

## Ombudsman's Determination

Applicant	Mr N
Scheme	HBOS Final Salary Pension Scheme ( <b>the Scheme</b> )
Respondent	Lloyds Banking Group ( <b>the Trustee</b> )

## Outcome

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

## Complaint summary

2. Mr N complained that the Trustee failed to carry out sufficient due diligence checks when transferring his benefits to the Bothbridge Pension Trust (**the Bothbridge Trust**), an Occupational Pension Scheme (**OPS**), in July 2013.

## Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the main points. I acknowledge there were other exchanges of information between all the parties.
4. Mr N held benefits in the Scheme, an OPS, and says he was encouraged to transfer to the Bothbridge Trust by North West Alternatives (**NWA**) in early 2013. Mr N has said that he had been researching about investment schemes on the internet since late 2012 and also visited NWA's offices on two occasions. Mr N was employed at the time of his transfer request and over 55 years old.
5. In May 2013, NWA contacted the Trustee requesting information about the Scheme.
6. On 29 May 2013, the Trustee wrote to both NWA and Mr N confirming the fund and transfer values applicable at the time and outlining the requirements for transferring. The Trustee included the relevant forms to progress the transfer. This letter recommended that Mr N seek financial advice before going ahead with any transfer away from the Scheme. The Trustee also asked for a copy of Mr N's birth certificate.
7. On 4 July 2013, Craighead Administration Ltd (**Craighead**) wrote to the Trustee to confirming that Mr N wanted to transfer to the Bothbridge Trust. This letter included a transfer application form signed by Mr N and one of Craighead's administration team

and included a Pension Scheme Tax Reference (**PSTR**), showing that the Bothbridge Trust was registered with HMRC on 12 April 2013.

8. On 9 July 2013, the Trustee sent an email to Mr N confirming receipt of transfer documentation and again asked for his birth certificate. Craighead was also copied into this email. On the same date, Craighead sent a copy of Mr N's birth certificate.
9. On 10 July 2013, another of Mr N's pension providers wrote to him with an update. It said that it was unable to proceed with his transfer request to the Bothbridge Trust at that time and would request further information from Craighead before writing to him again. This letter enclosed a copy of The Pension Regulator's (**TPR**) leaflet about pensions liberation fraud activity. Mr N has said that he received this letter after completion of his transfer from the Scheme to the Bothbridge Trust.
10. On 18 July 2013, Mr N has said that the Trustee refused to complete the transfer of Mr N's funds to the Bothbridge Trust. Mr N has said he was made aware of the decision by direct contact from the Bothbridge Trust. The Trustee has said that it has no record of this refusal and that it confirmed to the Bothbridge Trust on 18 July and 22 July, that funds would be credited to its bank account.
11. On 19 July 2013, Mr N telephoned the Trustee to query its decision to refuse his transfer request. Mr N said he was asked if he had carried out any due diligence on the Bothbridge Trust and has said that he did not understand this term but was told that *'it was checks to see if the company exists.'* Mr N said that he explained that he had visited NWA's offices and that it appeared to be a legitimate business. The Trustee said it would reconsider his request. There are no system notes, or a recording of this call, but the Trustee has accepted that Mr N's recollection of the call is accurate, although it also noted that he may not recall all the detail that was discussed.
12. On 23 July 2013, the Trustee sent a letter to the Bothbridge Trust confirming that the transfer had been completed. Around £165,000 was transferred from the Scheme to the Bothbridge Trust.
13. On 30 July 2013, NWA wrote to Mr N confirming his transfer to the Bothbridge Trust. It asked him to complete and return documentation to allow transfer of his tax free cash allowance. On 6 September 2013, Craighead wrote to Mr N to confirm that around £41,000 would be paid into his account on 9 September 2013.
14. On 5 September 2016, Cathcart Management Services Ltd (**Cathcart**), the Trustee of the Bothbridge Trust, wrote to Mr N informing him that the Bothbridge Trust had entered liquidation, and an insolvency practitioner, WRI Associates had been appointed to handle the liquidation. This letter also informed Mr N that both Cathcart and Craighead had resigned, as Trustee and administrator respectively, of the Bothbridge Trust.

15. Mr N has subsequently complained that the Trustee did not follow guidance put in place by TPR and that it should have refused to transfer his benefits to the Bothbridge Trust like his other pension provider did. Mr N made the following points:-
- The Bothbridge Trust was registered with HMRC in February 2013, only a few months before his transfer. This was a warning sign for a receiving scheme to not be registered or newly registered with HMRC.
  - He telephoned the Trustee to query the initial refusal of the transfer request. This is also a warning sign relating to the member pressurising the ceding scheme to carry out the transfer.
  - He was unsure whether the Trustee had requested evidence from the Bothbridge Trust showing its registration with HMRC.
  - None of the parties he was dealing with were regulated at the time of transfer. He queried whether the Bothbridge Trust was registered with the regulator at the time of transfer.
  - He did not know the Bothbridge Trust was an OPS and was not asked to clarify the type of scheme he was transferring to.
  - The TPR guidance mentions overseas investments and requesting promotional materials from members, the Trustee did not clarify this information with him.
  - The transfer was completed within a few days of his telephone call to the Trustee.
  - He was not provided with a copy of TPR's leaflet about pension scams and only became aware of it when the Bothbridge Trust entered liquidation.
16. Mr N asked to be put into the position he would have been in had the transfer not been processed, leaving his funds invested in the Scheme instead of in the Bothbridge Trust.
17. On 11 November 2019, after previously considering Mr N's complaint under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**), the Trustee responded to the complaint under stage two of the IDRP. It said that it had carried out the necessary checks, in line with its due diligence process in place at the time. The Trustee made the following points:-
- Its administration function was aware of TPR's guidance about pension scams and was considering it when looking at potential transfers out of the Scheme. If there were concerns about potential scam schemes, it would refer requests to its legal team. The transfer was initially refused, suggesting processes were in place to identify potential scams.
  - It cannot verify if it sent a pension scams leaflet to Mr N but its policy at the time was to issue the leaflet in response to every transfer request. The transfer was

initially refused, suggesting processes were in place to identify potential scam schemes.

- It is now aware that Mr N was sent a leaflet by another pension provider before he telephoned it and before the transfer request was completed although, it was not made aware of this at the time.
  - Mr N did not make it aware that another provider had refused a transfer to the Bothbridge Trust and raised concerns about the Bothbridge Trust. It believes that the other provider's refusal of the transfer, along with its initial refusal, and Mr N receiving a copy of the leaflet would have made him aware of the possible signs of pension liberation and the potential of the Bothbridge Trust being a potentially risky scheme to transfer to.
  - It said that there was limited contemporaneous evidence available from the time of the transfer, including the telephone call Mr N made after his initial transfer request was refused. The lack of records from the time does not suggest that the transfer request was handled incorrectly.
  - It accepts Mr N's recollection of the telephone call with the administration team but, given that it took place in 2013, acknowledges that he may not remember all the details of what was discussed.
  - Mr N discovered the Bothbridge Trust through his own research and visited NWA's offices more than once. He was not cold called. Also, Mr N did not make it aware of the overseas nature of the investments or the high returns that he had been promised.
  - It recommended that Mr N seek financial advice to make sure the transfer was suitable in his circumstances but there was no requirement for him to receive advice at the time of his transfer.
  - As the Bothbridge Trust was an OPS it did not have to be regulated but it was registered with HMRC, with a valid PSTR, which was checked in line with the guidance. In addition to this, Cathcart and Craighead did not need to be registered either.
  - Mr N was on notice due to receipt of the TPR leaflet and refusal to transfer from two pension providers but he did not do anything further.
18. The Trustee said that it had no further concerns about the Bothbridge Trust at that time, having carried out a sufficient level of due diligence. It received a valid transfer instruction from Mr N, so it completed the transfer in line with his request.
19. On 25 March 2022, TPR appointed Dalriada as an Independent Trustee to the Bothbridge Trust. Dalriada wrote to members of the Bothbridge Trust informing them of the decision in October 2023, and provided a further update in October 2024. I

understand that it is currently seeking compensation from the Fraud Compensation Fund.

## **Adjudicator's Opinion**

20. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised in paragraphs 21 to 32 below.
21. The TPR guidance at the time this transfer took place was published to make members, trustees and administrators aware of pensions scams and identify potential red flags to look out for. There was guidance given on checks that could be carried out to identify potential schemes that should not be transferred to.
22. The first part of this guidance was released in February 2013 and included a guide to pensions scams leaflet also known as the Scorpion leaflet. This was to be sent out to members who had requested a transfer so they could be aware, and make providers aware, of any elements of pension liberation present in their circumstances.
23. If members highlighted any issues, providers were expected to carry out further checks and based on the results of these either complete the transfer, ask for further information or not allow the transfer at that stage.
24. The Pensions Ombudsman has described February 2013 as marking a point of change in the level of due diligence that ceding schemes were required to carry out.
25. It is unclear whether Mr N received a Scorpion leaflet from the Trustee, but it has been accepted by all parties that he did receive one from his other provider. Mr N has said that this was not received prior to the transfer going through. However, given the date that it was issued by the other provider, approximately a week before he spoke to the Trustee, on the balance of probabilities, it is more likely than not that Mr N received the Scorpion leaflet before the completion of his transfer from the Scheme.
26. Additionally, the Adjudicator considered that if it was received shortly after the transfer and it did not prompt him to query the Trustee's decision or try to reverse the transfer, this would suggest that he would not have been persuaded to act differently anyway. In fact, it appears that on 19 July 2013, Mr N challenged the Trustees decision to refuse the transfer as he was confident about the legitimacy of the pension scheme he was transferring to. This would suggest he would insist on the transfer going ahead.
27. Mr N has not clarified whether he called his other pension provider to query its reason for refusing the transfer, as he did with the Trustee. Or if he received any further correspondence from it. The Adjudicator only had the information in paragraph 9 above, to go on.
28. In the Adjudicator's opinion, Mr N was aware that some of the warning signs mentioned in the leaflet applied in his circumstances, but he did not make the Trustee

aware of them. Mr N may have weighed up the information and still taken the decision to transfer, despite the potential risks. If the Scorpion leaflet was received after the transfer from the Scheme was completed, Mr N still had the opportunity to contact the Trustee and raise any issues.

29. Turning to the question of due diligence on the receiving scheme, the Bothbridge Trust was registered with HMRC in April 2013, three months before the transfer was completed. This was a red flag, however the scheme being newly registered alone would not have been enough to confirm that it could be potentially fraudulent.
30. In the Adjudicator's view, the Trustee had completed the necessary checks and had no concerns about the Bothbridge Trust at that time, so it had enough information to proceed with the transfer.
31. In response to Mr N's query as to whether the Trustee ought to have considered whether the parties involved in the transfer were regulated, the Adjudicator explained that at the time of the transfer there was no requirement for a regulated adviser to be involved or for due diligence to be undertaken on the parties involved.
32. The Adjudicator concluded that the Trustee carried out all the relevant checks expected of it at the time.
33. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided further comments which do not change the outcome.
34. In summary, he said that:-
  - The Trustee did not put enough emphasis on a scheme being newly registered as a warning sign and generally did not do enough to make him aware of the scams and fraudulent activity linked to pension transfers.
  - The Trustee initially refused his transfer request, showing it was unacceptable for him. His other provider turned down an identical transfer and issued a Scorpion leaflet. The Trustee should have given more specific advice about why it initially refused the transfer and referred his transfer to its legal team, and per its processes.
  - He was aware of the Scorpion leaflet as he had received it from his other provider but does not think that this was enough to put him on notice about the warning signs. He also commented that it was not his sole responsibility to carry out checks on the receiving scheme.
  - The Trustee cannot prove that it sent him a Scorpion leaflet, this along with its limited record keeping from the time indicates inadequate procedures.
  - The Trustee should have demanded to see evidence of any advice he had received and not allowed the transfer to proceed when it realised that none of the parties involved were regulated.

- The Trustee never explicitly advised him that the transfer was not in his best interests, simply telling him to get financial advice is not enough of a defence for it to rely on.
- He does not accept that he would have insisted on the transfer going ahead. If timely warnings had been issued about investing his entire fund in Africa, he would have changed his mind.

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

### **Ombudsman's decision**

36. I have considerable sympathy for Mr N. However, this matter cannot be viewed with the benefit of hindsight, and it is the circumstances at the time of transfer which are of importance.
37. Mr N has highlighted issues regarding his transfer to the Bothbridge Trust. Most of the arguments centred around TPR's Scorpion guidance and how it should have been applied in the circumstances of Mr N's transfer.
38. The potential features of a pension transfer scam may be specific to each case, but consideration needs to be given as to whether any common risk features are present prior to a transfer taking place.
39. It is unclear whether the Scorpion leaflet was issued by the Trustee in this case. The pause on the transfer that Mr N describes suggests that the Trustee had processes in place to review transfers, and I would have expected that to include sharing the leaflet. However, in the absence of positive evidence that it was shared, I will proceed on the basis that it was not issued by the Trustee. Although this was only three months after the February 2013 guidance was issued, I consider this was a failure on the part of the Trustee.
40. However, it is accepted that the Scorpion Leaflet was issued to Mr N by the other provider, and given the timing of that being issued, on 10 July 2013, and his call to the Trustee the following week, I consider Mr N would have had access to the Scorpion leaflet at the relevant time. The Scorpion leaflet did contain risk warnings which were relevant to the transfer, including: overseas investment and high investment returns. These are factors which Mr N may have recognised as being relevant to his proposed transfer and might have prompted him to reconsider.
41. However, there is no suggestion that he did, and despite speaking to the Trustee, he does not suggest that he disclosed those risks to the Trustee in the course of the call. The evidence is that, when he became aware of warnings such as the refusal of his other scheme to implement a transfer or receipt of the Scorpion leaflet, Mr N ignored the warnings and did not share information about those warnings.
42. Similarly, the Trustee ought to have considered the Scorpion guidance in relation to Mr N's transfer and undertaken the relevant level of due diligence on the Bothbridge

Trust. The risk factor that it ought to have been aware of was that the Scheme was newly established. Given the Trustee's initial refusal of the transfer, as Mr N describes, it seems likely that it had taken steps to consider the transfer in detail.

43. I have considered whether, having identified that the Scheme was newly established, the Trustee ought to have done more to alert Mr N to the risks of the transfer. While undoubtedly a risk factor, in isolation I am not persuaded that it would be justification to unilaterally block the transfer. Additionally, at the time, Mr N was over 55 years old and therefore not at risk of receiving an unauthorised payment from the Bothbridge Trust. This is significant because the 2013 Scorpion Leaflet's primary focus was to counter a growing number of individuals seeking pension benefits prior to age 55. Therefore, it is justifiable that the Trustee would consider this a lower risk transfer despite the new establishment of the Bothbridge Trust.
44. The Trustee could not have given advice about the suitability of a transfer or tried to encourage or discourage Mr N from transferring his funds away from the Scheme. It could have provided more warnings, but in the circumstances where he was over age 55 and there was only the fact that the Bothbridge Trustee was newly established, I am not persuaded that it was necessary. The Trustee recommended that he seek financial advice, but as confirmed by the Adjudicator, there was no requirement for the Trustee to check that Mr N had received advice or that he was only dealing with regulated parties.
45. A further consideration is whether Mr N had a statutory right to transfer. This was a transfer from an occupational scheme into another occupational scheme. The transfer request was received within three months of the CETV being issued. Mr N therefore had a statutory right to transfer and the Trustee, regardless of any concerns it may have held over the transfer could not have unilaterally blocked the transfer.
46. I have considered what would likely have happened had Trustee issued the Scorpion leaflet to Mr N or issue any warning relating to the recent registration of the Bothbridge Trust. It is significant that despite the other scheme's refusal to transfer and its provision of the Scorpion leaflet, Mr N did not rethink or try to undo the transfer at the time. This suggests that he was content with his decision to transfer these benefits. Further, he had built a relationship with NWA, which suggests he had confidence in the information it was sharing with him, and would have likely countered warnings he was receiving from other sources.
47. Finally, Mr N accessed a significant tax free lump sum from the Bothbridge Trust shortly after transferring. This is unlikely to have been possible in the Scheme without formally retiring, suggesting another incentive to complete the transfer. Given these factors, I consider that Mr N would have insisted on exercising his statutory right to transfer even had the Trustee been more thorough in its due diligence.
48. In conclusion, I do not find that the Trustee failed in its due diligence obligations at the time of the transfer and it is not responsible for the losses Mr N has suffered.
49. I do not uphold Mr N's complaint.



CAS-31532-G2M0

**Camilla Barry**

Deputy Pensions Ombudsman

29 January 2025