

## Ombudsman's Determination

Applicant	Mr R
Scheme	Local Government Pension Scheme ( <b>the Scheme</b> )
Respondents	London Pension Fund Authority Newham Council ( <b>acting jointly and referred to below as the LPFA</b> )

## Outcome

1. Mr R's complaint against the LPFA is partly upheld, but there is a part of the complaint that I do not agree with. To put matters right for the part that is upheld the LPFA shall pay Mr R £1,000.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr R has complained about the LPFA's decision to allow him to transfer his pension into the Gresham Pension Scheme (**the Gresham Scheme**). It has since been established that the Gresham Scheme is linked to pension liberation and it appears Mr R has lost all of his pension.
4. Mr R has argued that the transfer should not have gone ahead as the Gresham Scheme was not regulated by the Financial Conduct Authority (**the FCA**) and the LPFA should have conducted further checks on the Gresham Scheme.

## Background information, including submissions from the parties

5. Mr R asked for his pension benefits to be paid to him by the Scheme in late 2010 on ill-health and compassionate grounds. This was declined in January 2011 on the basis that he had not reached the minimum pension age of 55 and did not meet the criteria for early payment.
6. In January 2013, Mr R made a further request to the LPFA for payment of benefits. The LPFA responded confirming it would not be possible at that time.

7. On 14 February 2013, The Pension Regulator (**TPR**) issued a press release aimed at pension schemes and members, highlighting the potential risk of pension liberation giving rise to an unauthorised tax charge<sup>1</sup>.
8. On 26 February 2013, Mr R telephoned the LPFA and requested a transfer value quote. It responded on the same day confirming that his benefits had a cash equivalent transfer value (**CETV**) of £62,780.13. Mr R signed the transfer request on 28 February 2013.
9. On 22 March 2013, the transfer request was received by the LPFA from the Gresham Scheme, on Mr R's behalf. Included was HMRC documentation confirming that since December 2012 the Gresham Scheme had been a registered pension scheme, with the reference 00789116RP.
10. The transfer was made in April 2013. Following the transfer Mr R has been unable to get information about his pension from the Gresham Scheme.
11. In December 2014, Dalriada Trustees Limited was appointed by TPR to act as independent trustees for the Gresham Scheme. Mr R remains unable to access his pension.
12. Mr R raised a complaint about the LPFA's decision to accept the transfer request and it was considered through the Internal Dispute Resolution Procedure (**IDRP**). It was considered at stage 1 and stage 2 but not upheld. Newham Council concluded that it had acted in accordance with Mr R's request and had complied with the necessary regulations.
13. During the Adjudicator's investigation, the LPFA accepted that it ought to have done more at the time of the transfer and provided Mr R with the relevant warning materials available at the time. However, it argues that even if it had done more there was no indication that Mr R would have done anything differently. In recognition of the maladministration it offered Mr R £1,000.

## **Adjudicator's Opinion**

14. Mr R's complaint was considered by one of our Adjudicators who concluded that no further action was required by the LPFA. The Adjudicator's findings are summarised briefly below:-
  - Mr R is likely to have been the victim of a pension liberation fraud, and his funds misappropriated.

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<http://webarchive.nationalarchives.gov.uk/20130402194931/http://www.thepensionsregulator.gov.uk/pension-liberation-fraud.aspx>

- The transfer occurred shortly after the TPR's press announcement providing warnings about the risk of Pension Liberation. This was identified by the Ombudsman as a point of change in industry good practice.
  - The LPFA should have been aware of TPR's press announcement and given the risks associated with pension liberation it should have acted quickly. As a minimum it should have placed pending transfers on hold whilst putting in place appropriate checks.
  - The LPFA did review its processes and contacted some transferring members to provide warnings of pension liberation, but the formal process was not in place until after Mr R's transfer and his was not identified as at risk of pension liberation at the time. Having reviewed the position now, the LPFA accepts Mr R's transfer should have been flagged and acknowledges this error as maladministration.
  - However, even if the transfer had been flagged, Mr R had a right to the transfer and there was no reason for it not to have acted on his request. Following the High Court judgment in *Hughes v Royal London* ([2016] EWHC 319 (Ch)), the current legal position is that it would have been obliged to process the transfer. Ultimately the decision to transfer was Mr R's.
  - The question was therefore whether Mr R would have gone ahead with the transfer had the warning been provided to him by the LPFA. Having considered Mr R's actions prior to the transfer request, the strength of the warnings which ought to have been provided to him and the circumstances of the transfer the Adjudicator concluded that on the balance of probabilities Mr R would more likely than not have made the transfer regardless of the warnings.
  - In the circumstances, in recognition of the procedural error admitted by the LPFA, the offer of £1,000 was appropriate.
15. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr R.

### **Ombudsman's decision**

16. Before I elaborate on my decision I want to make clear to Mr R that I understand the upsetting nature of the complaint. Mr R may have lost the entirety of his pension fund. This will have been very distressing and will impact his future significantly. I accept that, with hindsight, he would never have proceeded with the transfer. However my role, and that of the Adjudicator, is to assess a complaint objectively and without the benefit of hindsight.

17. Mr R stresses that having accepted it should have done more, the LPFA should be responsible for the full loss he has suffered. Whilst I appreciate the argument, the legal test in this instance requires it to be shown that but for the LPFA's negligence Mr R's losses would not have been suffered. So if the LPFA had acted correctly would Mr R still have suffered the losses?
18. In assessing this test, I am in the position of having to determine whether the warnings were sufficiently strong to dissuade Mr R from proceeding with the transfer. Ultimately, it was Mr R's decision to make. This is of course coupled with the strength of Mr R's motivation to transfer. These issues are subjective and not clear cut, and I have given considerable thought to the documents when reaching my decision.
19. The evidence shows that prior to the transfer request being submitted Mr R made a number of attempts to access his pension. The character of these requests suggests that Mr R was very keen to access funds from his pension. Mr R clearly had strong motivation to access his pension despite being aware that due to his age he was ineligible.
20. I have also considered the contents of the warning letters that Mr R would have received had the LPFA acted appropriately. These warnings were not specific to the Gresham Scheme, and could be interpreted to apply to any potential pension transfer. Additionally, they are focussed on the potentially serious tax consequences that could arise if the transfer was considered by HMRC to break the rules.
21. Although the warnings are not passive, neither were they, in my view, strongly worded to be considered alarming. Caution is encouraged, but the documentation is more concerned with highlighting the risks, and make no specific statement about not transferring.
22. Mr R was already exhibiting high risk behaviours by looking to transfer guaranteed pension benefits in exchange for an uncertain investment based pension alternative. Additionally it appears that given the transfer documentation was signed within two days of the CETV being confirmed to him that he was acting hurriedly. In that context it is conceivable that if the warnings had been received he would have placed little weight on them.
23. This, coupled with the context of Mr R's motivation suggests to me that it is more likely than not that he would not have rescinded the transfer request, as would have been required for the transfer to be stopped. I believe Mr R would have been prepared to take that risk in the context of the potential to release some, or all, of his pension benefits.
24. Mr R is adamant that if he had received any risk warnings he would have pulled out of the transfer. However, it is relevant that these warnings have not put a stop to people transferring their benefits into other pension liberation schemes and people continue to fall victim to this type of fraud. The warnings are therefore no guarantee that the transfer would have been halted.

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25. In the circumstances, I believe there is sufficient indication that Mr R would not have stopped the transfer, even if the warning letters had been issued. So although the LPFA should have given the warnings to him, and by not it was acting in maladministration, Mr R would have suffered the losses he now claims for regardless.
26. Given the maladministration it is right that the LPFA provide some redress for that failing. I consider the £1,000 offered is an appropriate award for its error.
27. I understand Mr R will be disappointed with the outcome of the complaint. I realise the issue at hand is contentious. However, the evidence to suggest he would have gone ahead with the transfer is compelling, and I cannot ignore it or use the benefit of hindsight that the Gresham Scheme has subsequently been established as connected to pension liberation. I suggest Mr R make enquiries with the new trustees of the Gresham Scheme to establish whether there are any funds remaining in his name in order for him to take his benefits.
28. Therefore, I uphold Mr R's complaint, but only in respect of the procedural error committed by LPFA by not providing him with the warnings. I find that it is not responsible for the later losses that appear to have been suffered by Mr R.

**Directions**

29. Within 28 days of the date of this Determination the LPFA should pay Mr R £1,000 in respect of the significant distress and inconvenience he has suffered.

**Anthony Arter**

Pensions Ombudsman

20 July 2017