

Ombudsman's Determination

Applicant	Mr S
Scheme	BlueSky Heritage Pension Scheme (the Scheme)
Respondents	Evolve Pensions Limited (the Scheme Administrator) The Crystal Trust (the Trustee)

Outcome

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

Complaint summary

2. Mr S complained that the Scheme Administrator did not follow the correct procedure or carry out sufficient due diligence before it transferred his benefits in the Scheme to the Fanshawe Crescent 1958 Limited Small Self-Administered Scheme (**the SSAS**). Mr S is now unable to access his benefits in the SSAS due to the nature of its investments.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between the parties.
4. Mr S was a member of the Scheme, a defined contribution occupational pension arrangement.
5. On 28 January 2013, Carrington Mitchell Limited (**Carrington**) requested a statement of account (**the first statement**) relating to Mr S' benefits in the Scheme. A signed letter of authority (**LOA**) was attached to the request.
6. On 6 February 2013, the Scheme Administrator requested a change of address form to be completed by Mr S as the address on the LOA provided by Carrington contained a different address compared to the one on Mr S' member file.
7. On 6 February 2013, the Scheme Administrator sent the first statement to Carrington, which confirmed that the value of Mr S' benefits in the Scheme amounted to

£24,437.68, along with the transfer out discharge forms. This was also sent via fax on 8 March 2013.

8. On 14 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 wanted administrators and pension providers to 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.
9. Page 8 of the fraud action pack provided a number of warning signs / red flags that pension providers should be on the lookout for:
 - the receiving scheme was not registered, or was only newly registered, with HM Revenue and Customs (**HMRC**);
 - the member was attempting to access their pension before age 55;
 - the member was pressuring the Trustee or administrator to carry out the transfer quickly;
 - the member was approached unsolicited;
 - the member being informed that there was a legal loophole; and
 - the receiving scheme was previously unknown but was now involved in more than one transfer request.
10. If any of these red flags were present, then it was recommended that direct contact should be made with the member to query the receiving scheme and how they came to know of it.
11. The Scorpion Leaflet included examples of real-life pension scams and explained that the warning 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 advance 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.
12. On 12 April 2013, TRG Plc requested a statement of account (**the second statement**) relating to Mr S' benefits in the Scheme. A signed LOA was attached to the request.
 13. On 24 April 2013, the Scheme Administrator sent the second statement to TRG Plc, which confirmed that the value of Mr S' benefits in the Scheme amounted to £25,698.85, along with the transfer out discharge forms. The Scheme Administrator did not include the Scorpion Leaflet.
 14. Between the date when TRG Plc sent the request and received the second statement Mr S reached age 55.
 15. On 24 September 2014, the Scheme Administrator received the transfer discharge forms from the SSAS' administrator, Cantwell Grove Limited (**Cantwell**). On the same date, the Scheme Administrator received a signed letter from Mr S, stating the following:
 - "I am aware of the issues relating to pension liberation. Indeed, I have carefully considered my decision to request a transfer to the Scheme and have not made it lightly;
 - I confirm that the Scheme is a registered pension scheme for HMRC purposes and that the trust deed and rules governing it only allow standard benefit options such as annuities and drawdown in accordance with the applicable legal requirements;
 - I therefore wish to confirm that the transfer request is being made in order that I can take advantage of investment opportunities available under the Scheme, none of which are in any way connected with pensions liberation. I have received detailed information about the Scheme, how it operates, who administers it and the risks associated with taking a transfer out of my existing pension arrangement;
 - In making this transfer I am not seeking to access my pension benefits before age 55 and I am aware of the potentially significant tax liabilities that would arise were I to attempt to do so; and
 - I also confirm that I have not been offered any cash or other incentive by any person as part of my decision to transfer my pension to the Scheme."
 16. On 30 September 2014, the Scheme Administrator requested the following further information:
 - A copy of the SSAS' scheme details page from HMRC's Pension Online services showing that Cantwell was the administrator;

- Confirmation and evidence that the SSAS had been registered with TPR;
 - Confirmation that Mr S was employed by the employer that had established the SSAS and evidence of this, such as his last wage slip. Confirmation of the basis Mr S was able to join the SSAS if he was not an employee;
 - A copy of the SSAS' scheme booklet; and
 - A copy of a bank statement for the SSAS.
17. On 30 September 2014, the Scheme Administrator wrote to HMRC requesting confirmation of the registration status of the SSAS.
18. On 3 October 2014, Cantwell provided the requested information and documents. The documents provided covered various aspects of Mr S' position:
- In addressing its lack of registration with TPR Cantwell stated that "as the company is a personal service business it is not registered with The Pensions Regulator";
 - Concerning Mr S' lack of employment with the sponsoring employer, Cantwell addressed this by stating that "a dormant company can validly establish a SSAS or other form of occupational pension scheme and that a salary is not a requisite." In backing up this claim, Cantwell made reference to an extract from Page 7 of the Scorpion Leaflet, Section 1 (1) of the Pension Schemes Act 1993, Part 4 Section 150 (5) of the Finance Act 2004 and the case of *PI Consulting (Trustee Services) Limited v The Pensions Regulator & Others* [2013] EWHC 3181 (Ch). (**See Appendices Nos 3 to 5**) Cantwell stated that a refusal of the transfer would be unlawful;
 - Copy of HMRC notification of registration for tax relief and exceptions dated 16 September 2014;
 - Copy of the signed Administration services agreement with Mr S dated 12 September 2014.
19. On 8 October 2014, the Scheme Administrator received a letter from HMRC confirming that the SSAS had been registered on 16 September 2014. The letter also stated:
- "at the present time the information held by HMRC does not indicate a significant risk of the scheme being set up or being used to facilitate pension liberation".
20. The Scheme Administrator has said that at the time of the transfer request, it had no other information that would have alerted it to the need for further due diligence.
21. On 23 October 2014, the transfer was completed and letters confirming this were sent to Mr S and Cantwell. The amount transferred was £26,775.46.

22. Mr S received the following statements from the SSAS between 31 March 2016 to January 2023:

Statement Date	Total Scheme Valuation
31 March 2016	£30,694.74
20 July 2017	£26,909.08
2 May 2018	£27,045.94
12 September 2018	£26,981.92
On 29 August 2019	£24,463.54
4 August 2020	£24,060.54
18 August 2021	£23,655.89
January 2023	£23,235.27

23. On 27 April 2020, Mr S', via his representative, made a formal complaint to the Trustee via its Internal Dispute Resolution Procedure (**IDRP**) as follows:

- There was a failure to meet the regulatory obligations regarding the transfer. The 2013 TPR guidance was available and should have been followed;
- The Scheme Administrator and the Trustee failed to exercise the duty of care that they should have as defined by the Pension Regulator's Code of Practice No 7 (2009). There was evidence that Mr S did not fully understand the arrangement so would not have understood the questions in the transfer documents which is why some were left unanswered. The Scheme Administrator should have contacted Mr S to check his understanding. Mr S' signed transfer out discharge form of 24 September 2014 was also more than 12 months out of date from the transfer quote of 5 February 2013, however no signature validation check or evidence of identity was requested;
- The Scheme Administrator and the Trustee failed to carry out an adequate level of due diligence, and further investigation and questioning should have taken place. The SSAS was not regulated with TPR, this was known to the Scheme Administrator and should have been addressed. The fact that the SSAS' name comprised of part of Mr S' home address and his year of birth, together with the fact that it was a newly registered scheme, are examples of potential signs of pension liberation that should have been addressed;
- The Scheme Administrator and the Trustee failed to provide warnings in relation to pension liberation and did not consider Mr S' best interests;
- The Scheme Administrator and the Trustee made the transfer payment to a company bank account rather than to the Trustees of the SSAS however, transfer payments should only be made to the Trustees of the receiving scheme and not to a third party or an intermediary bank account;
- Had the due diligence and checks been sufficient, it was likely that they would have decided that the transfer should not go ahead.

24. In July 2020, the Scheme was wound up.

25. On 22 September 2020, the Trustee provided its IDRPs Stage 2 response as follows:

- The Scorpion Leaflet was released in February 2013, which was after the first statement of account had been requested on 6 February 2013. As the Scheme was a defined contribution arrangement, the value was not guaranteed and had no expiry date. The transfer was then paid 18 months after the first statement of account had been provided. Mr S did not request a more up to date value, and as the value had not decreased, issuing an updated value was not deemed necessary.
- Mr S signed the transfer declaration on 24 September 2014 and once final checks were carried out by the Scheme Administrator, the transfer payment was made on 23 October 2014. Mr S also enclosed a letter stating that he had taken independent advice about the transfer, and that he had not relied on any representations made by BlueSky or his employer.
- Mr S' signed letter of 24 September 2014 had confirmed that he was aware of pension liberation.
- It was standard practice for signatures to be compared on any correspondence. The Trustee was satisfied that all of Mr S' signatures in relation to the transfer matched his expression of wish form dated 19 March 1988. The Trustee believed that Mr S fully understood the transfer forms and documents and that he understood the risks involved with transferring.
- The Trustee had received confirmation of the SSAS registration from HMRC on 8 October 2014. Prior to the transfer the Scheme Administrator had also contacted Carrington to obtain a copy of the HMRC pension online screen print confirming that Cantwell was the registered administrator of the SSAS; determine Mr S' relationship with the employer who had established the SSAS and obtain copies of the SSAS' scheme booklet, rules and administration services agreement.
- The Trustee did not uphold the complaint and stated that the actions of the Scheme Administrator were satisfactory and demonstrated appropriate checks and due diligence. The Trustee did not believe that Mr S' situation was due to any failings of the Trustee or Scheme Administrator.

26. During the course of the investigation the Scheme Administrator provided the following information:

"I can also confirm that the name of the SSAS was not queried at the time as it was, and still is, very common for these SSAS' to be named with the member's address and year of birth. I had recently discussed this case with someone from our legal team and they confirmed they saw a number of these in private practice. As it was not considered unusual, it was not questioned."

“Having reviewed the file again and the documents received by the Bluesky Pension Scheme from the SSAS’ Administrator, Cantwell Grove Limited which included a copy of the HMRC Scheme registration status letter, at the time of the transfer, I confirm the name of the SSAS is “Fanshawe Crescent 1958 Limited”. Therefore, the transfer payment was made to the scheme, Fanshawe Crescent 1958 Limited.”

Adjudicator’s Opinion

27. Mr S’ complaint was considered by one of our Adjudicators who concluded that no further action was required by the Scheme Administrator or the Trustee. The Adjudicator’s findings are summarised below:-

- The Scheme Administrator received Carrington’s request for the first statement on 28 January 2013, which was issued on 6 February 2013, prior to the release of the TPR guidance. The first statement was sent again on 8 March 2013, which was after the TPR guidance had been issued and before Mr S reached age 55.
- On 24 April 2013, the Scheme Administrator sent the second statement without including the two-page warning note or Scorpion Leaflet. By this time Mr S had reached age 55.
- Although the Scorpion leaflet at the time would have been principally about pension liberation it also included a general warning about predators stalking your pension. As Mr S was over age 55 pension liberation would not necessarily have applied however, the Scorpion leaflet was still considered necessary according to the TPR guidance.
- Carrington sent the Scheme Administrator the completed transfer discharge forms on 24 September 2014. So, there had been sufficient time to allow the Scheme Administrator to introduce TPR’s guidance into the Scheme’s transfer process. Therefore, in the Adjudicator’s view, Mr S’ complaint should be considered against these industry standards.
- After requesting further information from Cantwell, the Scheme Administrator was satisfied with its responses regarding the lack of TPR registration, the HMRC registration and Mr S’ employment with the sponsoring employer. The Adjudicator considered this was reasonable.
- In the Adjudicator’s view it was reasonable that the HMRC letter of 8 October 2014, re-confirming the registration of the SSAS and stating that “at the present time the information held by HMRC does not indicate a significant risk of the scheme being set up or being used to facilitate pension liberation” would have resulted in the Scheme Administrator reaching a view that no further checks were necessary and contacting Mr S directly would not be required.

- The Adjudicator said that while it is regrettable that the Scorpion Leaflet was not sent to Mr S, Mr S stated himself, in the signed letter of 24 September 2014, that he was “aware of the issues relating to pension liberation. Indeed, I have carefully considered my decision to request a transfer to the Scheme and have not made it lightly...”. In the Adjudicator’s opinion this was reason enough for the Scheme Administrator to be of the view that adequate warnings and information regarding pension liberation had been provided to Mr S during the transfer process

28. In the Adjudicators view, although the Scorpion Leaflet was not issued to Mr S at the time of transfer, the Scheme Administrator carried out an appropriate level of due diligence. Relevant queries were raised with Cantwell and the Scheme Administrator ensured that they had proof of the SSAS’ HMRC registration which was obtained and re-confirmed at a later date. The Scheme Administrator and the Trustee had no right to or relevant reason to refuse Mr S’ transfer. It was considered reasonable for the Scheme Administrator to believe that Mr S was suitably aware of the risks relating to pension liberation and that he would have contacted the Scheme Administrator or the Trustee if he had any concerns.

- Although the Scheme Administrator and the Trustee may not have explicitly warned Mr S against the transfer as there were no other substantial signs that the Scheme Administrator were aware of at the time to warrant warning Mr S against the transfer, it is reasonable that this step was not taken. There was no evidence that Mr S would have taken that advice and refrained from transferring had he received any such warnings. On the balance of probabilities, it is likely that the transfer would have gone ahead in any event.
- Mr S said that the fact that the SSAS’ name was comprised of part of his home address and his year of birth should have been a warning indicator. The Adjudicator was of the view that, given it is common practice for SSAS’ to be named in this way, it is reasonable that the name of the SSAS would not have been raised as a cause for concern or a reason to query the matter any further.

29. Mr S did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr S said that he disagreed with the outcome on the grounds that the Scorpion leaflet was not issued. I have considered the additional point raised by Mr S but I agree with the Adjudicator’s Opinion.

Ombudsman’s decision

30. Mr S complained that the Scheme Administrator did not follow the correct procedure or carry out sufficient due diligence before it transferred his benefits in the Scheme to the Fanshawe Crescent 1958 Limited Small Self-Administered Scheme (**the SSAS**). Mr S is now unable to access his benefits in the SSAS due to the nature of its investments.

31. Specifically, Mr S points to Scheme Administrator’s failure to issue the Scorpion Leaflet a point about which there is no dispute. TPR issued its Scorpion guidance on

how to manage transfer requests on 13 February 2013. It is clear that the first request to transfer Mr S' benefits from the Scheme was made before the Scorpion guidance had been issued. However, the second request occurred at least 6 weeks after the issue of the guidance and by that time, the Scheme Administrator ought to have had a process in place, in line with TPR's guidance, where it issued the Scorpion leaflet to a member who had asked for transfer paperwork.

32. Despite this omission, I consider that Mr S was nonetheless aware of the applicable warning signs, prior to his transfer completing. Indeed, Mr S provided a signed letter, dated 24 September 2014, which confirmed that he was aware of pension liberation and emphasised that he had no cause for concern in relation to the SSAS and wished to transfer in order to take advantage of investment opportunities available under the SSAS. On this basis, I consider it unlikely, on the balance of probability, that even had the Scorpion Leaflet been issued by the Scheme Administrator that Mr S would have acted differently.
33. Although the Scorpion Leaflet was not issued to Mr S at the time of transfer, I find that the Scheme Administrator carried out an appropriate level of due diligence. Relevant queries were raised with Cantwell and the Scheme Administrator ensured that it had proof of the SSAS' HMRC registration which was obtained and re-confirmed at a later date. I find that the Scheme Administrator and the Trustee had no right to or relevant reason to refuse Mr S' transfer.
34. Further, the Scheme Administrator had no other information which would have alerted it to the need for further due diligence. The Scheme Administrator was satisfied with the fact that Mr S claimed to have taken independent advice about the transfer, and that he had not relied on any representations made by BlueSky or his employer.
35. As the level of due diligence that the Scheme Administrator carried out was adequate and in line with the guidance at the time it cannot be said that the Scheme Administrator or the Trustee were negligent when agreeing to transfer Mr S' benefits in the Scheme to the SSAS.
36. I do not uphold Mr S' complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
5 February 2024

Appendix

1. Pension Schemes Act 1993

94 Right to cash equivalent

(1) Subject to the following provisions of this Chapter—

(a) a member of an occupational pension scheme acquires a right, when his pensionable service terminates, to the cash equivalent at the relevant date of any benefits which have accrued to or in respect of him under the applicable rules; and

(b) a member of a personal pension scheme acquires a right to the cash equivalent at the relevant date of any benefits which have accrued to or in respect of him under the rules of the scheme.

95 Ways of taking right to cash equivalent

(1) A member of an occupational pension scheme or a personal pension scheme who acquires a right to a cash equivalent under this Chapter may only take it by making an application in writing to the trustees or managers of the scheme requiring them to use the cash equivalent to which he has acquired a right in whichever of the ways specified in subsection (2) or, as the case may be, subsection (3) he chooses.

2. Pensions Act 2004

18 Pension liberation: interpretation

(2) Money is to be taken to have been liberated from a pension scheme if—

(a) the money directly or indirectly represents an amount that, in respect of accrued rights **[F1]** or an entitlement] of a member of a pension scheme, has been transferred out of the scheme in pursuance of—

(i) a relevant statutory provision, or

(ii) a provision of **[F2]** the scheme rules], other than a relevant statutory provision,

(b) the trustees or managers of the scheme transferred the amount out of the scheme on the basis that a third party (“the liberator”) would secure that the amount was used in an authorised way,

(c) the amount has not been used in an authorised way, and

(d) the liberator has not secured, and is not likely to secure, that the amount will be used in an authorised way.

3. Pension Schemes Act 1993

Categories of pension schemes.

1. In this Act, unless the context otherwise requires—

- “occupational pension scheme” means a pension scheme—

(a) that—

(i) for the purpose of providing benefits to, or in respect of, people with service in employments of a description, or

(ii) for that purpose and also for the purpose of providing benefits to, or in respect of, other people, is established by, or by persons who include, a person to whom subsection (2) applies when the scheme is established or (as the case may be) to whom that subsection would have applied when the scheme was established had that subsection then been in force, and

(b) that has its main administration in the United Kingdom or outside the **[F3 EEA states]**, or a pension scheme that is prescribed or is of a prescribed description;]

- “personal pension scheme” means a pension scheme that—

(a) is not an occupational pension scheme, and

(b) is established by a person within **F4...** section 154(1) of the Finance Act 2004;]

- “public service pension scheme” means an occupational pension scheme established by or under an enactment or the Royal prerogative or a Royal charter, being a scheme—

(a) all the particulars of which are set out in, or in a legislative instrument made under, an enactment, Royal warrant or charter, or

(b) which cannot come into force, or be amended, without the scheme or amendment being approved by a Minister of the Crown or government department **[F5]** or by the Scottish Ministers],

and includes any occupational pension scheme established, with the concurrence of the Treasury, by or with the approval of any Minister of the Crown **[F6]** or established by or with the approval of the Scottish Ministers] and any occupational pension scheme prescribed by regulations made by the Secretary of State and the Treasury jointly as being a scheme which ought in their opinion to be treated as a public service pension scheme for the purposes of this Act.

4. Finance Act 2004, Part 4, S.150 (5)

(5) In this Part “occupational pension scheme” means a pension scheme established by an employer or employers and having or capable of having effect so as to provide benefits to or in respect of any or all of the employees of—

(a) that employer or those employers, or

(b) any other employer, (whether or not it also has or is capable of having effect so as to provide benefits to or in respect of other persons).

[F2(5A)This Part applies in relation to certain pension schemes that are not occupational pension schemes as it applies in relation to occupational pension schemes (see section 274B and paragraph 1(4A) of Schedule 36).]

(6) In this Part “sponsoring employer”, in relation to an occupational pension scheme, means the employer, or any of the employers, to or in respect of any or all of whose employees the pension scheme has, or is capable of having, effect so as to provide benefits.

CAS-64392-H8Z8

**5. PI Consulting (Trustee Services) Limited v The Pensions Regulator & Others
[2013] EWHC 3181 (Ch).**

<https://www.casemine.com/judgement/uk/5a8ff76d60d03e7f57eac5de>