Mr H would have more likely than not continued with the transfer regardless of any further due diligence.
67. Accordingly, I do not uphold Mr H's complaint.

Dominic Harris

Pensions Ombudsman
3 April 2023