

Ombudsman's Determination

Applicant	Mr R
Scheme	Merlin Pension Scheme (the Scheme)
Respondents	Zedra Governance Limited (the Trustee) Barnett Waddingham LLP (the Administrator)

Outcome

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

Complaint summary

2. Mr R has complained that the Administrator failed to notify him of scam warning signs before he proceeded with transferring his benefits from the Scheme to the Harbour Retirement Scheme (**HRS**), a Qualifying Overseas Retirement Pension Scheme (**QROPS**). Assets in the HRS were subsequently invested in an illiquid, overseas green energy investment and are unlikely to be recovered in full, or even at all.
3. Mr R wants to be put in the same position he would have been in if he had not transferred his benefits to the HRS.

Background information, including submissions from the parties

4. 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 all the parties.
5. Mr R is represented by Money Redress Limited (**the Representative**).
6. Mr R was a member of the Scheme between 1991 and 1998. The Trustee of the Scheme was Merlin Pension Trustees Limited until 15 February 2021 when it was replaced by AAA Trustee Limited. AAA Trustee Limited was replaced as sole trustee of the Scheme by Zedra Governance Limited on 31 July 2024.
7. On 30 November 1998, the Scheme closed to future accrual of benefits for all members and was made "paid up" with effect from this date. Therefore, Mr R became a deferred member of the Scheme.

8. 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 (**the Warning Note**), which TPR suggested administrators and pension providers include in the information they provided to members who requested a transfer;
 - an information leaflet (**the Scorpion Leaflet**), which contained a number of warnings directed at potential members who were thinking of transferring; and
 - a “fraud action pack” for pension professionals (**the 2013 Fraud Action Pack**).
9. 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.
10. Mr R said that in 2013 he received an unsolicited telephone call from an agent of It's Your Pension LTD (**IYPL**) which was not a firm authorised or regulated by the Financial Conduct Authority (**FCA**). During the telephone call the agent said that his final salary pension needed to be transferred, or he would end up losing his benefits. He was offered a free pension review.
11. During 2013, Mr R received further telephone calls from IYPL. During these telephone calls he was told the following:
 - he should transfer all of his three pension schemes including his benefits in the Scheme, so his pension funds would be collectively and well managed;
 - these transferred pension funds would generate attractive returns by being invested into three different investments;
 - proceeding with the recommended investment strategy would minimise risk and make the investment strategy as ‘safe as it could be’;
 - the transfer was heavily regulated and governed by HM Revenue and Customs (**HMRC**) so it would not involve any risk; and
 - he could withdraw funds from his pension if he proceeded with the transfer.

12. On the basis of this information, Mr R agreed that he would consider transferring all three of his pension funds including his benefits from the Scheme.
13. On 8 July 2013, Mr R signed a Letter of Authority (**LOA**) giving the Administrator permission to provide information regarding the Scheme, including the transfer value and transfer pack, to IYPL.
14. On 11 July 2013, the LOA was sent by IYPL to the Administrator via email.
15. On 23 July 2013, the Administrator wrote to IYPL. It advised that in accordance with guidance from TPR, it no longer provided quotations for a Cash Equivalent Transfer Value (**CETV**) to third parties. It advised IYPL that a quotation had been sent to Mr R and it should contact him for a copy.
16. On the same day, the Administrator wrote to Mr R and provided a CETV which was calculated on 16 July 2013. The CETV was £62,550.00, guaranteed to 16 October 2013. The Administrator enclosed the Warning Note and a link to The Pensions Advisory Service (**TPAS**) website with the letter. The Administrator also informed Mr R about the risk of pension liberation and encouraged him to contact it if he had any concerns he would like to discuss.
17. On 31 July 2013, Britton Merlin Ltd (**the Employer**) contacted the Administrator to advise it that it had spoken to Mr R. It said that Mr R wished to be provided with paperwork regarding the transfer of his benefits in the Scheme, as he had not received any information from IYPL.
18. On 6 August 2013, the Administrator again wrote to Mr R and provided the CETV of £62,550.00, guaranteed to 16 October 2013. It enclosed the same information as it provided with its letter to Mr R dated 23 July 2013, including the Warning Note and information regarding pension liberation.
19. On 28 October 2013, Mr R completed and signed an application form (**the Application Form**) to Harbour Pensions (**Harbour**) to join the HRS. On page 6 of the Application Form under the heading "Where the transferring scheme holds Defined Benefits (Final Salary or Guaranteed Benefits)" it stated:

"1. If you transfer from a Final Salary Scheme to a Money Purchase Scheme (i.e. Harbour Retirement Scheme) you will give up the promise of a guaranteed pension when you retire".
20. On page 11 of the Application Form, the details of Mr R's professional advisor were given as St James International (**St James**) based in the Czech Republic. St James was not a firm authorised or regulated by the FCA.
21. On 18 November 2013, Harbour contacted the Administrator. It provided a LOA signed by Mr R, which related to a new request to transfer his benefits from the Scheme to the HRS. It asked for information regarding the Scheme, and enclosed confirmation from HMRC that HRS was a recognised QROPS.

22. On 3 December 2013, the Administrator replied to Harbour. It advised that a CETV had been issued to Mr R on 16 July 2013, therefore it required a cheque for £240 plus VAT to cover the cost of reissuing a CETV before it could do so.
23. On 6 December 2013, IYPL contacted the Administrator to request its bank details so a payment to reissue the CETV could be made.
24. On 9 December 2013, the Administrator wrote to IYPL and enclosed its bank details.
25. On 24 December 2013, the Administrator wrote to IYPL to confirm it had received payment for £240 plus £48 VAT and to advise it that it no longer provided quotations for a CETV to third parties. It advised IYPL that a CETV had been sent to Mr R and it should contact him for a copy.
26. On the same day, the Administrator wrote to Mr R. It reissued a CETV which was £64,350.00 and guaranteed to 19 March 2014. It enclosed the Warning Note and a link to TPAS' website with the letter. The Administrator also provided information about the risk of pension liberation fraud and encouraged Mr R to get in contact if he had any concerns he would like to discuss. It also asked him to provide a copy of HMRC's letter of acceptance for the HRS as a QROPS when he returned the transfer forms.
27. On 6 January 2014, Mr R signed the Scheme's Transfer out form (**the Transfer Form**). This included the statement that he accepted the receiving arrangement may not be regulated by UK law and may therefore not be obliged to provide a particular level of benefit.
28. On 17 January 2014, Harbour responded to the Administrator. It enclosed the completed and signed Transfer Form along with a letter dated 9 April 2013 from HMRC confirming that the HRS was a QROPS.
29. On 24 January 2014, the Administrator sent an internal email to several of its agents asking if they were satisfied that there was no hint of pension liberation associated with the QROPS request. The response, sent by email on 30 January 2014, noted that they had checked that the HRS was registered with HMRC and was on their recognised QROPS list.
30. On 3 February 2014, Mr R's benefits in the Scheme were transferred to the HRS.
31. On 6 March 2014, the funds Mr R now held with the HRS were invested into the Green Renewable Redeemable Energy Investment Fund (**GRREIF**).
32. In June 2017, the GRREIF was suspended. While a current valuation cannot be obtained, the investment remains illiquid, and it is highly likely to be considered worthless.
33. On 8 October 2019, the Administrator received a Data Subject Access Request (**DSAR**) and a signed LOA by Mr R from the Representative.

34. On 4 November 2019, the Trustee's legal advisers replied to the DSAR on behalf of the Trustee and enclosed the information requested by the Representative.
35. On 21 March 2020, the Representative complained to the Administrator and to the Trustee under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**). In summary it said:-
- On 5 March 2014, Mr R's funds were transferred from the Scheme to the QROPS and thereafter invested into the GRREIF, an investment which was highly likely to be illiquid and worthless.
 - There was little meaningful contact between the Administrator and Mr R throughout the transfer process, except the provision of the Warning Note on a number of occasions.
 - The Administrator ought to have been aware of the cross-government initiative to prevent pension scams, widely publicised in the financial services industry from February 2013 onwards.
 - The Administrator could and should have identified the involvement of unregulated introducers and advisors, including the fact Mr R was contacted by an unsolicited telephone call, which it would have done if it had contacted Mr R.
 - The Administrator was aware that Mr R transferred to a QROPS. This should have been identified as an unusual feature and risk factor when there was no indication he intended to move abroad.
 - Ultimately, the Administrator should have identified the warning signs either from the transfer documents or by making simple, brief enquiries by telephone with Mr R.
 - The Pensions Ombudsman's (**the PO**) decision in Mr N v Northumbria Police Authority, reference PO-12763, made it clear that more is required from pension scheme providers where clear warning signs are identified and these should be communicated to members.
 - The Administrator failed to comply with the guidance issued by TPR in February 2013 by failing to warn Mr R of the risks and therefore it failed in its duty to him. Mr R would have heeded the warnings provided by the Administrator and would have decided not to effect the transfer, or in the alternative, he would have obtained properly independent advice.
36. On 15 July 2020, the Trustee responded to the Representative's complaint under stage one of the IDRP. The Trustee said:-
- More than six years had elapsed between the end of Mr R's membership of the Scheme and the date the Trustee received his letter of complaint. Notwithstanding that, it was willing to consider his complaint against the Scheme under the IDRP.

- If Mr R believed he had been the victim of fraud, or theft of his pension monies, he should consider reporting this to the police, or to Action Fraud.
- Mr R had approached it with a request to exercise his statutory right to transfer his benefits out of the Scheme. He did not explain his reasons for wanting to do this and, as he was exercising his statutory rights, the Trustee was under no obligation to seek information about his personal circumstances or motivations in seeking a transfer.
- Mr R's willingness to pay a fee in order to receive a second, updated, transfer value indicated a clear determination on his part to transfer out of the Scheme, to some other form of pension arrangement where he believed he could attain a greater financial benefit.
- Mr R had also transferred some separate pension funds to the same receiving pension scheme which, again, demonstrated his determination to move his pension savings to a new receiving arrangement.
- The Administrator had provided copies to Mr R of the Warning Note with both CETVs and had also highlighted the issue of risk in making transfers in its covering letters of 23 July 2013 (which was re-issued to him on 6 August 2013) and 24 December 2013. In each case there was a clear warning to him to consider pension liberation fraud and an invitation to speak with the Administrator if he had any concerns about this.
- Mr R had given no indication to the Administrator that the circumstances around his transfer request were anything other than his own decision to exercise his statutory right to transfer his benefits to another registered pension scheme, in this case, a QROPS.
- It was satisfied that the actions taken by the Administrator in 2013 and 2014, in relation to warning Mr R about pension liberation fraud, were appropriate actions and accorded with the guidance of TPR issued in 2013.
- Any loss Mr R may have suffered following the transfer from the Scheme was not the responsibility of the Administrator or of the Trustee. If any third party caused him a loss in investment or other action in relation to his funds, he should seek redress from them.
- The Scheme was made "paid up" on 30 November 1998, in accordance with Rules 9.3 and 32.1.3 of the Scheme's governing trust deed and rules dated 8 August 1995 (**the Scheme Rules**). Since 30 November 1998, no person had been able to join, or re-join, the Scheme and no person was able to accrue any benefits under the Scheme. It was therefore not possible under the Scheme Rules for Mr R to either be re-admitted to the Scheme, nor receive any benefits from the Scheme.

37. On 10 November 2020, the Representative complained to the Trustee to invoke stage two of the IDR. The Representative said:-

- It was not disputed that Mr R had a statutory right to transfer from the Scheme into the QROPS, nor was it alleged that the HRS did not meet the prescribed requirements under Section 95 Pensions Scheme Act 1993 (**PSA 1993**).
- Mr R's complaint was directed at the manner in which the Administrator and the Trustee's duties were carried out during the transfer of his benefits from the Scheme. He did not accept that, as he was exercising his statutory right, the Trustee was under no obligation to seek information about his personal circumstances or motivations in seeking a transfer.
- The Trustee was under an obligation to make enquiries of Mr R, and Harbour, to comply with their fiduciary duties and TPR's guidance.
- If Mr R had been appropriately warned about the risks associated with the proposed transfer by the Trustee, Mr R considered that he would have remained in the Scheme.
- It reiterated that the PO's decision in PO-12763 should be made available to the Trustee and consideration of Mr R's complaint should be made regarding what was expected of pension professionals after February 2013.
- It alleged that there were at least six warning signs present during Mr R's transfer out of the Scheme, which were identified in the February 2013 action pack and which the Trustee did not bring to Mr R's attention.
- The letter sent to Mr R in July 2013 was sent in response to a request for a CETV and before the identity of the receiving scheme was known to the Trustee. Therefore, it was not in a position at that point to identify all the warning signs.
- The first point at which the Trustee received sufficient details on the proposed transfer to identify the numerous warning signs was on 22 November 2013, on receipt of the transfer request from Harbour.
- The internal email dated 24 January 2014, only considered whether the transfer met the requirements of the PSA 1993, and not whether proper checks had been made for pension liberation fraud.

38. On 21 December 2020, the Trustee responded to the Representative's complaint invoking stage two of the IDR, but not under the IDR. The Trustee said:-

- The letter from the Representative dated 10 November 2020, raised no new substantive facts, evidence or issues in relation to Mr R's complaint. Therefore, should it operate stage two of the IDR it would arrive at no different conclusions than those explained in its response to the stage one IDR.

- It reiterated that if Mr R had any cause for complaint in relation to dealings with his pension arrangements after he transferred out of the Scheme, these were not matters for the Trustee of the Scheme.
- It did not share the Representative's views on the duties of trustees of an occupational pension scheme and its interpretation of the law, nor of the legal status or binding nature of Guidance issued by TPR or the PO Determinations it highlighted.
- Neither the Trustee nor the Administrator were authorised to provide personal financial advice to Mr R, or any other member of the Scheme.
- It reiterated that, as well as providing copies of the Warning Note with both CETVs, the Administrator also highlighted the issue of risk in pension transfers in its covering letters to Mr R. In each case there was a clear warning to him to consider pension liberation fraud and an invitation to speak with the Administrator if he had any concerns about this.
- Mr R did not take up that invitation on either occasion, despite warnings of matters such as cold calling in the Warning Note. The Representative's proposition that, had Mr R spoken to the Administrator he would not have proceeded with the transfer was, in its view, only a reflect of regret and hindsight.
- It remained satisfied that the actions taken by it and the Administrator were appropriate and accorded with the guidance of the TPR issued in 2013.

39. Following the referral of the complaint to The Pensions Ombudsman (**TPO**), the Representative on behalf of Mr R, and the Trustee, made further submissions that have been summarised below.

40. The Representative's further submissions:-

- Mr R had made contact with the Employer in July 2013 to ask for information regarding his pension, and it was clear from this contact that he had not received any information from IYPL. This provided an opportune point where the Administrator could and should have contacted Mr R in relation to the transfer of his benefits from the Scheme.
- Further, it could have been reasonably surmised by the Administrator from Mr R's communication with the Employer that he relied on an unregulated firm for advice.
- It ought to have been clear to the Trustee and the Administrator that it was not in Mr R's best interests to transfer a secure and guaranteed Defined Benefit (**DB**) pension into an alternative pension such as a QROPS, and Mr R ought to have been informed of the risks associated with this.
- Mr R was not seeking re-admittance to the Scheme. In its view, it was not a reasonable response for the Trustee to say that it had no "power" to make any compensatory payment from the remaining funds in the Scheme.

- It would have been clear to the Administrator that IYPL was an unregulated introducer as its letter carried no professional accreditation or FCA authorisation status, which was a warning sign of a potential pension scam. This ought to have been identified by the Administrator and communicated to Mr R as being a scam warning sign present on his transfer request.
- There was no allegation that advice ought to have been provided by the Administrator or an assessment made as to whether the transfer was in Mr R's best interests. Rather, the Administrator and the Trustee ought to have adhered to TPR's guidance at the time, to look for potential scam warning signs and communicate their presence to him, so he could make an informed decision whether to go ahead or not.

41. The Trustee's further submissions:-

- The Scheme was established with a single joining opportunity in 1994, whereupon it was immediately closed. There was never an opportunity for it to admit or re-admit members to the Scheme.
- Further, it had no power to make any compensatory payment to Mr R from the remaining funds in the Scheme.
- It disagreed that the Administrator should have been obliged to investigate contact by Mr R with the Employer in July 2013, regarding the transfer of his pension and investigate the persons he may have mentioned in that contact. The Representative appeared to have raised this issue with hindsight and following a "fishing expedition" of notes and records kept by parties other than Mr R himself.
- The Scheme could not have been described as a "secure and guaranteed DB pension" at the time of the transfer, as it was subject to the protection of the employer covenant, with potential support from the Pension Protection Fund in the event of insolvency. It did not hold any guarantee from any party.
- It was dismayed to hear that Mr R appeared to have lost the value of the funds he transferred from the Scheme. However, any loss suffered by Mr R arose from the actions of the parties who received it, who Mr R instructed the payment to be made to.

Adjudicator's Opinion

42. Mr R'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 below:-

- Mr R's complaint was solely based on the question of whether the Trustee and the Administrator carried out sufficient due diligence on the transfer of his benefits from the Scheme. Whatever happened subsequently, and the information that has since come to light, cannot influence the outcome.

- The HRS was registered as a recognised QROPS with HMRC, and Harbour confirmed it was willing to accept the transfer. So, Mr R'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 deferred member who apparently wished to exercise his legal rights and a receiving QROPS that was properly registered with HMRC and had provided the appropriate declarations and information.
- However, the Administrator was also responsible for issuing the Warning Note and checking Mr R's transfer in accordance with TPR's guidance at the time. The transfer took place in February 2014, therefore the Administrator was required to follow the guidance in the 2013 Fraud Action Pack, as the 2014 Fraud Action Pack had not yet been published.
- The evidence indicated that Mr R was not intending to access his pension before age 55, he did not receive a cash bonus or loan, and he was not told that there was a legal loophole, which could have been other warning signs. While one of the example scenarios in the 2013 Fraud Action Pack mentioned "transferring overseas" as a potential pension scam warning sign, it was not one of the six criteria for the Administrator to look out for, and if present, take further action.
- On several occasions the Representative had directed the Trustee to the PO's decision in PO-12763 as evidence that the Administrator and Trustee were required to do more at the time of Mr R's transfer than send the Warning Note. However, PO-12763 should be distinguished from the facts of Mr R's complaint. In PO-12763, the PO found that the Authority failed to carry out the due diligence required for that transfer. For example, it failed to conduct adequate checks and enquiries in relation to its member's new pension scheme, it failed to send the Warning Note to the member and ultimately, it failed to engage directly with him at all regarding the concerns it should have had with his transfer request, had it properly assessed it.
- These arguments do not apply in this case. First, it was evident that the Administrator did write directly to Mr R on three occasions, and on each occasion, it provided him with the Warning Note and information regarding pension liberation fraud. While the Warning Note encouraged members to obtain advice from an FCA regulated adviser, it was not a requirement that they must do so.
- Secondly, the relevant warning signs for Mr R's transfer were receiving an unsolicited call and being told by IYPL that he could withdraw funds from his pension if he proceeded with the transfer, although it does not appear that he did do this. As he received the Warning Note it was reasonable to expect that he was aware that these could be warning signs of pension liberation fraud. However, he did not contact the Administrator with any concerns.

- Finally, the Administrator conducted checks which were required by TPR guidance issued at that time. Namely, that the receiving scheme was a registered QROPS and recognised by HMRC. As the transfer was to a QROPS, Mr R was not required to have any earnings unlike a transfer to an occupational pension scheme, and the transfer occurred within three months of a CETV being issued. Therefore, it was a statutory transfer. On this basis, the Administrator had no right or relevant reason to refuse Mr R's transfer.
- While it was accepted that Mr R may have been vulnerable, this would not have been clear to the Administrator or the Trustee. Mr R may not have been capable of understanding the implications and risks of the transfer, yet he signed the transfer documents which stated that he did, and he received the Warning Note which warned him about pension liberation fraud. Further, by signing the transfer documents Mr R acknowledged and accepted to take the risk that the value of the HRS could be less than his benefits in the Scheme. So, it was reasonable for the Trustee to accept Mr R's declaration on these documents. The Trustee could not have known that Mr R had no pension or investment knowledge.
- While the possible loss of Mr R's pension has no doubt caused him to suffer significant distress, it was not caused by the Trustee's or the Administrator's actions.

43. Mr R did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. The Representative, on behalf of Mr R, provided his further comments which are summarised below:-

- The Administrator erroneously referred to IYPL as Mr R's IFA throughout the transfer period, and it failed to pick up on numerous significant warning signs relating to the involvement of this company, including the fact that numerous agents were involved in the transfer.
- There were six warning signs present on the transfer and not two as the Adjudicator described in the Opinion. These were:-
 - The involvement of unregulated introducers and advisers.
 - Initial contact by cold call and offer of a free pension review.
 - Transfer overseas.
 - Lack of regulated advice.
 - High risk, overseas unregulated investment intention.
 - Significant and unrealistic return promised.

- It accepted that the Administrator had checked that the HRS was registered with HMRC and was on their recognised QROPS list. However, it failed to adhere to its own internal checklist relating to pension liberation by failing to identify several warning signs. These included the second request for a CETV within 12 months which was paid for by the director of HRS, and pressure being applied by IYPL to action the transfer quickly.
- It was wholly unreasonable for the Adjudicator to criticise Mr R for not himself initiating a dialogue with the Administrator. The Administrator's own checklist directed it to carry out checks and investigations. An obvious starting point was for it to have had a conversation with Mr R to ask him about how he had been introduced to the HRS, and why he was transferring to a QROPS.
- Ultimately, the Opinion ignored relevant evidence, and the Adjudicator applied the requirements of the 2013 Fraud Action Pack in an unreasonable manner.

Preliminary Decision

44. I issued a Preliminary Decision (**the PD**), dated 17 March 2025, which did not uphold Mr R's complaint. The Representative submitted further comments in response that are summarised as follows:-
- Mr R has always accepted that he did have a statutory right to transfer from the Scheme to HRS. The complaint concerns the Administrator's alleged non-compliance with the 2013 Fraud Action Pack and how an appropriate level of due diligence would have altered Mr R's decision to transfer.
 - Mr R's complaint has relied on the manner in which the PO has previously interpreted the 2013 Fraud Action Pack. The purpose of the 2013 Fraud Action Pack was to encourage pension providers to assist their members in making informed decisions, helping them identify any scam warning signs and communicating with them in a proportionate but informative way.
45. The Representative has highlighted cases PO-3809, PO-11134, and PO-12763. It said that PO-11134 is particularly relevant on the issue of where the balance should lie (according to the PO) between upholding a statutory transfer right, and carrying out due diligence and communication about potential scams. In Mr R's case, the potential inability to refuse a transfer did not, and should not, have prevented due diligence from being undertaken to ensure the parties had access to the full facts before deciding whether to proceed. In doing so, this due diligence might have uncovered evidence that the statutory right to transfer did not actually exist, for example, because the scheme was not a valid recipient scheme, or the transfer would not have provided transfer credit as required under the legislation.

46. It seems the PD represents a fundamentally different interpretation than has been applied in previous decisions made by the PO. It is unclear, in light of the previous decisions highlighted, how the Administrator's due diligence can be considered as sufficient when the evidence shows that their 'checks' extended no further than ensuring that HRS was registered as a QROPS. The conclusion in the PD is that this was the only requirement to comply with the 2013 Fraud Action Pack. This is inconsistent with both the 2013 Fraud Action Pack itself and the manner in which the guidance has previously been interpreted by the PO. The purpose of the 2013 Fraud Action Pack was to extend the due diligence checks expected of ceding schemes beyond the basic requirement to check the registration status of the receiving scheme.
- On the issue of communication with Mr R, the PD also appears to mark a shift in approach. In PO-12763, the PO concluded that provision of the Warning Note alone was insufficient communication where scam warning signs were identifiable and a more bespoke dialogue was expected.
 - It is not accepted that Mr R was warned that his transfer contained risks. None of the letters issued to Mr R along with the transfer quotations had any specificity to his own pension transfer; they were entirely generic. A proper consideration of the issue of causation must identify the substance of the warning communication that should have been given to Mr R and reach a conclusion about how Mr R would most likely have acted, if he received had that different warning.
 - The PD comments only on the non-specific and inadequate provision of the Warning Note. Again, this is not the manner in which previous PO decisions have considered causation. PO-12763 included careful analysis of how the warnings the ceding scheme ought to have given differed from the actual events, then came to a conclusion as to how the transferee would have acted 'on the balance of probabilities'. The PD covers none of these important considerations.
47. The Trustee and the Administrator both accepted the findings of the PD without further comment.

Conclusions

48. I sympathise with Mr R, as it is apparent that, unfortunately, he was a victim of a persuasive cold caller, which resulted in him transferring his CETV to the HRS and investing it in the GRREIF which has proved to be a poor investment. He was most likely told that there would be benefit to him in transferring to an alternative pension arrangement by IYPL, a firm that was not regulated or authorised by the FCA, 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 HRS, it is more likely than not that Mr R will have lost most, if not all, of the value of his pension.

49. However, this complaint is not directed against those who advised Mr R or the entities that received the transfer. Rather, in this complaint I need to consider whether the Administrator's and the Trustee's decision to accept Mr R's transfer request was reasonable at the time of the transfer.
50. It is important to set out that I am not bound by previous PO decisions. Each case is to be considered on its merits, applying legal principle to provide a remedy only if a court could provide a remedy, given the circumstances of the case. The exception to this is awards for distress and inconvenience where maladministration is found.
51. The legal principles relevant to the duties of trustees and administrators paying transfers further to an exercise of a member's statutory transfer right prior to coming into force of the Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021 on the 30 November 2021 have recently been considered in detail by the Pensions Ombudsman in his determination in CAS-89140. I will not repeat the full analysis but summarise relevant key points here.
52. The Pensions Ombudsman found that when a member was exercising a statutory transfer right in respect of an occupational scheme there was no legislative or regulatory obligation on the Trustee of the Scheme to undertake due diligence, beyond that required to meet the express legislative criteria for a transfer. Specifically, the Trustee did not have a duty to undertake the due diligence set out in the 2013 Fraud Action Pack or in the Scorpion Leaflet aimed at members.
53. The Pensions Ombudsman also found that there was no general, common law or equitable duty of care that required the Trustee to conduct the due diligence suggested in respect of the member's transfer. Guidance issued by the Pensions Regulator such as the 2013 Fraud Action Pack could not create any new duty but could only influence the standard of duty if a pre-existing duty existed. Having established that there was no such pre-existing duty, the Pensions Ombudsman concluded that there was no legal duty on the Trustee to carry out the due diligence suggested in the 2013 Fraud Action Pack.
54. The response to the PD states that the purpose of the 2013 Fraud Action Pack was to extend the due diligence checks expected of ceding schemes beyond the basic requirement to check the registration status of the receiving scheme. I need make no finding as to the purpose of the 2013 Fraud Action Pack. It appears to be worded in terms of suggesting what due diligence could be done which could provide evidence that the Pensions Regulator might take into account in the exercise of its own powers. Regardless, it was guidance only and could not extend or create new legal duties. It is not suggested that confirming the status of the receiving scheme as a registered QROPS was sufficient to satisfy the 2013 Fraud Action Pack. Only that confirming such status was necessary to ensure that the transfer met the requirements of section 95 PSA93.

55. Both the Administrator and the Representative have said that Mr R was entitled to a statutory right to transfer his benefits. Section 94(1)(aa) of the PSA 1993, as it stood at the time of the transfer, says that in order for a statutory right to apply, a member must request a CETV within three months of the guarantee date in his statement of entitlement (i.e. the CETV illustration). I note that Mr R's CETV illustration was dated 19 December 2013, and his request to transfer was sent to the Administrator within three months of this date on 17 January 2014 (with the transfer occurring on 3 February 2014). Therefore, Mr R had a statutory right to transfer his benefits from the Scheme. Mr R has clarified that he always accepted that he had a statutory right to transfer from the Scheme to HRS.
56. As such, I find that the Trustee and Administrator had no right or relevant reason to refuse to implement Mr R's transfer request. The Trustee was under a statutory obligation to make the transfer and the Administrator, carrying out administrative tasks on behalf of the Trustee, was likewise required to make the transfer.
57. For the reasons more fully explained by the Pensions Ombudsman in CAS-89140 and discussed above, the 2013 Fraud Action Pack, being non-statutory guidance issued by TPR (i.e. advisory only), did not alter the obligations of the Trustee and the Administrator to Mr R. There was no legal requirement to comply with the guidance. The 2013 Fraud Action Pack did not and could not create a legal duty to educate members or carry out due diligence on risks they might face after exercising or in exercising their right to transfer, because TPR did not have power to create legal duties. In any event, the Administrator issued the Warning Note to Mr R and carried out checks in accordance with TPR's guidance at the time.
58. The Administrator received Mr R's transfer requests from IYPL, which was an unregulated 'introducer' company. At that time, TPR advised members to use an IFA regulated by the FCA. However, there was no requirement for the Administrator to check that Mr R was receiving regulated advice.
59. The Employer contacted the Administrator to chase Mr R's paperwork regarding the initial CETV and transfer documents. Indeed, the Employer advised the Administrator that this was because Mr R had not received any documents from IYPL. The Administrator was also aware that Mr R intended to transfer three of his pension funds, including his benefits from the Scheme, into the HRS, which he duly did. Therefore, when the Administrator received a second request for a CETV to be issued, it was reasonable for it to believe that this indicated a clear determination from Mr R to transfer out of the Scheme. On this basis, there would have been no reason for the Administrator to consider that Mr R's request to transfer his benefits from the Scheme into the HRS was anything other than his own wish to do so in exercise of his right under section 94 of the PSA.

60. It has been suggested that events might have been different if the Administrator had asked Mr R about the advice process that had led him to decide to transfer his benefits, as it would then most likely have determined that Mr R had been cold called and had received advice that he could withdraw funds from his pension if he proceeded with the transfer. However, the Administrator had no obligation to ask about the advice process and had no responsibility for Mr R's decisions or for investigating what advice he received from third parties¹.
61. I note the recent decision of the Supreme Court in the case of *Philipp v Barclays Bank UK Plc* [2023] UKSC 25 in which Lord Leggatt quoted with approval Lord Sumption NPJ's observation in *PT Asuransi Tugu Pratama Indonesia TBK v Citibank NA* [2023] HKCFA 3, para 14 that: "*The law cannot coherently treat compliance with an authorised instruction as a breach of duty...*".
62. Although the Supreme Court's decision concerned an 'authorised push payment' fraud and the obligations of a bank to make payments on instructions from its customer, it is binding on TPO. In my view, the decision seems wide enough to apply in the circumstances of a trustee under a statutory duty to pay a CETV pursuant to the member's exercise of their statutory transfer right. The PO decisions referred to by the Representative preceded the Supreme Court's decision in *Philipp v Barclays Bank UK Plc*.
63. A similar principle was considered by the Pensions Ombudsman in CAS-81940. In essence, it is a well-established principle that a common law duty of care will in most circumstances not arise where it would hinder the performance of a statutory obligation². Clearly, imposing a duty to carry out due diligence that goes above and beyond that required to meet the statutory criteria to transfer could inhibit transferring trustees from meeting their statutory obligations which are to effect the transfer and to do so within the fixed time-scale provided.
64. HRS was at the time of the transfer registered with HMRC and was included on its recognised QROPS list. As such, payment to HRS was a valid means of giving effect to Mr R's statutory transfer right under section 95 of the PSA, was an authorised instruction to the Administrator from Mr R in exercise of his statutory right. It is clear that the Administrator considered this and was entitled to form the view that HRS was a bona fide scheme. The Administrator's compliance with the statutory obligation of the Trustee, which it was required to discharge on the Trustee's behalf, could not be a breach of duty to Mr R by the Administrator.

¹ See *Hamar v The Pensions Ombudsman* [1996] PLR1 in which it was held that it was not the duty of the trustees of a pension fund to point a beneficiary in the right direction or to tell him of his errors and *Wirral Borough Council v Evans* [2000] 63 PBLR where a member complained that the administrator of the receiving scheme should have explained that the transfer he was making was not advantageous to him and it was held that "... there was no duty on the Administrators in this case to give the advice which would have prevented [the member] from transferring his pension benefits to the Scheme on such unfavourable terms".

² See *Desmond v The Chief Constable of Nottinghamshire Police* [2011] EWCA Civ 3 where it was held that "the common law should not impose a concurrent duty which is inconsistent, or may be in conflict with, the statutory framework".

65. Neither the Administrator nor the Trustee had any common law or equitable duty to carry out due diligence in respect of the receiving scheme, investments to be made in the receiving scheme, advice received by Mr R or his motivations for requesting the transfer. They had no duty to enquire or carry out due diligence to ensure that the transfer was in Mr R's best interests. They had no legislative or regulatory duty to carry out due diligence in respect of the receiving scheme (beyond that required to ensure it met the express statutory requirements of section 95 PSA93). They had no legal duty to carry out due diligence suggested in the 2013 Fraud Action Pack.
66. I note the other warnings that were provided to Mr R, particularly in the Warning Note which referred to unsolicited calls, and in the letters the Administrator sent to Mr R, which provided him with links to the TPAS website and information regarding the risk of pension liberation. Ultimately, it would appear that Mr R was warned that the transfer contained risks. So, even if the Administrator had identified and informed Mr R of the warning signs, I do not find that he would have changed his mind about proceeding with the transfer. However, that is not the basis of my determination. It is simply that the Trustee and the Administrator had no duty to Mr R to carry out due diligence suggested in the 2013 Fraud Action Pack or otherwise to investigate or warn him about risks relating to the transfer or the investments he might seek to make in the receiving scheme or to ensure or warn him about whether the transfer was in his best interests.
67. I do not uphold Mr R's complaint.

Camilla Barry

Deputy Pensions Ombudsman
11 September 2025