

Ombudsman's Determination

Applicant	Mrs T
Scheme	HBOS Final Salary Pension Scheme (the Scheme)
Respondent	Lloyds Banking Group Pensions Trustees Limited (the Trustee)

Outcome

1. I do not uphold Mrs T's complaint, and no further action is required by the Trustee.

Complaint Summary

2. Mrs T has complained that the Trustee failed to carry out sufficient due diligence checks when transferring her benefits to the Bodhyfrd Road 1967 Ltd Small Self-Administered Scheme (**the SSAS**) in February 2015.

Detailed Determination

Material facts

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 all the parties.
4. Mrs T held benefits in the Scheme, an occupational pension scheme (**OPS**), and said she was approached to transfer it to the SSAS, via an unsolicited call from an unregulated adviser. Mrs T said First Review Pension Services (**FRPS**) offered her a free pension review.
5. On 17 June 2014, the Trustee received a letter of authority (**LOA**) signed by Mrs T and a request for information about the Scheme. This LOA appointed FRPS and Moneywise, a Financial Conduct Authority (**FCA**) regulated firm, to act on Mrs T's behalf going forward.
6. On 24 June 2014, the Trustee issued a quotation to FRPS confirming the fund and transfer values applicable at the time and a deferred member factsheet.
7. On 1 July 2014, it sent a further letter to FRPS, including a Cash Equivalent Transfer Value (**CETV**) quotation. It confirmed the requirements for transferring and included the relevant forms to progress the transfer. This letter also included a list of

organisations that Mrs T could contact to get further information and advised that Mrs T should seek financial advice before going ahead with any transfer.

8. On 23 August 2014, FRPS wrote to Mrs T explaining the requirement under section 36 of the Pensions Act 1995 that financial advice be considered on the intended investments. It went on to say that the advice had been completed “by an Independent firm of financial advisors, Broadwood Assets Ltd” (**Broadwood**) and requested that she sign copies of the advice dated the same date.
9. The advice provided by Broadwood was six pages, it mentioned on page five that Broadwood was not regulated or authorised by the FCA.
10. It appears that within the same letter from FRPS was attached a Client Agreement & Guide to Services for a regulated financial adviser, Sequence Financial Management (**Sequence**). It is unclear whether Mrs T signed this document.
11. On 10 September 2014, the SSAS was established by Trust Deed as an OPS and Mrs T as the sole Trustee. It was registered with HMRC on 11 September 2014.
12. On 24 September 2014, the Trustee received a letter from Bespoke Pension Services Ltd (**Bespoke**), the administrator of the SSAS, requesting the transfer of Mrs T’s benefits. Bespoke confirmed that the receiving scheme, the SSAS, was a registered OPS. It provided a Pensions Scheme Tax Reference (**PSTR**) and confirmed that Mrs T wanted to transfer into the SSAS. Completed release forms were included with the letter and were signed by Mrs T and one of Bespoke’s administration team. A copy of the SSAS’s Trust Deed and Rules were included, along with a copy of The Pension Regulator’s (**TPR**) leaflet about pensions scams, signed by Mrs T, on 11 September 2014, and a document setting out the terms of her agreement with the sponsoring employer of the SSAS.
13. This submission included a letter from Mrs T that confirmed that she was aware of pension liberation and had carefully considered her decision to transfer to the SSAS. Mrs T said she was transferring to take advantage of investment opportunities available in the SSAS. She said she had been provided with detailed information about the SSAS and how it would operate.
14. On 3 October 2014, the Trustee wrote to Mrs T to confirm receipt of her request to transfer her funds from the Scheme to the SSAS. The Trustee included a copy of the leaflet about pension scams and a link to TPR’s website for more information about pension liberation. It recommended that Mrs T should seek independent financial advice before finalising her transfer away from the Scheme. It also included a member consent form which needed to be returned for the transfer to proceed.
15. On the same day, the Trustee emailed HMRC asking it to confirm that the SSAS was registered with it and whether HMRC had any information suggesting the SSAS was being used to facilitate pension liberation.

16. On 9 October 2014, another of Mrs T's pension providers wrote to her with an update on her transfer of a personal pension to the SSAS. It said that it would carry out the necessary checks and complete the transfer, if it was satisfied with the outcome of the checks. It also recommended that Mrs T seek financial advice regarding the transfer. On 29 October 2014, this transfer was completed (**Transfer A**).
17. Between 13 October 2014, and 3 December 2014, Bespoke telephoned the Trustee several times, to get an update on the transfer of Mrs T's pension. On each occasion, the Trustee said that the member consent form and HMRC confirmation were still outstanding.
18. On 11 November 2014, Mrs T signed an Instruction to Invest £67,700 of the SSAS' funds into a Cape Verde investment offered by The Resort Group PLC. The instruction noted that she had received and considered advice from Broadwood Assets Limited, which she believed to be appropriately qualified for the purposes of Section 36 of the Pensions Act 1995. This resulted in the money received from Transfer A being invested.
19. On 7 January 2015, Bespoke asked the Trustee to reissue a member consent form to Mrs T. On 9 January 2015, Bespoke requested a copy of the member consent form to be emailed to it.
20. On 16 January 2015, the Trustee emailed HMRC to chase up its earlier request for confirmation of the SSAS's registration. On the same day, it emailed Bespoke to update it about the registration confirmation and provide it with a copy of the letter sent to Mrs T on 3 October 2014.
21. On 3 February 2015, HMRC wrote to the Trustee and confirmed that the SSAS was still registered with it and not subject to a deregistration notice. HMRC also confirmed that the information it held did not indicate a significant risk of the SSAS being set up or being used to facilitate pension liberation.
22. On 6 February 2015, the Trustee issued another copy of the 3 October 2014 letter directly to Mrs T.
23. On 11 February 2015, Bespoke wrote to the Trustee with a copy of the member consent form, signed by Mrs T. The form included statements confirming that Mrs T: would not be taking benefits before she turned 55 and was aware of the tax implications if she was to do this; she had read TPR's leaflet about pension liberation; she had considered taking independent financial advice; and, that she was employed by the sponsoring employer of the receiving scheme.
24. On 16 February 2015, the Trustee wrote to Bespoke and confirmed that the transfer had been completed. In total, around £77,000 was transferred from the Scheme to the SSAS.
25. On 22 May 2015, Mrs T signed an Instruction to Invest £81,087 of the SSAS' funds into a Cape Verde investment offered by The Resort Group PLC. The instruction

noted that she had received and considered advice from Broadwood Assets Limited, which she believed to be appropriately qualified for the purposes of Section 36 of the Pensions Act 1995.

26. Mrs T's representatives have subsequently argued that the Trustee did not exercise its duty of care to protect Mrs T's interests as it was later found that the SSAS was a pension liberation scheme. Also, that Mrs T was exposed to loss of her pension funds due to the Trustee not following guidance put in place by TPR. It has been argued that Mrs T did not have a statutory right to transfer away from the Scheme.
27. Mrs T's representatives said that the Trustee should have spotted the warning signs that applied and not allowed the transfer to proceed. The following warning signs were highlighted:
 - the receiving scheme being newly registered with HMRC;
 - the sponsoring employer being newly established;
 - the member not meeting the definition of an earner, so not having a statutory right to transfer;
 - the member receiving advice from an unregulated adviser;
 - funds being invested in an unregulated and overseas investment, with a promise of high returns;
 - pressure on the Trustee to speed up the transfer;
 - an unsolicited approach being made to a member; and
 - paperwork which had clearly been pre-filled in.
28. Mrs T asked to be put into the position she would have been in had the transfer not been processed, leaving her funds invested with the Trustee in the Scheme instead of in the SSAS.
29. On 21 July 2021, after previously considering Mrs T'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:-
 - It received scheme documentation and information from HMRC's online service to confirm the SSAS was a registered pension scheme.
 - Mrs T had a statutory right to transfer her benefits to another pension arrangement.

- It recommended that Mrs T seek financial advice to make sure the transfer was suitable in her circumstances and there was an FCA regulated firm mentioned on the LOA that was provided during the initial request for information.
 - It provided Mrs T with a copy of TPR's scams leaflet and links to websites with more details about pension liberation. It received a signed copy of the leaflet, confirming Mrs T had read and understood its contents. She also confirmed that she had read and understood the contents of the leaflet by signing the member consent form.
 - It received confirmation that Mrs T was employed by the principal employer of the SSAS.
 - The SSAS was newly registered but one warning sign alone is not conclusive evidence of pension liberation.
 - It was chased for updates by Bespoke, on several occasions, but this was not to excessive levels and was over the period of a few months.
 - It did not identify red flags in its initial checks of the SSAS and was not made aware of any by Mrs T, so it did not carry out further due diligence.
 - It did not think that further contact with Mrs T would have changed her decision to proceed with the pension transfer. She was already aware that many of the warning signs applied, such as cold calling and overseas investments, but still chose to transfer.
30. The Trustee said that it had no further concerns about the SSAS at that time, having carried out a sufficient level of due diligence. It said there was nothing about the transfer that required enhanced due diligence checks, so it completed the transfer in line with Mrs T's request.

Adjudicator's Opinion

31. Mrs T'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 32 to 44 below.
32. 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.
33. 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 (**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.

34. 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.
35. 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. The guidance was updated in July 2014 with a checklist of potential questions for transferring schemes to consider.
36. If initial due diligence suggested a risk of a potential scam, the 2014 guidance suggested actions to establish further details about a receiving scheme. The checklist included expanded sections on how the receiving scheme was set up and being run; how the receiving scheme was promoted; and, how the member had been approached and their actions during the transfer process. It included checks the ceding scheme could carry out itself and questions that could be asked of the receiving scheme and member.
37. The guidance also noted that the appearance of red flag signs did not necessarily mean the receiving scheme was a scam. However, if several red flags applied, there may be cause for concern.
38. Turning first to whether the Trustee was correct to class this as a statutory transfer, a point which is in dispute between the parties, the fact that Mrs T signed documentation stating that she was employed by the sponsoring employer of the SSAS is significant and cannot easily be overlooked. On the basis of this, the Trustee had no reason to doubt that Mrs T was not an earner. The Adjudicator noted Mrs T's counter argument that the Trustee ought to have requested more information on this but disagreed. Notwithstanding this, Mrs T has said that she was a foster carer at the time, with an inconsistent income, but has not actually confirmed the consistency of any income at the relevant time. If indeed she was not in receipt of income at the time, the Adjudicator would have expected her to state this in her submissions. On the basis of the above, the Adjudicator considered the Trustee had a reasonable belief that Mrs T was an earner for the purposes of a statutory transfer.
39. Turning to the question of due diligence on the receiving scheme, the SSAS was registered with HMRC in September 2014, five months before the transfer was completed, the sponsoring employer was also set up around the same time. Although a red flag under the 2014 guidance, it would not be unusual for a SSAS and sponsoring employer to be set up close to when a transfer was requested, and it is significant that the risks now associated with SSASs and their potential misuse were not widely recognised in 2015. Indeed, there is no specific mention of SSASs in the 2013 or 2014 Scorpion Documentation.
40. There was no indication from the correspondence seen by the Trustee that Mrs T was approached unsolicited, via a cold call or given unregulated advice. As mentioned in paragraph five above, the Trustee received an LOA giving both FRPS and Moneywise, a regulated financial adviser at the time, authority to act on Mrs T's

behalf. Mrs T did not provide any further details about how she was approached or her relationship with either firm.

41. Mrs T has said that documents to enable the transfer were presented to her and she was simply asked to sign them, they were not explained to her in any detail. However, Mrs T received the 3 October 2014 letter directly from the Trustee twice and independent of any pressure from FRPS or Bespoke. Further, there were over four months between receipt of the Scorpion leaflet and completion of the transfer to the SSAS. So, Mrs T had sufficient opportunity to thoroughly read through the information and contact the Trustee, TPR or any of the other organisations mentioned on the leaflet.
42. Mrs T has said that the representative from FRPS was very professional and convincing, assuring her that the transfer was in her best interests. Mrs T thought she was receiving regulated advice from an independent financial adviser. As mentioned in paragraph seven, Mrs T signed documents setting out that Broadwood had advised her on the investments in the SSAS. The Adjudicator noted that at this point there was no requirement for Mrs T to receive regulated financial advice before transferring her pension from the Scheme, and the Trustee could not have offered Mrs T advice on her pension transfer. However, it did recommend that she seek advice, and this was also set out in the documents relating to pension liberation.
43. Mrs T said that she had carefully considered the transfer and was moving her funds away from the Scheme to take advantage of investment opportunities in the SSAS. She also confirmed, on more than one occasion, that she was aware of the Scorpion leaflet and other guidance about pension liberation.
44. The Adjudicator said the Trustee had completed the necessary checks and had no concerns about the SSAS at that time, so had enough information to proceed with the transfer.
45. Mrs T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

Further submissions

46. Mrs T's' representatives provided further comments.
47. In summary, the representatives said that:-
 - 47.1. Mrs T did not have any contact with Moneywise or Sequence and the Trustee did not correspond with these companies either.
 - 47.2. The letter referencing other organisations that could be contacted for information and recommending she take financial advice was not sent directly to Mrs T.

- 47.3. There were clear signs that the SSAS may have been a vehicle for pension liberation, the Trustee did not do enough to make Mrs T aware of warning signs.
- 47.4. The Trustee did not carry out sufficient checks to confirm that Mrs T had a statutory right to transfer.
- 47.5. Mrs T funds are held in two fractional property investments with The Resort Group but these investments are worthless with no market for resale. This was the case from the outset.
- 47.6. The employment agreement between Mrs T and the employer of the SSAS lacked information such as remuneration or the duties that she would undertake in her role. The agreement was witnessed by a representative of FRPS, an unregulated entity.
- 47.7. Mrs T's status as a foster carer meant she was in receipt of an allowance, not an employment income. This should not have qualified her as an earner, therefore she did not have a right to a statutory transfer.
- 47.8. The SSAS being newly registered should have been a major warning sign that it was going to be used for pension liberation.
- 47.9. Many of the warning signs present in the transfer have not been considered by the Adjudicator. If the Trustee had asked Mrs T directly, she would have confirmed that many of them applied in the circumstances of her transfer.
- 47.10. The correspondence the Trustee did have with Mrs T was not sufficient in highlighting the warning signs present in her transfer and was not in line with the guidance at the time.
- 47.11. If the Trustee had warned Mrs T about the risks of taking unregulated advice, she could have sought regulated advice from another adviser.
- 47.12. Mrs T was presented with huge amounts of documentation from FRPS and asked to sign it. She was told that the letters regarding pension liberation only related to situations where funds were being accessed before age 55, which was not relevant in her circumstances. The guidance clearly addressed the wider risk of pension scams. Mrs T did not confirm that she was informed of warnings signs related to her transfer and wanted to proceed.
- 47.13. If the Trustee telephoned Mrs T they would have discovered that she had not received regulated advice on the transfer.
- 47.14. There were a high number of warnings signs that the transfer may be a scam, not just the recent registration of the SSAS. The Trustee should have discovered this when reviewing the documentation it received.

Response to my Preliminary Decision

48. On 28 March 2025, I sent my Preliminary Decision (**the Decision**) on this complaint to the parties. For the reasons set out in my Conclusions below, I did not uphold Mrs T's complaint.
49. In response, Mrs T's representatives raised the following points:-
50. Disagreement with my application of the judgement of Hughes v Royal London. In summary:-
 - 50.1. It contradicts the ratio decidendi of the judgement on the meaning and application of the word 'earner'.
 - 50.2. It accepts and applies a comment, that was specifically discounted by Morgan J in his judgement, making it inconsistent with the ratio decidendi.
 - 50.3. It goes against the Pensions Ombudsman's previous acceptance and application of the meaning of 'earner' following Hughes v Royal London.
 - 50.4. It means I am not deciding complaints in accordance with established legal principles.
51. Disagreement with my finding that there was no legal duty on the Trustee to carry out any due diligence on the receiving scheme and circumstances of Mrs T's transfer request.
52. In summary:-
 - 52.1. It marks a change of approach from earlier decisions where the Pensions Ombudsman has applied law and regulation on similar complaints.
 - 52.2. Decisions from 2015 have consistently made clear the obligations on trustees when following the guidance issued by TPR.
 - 52.3. The Supreme Court decision in Phillip v Barclays Bank UK plc relates to banking and not trustees or administrators of occupation pension schemes.
53. Disagreement with my finding that Mrs T would have gone back to FRPS had she been made aware of its unregulated status and that it was recommending a potential scam transfer.
54. I have considered these further points and addressed them in my Conclusions below.

Conclusions

55. I have considerable sympathy for Mrs T. 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.
56. Mrs T's representatives highlighted issues regarding her transfer to the SSAS. Most of the arguments centred around her employment status and TPR's Scorpion guidance and how it should have been applied in the circumstances of Mrs T's transfer.
57. The Scorpion Leaflet, as issued to Mrs T, did contain a number of risk warnings which were relevant to the transfer, including: overseas investment; high investment returns; and appointment as a company director and trustee of the pension scheme. These are factors which Mrs T may have recognised as being relevant to her proposed transfer and prompted her to reconsider.
58. However, in relation to awards for distress and inconvenience, it is well settled that I must decide complaints in accordance with established legal principles (*Henderson v Stephenson Harwood* [2005] Pens LR 209). As such, the issues I have to determine are:
 - 58.1. whether Mrs T had a statutory transfer right and whether the Trustee was under a statutory obligation to give effect to her exercise of that right by making the transfer payment to the SSAS;
 - 58.2. whether the Trustee had a duty to Mrs T to carry out any due diligence that they failed to carry out and take other action in respect of any warning signs (including those identified in the 2013 and 2014 Scorpion Documentation) that may have been present, including highlighting warnings signs to Mrs T and warning Mrs T about the risks of taking advice from an unregulated adviser including by telephone;
 - 58.3. whether the Trustee breached that duty; and
 - 58.4. whether Mrs T suffered a recoverable and foreseeable loss caused by the Trustee's breach of duty.

Statutory transfer and Mrs T's status as an earner

59. The first consideration is whether Mrs T had a statutory right to transfer. This was a transfer from an occupational pension scheme into a SSAS. The transfer request was received within three months of the CETV quotation being issued. I find that Mrs T had a statutory right to require the Trustee to use her CETV quotation to acquire "transfer credits" in an occupational pension scheme and that the SSAS was an occupational pension scheme.
60. It is however suggested that because she was not in employment at the time of the transfer because her income as a foster carer was not employment income, the

Trustee could not use her CETV quotation to acquire transfer credits for her under the SSAS and the transfer to the SSAS was therefore not a permitted application of her CETV quotation under section 95 of the Pension Schemes Act 1993 (the “**1993 Act**”).

61. Mrs T confirmed to the Trustee that she was employed by the sponsoring employer of the SSAS at the time of the transfer, and she was receiving income for her work as a foster carer, and so was an “earner” for the purposes of the Pension Schemes Act 1993. Mrs T’s representatives argue that she did not meet the definition of an “earner”, as she was not in receipt of employment income from her work as a foster carer. Mrs T’s representatives have argued that the employment agreement was incomplete and should have been deemed invalid as it was witnessed by a representative from FRPS. I do not find that either of these points are relevant as the agreement would not necessarily have to include the level of detail Mrs T’s representative is claiming and the agreement could be witnessed by any third party.
62. The issue of whether Mrs T was an “earner” at the time of the transfer arises from the interpretation of the definition of “transfer credits” accepted in *Hughes v Royal London*. “Transfer credits” is defined in the 1993 Act and for the purposes of section 95 of that Act as “rights allowed to an earner under the rules of an occupational pension scheme”. The decision in *Hughes v Royal London* was as to how the term “earner”, defined elsewhere as a person receiving “earnings”, being any remuneration or profit derived from employment, should be interpreted and the court was asked to determine whether the employment income required to be an “earner” needed to be in respect of employment with a scheme employer or whether employment income from any source was sufficient. It held that employment income from any source was sufficient.
63. In his judgment, Morgan J commented obiter that the phrase “rights allowed to an earner under the rules of an occupational pension scheme” was apposite to describing the type of rights that could be “transfer credits” rather than importing a requirement that the transferring member be an earner. In his words, “transfer credits” are “*rights which have the character of rights which were allowed to persons who were earners but without requiring the individual applicant for a transfer of the cash equivalent to be himself or herself an earner*”. This seems a perfectly straightforward reading of the words used which I adopt. Because in *Hughes v Royal London* it was only an assumption made and agreed by counsel that the word “earner” in the definition of “transfer credits” required the transferring member to be an “earner” I am not bound to follow that interpretation and prefer the interpretation suggested by Morgan J obiter in his decision.
64. Mrs T’s representatives have challenged my approach and it is fair that I should explain my reasoning more fully.
65. I acknowledge that the interpretation of the definition of “transfer credits” accepted in *Hughes* is that it is a requirement for Mr S to have “earnings” at the time of the transfer, albeit from any source. I note however that the only point actually determined in the case was whether Mrs Hughes needed to be an “earner” in relation

to a scheme employer or whether having “earnings” from any source would be sufficient.

66. I also note that Morgan J suggested the alternative interpretation of the definition of “transfer credits” referred to above. However, as neither counsel supported this interpretation, he confined his decision to the only point in issue between the parties which was whether Mrs Hughes was needed to have employment income in respect of employment with a scheme employer or whether employment income from any source was sufficient and held that employment income from any source was sufficient.
67. I have considered whether I am bound to follow the interpretation of “transfer credits” accepted in Hughes, or as expressed by Mrs T’s representatives whether the requirement for the transferring member to be an “earner” was part of the ‘ratio decidendi’. Where a legal proposition is assumed to be correct in a judgment, but was not the subject of argument or consideration, it is not binding as authority for that legal point, even if it is an implicit part of the decision’s reasoning¹.
68. Because Morgan J made express reference to the assumption and the fact that it was not argued, this principle can be applied here. It is therefore open to me to apply the construction which was raised by Morgan J but that was not open to the court in that case.
69. I also note that the decision in Hughes was an appeal from a decision by a previous Deputy Pensions Ombudsman; however, I am not bound by the view adopted in that decision either or indeed in other previous decisions of the current or any previous Pensions Ombudsman or Deputy Pensions Ombudsman which may have accepted the interpretation assumed in Hughes as referred to by Mrs T’s representatives.
70. As such, I consider that I am not bound to follow the assumed interpretation in Hughes, namely that the word “earner” in the definition of “transfer credits” in section 181 of the 1993 Act refers to the person for whom the transfer credits are being acquired, and so importing a requirement that for a transfer to an occupational pension scheme, under section 95 of the 1993 Act, the individual in respect of whom the transfer is made must be an “earner” (albeit their earnings may be from any source as held in that case). In taking this approach, I consider that I am following established legal principle.
71. I therefore need to consider and determine whether the rights acquired for Mrs T in the SSAS were “transfer credits” and whether as such, the transfer was made in accordance with section 95 of the 1993 Act.
72. I accept Morgan J’s suggestion that the definition of “transfer credits” can be read so that it refers to “rights which have the character of rights which were allowed to

¹ See Baker v The Queen [1975] 3 All R 55 (Privy Counsel); R (oao Kadhim) v Brent LBC Housing Benefit Review Board [2001] QB 955 at [33]-[38] (CA).

persons who were earners but without requiring the individual applicant for a transfer of the cash equivalent to be himself or herself an earner”.

73. I consider this to be the correct interpretation because:

- 73.1. It is a natural reading of the words used;
- 73.2. The use of the indefinite in “rights” and “an earner” is more apposite to refer to a type of right rather than to the transferring member. Had it been intended for the words “an earner” to refer to the transferring member, a clearer form of words could have been used, such as “the earner” or “the relevant earner” or even “the transferring member”.
- 73.3. Read as referring to a type of right, the definition is meaningful as it limits the type of rights that can be acquired on a transfer to those that could be acquired by an earner and, for instance, excludes short term pensions or other rights allowed to dependants or other persons and rights not allowed under an occupational pension scheme.
- 73.4. To read “rights allowed to an earner” as implying a requirement that the transferring member is an earner is not a natural reading of the words and requires additional words to be read into the provision such as “rights allowed to the transferring member provided he is an earner”.
- 73.5. Where detailed conditions are provided in statute, additional conditions should not be readily implied. Had it been intended that only persons in employment at the time of transfer should be able to take a transfer to an occupational pension scheme, some explicit wording could have been used given the number of explicit statutory conditions applying to statutory transfers.
- 73.6. In considering the objective intent of the provision, the requirement for transferring members to be receiving employment earnings of some kind at the time of a transfer creates an apparently arbitrary restriction on statutory CETV rights and does not appear to serve a clear rational policy.
- 73.7. As the definition of transfer credits is also used in Section 73 of the 1993 Act and therefore applies to discretionary transfers and bulk transfers, interpreting the provision as importing a requirement for transferring members to be in employment rather than as referring to a type of right creates an obstacle to scheme mergers and bulk transfers without any apparent rationale. There is also no basis for interpreting a defined term differently where it is used in two different sections of the same Act.
- 73.8. Since the definition of “earner” has been amended in April 2016 to include “a person who was an earner in contracted-out employment by reference to the scheme”, it becomes more difficult to read the words “an earner” as referring to the transferring member whereas by reading “rights allowed to an earner” as a description of a type of rights, the amendment can be understood to include

contracted-out rights which, but for the amendment, would no longer be within the definition of transfer credits after the abolition of contracting out in April 2016.

74. For the reasons set out above, I find that the definition of “transfer credits” in section 181 of the 1993 Act as used in section 73 and section 95 of the 1993 Act did not require Mrs T to be receiving “earnings” of any kind at the time of the transfer and the reference to “an earner” in the definition of “transfer credits” is to be taken to refer to any person who is “an earner” as defined in section 181 of the 1993 Act and not to Mrs T as the individual for whom the transfer credits were being acquired. Instead, the definition of “transfer credits” defines the type of rights that may be acquired under the receiving scheme if it is an occupational pension scheme.
75. Save that Mrs T was not an “earner” at the time of the transfer, it is not suggested, and I have seen no evidence that her CETV was not used to acquire “transfer credits” for her in the SSAS, being rights of the type that could be allowed to an earner under rules of the SSAS. The rights granted in respect of a transfer were on a defined contribution basis and were consistent with those that could be accrued by “earners” including both earners and self-employed earners under the SSAS as a registered pension scheme.
76. As such, I determine that Mrs T had a statutory transfer right and that the payment by the Trustee to the SSAS, made pursuant to her application and the requirement under section 95 of the 1993 Act, was a permitted use of her CETV to acquire “transfer credits” for her under the SSAS, notwithstanding that she may not have been in receipt of any “earnings” from employment at the time of the transfer. I make no determination as to whether her income as a foster carer constituted “earnings” for the purpose of the 1993 Act.

Duty to investigate, issue warnings or telephone Mrs T

77. In the Decision, I stated that:
- 77.1. The Trustee had no legal duty to Mrs T to carry out any due diligence in respect of her SSAS or the circumstances of her transfer request that they failed to carry out or to take any other action in respect of any warning signs (including those mentioned in the 2013 and 2014 Scorpion Documentation) that may have been present, including highlighting warnings signs to Mrs T and warning Mrs T about the risks of taking advice from an unregulated adviser, including by telephone.
- 77.2. The Trustee had a duty under section 95 of the Pension Schemes Act 1993 (the “1993 Act”) to make payment to the SSAS to give effect to Mrs T’s exercise of her statutory transfer right to require them to use her CETV to acquire transfer credits for her under the rules of the SSAS being an occupational pension scheme. They needed to be satisfied of the validity of her application and that the SSAS was an occupational pension scheme and that the payment would be used to acquire rights for Mrs T under the rules of

the SSAS. Some due diligence was required for this. The Trustee's due diligence included checking that the SSAS was a registered pension scheme and that it had received a valid transfer instruction from Mrs T and was not made aware at the time of the transfer of the warnings signs that subsequently formed a part of the complaint it received.

- 77.3. However, at the time of this transfer, there was no requirement under law for the Trustee to investigate any warning signs, including the fact that the SSAS was newly established, whether Mrs T had received advice from an unregulated adviser or any other matters identified in the 2013 and 2014 Scorpion Documentation.
- 77.4. The 2013 and 2014 Scorpion Documentation issued by TPR, together with other bodies, was designed to raise awareness of pension liberation and other pension scams and trustee and scheme managers were asked to share the leaflets. However, it was non-statutory guidance. There was no general requirement of law or provision in statute requiring trustees to follow guidance issued by TPR. TPR had discretion to provide an extension of time for paying transfers to which the guidance was relevant but had no power to authorise a trustee to withhold a statutory transfer. As such, there was no provision of law requiring the Trustee to follow or take any action pursuant to the 2013 and 2014 Scorpion Documentation.
- 77.5. There was also no general legal duty on the Trustee owed to Mrs T to protect her from or advise her or warn her about potential fraud or scams by third parties. The Trustee had a duty to protect Mrs T's funds within the Scheme, to exercise skill and care in carrying out all duties imposed on them by the rules of the Scheme and legislation, including paying her CETV quotation transfer in accordance with her application, and to avoid wrongly paying away amounts held by the Scheme in respect of her.
- 77.6. But the Trustee had no duty of care to do anything not provided for by the Scheme or legislation and, in particular, no duty to warn her about risks relating to third parties to which she might be exposed following a transfer to another scheme.
78. Mrs T's representatives have argued that this represents a change of approach. As referred to above, while my function is to determine in accordance with established legal principles², I am not bound to follow previous decisions of any previous Pensions Ombudsman or Deputy Pensions Ombudsman. The reasoning set out above is however consistent with the recent decision of the current Pensions Ombudsman in case CAS-81940-Z2S8 which explains more fully why a trustee is not under a legal duty to carry out due diligence (other than as necessary to be satisfied that the transfer is in accordance with section 95 of the Pension Schemes Act 1993), or to issue warnings, about scam risks or other risks relating to the receiving scheme

² See *Arjo Wiggins v Ralph* [2009] EWHC 3198 (Ch).

despite the 2013 Scorpion Documentation and is not legally liable to a transferring member for not carrying out such due diligence or issuing warnings.

79. For the reasons set out above and in CAS-81940-Z2S8, I find the Trustee had no duty of care to protect Mrs T from or advise her or warn her about potential fraud or scams by third parties.
80. In the Decision and in relation to considering whether the Trustee had a duty to investigate concerns they may have had, issue warnings or take other action to protect Mrs T in relation to her transfer, I considered the decision of the Supreme Court in *Philipp v Barclays Bank UK Plc* [2024] 1 All ER (Comm) 1 (Philipp v Barclays) in relation to the obligations of a bank to make payment further to a customer instruction where there was a risk of an “authorised push payment” fraud. Reversing the decision of the Court of Appeal that the bank had a duty to investigate and not to make payment until it had investigated if it was put “on inquiry”, the Supreme Court held that there was no such duty and that, provided the instruction was clear and given by the customer personally or by an agent acting with apparent authority, no inquiries were needed and it was the bank's duty to execute the instruction and any failure to do so would prima facie be a breach of duty by the bank, even where the instruction had been induced by another person's deceit. It quoted with approval the words of Lord Sumption NPJ in *PT Asuransi Tugu Pratama Indonesia TBK v Citibank NA* [2023] HKCFA 3 (PT Asuransi) , that: “*The law cannot coherently treat compliance with an authorised instruction as a breach of duty*”. The circumstances of the Trustee under a statutory obligation to comply with Mrs T's exercise of her statutory transfer right are in my view similar to those of a bank that has received a payment instruction from its customer. It had a duty to make the payment and compliance with that duty cannot be treated as a breach of duty.
81. Mrs T's representatives have argued that the decision in *Philipp v Barclays* concerned the obligations of banks and not trustees of occupational pension schemes. That is correct. However, I consider that the principles clarified in that decision, including the principle stated in *PT Asuransi* and approved in *Philipp v Barclays* that “The law cannot coherently treat compliance with an authorised instruction as a breach of duty” must apply equally to a trustee complying with an unequivocal statutory obligation to make a transfer payment pursuant to a member request. I also consider that while that principle may not have been clear at the time of previous Pensions Ombudsman decisions (given the different decision reached by the Court of Appeal), it is now and I must apply it as established legal principle.
82. As such, I find that the Trustee owed no legal duty to Mrs T to investigate Mrs T's circumstances or intentions or the advice she had received from third parties or to issue or highlight warnings or telephone Mrs T, notwithstanding the guidance in the 2013 and 2014 Scorpion Documentation. Having no such duty to Mrs T, the Trustee could not be in breach of duty in failing to take such steps.
83. For completeness, I note that there are several factors which may have led Mrs T to disregard any warnings that might have been brought to her attention. As I

understand it, Mrs T was of the belief, albeit incorrect, that she was receiving regulated advice in relation to the transfer and she was wholly reliant on that advice and trusted FRPS.

84. In the Decision, I concluded on the balance of probabilities that Mrs T would have continued with the transfer even if warnings had been raised. Mrs T's representatives have challenged this finding and stated that had she been aware that FRPS were not regulated advisers or that there was a risk that the transfer was a scam she would not have withdrawn her transfer request.
85. The reasonable point that arises is that it is difficult to know what information might have been obtained from due diligence inquiries suggested by the 2013 and 2014 Scorpion Documentation. Reasonably, Mrs T's response might have varied according to the information that was obtained and shared with her.
86. As I have found that there was no breach of duty by the Trustee and that it had no duty to carry out the due diligence suggested by the 2013 and 2014 Scorpion Leaflet and that no warnings were in fact given to Mrs T, other than providing her with a copy of the Scorpion leaflet, I consider that I do not need to make any finding on the actions Mrs T would have taken if she had been provided with warnings that were not in fact provided. I accept that her actions might have depended on the content of such warnings.
87. For the reasons set out above, I determine that Mrs T had a statutory right to transfer to the SSAS, the Trustee had an obligation to pay her CETV quotation to the SSAS in accordance with her application and the Trustee did not breach any duty it owed Mrs T in complying with that obligation.
88. I do not uphold Mrs T's complaint, and no further action is required by the Trustee.

Camilla Barry

Deputy Pensions Ombudsman
30 September 2025