# Ombudsman’s Determination

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| Applicant | Mr S |
| Scheme | NHS Superannuation Scheme (Scotland) (**the NHS Scheme**) |
| Respondents | Scottish Public Pensions Agency (**SPPA**) |

## Complaint Summary

Mr S has complained that SPPA did not carry out sufficient due diligence checks when he applied to transfer his benefits in the NHS Scheme to the Capita Oak Pension Scheme (**the Capita Oak Scheme**). If SPPA had carried out sufficient due diligence it would have noted that:

- the Sponsoring Employer, RP Redplant Limited, was bogus and did not exist, it was not registered in this country but was registered in Cyprus as a dormant company;
- he was not an employee of the company nor did it have any employees; and
- there were no directors of the trustee company, Imperial Trustees Services Ltd (**ITSL**) at the time of the transfer.

If these checks had been carried out, as recommended by The Pensions Regulator (**TPR**), the transfer would not have taken place. Mr N is seeking to recover his lost pension assets.

## Summary of the Ombudsman’s Determination and reasons

The complaint is not upheld against SPPA because it did provide Mr S with a warning about the possibility of pension liberation and the checks it carried out on the Capita Oak Scheme were in accordance with standard practice at the time.

## Detailed Determination

### Material facts

1. Mr S was an active member of the NHS Scheme. In April 2012 Mr S authorised "thepensionspecialist.com" to act on his behalf in obtaining information about his NHS Scheme benefits.

2. The SPPA gave thepensionspecialist.com an estimate of the transfer value on 26 June 2012. In response to a request for discharge forms it explained that as Mr S was still an active member of the NHS Scheme, he would have to opt out before he could transfer.

3. SPPA's notes say that a financial adviser (not identified, but presumably thepensionspecialist.com) called in August 2012, asking if it had received an opt-out form (this had been received, but it had not been signed by Mr S' payroll). The notes also record that Mr S called in December saying he had opted out and wanted to transfer and the note records that he knew that the request had to come from the receiving pension provider.

4. On 5 December 2012, Mr S signed a declaration on "Capita Oak Pension Scheme" headed paper saying that he had decided to transfer to the Capita Oak Scheme and asked the recipient to deal with the Capita Oak Scheme as necessary to process that instruction. The declaration was at the foot of a letter from the Capita Oak Scheme which was received by SPPA on 4 February 2013, and which requested forms and information for the transfer value to be facilitated.

5. There was also a form giving ITSL authority to act on Mr S' behalf. The Capita Oak Scheme application form authorised a 5% deduction from his member account on joining the Capita Oak Scheme, and various other deductions.

6. On 20 February 2013, SPPA informed the Capita Oak Scheme that the estimated transfer value was £367,601.81 and provided forms, including a declaration to be signed by Mr S that he had "been made aware of the implications of transferring to a UK non- contracted out Defined Contribution scheme" as well as a "Pension Liberation Factsheet".

7. The Pension Liberation Factsheet (**the SPPA Factsheet**) was not the Scorpion leaflet, but a summary produced by SPPA and is reproduced in the Appendix. The SPPA Factsheet contained a number of warnings including:-

    **Is pension liberation the same as pension unlocking?**

    No. Pension liberation should not be confused with pension unlocking. With pensions unlocking, a person aged 55 or over can legally release up to 25% of their total pension as a tax-free lump sum.

    …

**How does pension liberation work?**'

Organisers of pension liberation may claim that they can release your pension as a cash lump sum through a legal loophole. There is no legal loophole. In fact, by organising pension liberation those involved may be committing criminal offences such as fraud (false representations) and money laundering. In order to release your pension, it first has to be transferred out of the pension scheme that holds it for you.

…

**What is the catch?**

Converting a pension into cash might sound very attractive to people who urgently need money. However, if something sounds too good to be true, it invariably is.

…

If you have liberated your pension, you will eventually be contacted by HMRC for appropriate tax.

8. Mr S completed the SPPA transfer forms on 6 March 2013 and ticked a box to confirm he had "read the Pension Liberation Factsheet". The signed forms were returned to SPPA. On 14 March 2013, SPPA wrote to the Capita Oak Scheme saying that a BACS payment would be made of £367,601.81.

9. Following the transfer Mr S received a "non-repayable loan" of £17,500.

**Summary of Mr S's position**

10. Mr S says that there have been many complaints against the Capita Oak Scheme and the investment vehicle Storefirst Limited. ITSL was wound up in the High Court in July 2015; the assets are in the hands of the Insolvency Service, and he believes it will take years for the investigation to be completed and all his pension benefits appear to be gone.

11. Mr S also says that SPPA did not adequately inform him in writing or provide a factsheet of the possibility of pension liberation. The SPPA did not respect its fiduciary responsibility to him and did not make additional checks. The SPPA simply relied on a HMRC number. The Pensions Ombudsman has said in other determinations that as from February 2013, the time of simply acting as the SPPA did, was over. He firmly believes that as his case was handled after this warning and the money not transferred until March 2013, the SPPA acted outwith the advice at the time. Therefore, the Pensions Ombudsman should act within the spirit of his own advice and uphold the complaint against SPPA.

12. Mr S has also referred to my determination in PO-12763 regarding Mr N's complaint against Northumbria Police and a number of checks that should be carried out by the ceding scheme and drawn comparisons with his own complaint. Mr S has asked why did SPPA not implement these checks in February 2013 or within a month of the

issue of the Pensions Regulator's guidance. The payment to the Capita Oak Scheme was made in March 2013 without the further checks being implemented. He believes his complaint requires a much more detailed investigation because of the negligence of SPPA, a major pension provider.

**Summary of Scottish Public Pensions Agency's position**

13. SPPA say that Mr S applied to transfer his funds to the Capita Oak Scheme in December 2012 and the payment was made on 14 March 2013. An action pack was issued by TPR in February 2013 which included a check list for trustees and administrators to help identify pension liberation fraud. The action pack also set out that trustees and administrators had a duty to carry out a member's transfer request where the legislative requirements are met. There was no evidence to suggest at the time of transfer, and given the initial information provided by SPPA on pension liberation that Mr S would not have chosen to transfer his pension.

14. SPPA's due diligence requirements at that time extended to providing the SPPA Factsheet on pension liberation and asking the member to state that they had read the leaflet and were aware of pension liberation fraud. Mr S signed the form to say that he had read the SPPA Factsheet. After December 2014 SPPA brought in further checks to check that financial advisers were registered with the FCA.

15. SPPA also say that the appropriate checks at the time included making sure that the receiving scheme was a registered pension scheme with HMRC as per the documentation supplied by the receiving scheme. It was sufficient to have sight of a copy of the registration from HMRC's online registration of pension schemes. SPPA were not required to check the administrators of the receiving scheme only the scheme to which the transfer was being made which was the Capita Oak Scheme. SPPA would not have had sight of trust deeds or undertaken any checks regarding the sponsoring employer. Even if the necessary checks had identified that the sponsoring employer was a dormant company, it is not clear that Mr S would have withdrawn his transfer request.

**Conclusions**

16. This complaint is concerned with the level of information that Mr S was provided with regarding pension liberation and the level of due diligence carried out by SPPA. Mr S contends that SPPA did not provide him with sufficient information on the possibility of pension liberation scams and that if he had been provided with that information, he would not have transferred to the Capita Oak Scheme. Furthermore, he says that if SPPA had carried out sufficient due diligence checks it would not have allowed the transfer to proceed.

17. The transfer took place over the period from December 2012 to 14 March 2013 which spans the time when the Pensions Regulator issued its guidance in February 2013. The guidance provided advice on areas for potential concern, flags and appropriate warnings. I have said in previous determinations, it was reasonable to allow a period

of time for providers to consider and implement the guidance and introduce appropriate procedures.

18. SPPA had to some extent anticipated the Pensions Regulator's guidance by preparing its own leaflet on pension liberation and it was not until May 2013 that it changed its own procedures to start issuing the Scorpion leaflets and carrying out further due diligence checks. I do not find that delay to be unreasonable.

19. The questions I have to consider are, did SPPA give sufficient warning to Mr S and, did it carry out sufficient checks on the Capita Oak Scheme? Also, if SPPA had given any further warnings to Mr S is it possible that he would not have proceeded with the transfer?

20. Looking at the pensions liberation leaflet that SPPA issued, it is clear that there are some specific warnings over the consequences of pension liberation including the wording in the section: 'What is pension liberation' that "there are no lawful means to achieve a release of funds before retirement through pension liberation." The leaflet also explains in the next section 'Is pension liberation the same as pension unlocking' that a person over age 55 can legally release up to 25% of their total pension as a tax free cash sum.

21. Mr S was under age 55 when he applied for the transfer to the Capita Oak Scheme and as a consequence also received a non-returnable loan of some £17,500. Mr S confirmed when completing the transfer forms that he had read the pension liberation leaflet, and therefore should have realised that a release of funds before age 55 was unlawful and could lead to a tax demand from HMRC.

22. I have asked Mr S why he wished to transfer away from the NHS Scheme, and he has replied to the effect that he was on long term sick leave at the time and he felt it was in his best interests to move his pension for his children's security. He understood that the NHS Scheme would not provide the same level of security for his children.

23. Mr S has also referred to my determination in PO-12763 regarding Mr N's complaint against Northumbria Police and a number of checks that should be carried out by the ceding scheme and drawn comparisons with his own complaint. Mr S has asked why SPPA did not implement these checks in February 2013, or within a month of the issue of the Pensions Regulator's guidance. The facts of the complaint, PO-12763, were very specific to that complaint; there was a lack of any checks being carried out or any warnings being given to Mr N by Northumbria Police. Mr S' position is different as there was a warning given by SPPA of the potential effects of pension liberation.

24. Mr S has also raised the question of why SPPA did not carry out sufficient due diligence on the proposed transfer to the Capita Oak Scheme. SPPA say that at the time the checks carried out were mainly to check that the receiving scheme was registered with HMRC and it was not a requirement to check out the administrators. It was not until May 2013 that SPPA changed its internal procedures and carried out

further checks on transfers which I do not find to be unreasonable in the circumstances.

25. I am also aware that it was not until October 2013 that HMRC changed its process for the registration of Qualifying Recognised Overseas Pension Schemes (**QROPS)** such as the Capita Oak Scheme. Therefore, I do not find that there were any indications at that time that the Capita Oak Scheme was a scheme of which SPPA should be wary.

26. I have also considered the reasons for Mr S' decision to transfer. I find, on the balance of probability, that given Mr S' personal circumstances it is more likely than not that he had financial pressures at the time and the possibility of the loan was the driving factor behind the decision to transfer. Therefore, even though SPPA had issued the pension liberation leaflet this was disregarded by Mr S, and it was only with hindsight that he recognised the error of his action.

27. While I strongly sympathise with the position that Mr S now finds himself in, I find that SPPA did provide him with sufficient information through the pension liberation leaflet for him to be aware of the possibility of pension liberation and the consequences of this.

28. I do not uphold Mr S' complaint.

**Anthony Arter**

Pensions Ombudsman
14 October 2019

**Appendix**

**Pension Liberation Factsheet issued by SPPA**

A warning about the risks and consequences of pension liberation or trust busting.

This information is provided by the Pensions Regulator, the body that regulates work based pension arrangements in the UK. A work based pension scheme is any scheme that an employer makes available to employees. This includes all occupational schemes and any stakeholder and personal pension schemes. The objectives of the regulator are to protect the benefits of members of work based pension schemes, to promote good administration and to reduce the risk of situations arising that may lead to claims for compensation from the Pension Protection Fund.

**What is pension liberation?**

The term pension liberation (also known as trust busting) describes the process by which people release their pensions before retirement and convert them entirely into cash (they do not keep their pension savings for retirement). There are no lawful means to achieve a release of funds before retirement through pension liberation.

**Is pension liberation the same as pension unlocking?**

No. Pension liberation should not be confused with pension unlocking. With pensions unlocking, a person aged 55 or over can legally release up to 25% of their total pension as a tax free lump sum. The FSA warn that unlocking your pension will almost certainly mean you will have less income in retirement and, as a result, unlocking is only suitable for a very limited number of people and circumstances. Information on pensions unlocking can be found on the FSA website www.fsa.gov.uk including a useful fact sheet called *Unlocking pensions – Make sure you understand the risks*.

**How does pension liberation work?**

Organisers of pension liberation may claim that they can release your pension as a cash lump sum through a legal loophole. There is no legal loophole. In fact, by organising pension liberation, those involved may be committing criminal offences such as fraud (false representations) and money laundering. In order to release your pension, it first has to be transferred out of the pension scheme that holds it for you. Pension transfers are undertaken on the understanding that the transfer value (money representing your pension rights) will be used to provide you with pension benefits in retirement (for example, providing a tax free lump sum and a regular income or annuity).

In pension liberation transfers, the money transferred is not used to provide pension benefits in retirement. Your pension scheme would not part with a transfer if it suspected that it would be released in cash. In order to mislead your pension scheme into parting with your transfer, the organisers of pension liberation will have to pretend to run a legitimate pension scheme which provides pension benefits or may pretend to be agents authorised to work for recognised pension companies.

**What is the catch?**

Converting a pension into cash might sound very attractive to people who urgently need money. However, if something sounds too good to be true, it invariably is. You can only use your pension fund once. If you liberate your pension, there will be no tax free lump sum or income from it when you retire. As part of the liberation transaction, you will probably have to pay the organisers a commission or arrangement fee and you may have a number of deductions made from the transfer value before you get it. You might be told these deductions are from a number of different things but, typically, you may get around 70% to 75% of your transfer value once the organisers have taken their cut (deductions will vary).

You might be told that part of the deduction will be paid to HM Revenue & Customs to cover your income tax. However, it is extremely unlikely that money will be paid to HMRC on your behalf to cover tax due on a liberated pension because this kind of transfer activity is not lawful. If you have liberated your pension, you will eventually be contacted by HMRC for appropriate tax. All the cash released from the pension scheme will be treated as taxable income. It is also likely that you will be charged additional penalties or charges or interest by HMRC.

Example: You have a pension with a previous employer. The transfer value of the pension is £20,000. You decide to liberate the pension after being approached by the organiser of a pension liberation scheme who assures you there is a legal way of releasing your pension in this way. You are told that 25% of your pension transfer (£5000) has to be deducted. The organisers tell you that this deduction is made up of 22% tax for HMRC and 3% is the organiser's commission cut. You get £15,000 after their deductions. Despite the assurances from the organisers about the legality of your pension release, you will eventually be contacted by HMRC about the tax due on your liberated pension. No tax was paid to HMRC on your behalf. Your standard tax liability could be anything from 22% to 40% of the full £20,000 liberated (up to £8,000) and it is likely that additional charges and penalties will apply on top. That means you could be left with little of the original transfer of £20,000 and no pension left for when you retire.

**What action is the Pensions Regulator taking to tackle pension liberation?**

The Pensions Regulator was established on 6 April 2005 under the Pensions Act 2004. The new Act prescribed new powers to help disrupt pensions liberation activity and put things right. At present, the Pensions Regulator is considering the most effective ways to prevent pension liberation by warning pension schemes when a new activity is discovered as well as providing fact sheets like this one to raise awareness of the consequences of pension liberation.

The Pension Regulator continues to investigate new reports of liberation and will continue to cooperate with the pensions industry, other government agencies and law enforcement agencies to ensure liberation is prevented, deterred and disrupted. Where evidence of criminality exists, the regulator will co-operate fully with law enforcement agencies to ensure perpetrators are brought to justice.

**Organisations that can help you if you have money problems**

**Citizens Advice Bureaux** - Details in the phone book or Yellow Pages visit the website www.nacab.org.uk

**National Debtline** - This helpline offers advice on debt problems and free booklets on dealing with debt.