

## Ombudsman's Determination

Applicant	Mr I
Scheme	Asda Group Pension Scheme ( <b>the Scheme</b> )
Respondents	Asda Group Pension Scheme Trustees Limited ( <b>the Trustee</b> ) The Asda Pensions Team ( <b>the Administrator</b> )

## Outcome

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

## Complaint summary

2. Mr I 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 I wants to be put in the 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 I is represented by Money Redress Limited (**the Representative**).
5. In January 2008, Mr I became a deferred member of the Scheme, a defined benefit pension arrangement. The Administrator of the Scheme is an in-house 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.
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. In July 2014, TPR updated the February 2013 “fraud action pack”.
9. Mr I says that towards the end of 2014, he received an unsolicited telephone call from First Review Pension Services (**FRPS**). During the telephone call, FRPS suggested that he would be better off if he transferred his benefits from the Scheme. He was offered a free pension review. During subsequent telephone calls with FRPS, he was told that if he transferred to another pension arrangement, he would be able to access his funds and receive a better return by investing in a safe investment strategy. He was not made aware of the risks of the investment strategy or told that his funds could fall in value significantly.
10. The Representative says:-
- Mr I’s earnings at the time were around £7,500 per annum. He was not a high net worth individual and had no experience in pensions or investments.
  - FRPS was not regulated by the Financial Conduct Authority (**FCA**).
  - At the pension review meeting, Mr I was told:
    - his benefits in the Scheme were frozen;
    - he could achieve better returns by transferring and investing in a hotel resort; and
    - he could take 25% of his benefits at age 55.
  - Mr I’s risk appetite was not assessed, and no transfer analysis was undertaken. He was given projected values over the next 10 years.
  - Mr I was encouraged to transfer his benefits quickly.

11. Mr I agreed to transfer his benefits from the Scheme to the Rose 1961 Limited SSAS (**the Rose SSAS**). Mr I was the sole Trustee of the Rose SSAS, and the principal employer was Rose 1961 Limited (**Rose Limited**). The Rose SSAS' administrator was Bespoke Pension Services Limited (**BPS**). Mr I was 54 years old.
12. On 17 November 2014, the Administrator sent an illustration for Mr S' Cash Equivalent Transfer Value (**CETV**) and transfer documents to FRPS (**the Transfer Pack**). The CETV was £74,837.47, guaranteed to 17 February 2015.
13. On 3 December 2014, Mr I signed an employment agreement with Rose Limited (**the Employment Agreement**). It stated that he was a director of Rose Limited.
14. On 6 December 2014, Broadwood Assets Limited (**Broadwood**) wrote a letter to Mr I (**the Broadwood Letter**) in his capacity as Trustee of the Rose SSAS with information about the Cape Verde Investment and The Resort Group PLC (**the Cape Verde Investment**), the proposed investment for the Rose SSAS. The following points were confirmed in the Broadwood Letter:-
  - It was not regulated by the FCA and could not provide advice under the Financial Services and Markets Act 2000.
  - It was not advising whether the Cape Verde Investment was suitable but was providing information on the potential suitability. If Mr I wanted to obtain regulated advice, he would need to contact an Independent Financial Adviser (**IFA**).
15. The Broadwood Letter set out the key features and risks of the Cape Verde Investment. It also mentioned diversification, cash management and pensions liberation. It concluded that the Cape Verde Investment was a suitable investment for the Rose SSAS.
16. Mr I signed the last page of the Broadwood Letter, confirming that he had read and understood the advice contained in it.
17. On 2 February 2015, Mr I signed the Trust Deed and Rules for the Rose SSAS (**the TD&Rs**). The TD&Rs were based on a model trust deed and rules drafted by Addleshaw Goddard LLP (**Addleshaw Goddard**).
18. On 9 February 2015, the following actions took place:-
  - The Rose SSAS was registered with HM Revenue & Customs (**HMRC**).
  - Mr I 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 I signed a letter to the Administrator (**Mr I'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 Rose SSAS was a registered pension scheme for HMRC purposes, and the 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 Rose SSAS, none of which were in any way connected with pensions liberation.
    - He had received information about the Rose SSAS, including the risks of transferring his benefits.
    - He was not accessing his pension benefits before age 55.
19. On 16 February 2015, BPS wrote a letter to the Administrator (**the BPS Letter**). BPS requested the transfer of Mr I's benefits from the Scheme to the Rose SSAS and confirmed that the Rose SSAS was able to accept the transfer including protected rights. It set out the Rose SSAS' bank account details with Metro Bank.
20. The following documents were included with the BPS Letter:
- HMRC notification of registration for tax relief and exemptions for the Rose SSAS;
  - the Scorpion Leaflet signed by Mr I;
  - the Scheme's "Request for transfer of pension benefits" form (**the Transfer Form**), signed by Mr I and BPS and witnessed by an individual with an address in Nottingham, on 16 February 2015;
  - the Employment Agreement;
  - BPS' policy on pensions liberation;
  - the TD&Rs; and
  - a letter dated 27 February 2014 from Addleshaw Goddard (**the AG Letter**), confirming details about the model trust deed and rules.
21. In March 2015, TPR updated the "fraud action pack", which contained the following information:-
- On page three, it stated: "If a member is asking for a scheme transfer, use the checklist on the next page to find out more about the receiving scheme and how the member came to make the request."

- Pages four and five provided a checklist of warning signs that pension providers should look out for. The checklist is set out in the Appendix.
- Page ten 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 believes it is 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.

22. During the same month, the Pension Scams Industry Group issued a document called “Combating Pension Scams – a code of good practice” (**the PSIG code of good practice**). Section 6.4.3 of the PSIG code of good practice set out warning signs for schemes transferring members’ benefits to a SSAS as follows:-

- There was no employment link between the member and the sponsoring employer.
- The sponsoring employer had a different geographical location to the member.
- The member was cold called or had another unsolicited approach by the receiving scheme.
- The receiving scheme, the sponsoring employer or the administrator were very recently established.

23. On 5 March 2015, the Administrator carried out the following actions:

- It checked the Companies House website for the Sponsoring Employer, which showed that it was registered on 3 December 2014; and
- wrote to HMRC to request the status of the Rose SSAS.

24. On 14 March 2015, HMRC sent the Administrator confirmation of the Rose SSAS’ scheme registration status. HMRC confirmed the following about the Rose SSAS:-

- It was registered with HMRC and was not subject to a deregistration notice.
- Current information did not indicate a significant risk of it being used to facilitate pension liberation.

25. With effect from 6 April 2015, section 48 of the Pension Schemes Act 2015 (**the 2015 Act**) requires trustees or managers to check that a member has received “the appropriate independent advice” before making a transfer payment. However, this does not apply where a member’s application and right of entitlement arose before 6 April 2015, or where on or after 6 April 2015 all the member’s safeguarded benefits under the transferring scheme is £30,000 or less on the valuation date.
26. The Administrator says, on 24 April 2015, it telephoned Mr I (**the Telephone Call**) and told him that the transfer was a suspected pensions liberation transfer. It advised him of the possible implications of transferring to a scheme suspected of pensions liberation fraud. The Administrator says during the call Mr I confirmed that he wanted to continue with the transfer.
27. While the Telephone Call was not recorded, the Administrator’s file note of the conversation (**the File Note**) stated the following:
- “I called Mr I to discuss his request to transfer out of the AGPS to the Rose 1961 Limited SSAS. I advised the possible implications of transferring to an unauthorised scheme but Mr I said he still wishes to transfer. I said that I would need to send him the PENLIB letter and form to complete.”
28. After the Telephone Call, the Administrator sent a letter (**the April 2015 Letter**) and a pensions liberation form (**the Pensions Liberation Form**) to Mr I for him to complete. The April 2015 Letter stated:
- “As you are aware, the Pensions Regulator has issued guidance to pension schemes regarding transfers of pension benefits and potential pensions liberation or pension scams. If pension benefits are transferred to an unauthorised pension scheme, the member (you) and the transferring scheme could be subject to large tax charges for making an ‘unauthorised payment.’”
29. On 5 May 2015, Mr I signed the Pensions Liberation Form. It stated the following:
- “After speaking to the Asda Pensions Team, I request the Trustees to transfer the value of all benefits retained in the Asda Group Pension Scheme for me and my dependents or other potential beneficiaries to Rose 1961 Limited SSAS.”
30. The questions asked and the responses given in the Pensions Liberation Form were as follows:-
- How did you become aware of the receiving scheme? He was contacted by FRPS, who introduced him to BPS.
  - Have you taken independent financial advice regarding this transfer? No, as there was no requirement to do so. But he had received advice in accordance with Section 36 of the Pensions Act 1995.
  - Why do you wish to transfer your pension to the receiving scheme? He wanted to invest his benefits into the SSAS as it offered him more control over investments.

- Have you received policy documentation from the receiving scheme advising how your pension account will be invested? Yes, he had received a booklet about the Cape Verde Investment (**the Cape Verde Booklet**), and a copy was enclosed.
  - Have you been advised by the receiving scheme that you can access your pension account before the age of 55? No.
  - Has the receiving scheme advised you whether any future contributions will be paid into your pension account? No.
  - Are you employed by and receiving taxable income from Rose Limited? He was employed by Rose Limited, but it was a dormant company, and he was not receiving taxable income.
31. Mr I submits that the responses in the Pensions Liberation Form were templated and completed by FRPS.
32. On the same day, BPS wrote to the Administrator and enclosed the following documents:
- the Pensions Liberation Form;
  - the Broadwood Letter; and
  - the Cape Verde Booklet.
33. The Administrator says, after receiving the Pensions Liberation Form, it referred the transfer to the Trustee, who concluded that the Scheme was legally obliged to provide Mr I his statutory transfer rights.
34. On 29 May 2015, the Administrator transferred Mr I's benefits, amounting to £83,618.90, to the Rose SSAS. Subsequently, £55,350 of the assets in the Rose SSAS was invested in the Cape Verde Investment.
35. On 4 June 2020, the Administrator received a Data Subject Access Request (**DSAR**) from the Representative.
36. On 1 July 2020, the Administrator replied to the DSAR.
37. On 20 August 2020, the Rose SSAS's current administrator, Pension Administration Services, sent Mr I a valuation statement for his benefits. The Rose SSAS' assets were valued at £56,336.80. The investment in the Cape Verde Investment had been valued at cost price.
38. On 23 September 2020, the Representative complained to the Administrator under Stage One of the Scheme's Internal Dispute Resolution Procedure (**IDRP**).

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

- The name of the sponsoring employer was a combination of Mr I's home address and his year of birth.
- A check of Companies House would have confirmed that Rose Limited was a dormant company and had been recently incorporated. Also, it was not Mr I's employer.
- BPS was also relatively newly incorporated with no trading history.
- The proposed investments included commercial property from The Resort Group PLC. A review of The Resort Group PLC would have identified that it related to overseas property investments in Cape Verde, clearly a high risk and unregulated investment.
- The Transfer Form required a witness signature by a party who was not an associate of the financial adviser or receiving scheme. But Mr I's signature was witnessed by a director of FRPS who gave an address in Nottingham.
- There was no reference to a regulated and authorised IFA advising Mr I.

40. The Representative also stated:-

- There was no evidence that the Administrator had raised specific warnings with Mr I, or that it had spoken to him directly about the transfer and his reasons for transferring away from the Scheme.
- The Cape Verde Investment was entirely illiquid and could not be sold on the open market, so could be considered as having no value.
- The Administrator should have been aware of the cross-government initiative to prevent pension scams from February 2013 onwards. The "fraud action pack" provided clear guidance to administrators and trustees as to what was expected of them on receipt of a pension transfer request.

41. The Representative said that the Administrator did not adhere to the guidance as follows:-

- It should have assessed the transfer request carefully and identified any potential warning signs from TPR's guidance. The nine warning signs that had not been communicated to Mr I were as follows:-
  - (i) The recipient scheme was a SSAS newly registered with HMRC.
  - (ii) The sponsoring employer was incorporated shortly before the transfer request was sent.



- (iii) The sponsoring employer was a dormant company and not Mr I's genuine employer.
- (iv) The SSAS' administrator was a relatively new business and not FCA regulated.
- (v) Mr I had been cold called and offered a free pension review.
- (vi) The advice Mr I received was from unregulated firms.
- (vii) From 5 April 2015, it was a statutory requirement for ceding schemes to check that members transferring defined benefits of more than £30,000 had received independent financial advice. While Mr I's transfer request was received before 5 April 2015, it was only a few weeks before the new guidance was introduced. The fact that Mr I had not received regulated advice was a clear warning sign.
- (viii) Mr I was told that he could expect much better returns from the Cape Verde Investment. This should have been identified by the Administrator by contacting Mr I directly.
- (ix) The Cape Verde Investment was an unregulated, high risk and non-diversified asset. BPS had told the Administrator that the Cape Verde Investment was actually or akin to an unregulated collective investment scheme (**UCIS**).

- The Administrator did not refer or provide Mr I with a copy of the Scorpion Leaflet. It was clear from the guidance itself and previous decisions by the Pensions Ombudsman 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 I 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 I did not identify specific risk factors. There was no evidence that the Administrator had telephoned Mr I to discuss the transfer.

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

43. On 16 November 2020, the Administrator responded to the Representative's complaint under Stage One of the IDRPs. The Administrator said:-

- It had identified that the sponsoring employer and the receiving scheme had been recently incorporated and registered, so it contacted HMRC to ask whether there were any concerns about the Rose SSAS. HMRC confirmed that there were none.

- The Scorpion Leaflet was sent to Mr I in the Transfer Pack. Mr I 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 received Mr I's Letter, which confirmed that he had carefully considered his decision, he was aware that there had been a significant rise in cases of pensions liberation fraud, and still wanted to proceed.
- It had telephoned and spoken to Mr I on 24 April 2015. He was advised that the transfer was a suspected pensions liberation transfer and advised of the possible implications of transferring.
- It repeated the warning in a letter to Mr I. He completed the Pensions Liberation Form and confirmed that he still wanted to proceed. He also provided a copy of the Broadwood Letter, which detailed the risks of the Cape Verde Investment. Mr I had signed the Broadwood Letter, confirming that he had read and understood the advice.
- Mr I had a statutory right to transfer his benefits once the completed paperwork had been received.
- The requirement to receive independent financial advice was introduced after the guarantee expiry date of Mr I's transfer illustration. So, 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 I's complaint.

44. On 1 June 2021, the Representative complained to the Administrator under Stage Two of the IDR. The Representative said:-

- The Administrator had identified only two of the nine warning signs.
- It repeated the nine warning signs, linked them to the relevant warning signs in the "fraud action pack", and set out the expected actions of an administrator. The Administrator was informed of the warning signs but did nothing with the information.

- BPS had provided the Scorpion Leaflet to Mr I, 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 I and whether he had read and understood it.
- It should have been obvious that Mr I's Letter had not been written by him.
- The File Note only referred to the implications of transferring to an unauthorised scheme. The Rose SSAS was not unauthorised. The Telephone Call was not adequate to communicate the nine warning signs to Mr I and it took place before the Administrator received the Pensions Liberation Form, so Mr I's responses to the questions in the Pensions Liberation Form would not have been available.
- The Broadwood Letter was a warning sign as it stated the investment was overseas and the adviser was unregulated.
- The "fraud action pack" stated: "Next steps if you have concerns....contact the member to establish their understanding of, for example, the type of scheme they'll be transferring to...."
- The Pensions Liberation Form had confirmed additional warning signs, and there was no evidence that there had been adequate communication with Mr I to tell him about the warning signs.
- It believed that market practice was for a bespoke warning letter to be sent to a member.

45. On 4 August 2021, the Trustee responded to the Representative's complaint under Stage Two of the IDR. The Trustee said:-

- In accordance with TPR's guidance on pension scams, the Administrator had identified a number of warning signs and conducted further checks on the transfer. These checks were consistent with the due diligence standards expected at the time. Potential risks were raised with the member who decided to continue with the transfer.
- Commenting on the nine warning signs identified by the Representative:-
  - Warning signs (i) to (iv). The Administrator had identified these warning signs. It noted the TD&Rs and the AG Letter and the fact that Mr I had an employment contract with Rose Limited. HMRC did not have any concerns and Metro Bank had set up a bank account. There was no legal requirement for a SSAS administrator to be FCA regulated.
  - Warning sign (v). The Administrator was not told that Mr I had been cold called until it received the Pensions Liberation Form. Due to the warning signs identified, HMRC and Mr I were contacted.

- Warning signs (vi) and (vii). There was no requirement for Mr I to receive regulated advice, and he had acknowledged this in the Pensions Liberation Form.
- Warning sign (viii). The Administrator was not aware of this warning sign.
- Warning sign (ix). Mr I confirmed that he had received information about the Cape Verde Investment in the Broadwood Letter, which clearly documented several risks and said that the proposed investment was overseas. The Administrator was not aware that the investment was akin to a UCIS.
- Its Stage One response had been incorrect in stating that the Scorpion Leaflet had been sent to Mr I. It had been sent to the third party financial advising firm in the Transfer Pack. However, Mr I had received and signed the Scorpion Leaflet, so another copy was not sent to Mr I.
- The risk factors of the proposed investment did not override Mr I's statutory right to a transfer.
- While TPR's guidance said to check if advice was from a regulated adviser, the absence of regulated advice was not at that time sufficient to allow the Trustee to prevent the transfer from proceeding.
- It did not uphold Mr I's complaint.

46. Following the complaint being referred to The Pensions Ombudsman, Mr I, the Representative and the Trustee made further submissions that have been summarised below.

47. Mr I's and the Representative's further submissions:-

- He did not receive sufficient risk warnings from the Administrator, and it was not made clear to him that the firms he was dealing with were not regulated by the FCA. He did not recall the circumstances in which he was given the Scorpion Letter.
- Many of the forms received by the Administrator had different variations of his signature and were delivered by courier service.
- The Administrator's role was to identify any scam warning signs and communicate them to Mr I. The Administrator had demonstrated that a reasonable level of due diligence had been carried out. The relevant issue was the extent of the warnings revealed from the due diligence and whether they were adequately communicated to Mr I. There were at least seven warning signs identified from the Administrator's due diligence.
- Companies House records for Rose Limited confirmed that it was a dormant company and that Mr I was a taxi driver. There was a direct connection between one of FRPS' directors and The Resort Group PLC.

- The File Note indicated that Mr I was warned about the implications of transferring to an unauthorised scheme, not about the scam warning signs. As the receiving scheme was authorised, the warning made during the Telephone Call was ineffective. So, it was reasonable for Mr I to decide to continue with the transfer during the Telephone Call.
- The Telephone Call took place before the Administrator was notified of the additional warning signs in the Pensions Liberation Form, so it could not have notified Mr I of these warning signs during the Telephone Call. There was no further communication with Mr I after receipt of the Pensions Liberation Form. The Administrator should have communicated the warning signs to Mr I after receiving the Pensions Liberation Form.
- The April 2015 Letter did not mention the presence of scam warning signs.
- It did not accept that the events of the transfer could be taken as evidence that Mr I would have ignored scam warnings from the Administrator.
- Members who received the Scorpion Leaflet from the receiving scheme would not expect the warnings to apply to them. The Administrator should have sent the Scorpion Leaflet directly to Mr I.
- The fact that Mr I completed the Pensions Liberation Form and had not been informed of the warning signs could not be taken as evidence that he had insisted on continuing with the transfer.

48. The Trustee's further submissions:-

- After the Administrator had received the required documents, it was legally obliged to proceed with the transfer.
- TPR's guidance in place at the time was followed, and the Trustee had no grounds on which to legitimately withhold Mr I's right to a statutory transfer value.
- The Administrator carried out steps one and two from page ten of the March 2015 "fraud action pack". Steps three and four were not required as it was not clear that the receiving scheme was a scam. In any event, Mr I was clearly insistent on transferring his benefits, regardless of the various warnings given to him, and there was no indication that referring the case to Action Fraud would have changed the outcome.

## **Adjudicator's Opinion**

49. Mr I'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 50 to 67.

50. Mr I's complaint was solely based on the question of whether the Trustee and Administrator carried out sufficient due diligence on the transfer, and then adequately informed Mr I of its findings. Whatever happened subsequently, and the information that has since come to light, could not influence the outcome.
51. The Rose SSAS was registered as an occupational pension scheme with HMRC, and BPS confirmed that it was willing to accept the transfer. So, Mr I'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.
52. As set out in TPR's "fraud action pack" issued in March 2015, the Administrator was responsible for checking Mr I's transfer against a pension scam checklist, particularly as he had not yet reached age 55. It was also responsible for issuing the Scorpion Leaflet to Mr I. The Adjudicator appreciated that the Administrator issued the Scorpion Leaflet to Mr I's adviser along with the Transfer Pack. Nevertheless, by signing the front page of the Scorpion Leaflet, Mr I confirmed that he had read the document. So, the Administrator had no reason to believe that Mr I 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.
53. The Administrator initially received the following documents in respect of Mr I's transfer:-
- Mr I'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 I and Rose Limited.
  - The TD&Rs for the receiving scheme.
  - The AG Letter, confirming details about the model trust deed and rules.
54. From this documentation, the Administrator identified two warning signs from the checklist in the "fraud action pack": the receiving scheme was newly registered for tax purposes; and the sponsoring employer was newly registered. The Administrator could also have identified that the receiving scheme was a SSAS where the member was a trustee, as this was stated in the TD&R.

55. The guidance in the checklist in the “fraud action pack” for these warning signs was that HMRC should be contacted to check a scheme’s registration, and information about the sponsoring employer should be obtained from the receiving scheme and Companies House. The Administrator contacted HMRC about the receiving scheme and checked the Companies House website about the sponsoring employer. So, this was consistent with the checklist in the “fraud action pack”. HMRC confirmed that current information did not indicate a significant risk of the Rose SSAS being used for pension liberation. From the Companies House website, the Administrator should also have known at this stage that the sponsoring employer was a dormant company.
56. The two warnings resulted in the Administrator carrying out the following actions:-
- Speaking to Mr I by telephone. While the File Note only stated that Mr I was advised of the possible implications of transferring to an unauthorised scheme, which was not relevant as the Rose SSAS was registered with HMRC, the Administrator subsequently confirmed that it told him that the transfer could be a pensions liberation transfer. He was advised of the possible implications of a pensions liberation transfer.
  - Sending the April 2015 Letter and requesting Mr I to complete the Pensions Liberation Form.
57. While the April 2015 Letter did not mention the two identified warning signs, it confirmed that TPR had issued guidance to pension schemes regarding transfers of pension benefits and potential pensions liberation or pension scams.
58. The Pensions Liberation Form was signed by Mr I and stated that after speaking to the Administrator, he wanted to continue with the transfer. However, there were further warning signs in the Pensions Liberation Form and the enclosed Cape Verde Booklet as follows:
- Mr I had been contacted by an introducer, indicating he had been cold called, and he had been advised by a non-regulated adviser;
  - the proposed investment was overseas; and
  - no contributions would be paid to the receiving scheme.
59. The Adjudicator noted that Mr I said that the documents the Administrator received had different variations of his signature. There were some differences, but there was no reason for the Administrator to believe that Mr I’s signature had been forged, and neither Mr I nor the Representative had made that claim.

60. Guidance in the checklist in the “fraud action pack” for the warning signs exhibited in the Pensions Liberation Form was to ask the member for the following information:-
- Copies of promotional materials about the receiving scheme and information on how it had been described to them. The Administrator had received a copy of the TD&Rs, and Mr I had enclosed a copy of the Cape Verde Booklet he had signed, with the Pensions Liberation Form.
  - How they became aware of the receiving scheme, and check whether the advisers were approved by the FCA. The Administrator was aware that Mr I had initially been contacted by FRPS, and that none of the firms advising him were regulated by the FCA. It was not a requirement for Mr I to obtain appropriate independent advice as he requested his illustration for a CETV prior to the relevant rule in section 48 of the 2015 Act coming into effect on 6 April 2015.
  - What they were told about contributions. There was no evidence provided to suggest that the Administrator was aware of this, other than no contributions would be paid to the receiving scheme.
61. So, the Administrator had already received most of this information, and knowing more about the contributions would not have changed the outcome. The Administrator carried out due diligence that was adequate and in line with TPR’s guidance at the time.
62. However, given the new information contained in the Pensions Liberation Form, the Administrator should have contacted Mr I again to inform him of the additional warning signs it had identified. This amounted to maladministration.
63. While there was a possibility that a second conversation with Mr I would have resulted in him reconsidering transferring his benefits, the Adjudicator was not persuaded, on balance, that Mr I would have refrained from going ahead with the transfer. This was because he had already been informed about warning signs and pension scams as follows:-
- In the Scorpion Leaflet, which Mr I confirmed he had read by signing the front page. The Scorpion Leaflet set out potential warning signs. The relevant ones for Mr I were: receiving an unsolicited call about a free pension review; the promise of a unique investment opportunity in overseas property; and the use of a courier service to pressure him into signing transfer documents quickly. So, it was reasonable to expect that Mr I was aware that these were warning signs of a pensions scam. Mr I knew that he had been cold called and offered a free pension review and that the proposed investment was based overseas, and he had confirmed this by signing the Pensions Liberation Letter.
  - During the Telephone Call on 24 April 2015, although the Adjudicator appreciated that it was not clear precisely what had been said.



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

- It was acknowledged in Mr I'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 I was made aware of the risks of the Cape Verde Investment, as they were set out in the Broadwood Letter, which he confirmed he had read and understood by signing the last page.
- Mr I most likely wanted to receive the more attractive returns that had been offered to him by switching to the Rose SSAS.
- Given Mr I's financial position at the time, and the fact that he was approaching age 55, it was likely that he wanted to receive his Pension Commencement Lump Sum as soon as possible, and it would not have been available to him yet if he had remained in the Scheme.

65. So, on the balance of probabilities, Mr I would still have gone ahead with the transfer even if the Administrator had telephoned him after it received the responses in the Pensions Liberation Form. On this basis, the Administrator had no right or relevant reason to refuse Mr I's transfer, and its maladministration did not result in Mr I incurring a financial loss.

66. The Adjudicator accepted that the Administrator concluded that the Rose SSAS was not a pension scam, and so did not direct Mr I to Action Fraud. Indeed, the Rose SSAS was a genuine pension arrangement registered with HMRC and had a valid trust deed and rules. It was reasonable for the Administrator to conclude that while the Cape Verde Investment might be considered as a high risk and an illiquid asset, Mr I was aware of these risks and had decided to proceed with the investment.

67. Any distress that Mr I had 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.

68. 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:-

- The Adjudicator did not take into account the PSIG code of good practice, in particular, guidance set out in section 6.4.3, which included due diligence questions for transfers to a SSAS. This guidance should have been taken into account by the Administrator.

- The Administrator's position on what had been said during the Telephone Call had been inconsistent during the complaint process. Despite the Telephone Call taking place before the Pensions Liberation Form was issued to Mr I, the Trustee and the Administrator had tried to convey that a detailed and comprehensive conversation had taken place, which covered a range of risks associated with a SSAS transfer. However, the only evidence available from the time of the Telephone Call was the File Note. The Adjudicator's acceptance of the Administrator's later unsupported assertions about the breadth of the warning signs was unreasonable.
- It did not agree that Mr I had been informed about warning signs and pension scams. In particular:-
  - The Scorpion Leaflet had been given to Mr I by FRPS, which was different to him receiving it directly from the Administrator.
  - The Broadwood Letter and Mr I's Letter were signed by Mr I "within a well-orchestrated procedure put in place by FRPS". There was no evidence that these two documents had provided him with any information by which he could understand 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 I.
- Mr I did not need to transfer his benefits in the Scheme and would not have done so to a scheme that exhibited scam warning signs.
- Mr I was on a low income, had no other retirement provision and no investment experience. So, it would not have made sense for him to have taken the risk of full loss on his only retirement provision.

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

### **Ombudsman's decision**

70. I sympathise with Mr I, 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 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 the Cape Verde Investment, it is more likely than not that Mr I will have lost most, if not all, of the value of his pension.

71. However, this complaint is not directed against those who 'advised' Mr I or the entities that received the transfer. Rather, in this complaint I need to consider whether the Trustee's decision to accept Mr I's transfer request was reasonable at the time of the transfer.
72. The transfer request was submitted in February 2015, and the Administrator's due diligence activities continued until it received the Pensions Liberation Form from Mr I in May 2015. In March 2015, TPR updated the "fraud action pack", and the PSIG code of good practice was issued.
73. As a period of around one month should in most circumstances be sufficient time to allow an administrator to reflect new guidance in its processes, and so I agree that the Administrator should have been aware of and considered the PSIG code of good practice, as well as the 2015 "fraud action pack".
74. The Administrator identified two warning signs from the checklist in the 2015 "fraud action pack", and subsequently followed the relevant guidance. This was to contact HMRC to check the receiving scheme's registration, and to obtain information about the sponsoring employer from the receiving scheme and Companies House. It then telephoned Mr I and asked him to complete a form, the Pensions Liberation Form, which asked him further questions about the transfer.
75. The Administrator did not refer to the PSIG code of good practice in its responses to Mr I's complaint, although I acknowledge it was under no legal obligation to do so. Guidance for administrators transferring to a SSAS is to check the following:-
  - 75.1. Is there an employment link between the member and the sponsoring employer? The Employment Agreement verified that there was.
  - 75.2. Does the sponsoring employer have a different geographical location to the member. The sponsoring employer's registered address was the same as Mr I's home address.
  - 75.3. Was the member cold called or have another unsolicited approach by the receiving scheme? Mr I said in the Pensions Liberation Form that he had been contacted by FRPS, so this suggests that he was cold called.
  - 75.4. Was the receiving scheme, the sponsoring employer or the administrator established within the last six months? Both the receiving scheme and the sponsoring employer were registered within six months of the transfer request (although in the case of a SSAS that need not necessarily be a cause for concern).
76. In the event of a pension scam warning, guidance in the PSIG code of good practice is to obtain further documents and ask the member further questions by telephone or in writing. I am satisfied that the Administrator either received the additional documents or asked the key additional questions in the Pensions Liberation Form.

77. I note that the Administrator sent the Scorpion Leaflet to FRPS rather than directly to Mr I. Nevertheless, Mr I 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. Likewise, with the other two documents the Representative mentions in its response to the Adjudicator's Opinion. Mr I signed the Broadwood Letter and Mr I's Letter, so there were no reasons that would have led the Administrator to believe that he had not read or written these documents either.
78. Mr I's answers in the Pensions Liberation Form and information contained in the Cape Verde Booklet indicated several other warnings. This should have resulted in the Administrator contacting Mr I again, but this action did not take place. However, I cannot ignore the other warnings that were provided to Mr I. I accept that there is a degree of uncertainty about what exactly was said during the Telephone Call. Nevertheless, it is clear that to me that the call would have been an alert to Mr I of potential issues and would have given him the opportunity to reconsider his decision. Scam or investment risk warnings were also provided in the Scorpion Leaflet and the Broadwood Letter, and Mr I supported his transfer with the declarations he made in Mr I's Letter. Also, the Administrator 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, and it received confirmation that Mr I was employed by the sponsoring employer.
79. On this basis, I find that even had the Administrator contacted Mr I for a second time, he would not have changed his mind about proceeding with the transfer.
80. I do not uphold Mr I's complaint.

**Dominic Harris**

Pensions Ombudsman

30 September 2024

## Appendix – checklist from TPR’s “fraud action pack” – March 2015

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
<ul style="list-style-type: none"> <li>newly or not registered for tax purposes with HMRC, whether it is an occupational or personal scheme (including SIPPs)?</li> </ul>	<ul style="list-style-type: none"> <li>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 p9)</li> </ul>
<ul style="list-style-type: none"> <li>a personal pension (eg a SIPP) where the scheme operator is not authorised with the Financial Conduct Authority (FCA)?</li> </ul>	<ul style="list-style-type: none"> <li>Check the scheme operator is authorised with the FCA (<a href="http://www.fca.org.uk/register">www.fca.org.uk/register</a>)</li> </ul>
<ul style="list-style-type: none"> <li>a recently set up small self-administered scheme, where the member is a trustee?</li> </ul>	<ul style="list-style-type: none"> <li>Ask the member</li> </ul>
<ul style="list-style-type: none"> <li>sponsored by a newly registered employer?</li> <li>sponsored by a dormant employer?</li> <li>sponsored by an employer that is geographically distant from the member?</li> </ul>	<ul style="list-style-type: none"> <li>Obtain employer information from scheme in question</li> <li>Check with Companies House for details of the employer status (<a href="http://www.companieshouse.gov.uk">www.companieshouse.gov.uk</a>)</li> </ul>
<ul style="list-style-type: none"> <li>sponsored by an employer that doesn't employ the member?</li> </ul>	<ul style="list-style-type: none"> <li>Ask the member</li> </ul>
<ul style="list-style-type: none"> <li>connected to an unregulated investment company?</li> </ul>	<ul style="list-style-type: none"> <li>Ask the receiving scheme for details of their investment service providers</li> <li>Check these providers with the FCA (<a href="http://www.fca.org.uk/register">www.fca.org.uk/register</a>)</li> </ul>

Description/promotion of the scheme	
Do descriptions, promotional materials or adverts:	How to establish
<ul style="list-style-type: none"> <li>include the words 'loan', 'savings advance', 'cash incentive', 'bonus', 'loophole', 'preference shares', 'one-off investment opportunities', 'free pension reviews' or 'government endorsement'?</li> <li>allude to overseas investments?</li> <li>hint at unusual, creative or new investment techniques?</li> </ul>	<ul style="list-style-type: none"> <li>Ask the member for copies of promotional materials, emails or letters about the scheme</li> <li>Ask the member about the way the receiving scheme has been described to them over email/text/phone</li> </ul>

The scheme member	
Has the member:	How to establish
<ul style="list-style-type: none"> <li>been contacted by an 'introducer'?</li> <li>been advised by a non-regulated adviser?</li> <li>taken no advice?</li> <li>decided to transfer after receiving cold calls, unsolicited emails or text messages about their pension?</li> </ul>	<ul style="list-style-type: none"> <li>Ask the member about how he/she became aware of the receiving scheme</li> <li>Check whether the advisers are approved by the FCA at <a href="http://www.fca.org.uk/register">www.fca.org.uk/register</a></li> </ul>
<ul style="list-style-type: none"> <li>pressured the trustees/administrators to carry out the transfer as quickly as possible?</li> <li>mentioned that your pension scheme has transferred funds to this arrangement before?</li> </ul>	<ul style="list-style-type: none"> <li>Check whether the member has contacted trustees/administrators to hurry along transfer since first submitting request</li> </ul>
<ul style="list-style-type: none"> <li>not received documentation from the new scheme?</li> </ul>	<ul style="list-style-type: none"> <li>Check whether the member has received documents</li> </ul>
<ul style="list-style-type: none"> <li>been told they can access their pension before age 55?</li> <li>been misled about the potential tax consequences?</li> </ul>	<ul style="list-style-type: none"> <li>Review promotional material for receiving scheme</li> </ul>
<ul style="list-style-type: none"> <li>been advised that there will be no contributions paid by themselves or the employer?</li> </ul>	<ul style="list-style-type: none"> <li>Ask what the member has been told about contributions</li> </ul>