Ombudsman’s Determination

Applicant	Mr S
Scheme	Asda Group Pension Scheme (**the Scheme**)
Respondents	Asda Group Pension Scheme Trustees Limited (**the Trustee**)
	The Asda Pensions Team (**the Administrator**)

Outcome

1. I do not uphold Mr S’ complaint and no further action is required by the Trustee or the Administrator.

Complaint summary

2. Mr S has complained that the Administrator failed to notify him of scam warning signs before he proceeded with transferring his benefits from the Scheme to a one-member Small Self-Administered Scheme (**SSAS**). Assets in the SSAS were subsequently invested in an illiquid, overseas hotel resort, and are unlikely to be recovered in full, or even at all.

3. Mr S wants to be put in the same position he would have been in if he had not transferred his benefits to the SSAS.

Background information, including submissions from the parties

4. Mr S is represented by Money Redress Limited (**the Representative**).

5. In February 1998, Mr S became a deferred member of the Scheme, a defined benefit pension arrangement. The Administrator is an inhouse pension team.

6. In 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 suggested Administrators and pension providers 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 (**the Fraud Action Pack**).

7. The Scorpion Leaflet included examples of real-life pension scams and explained that the signs of a potential scam could be:

- receiving an unsolicited call about a free pension 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.

8. Mr S says that in 2014 he received an unsolicited telephone call from First Review Pension Services (**FRPS**). During the telephone call, FRPS said that Mr S’ benefits in the Scheme were “frozen”, and he would be better off if he transferred them to another scheme. He was offered a free pension review.

9. Mr S says that he subsequently had two meetings with FRPS. At these meetings, he was told the following:-

- If he transferred his benefits to another pension arrangement, they would be invested in property, which would provide attractive returns. He would also be able to access his benefits earlier than from the Scheme.

- The property would be in an up-and-coming holiday resort and would always be let out.

- He was led to believe that the investment did not involve any risk.

- The investment “would not be around forever”, so he should act quickly.

- If he ever wanted to sell the property, FRPS would help.

- His current pension benefits were being managed by an American company, which was not acting in his best interest.

10. On 4 March 2014, Mr S signed a Letter of Authority (**LOA**) giving the Administrator permission to provide information about his benefits in the Scheme to Moneywise Financial Advisors Limited (**Moneywise**), an adviser regulated by the Financial Conduct Authority (**FCA**).

11. On 6 March 2014, the LOA was sent to the Administrator by facsimile.

12. On 21 March 2014, the Administrator sent an illustration for Mr S' Cash Equivalent Transfer Value (**CETV**) and transfer documents to Moneywise. The CETV was £43,783.89, guaranteed to 21 June 2014.

13. Mr S agreed to transfer his benefits from the Scheme to the Cliff Lane 1996 SSAS (**the CL SSAS**). Mr S was the sole Trustee of the CL SSAS, and the principal employer was Cliff Lane 1966 Limited (**the Sponsoring Employer**). The CL SSAS' Administrator was Bespoke Pension Services Limited (**BPS**). Mr S was 48 years old.

14. On 16 May 2014, the following took place:-

- The Sponsoring Employer was incorporated at Companies House. Mr S was the sole company director, and his occupation was recorded as pest controller.
- Mr S signed an employment agreement with the Sponsoring Employer (**the Employment Agreement**).

15. In July 2014, TPR updated the Fraud Action Pack.

- On page three, it described the types of scams to look out for. Common features of pension scams were:
    - phrases like 'one-off investment opportunities', 'free pension review', 'legal loopholes', 'cash bonus', 'government endorsement';
    - victims were approached out of the blue over the telephone, via text messages or in person door-to-door;
    - transfers of money or investments overseas;
    - access to a pension pot before age 55;
    - no member copy of documentation; and
    - victims were encouraged to speed up transfer of their money to the new scheme.
- If any of these features applied, there was a checklist of warning signs that pension providers should look out for (**the Fraud Action Pack Checklist**). This could be used to find out more about the receiving scheme and how the member came to make the transfer request.
- The Fraud Action Pack Checklist was set out in pages four and five and is included in the Appendix to this Determination.
- Page nine provided further steps for pension providers in the event of concerns being raised as follows:-

    (i) Contact the member to establish whether they understood the type of scheme they were transferring to and send them the pension scams booklet.

(ii) Speak to the member at risk over the telephone, via e-mail or letter.

(iii) Direct the member to Action Fraud if the pension provider believed it was a scam, or The Pensions Advisory Service to discuss the potential consequences of the transfer.

(iv) If the member insisted on proceeding with the transfer, and the pension provider was still concerned, it should alert Action Fraud.

16. On 27 August 2014, the following actions took place:-

- The CL SSAS was registered with HM Revenue & Customs (**HMRC**).
- Mr S signed a copy of the Scorpion Leaflet. His signature confirmed that he had read the Scorpion Leaflet and that he was not party to any pensions liberation activity.
- Mr S signed a letter to the Administrator (**Mr S' Letter**), which stated the following:-
    - He was aware of the issues relating to pensions liberation, and he had carefully considered his decision to transfer.
    - The CL SSAS was a registered pension scheme for HMRC purposes, and the Trust Deed and Rules (**TD&Rs**) only allowed standard benefit options in accordance with legal requirements.
    - He understood that there had been a rise in cases of pensions liberation fraud.
    - He wanted to take advantage of investment opportunities available in the CL SSAS, none of which were in any way connected with pensions liberation.
    - He had received information about the CL SSAS, including the risks of transferring his benefits.
    - He was not accessing his pension benefits before age 55.

17. Mr S and the Representative say that Mr S' Letter was a preprinted letter and within a large pack of documentation that he had been asked to sign. The Administrator should have identified that Mr S' Letter was a standardised letter.

18. On 12 September 2014, BPS wrote a letter to the Administrator (**the BPS Letter**). BPS requested the transfer of Mr S' benefits to the CL SSAS and confirmed that the CL SSAS was able to accept the transfer including protected rights. It set out the CL SSAS' bank account details with Metro Bank.

19. The following documents were included with the BPS Letter:

- HMRC notification of registration for tax relief and exemptions for the CL SSAS;
- the Scorpion Leaflet signed by Mr S;

- the Scheme's "Request for transfer of pension benefits" form (**the Transfer Form**), signed by Mr S and BPS, and witnessed on 12 September 2014. The address for the witness was missing, and the address for Mr S was part completed.

- the Employment Agreement;

- BPS' policy on pensions liberation;

- the TD&Rs; and

- a letter dated 27 February 2014 from Addleshaw Goddard LLP (**the AG Letter**), confirming details about the model trust deed and rules that the TD&Rs were based on.

20. The same person had witnessed both the Employment Agreement and the Transfer Form. The witness was a FRPS representative.

21. On 15 December 2014, BPS completed the address for the witness on the Transfer Form and sent it to the Administrator.

22. On 6 January 2015, the Administrator wrote to Mr S to clarify his address. This was because the address on the Transfer Form was different to the one it held on its file. The Administrator says that it then called Mr S' telephone number on the Transfer Form, but the person who answered the call said that they did not know him. In the Administrator's letter, it asked Mr S to call it back.

23. A note made by the Administrator on its online pension system (**the Telephone Note**) confirmed that, on 19 January 2015, Mr S called back and confirmed his address and telephone number (**the First Telephone Call**). The Telephone Note said that during the call Mr S was warned about pensions liberation, he had said that he had "looked into" BPS, and he believed it was a legitimate company. He wanted to proceed with the transfer.

24. The Trustee says the following about the First Telephone Call:-

- The Administrator telephoned Mr S and told him about the full range of warning signs in the Fraud Action Pack.

- It was not the Administrator's practice at the time to take detailed telephone notes.

25. On 2 February 2015, the Administrator verified that the Scheme's transfer out payments checklist (**the Transfer Checklist**) had been completed. There was a note on the Transfer Checklist saying that, at the time, the address for the witness on the Transfer Form was missing. There was no other information recorded as being outstanding.

26. On 6 February 2015, the following actions took place:-

- The Administrator completed the Scheme's form for confirming that a pension liberation check had been carried out (**the Pension Liberation Checklist**).

- The Administrator says that it telephoned Mr S again to discuss pensions liberation (**the Second Telephone Call**). During the Second Telephone Call, Mr S confirmed that he was aware of pension scams and still wanted to proceed with the transfer. The Administrator has not been able to provide a formal note of the Second Telephone Call.

27. The Administrator answered "no" to the following questions on the Pension Liberation Checklist: was Mr S over 55 years old, was the name of the receiving scheme known, and was the company on the suspect list? It answered "yes" to the question: did the receiving scheme have a business address.

28. The Pension Liberation Checklist stated that if an answer was "no", the following actions should be carried out:-

- Check Companies House for the sponsoring employer's registration date.
- Check whether the financial adviser was registered with the FCA.
- Check the receiving scheme's HMRC letter.
- Contact HMRC to confirm status of the receiving scheme.
- If there was a concern, the case should be passed to "Andy/Julie".

29. A handwritten note on the Pension Liberation Checklist stated that the Administrator had previously contacted HMRC about BPS, and HMRC did not have any issues.

30. The Administrator also wrote handwritten notes on a copy of the Fraud Action Pack Checklist, which confirmed the following:-

- The receiving scheme was newly registered, and notification of registration had been provided.
- The Sponsoring Employer was newly registered, was not dormant, and was not geographically distant from Mr S.
- Mr S was employed by the Sponsoring Employer.
- Descriptions of the receiving scheme did not include the words loan, savings advance, cash incentive, bonus, loophole, preference shares, one-off investment opportunities, free pension reviews or government endorsement.
- There was reference to overseas investments.
- There was no hint of unusual, creative, or new investment techniques.

- The Trustee and the Administrator had not been pressured to carry out the transfer as quickly as possible.

- Mr S had not been told that he could access his pension before age 55 and he had not been misled about the potential tax consequences.

- The Administrator had spoken to Mr S, and he confirmed that he was aware of pension scams, and he did not believe this was a scam. The date of the telephone call was not noted on the Fraud Action Pack Checklist.

31. There were no notes written in the section of the Fraud Action Pack Checklist which asked the following questions: had the member been contacted by an introducer, been advised by a non-regulated adviser, taken no advice, decided to transfer after receiving cold calls?

32. On 9 February 2015, the Administrator transferred Mr S' benefits, amounting to £53,858.24, to the CL SSAS.

33. On 15 August 2019, the Administrator received a Data Subject Access Request (**DSAR**) from the Representative.

34. On 30 August and 5 December 2019, the Administrator replied to the DSAR.

35. On 30 October 2019, BPS emailed Mr S and confirmed that the value of the CL SSAS was £53,385.42, consisting of £6,667.33 cash and £46,718.09 invested in The Resort Group PLC (**TRG**), a hotel resort in Cape Verde. The value of TRG was the amount initially invested.

36. On 21 May 2020, the Representative complained to the Administrator under Stage One of the Scheme's Internal Dispute Resolution Procedure (**IDRP**).

37. The Representative said that the Administrator had been given the following information:-

- The name of the Sponsoring Employer was a combination of Mr S' home address and his year of birth.

- A check of Companies House would have confirmed that the Sponsoring Employer was a dormant company and had recently been incorporated. The Sponsoring Employer was not Mr S' employer.

- BPS was also relatively newly incorporated with no trading history.

- The proposed investments included commercial property with TRG. A review of TRG would have identified that it was related to overseas property investments in Cape Verde, clearly a high risk and unregulated investment.

- There was no reference to a regulated and authorised Independent Financial Adviser advising Mr S.

38. The Representative said that the Administrator did not adhere to TPR's guidance as follows:-

- It should have assessed the transfer request carefully and identified any potential warning signs from TPR's guidance. The eight warning signs the Administrator should have identified were as follows:-

  (i) The receiving scheme was a SSAS newly registered with HMRC.

  (ii) The CL SSAS' Administrator was a relatively new business.

  (iii) The Sponsoring Employer was a dormant company incorporated shortly before the transfer request was sent. It was not Mr S' genuine employer.

  (iv) Mr S had been contacted by cold call and offered a free pension review.

  (v) Mr S had based his decision on advice from unregulated firms.

  (vi) Mr S did not receive any regulated advice.

  (vii) Mr S was told that he could expect much better returns from the proposed investment in Cape Verde.

  (viii) The proposed investment was an unregulated, high risk and non-diversified asset. BPS had told the Administrator that the investment was actually or akin to an unregulated collective investment scheme (**UCIS**).

- These warning signs should have been communicated to Mr S.

- The Administrator did not refer or provide Mr S with a copy of the Scorpion Leaflet. It was clear from the guidance itself and previous decisions by the Pensions Ombudsman (**the PO**) that more was required from administrators where clear warning signs were identified, and the warning signs must be communicated to the member.

- The Administrator ought to have contacted Mr S directly to inform him of the warning signs and to establish the extent of his understanding of the proposed scheme. The communications sent to Mr S did not identify specific risk factors.

- There was no evidence that the Administrator had telephoned Mr S to discuss the transfer.

39. The Representative submitted that if Mr S had been told about the warning signs, he would have obtained independent financial advice from a regulated firm and not transferred his benefits.

40. On 30 June 2020, the Administrator responded to the Representative's complaint under Stage One of the IDRP. The Administrator said:-

- It had identified that the Sponsoring Employer and the receiving scheme had been recently incorporated and registered. It contacted HMRC to ask whether it had any concerns about BPS. HMRC confirmed that there were none.

- The Scorpion Leaflet was sent to Mr S in the transfer illustration pack. Mr S returned a signed copy of it, confirming that he had read it and that he was not party to any pensions liberation activity. The Scorpion Leaflet warned him about potential scams and warning signs, which may not be visible to the Administrator, such as promise of returns, how he had been initially approached and the speed with which he was being asked to transfer.

- It had telephoned and spoken to Mr S and warned him about pensions liberation. He confirmed his address and said that he was aware of pension scams, that he had "looked into" BPS, and he was happy for the transfer to proceed.

- Mr S had a statutory right to transfer his benefits once the completed paperwork had been received.

- There was no requirement for the Scheme to check that the financial adviser was authorised. The Scorpion Leaflet provided guidance on advisers by referring to the FCA website and the Pensions Advisory Service.

- TPR's guidance issued in April 2015 stated: "it is not the trustees' role to second-guess the member's individual circumstances and choice to transfer their safeguarded benefits. It is also not their role to prevent a member from making decisions which the trustees might consider to be inappropriate."

- There were warning signs, but the Administrator carried out due diligence. It complied with the guidance and requirements in place at the time of the transfer.

- It did not uphold Mr S' complaint.

41. On 10 November 2020, the Representative complained to the Trustee under Stage Two of the IDRP. The Representative said:-

- The Administrator had identified only one of the eight warning signs.

- It did not accept that some of the warning signs were only visible to Mr S, had correct procedures been followed. TPR's guidance in February 2013 confirmed that where at least some warning signs were visible, the checklist in the guidance should be used to carry out due diligence. All eight of the warning signs would have been identified if the Administrator had carried out the actions in the checklist.

- BPS had provided the Scorpion Leaflet to Mr S, not the Administrator. With the presence of clear warning signs, it was not accepted that receipt of a signed Scorpion Leaflet via the receiving scheme adequately met the requirement for a ceding scheme to provide the document to a member. The Administrator had no knowledge of the manner in which the Scorpion Leaflet had been signed by Mr S and whether he had read and understood it.

- It was clear from TPR's guidance and the PO's decisions that in situations where there were a number of warning signs, it was considered insufficient to only send out the Scorpion Leaflet. In addition, the warning signs must be communicated to the member.

- The DSAR documents did not contain any evidence of communications with Mr S about the warning signs.

- Other schemes complied with guidance by writing to members warning them of specific risks of a transfer.

- Had the Administrator complied with its regulatory duties, Mr S would have withdrawn his transfer application.

42. On 15 January 2021, the Trustee responded to the Representative's complaint under Stage Two of the IDRP. The Trustee said:-

- In accordance with TPR's guidance on pension scams, the Administrator did identify a number of warning signs and conducted further checks into the transfer. These checks were consistent with due diligence standards expected at the time.

- It commented on the eight warning signs identified by the Representative (see paragraph 38 above) as follows:-

    - Warning sign (i). The Administrator had identified this warning sign. It noted that the HMRC registration letter for the receiving scheme had been received and confirmed that it was an occupational pension scheme. It had also received the TD&Rs and the AG Letter.

    - Warning sign (ii). The Administrator had contacted HMRC regarding BPS on a previous transfer. HMRC had confirmed that it did not have any concerns and did not advise to stop transfers to schemes administered by BPS.

    - Warning sign (iii). The Administrator had identified this warning sign. It had received the Employment Agreement, which confirmed that Mr S was a director. Although evidence could not be provided, its file suggested that Companies House had been checked, and the Sponsoring Employer was not registered as dormant at the time.

    - Warning sign (iv). The Administrator had telephoned Mr S and he confirmed that he was aware of pension scams, and he did not believe his situation was a scam.

  - Warning signs (v) and (vi). There was no requirement for Mr S to receive regulated advice, so there was no need for the Administrator to check that he had received regulated advice. The LOA information request was received from Moneywise, which was FCA registered.

  - Warning sign (vii). High returns was not a warning sign in the Fraud Action Pack Checklist.

  - Warning sign (viii). The Administrator had identified that the receiving scheme would be invested in overseas investments, but there was no evidence that it would be in any unusual assets or akin to a UCIS.

- There were two key potential warning signs that were not present: Mr S had not been told that he could access his pension before age 55; and neither Mr S nor the receiving Administrator had put pressure on the Administrator to carry out the transfer as quickly as possible.

- Its Stage One IDRP response had been incorrect in stating that the Scorpion Leaflet had been sent to Mr S. It had been sent to Moneywise. However, Mr S had received and signed the Scorpion Leaflet, so another copy was not sent to him. The Administrator had received Mr S' Letter, which confirmed that he had carefully considered the decision to transfer to the receiving scheme. Mr S had been contacted by telephone by the Administrator on two occasions, and during both telephone calls, Mr S confirmed that he wanted to proceed with the transfer.

- It did not uphold Mr S' complaint.

43. On 16 January 2023, an extract from the Companies House website showed that CL Limited was a dormant company. It also showed that Mr S was a pest controller.

44. Following the complaint being referred to The Pensions Ombudsman, Mr S, the Representative and the Trustee on behalf of the Administrator made further submissions that have been summarised below.

45. Mr S' further submissions:-

- The Administrator did not emphasise how valuable his benefits in the Scheme were, and he did not have any discussions with the Administrator about pension liberation or risks of the transfer.

- It was not made clear to him that the firms providing advice to him were not regulated by the FCA.

- He was not aware of Moneywise.

- He was not made aware that the investment in TRG was unsuitable and highly illiquid. His investment could now be considered a complete loss. It also appeared that a considerable proportion of his assets in the CL SSAS were uninvested and not growing.

46. The Representative's further submissions:-

- Mr S' earnings at the time were around £25,000 per annum. He was not a high net worth individual and had no savings or investments. His benefits in the Scheme were his main provision for retirement. He had no experience in pensions or investments and his attitude to risk was low at most.

- Mr S' risk appetite was not assessed by FRPS, and no transfer analysis was undertaken. He was given projected values over the next 10 years. FRPS was not regulated by the FCA.

- The original documents provided from the DSAR did not evidence any due diligence process. At a very late stage in the complaint process, the Administrator disclosed some internal checklists and notes about the due diligence it had carried out. So, the Representative accepted that in terms of procedure, the Administrator's due diligence complied with the Fraud Action Pack. The issue was whether the Administrator recorded its findings accurately and reached the correct conclusions.

- The Administrator did not check that Mr S had a statutory right to transfer to an occupational pension scheme, and the due diligence checks were inaccurate and inadequate. The Administrator should have contacted Mr S to ask if he was receiving employment income. If this had been carried out, Mr S would have confirmed that he was employed as a pest controller, and that he had no genuine employment connection with the Sponsoring Employer. While it accepted that Mr S did have a statutory right to a transfer, the checking process that the Administrator should have undertaken would have revealed numerous scam warnings.

- There was no reference on the copy of the Fraud Action Pack Checklist that Mr S was asked how he became aware of the receiving scheme or that the Sponsoring Employer was dormant. Mr S should have been asked how he became aware of the receiving scheme.

- While the investment for the CL SSAS was not clear from the transfer paperwork, the Fraud Action Pack said that where there were a number of warning signs, further checks were justifiable, including asking the member or receiving scheme what the investment intentions were. The copy of the Fraud Action Pack Checklist had noted that there was reference to overseas investments, so the Administrator was aware of this warning sign. It appeared that the Administrator knew that the investment would be in TRG in Cape Verde.

- HMRC was not in the same position as a ceding pension scheme to identify specific warning signs in respect of a transfer involving BPS.

- The Fraud Action Pack required a bespoke level of communication where scam warning signs were present. TPR expected ceding schemes to carry out further steps if there were concerns.

- There was no evidence that the warning signs identified by the Administrator had been communicated to Mr S. It was unlikely that a subsequent telephone call to Mr S would have accurately communicated the warning signs to him.

- There was evidence to suggest that Mr S would not have continued with the transfer in the event that he had understood the risks of doing so.

47. The Trustee's further submissions:-

- The Scheme's various requirements in the Transfer Checklist had been complied with.

- After the Administrator had received the required documents, it was legally obliged to proceed with the transfer.

- The TD&Rs did not permit payment of benefits before age 55.

- There could be many legitimate reasons for why companies were initially registered as dormant. Even if the Administrator had identified that the Sponsoring Employer was dormant, it would not have been a relevant warning sign in this instance. The fact that the receiving scheme was newly registered, and the Sponsoring Employer was newly incorporated were not valid reasons to prevent the transfer.

- As Mr S had established his own pest control business, it was plausible that the Sponsoring Employer was a vehicle through which he operated his business.

- There was no requirement to discuss each of the specific warning signs in detail with Mr S.

- Where it was clear that a receiving scheme was a scam, the Fraud Action Pack advised trustees to direct the member to Action Fraud. The Trustee had no clear evidence that the receiving scheme was a scam, so did not direct Mr S to Action Fraud. Even if Mr S had been directed to Action Fraud, it appeared extremely likely that Mr S would still have gone ahead with the transfer.

Adjudicator's Opinion

48. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or the Administrator. The Adjudicator's findings are summarised in paragraphs 49 to 68 below.

49. Mr S' complaint was solely based on the question of whether the Trustee and the Administrator carried out sufficient due diligence on the transfer, and then adequately informed Mr S of its findings. Whatever happened subsequently, and the information that had since come to light, could not influence the outcome.

50. The CL SSAS was registered as an occupational pension scheme with HMRC, and BPS confirmed that it was willing to accept the transfer. So, Mr S' transfer application appeared to comply with the requirements in Section 95(1) of the Pension Schemes Act 1993. On this basis, the Administrator was presented with a member who apparently wished to exercise his legal rights, and a receiving scheme that was properly registered with HMRC and had provided the appropriate declarations and information.

51. As set out in the Fraud Action Pack issued in July 2014, the Administrator was responsible for checking Mr S' transfer against a pension scam checklist. It was also responsible for issuing the Scorpion Leaflet to Mr S. The Adjudicator noted that the Administrator issued the Scorpion Leaflet to Mr S' adviser along with the CETV illustration. Nevertheless, by signing the front page of the Scorpion Leaflet, Mr S confirmed that he had read the document. So, the Administrator had no reason to believe that Mr S had not read or understood the Scorpion Leaflet, which set out common features of pension scams, such as being cold called, being offered a free pension review, and investing in overseas assets.

52. The Administrator initially received the following documents in respect of Mr S' transfer:-

- Mr S' Letter, which confirmed that he was aware of pensions liberation fraud, he was not accessing his benefits before age 55, and he had received information about the receiving scheme, including the risks of transferring his benefits.
- HMRC notification of registration for the receiving scheme.
- The Transfer Form.
- The Employment Agreement between Mr S and the Sponsoring Employer.
- The TD&Rs for the receiving scheme.
- The AG Letter, confirming details about the model trust deed and rules.

53. From this documentation, the Administrator identified two warning signs from the Fraud Action Pack Checklist: the receiving scheme was newly registered for tax purposes; and the Sponsoring Employer was newly registered.

54. The guidance in the Fraud Action Pack Checklist for these warning signs was that HMRC registration should be checked, and documentary evidence obtained, and information about the sponsoring employer should be obtained from the receiving scheme and Companies House. The Administrator already had a copy of the receiving scheme's HMRC registration, and it has said that it contacted Companies House about the Sponsoring Employer. So, the Administrator's actions in respect of these warning signs were consistent with the Fraud Action Pack Checklist.

55. The Adjudicator also noted that the Administrator had previously contacted HMRC about BPS, and HMRC confirmed that it did not have any issues with the company.

56. According to the Administrator's handwritten notes on the copy of the Fraud Action Pack Checklist, it also identified that there was reference to overseas investments. While it was not clear how the Administrator found this out, the guidance in the Fraud Action Pack Checklist for this warning sign was to ask the member for copies of promotional materials about the receiving scheme and details about the way the receiving scheme had been described to them. The Adjudicator did not see any evidence of the Administrator requesting this information from Mr S.

57. One section of the Fraud Action Pack Checklist had no notes written against it. This referred to the questions: had the member been contacted by an introducer, been advised by a non-regulated adviser, taken no advice, decided to transfer after receiving cold calls? The guidance in the Fraud Action Pack Checklist for these warning signs was to ask the member how he became aware of the receiving scheme, and to check whether advisers were approved by the FCA. The Adjudicator did not see any evidence of the Administrator requesting this information from Mr S. Moneywise, the adviser who initially requested information about Mr S' benefits, was FCA registered.

58. The Administrator also completed the Scheme's own pension liberation checklist. As the Administrator had answered "no" to several questions in the Pension Liberation Checklist, further actions were required as follows:-

- Check Companies House for the sponsoring employer's registration date. This had already been completed.

- Check whether the financial adviser was registered with the FCA. Moneywise was FCA registered.

- Check the receiving scheme's HMRC letter. This had already been received.

- Contact HMRC to confirm status of the receiving scheme. As the Administrator already had a copy of the receiving scheme's HMRC letter, contacting HMRC would not have provided any further information.

- If there was a concern, the case should be passed to "Andy/Julie". The Adjudicator did not see any evidence that the case was passed to "Andy/Julie", so, it was reasonable to believe that the Administrator did not have any concerns with the transfer.

59. While the checks in the Pension Liberation Checklist were adequately carried out, there were aspects of the Fraud Action Pack Checklist which the Administrator did not fully check. This amounted to maladministration.

60. The Administrator conducted two telephone conversations with Mr S during the transfer process as follows:-

- While it appeared that the main reason for the First Telephone Call on 19 January 2015 was to verify Mr S' address, the Telephone Note confirmed that Mr S was warned about pensions liberation, that he had said that he had "looked into" BPS, and believed it was a legitimate company. Mr S said that he wanted to proceed with the transfer. The Trustee said that Mr S was told about the full range of warning signs in the Fraud Action Pack.

- The Second Telephone Call was on 6 February 2015. While there was no written note about this conversation, the Administrator said that Mr S confirmed that he was aware of pension scams and still wanted to proceed with the transfer.

61. One of the telephone calls was also noted on the copy of the Fraud Action Pack Checklist, but it was unclear which call it was referring to.

62. The Second Telephone Call took place on the same day that the Pension Liberation Checklist was verified, so by then, the Administrator was aware of all of the warning signs that it had identified. While it was unclear precisely what was said during this call, the Adjudicator accepted that the Administrator informed Mr S about pension scams and he said that he wanted to continue with the transfer.

63. If the Administrator had fully completed the checks in the Fraud Action Pack Checklist, it was most likely that Mr S would have said that he had been contacted by an introducer by a cold call. The Administrator should then have contacted Mr S to inform him of this additional warning sign.

64. While there was a possibility that another conversation or letter to Mr S would have resulted in him reconsidering transferring his benefits, the Adjudicator was not persuaded, on balance, that Mr S would have refrained from going ahead with the transfer. This is because he had already been informed about warning signs and pension scams as follows:-

- In the Scorpion Leaflet, which Mr S confirmed he had read by signing the front page. The Scorpion Leaflet set out potential warning signs. The relevant ones for Mr S were: receiving an unsolicited call about a free pension review and the promise of a unique investment opportunity in overseas property. So, it was reasonable to expect that Mr S was aware that these were warning signs of a pensions scam. Mr S knew that he had been cold called and offered a free pension review and that the proposed investment was based overseas.

- During the two telephone calls on 19 January and 6 February 2015, although the Adjudicator appreciated that it was not clear precisely what had been said.

65. The Adjudicator also took the following into account:-

- It was acknowledged in Mr S' Letter that he was aware of the issues relating to pensions liberation, that he had carefully considered his decision, and he had been told about the risks of transferring his benefits.
- Mr S most likely wanted to receive the more attractive returns that had been offered to him by switching to the CL SSAS.
- Mr S would be able to access his benefits from age 55 from the CL SSAS, which was earlier than the Scheme.

66. So, on the balance of probabilities, Mr S would still have gone ahead with the transfer even if the Administrator had contacted him after identifying the additional warning signs. On this basis, the Administrator had no right or relevant reason to refuse Mr S' transfer, and the maladministration did not result in Mr S incurring a financial loss.

67. The Adjudicator accepted that the Administrator concluded that the CL SSAS was not a pension scam, and so did not direct Mr S to Action Fraud. Indeed, the CL SSAS was a genuine pension arrangement registered with HMRC and had a valid TD&Rs.

68. Any distress that Mr S suffered was not caused by the Trustee's or the Administrator's maladministration. So, the Adjudicator could not suggest an award to him for any distress and inconvenience.

69. The Representative did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. The Representative's comments are summarised below:-

- Moneywise did not provide any advice to Mr S and had no direct contact with him. Moneywise also did not have contact with the Scheme after sending the initial CETV illustration request. It was well evidenced that Moneywise allowed their name to be used by FRPS during the initial stages of a transfer. So, advice was provided to Mr S by an unregulated company. There was no handwritten note in the Pension Liberation Checklist about the advisory process. Also, FRPS had links to TRG, and a representative of FRPS had witnessed Mr S' signature in documents in the transfer pack.
- The Scheme ought to have asked questions about the advice process regarding cold calling and unregulated advice. Had this been done, Mr S would have clarified that the process had started with a cold call and that he had received no FCA regulated advice.
- The Scheme's response to the DSAR was incomplete and contained none of the documents the Scheme was now relying upon as evidence of carrying out due diligence.

- The Scheme should have checked Companies House for details of the Sponsoring Employer's status. It would have shown that it was a dormant company from the date of its incorporation, and filing history showed that its status had not subsequently changed. The Scheme incorrectly noted that the Sponsoring Employer was not a dormant company, so, the Scheme either did not carry out a check at Companies House or carried it out inadequately.

- In other complaints, the PO had confirmed an expectation for communication with transferring members that went beyond providing the Scorpion Leaflet.

- There was no evidence at all that the Scheme had provided any warnings to Mr S about pension scams. The Telephone Note said that Mr S was warned about pensions liberation, but it did not specify in detail what was said during the call. Mr S was not warned that the Scheme had identified numerous signs of a pension scam.

- It did not agree that Mr S had been informed about warning signs and pension scams. In particular:-

  - The Scorpion Leaflet had been given to Mr S by FRPS, which was different to him receiving it directly from the Administrator.

  - Mr S' Letter was signed by Mr S "within a well-orchestrated procedure put in place by FRPS". There was no evidence that he had been provided any information by which he could understand that he was falling victim to a pension scam.

  - Transfer documentation referred to warnings about pension liberation involving accessing a pension before the age of 55, or transferring to a scheme not authorised by HMRC, neither of which were relevant to Mr S.

- Mr S was not a high earner, he was almost 50 years old, and he had only a basic understanding of investment issues. The Scheme was his main retirement provision, so it would not have made sense for him to have taken the risk of full loss, had he been made aware of the warning signs of the receiving scheme.

70. I have considered the Representative's comments, but they do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

71. I sympathise with Mr S, as it is apparent that, unfortunately, he was a victim of a persuasive cold caller, which may have resulted in fraud. He was most likely told about the benefits of transferring to an alternative pension arrangement, and this was sufficiently compelling for him to agree to proceed with the transfer. While there is a chance that he will eventually recover some of his investments in TRG, it is more likely than not that Mr S will have lost most, if not all, of the value of his pension.

72. However, this complaint is not directed against those who ‘advised’ Mr S or the entities that received the transfer. Rather, in this complaint I need to consider whether the Trustee’s decision to accept Mr S’ transfer request was reasonable at the time of the transfer.

73. Both the Administrator and the Representative have said that Mr S was entitled to a statutory right to transfer his benefits. However, Section 94(1)(aa) of the Pension Schemes Act 1993, as it stood at the time of the transfer, says that in order for a statutory right to apply, a member must request a CETV within three months of the guarantee date in his statement of entitlement (i.e. the CETV illustration). I note that Mr S’ CETV illustration was dated 21 March 2014, and his request to transfer was sent to the Administrator more than five months later on 12 September 2014 (with the transfer not taking place until 9 February 2015). So, in the absence of evidence suggesting that Mr S requested and was granted a second CETV illustration, Mr S did not have a statutory right to transfer his benefits. However, I note that the Scheme’s governing documentation did nonetheless allow non statutory transfers and so I find that it was reasonable for the Trustees and Administrator to implement Mr S’ transfer request, subject to guidance in the Fraud Action Pack being followed.

74. The Administrator received Mr S’ initial transfer enquiry from Moneywise, an adviser regulated by the FCA. The Administrator then sent a CETV illustration and transfer documents to Moneywise. Subsequent communication about Mr S’ transfer was with the CL SSAS’ administrator, BPS, which was unregulated, but a firm that HMRC had previously told the Administrator it did not have any issues with.

75. There was no requirement at the time for Mr S to obtain regulated advice but given that the CETV illustration was sent to an FCA regulated adviser, it would be reasonable to conclude that Mr S had received regulated advice from Moneywise, and administration of the transfer had been delegated to BPS. However, I agree that it would have been preferable if the Administrator had asked Mr S about the advice process that had led him to decide to transfer his benefits. The Administrator would then most likely have determined that Mr S had been cold called and received unregulated advice. However, I cannot ignore the other warnings that were provided to Mr S, particularly in the Scorpion Leaflet which referred to unsolicited calls, and the two telephone calls from the Administrator. Ultimately, it would appear that Mr S was warned that the transfer contained risks. Mr S also supported his transfer with the declarations he made in Mr S’ Letter. So, even if the Administrator had identified and informed Mr S of the additional warning signs, I do not find that he would have changed his mind about proceeding with the transfer.

76. I accept that there is a degree of uncertainty about what exactly was said during the telephone calls. However, as I say above, it is clear to me that receiving two calls would have alerted Mr S to a potential issue and would have given him the opportunity to reconsider his decision. While I note that the Administrator sent the Scorpion Leaflet to Moneywise rather than directly to Mr S, he confirmed that he had read the document by signing it, and there was no reason for the Administrator to believe that he had not read it. The Administrator also verified the receiving scheme by receiving its HMRC registration, its TD&Rs and the AG Letter, so it was entitled to form the opinion that it was a bona fide scheme. It also received confirmation that Mr S was employed by the Sponsoring Employer.

77. I note that an FRPS representative did witness Mr S' signature on several documents, but I do not accept that at the time it should have alerted the Administrator to a scam. It is not clear whether the Administrator knew that Mr S was proposing to invest the proceeds of his transfer in TRG.

78. The Representative alleges that as the Administrator did not determine that the Sponsoring Employer was dormant, the check with Companies House was either carried out inadequately or not all. The Administrator says that it did check Companies House, and this is confirmed in a note written on the Fraud Action Pack Checklist. The note said that the Sponsoring Employer was newly registered, not geographically distant from Mr S, but was not dormant. If the Sponsoring Employer was dormant at the time, I accept that the Administrator should have identified this – but I do not accept that this amounts, by itself, to a fatal flaw in the due diligence process. The Administrator identified that the Sponsoring Employer was recently registered, which was a warning sign in the Fraud Action Pack Checklist, and, importantly, subsequently contacted Mr S to discuss his transfer.

79. I do not uphold Mr S' complaint.

Dominic Harris

Pensions Ombudsman

7 October 2024

CAS-78487-F8S2

Appendix – checklist from TPR's "fraud action pack" – July 2014

Answering **yes** to any of these questions individually does not necessarily indicate a pension scam, but if several features are present there may be cause for concern.

The nature/status of the scheme	
Is the scheme to which the member wants to transfer:	How to establish
• newly or not registered for tax purposes with HMRC, whether it is an occupational or personal scheme (including SIPPs)?	• Check the scheme is registered with HMRC for tax purposes: ask the pension scheme in question for documentary evidence of their registration. You can also write to HMRC for confirmation (see p8)
• a personal pension (eg a SIPP) where the scheme operator is not authorised by the Financial Conduct Authority (FCA)?	• Check the scheme operator is authorised with the FCA (**www.fca.org.uk/register**)
• sponsored by a newly registered employer? • sponsored by a dormant employer? • sponsored by an employer that is geographically distant from the member?	• Obtain employer information from scheme in question • Check with Companies House for details of the employer status (**www.companieshouse.gov.uk**)
• sponsored by an employer that doesn't employ the member?	• Ask the member
• connected to an unregulated investment company?	• Ask the receiving scheme for details of their investment service providers • Check these providers with the FCA (**www.fca.org.uk/register**)

Description/promotion of the scheme	
Do descriptions, promotional materials or adverts:	How to establish
• include the words 'loan', 'savings advance', 'cash incentive', 'bonus', 'loophole', 'preference shares', 'one-off investment opportunies', 'free pension reviews' or 'government endorsement'? • allude to overseas investments? • hint at unusual, creative or new investment techniques?	• Ask the member for copies of promotional materials, emails or letters about the scheme • Ask the member about the way the receiving scheme has been described to them over email/text/phone

The scheme member	
Has the member:	How to establish
• been contacted by an 'introducer'? • been advised by a non-regulated adviser? • taken no advice? • decided to transfer after receiving cold calls, unsolicited emails or text messages about their pension?	• Ask the member about how he/she became aware of the receiving scheme • Check whether advisers are approved by the FCA at **www.fca.org.uk/register**
• pressured the trustees/administrators to carry out the transfer as quickly as possible? • mentioned that your pension scheme has transferred funds to this arrangement before?	• Check whether member has contacted trustees/administrators to hurry along transfer since first submitting request
• not received documentation from the new scheme?	• Check whether member has received documents
• been told they can access their pension before age 55? • been misled about the potential tax consequences?	• Review promotional material for receiving scheme
• been advised that there will be no contributions paid by themselves or the employer?	• Ask what the member has been told about contributions