

Ombudsman's Determination

Applicant	Mrs G
Scheme	Teachers' Pension Scheme (TPS)
Respondent	Teachers' Pensions (TP)

Complaint Summary

1. Mrs G has complained that TP did not conduct sufficient due diligence checks when transferring her pension benefits from the TPS to the London Quantum Pension Scheme (the **LQPS**). Mrs G is unable to access her benefits from the LQPS.

Summary of the Ombudsman's Determination and reasons

2. The complaint is upheld against TP because it failed to put in place proper processes to conduct adequate checks and enquiries in relation to the LQPS and warn Mrs G of the potential consequences of transferring.
3. Having considered all of the available evidence, I am satisfied, on the balance of probability, that but for TP's maladministration, Mrs G would not have proceeded with the transfer. As a result, Mrs G has suffered the loss of her benefits within the TPS.
4. To put matters right TP shall reinstate Mrs G's accrued benefits in the TPS accounting for any revaluation that would have taken place since the transfer.
5. To avoid double recovery, if the new trustees of the LQPS, appointed by the Pensions Regulator (the **Regulator**), manage to retrieve some or all of Mrs G's pension fund for her benefit, and provide TP with satisfactory evidence that has happened, TP shall be entitled to recover that amount from Mrs G.
6. TP shall also pay Mrs G £1,000 to reflect the serious distress and inconvenience that she has suffered as a result of the appropriate checks not having been made, and the appropriate warnings not having been provided.

Detailed Determination

Material facts

7. Based on the information available, the LQPS appears to be a defined contribution occupational pension scheme. Documents sent to TP showed the LQPS was registered by HMRC on 15 January 2013.
8. The principal employer of LQPS was Quantum Investment Management Solutions LLP (**QIMS**), based in offices in London, now in liquidation.
9. LQPS was originally administered by Dorrixo Alliance (UK) Limited (**Dorrixo**) which was also the original trustee. On 18 June 2015, Dalriada Trustees Limited (**Dalriada**) was appointed by the Regulator as an independent trustee to the LQPS. Dalriada believes that actions taken by Dorrixo may have been in breach of trust, and members may have suffered a loss as a result.
10. The current position with the LQPS is that Dalriada is trying to reconcile the remaining assets and establish the funds, if any, that might be able to be returned to scheme members.
11. In February 2015, Mrs G transferred the whole of her TPS fund, totalling £217,291.15, into the LQPS where it appears to have been invested in high risk, unregulated assets, unsuited to pension fund investment. She said she requested the transfer because she wanted to take the maximum 25% tax free lump sum on reaching age 55 in September 2015.
12. Mrs G was advised by Investaco, a firm she had used previously as a mortgage and insurance broker. Investaco was unregulated and not authorised to give investment advice. Mrs G said it was Investaco that introduced her to the LQPS.
13. In an email dated 4 December 2014, Mrs G told Investaco that she was looking to take her 25% tax free cash sum on her 55th birthday. In response, Investaco recommended a number of unregulated and high risk investments for the balance of her fund to be held in the LQPS.
14. In 2010, the licence held by Mrs G's importing business, issued under the Warehousekeepers and Owners of Warehoused Goods Regulations (**WOWGR licence**), had been unexpectedly withdrawn by HMRC. After successfully appealing the decision at a tax tribunal in January 2014, the licence was reinstated in August 2017.
15. Mrs G received a transfer analysis report (**the Gerard report**) from Gerard Associates Ltd (**Gerard**), dated 16 January 2015. Gerard was authorised to provide transfer advice. It is apparent from the covering letter to the Gerard report that Mrs G had already been advised to transfer to the LQPS. Included with covering letter and

the Gerard report was: the LQPS Member's Booklet; an LQPS Application Form; and transfer forms in respect of her existing pensions in the TPS and Friends Life.

16. Pages 5 and 6 of the Gerard report modelled the potential retirement benefits at age 58 and age 60 for the TPS versus a personal pension. At both ages, the quoted annual figure for the LQPS is substantially lower than that quoted for TPS. The Gerard report did not make an overall recommendation or offer advice but stated in the Introduction that it was, "designed to assist in deciding whether a transfer of benefits from the Existing Scheme to an alternative pension contract would be appropriate."
17. Gerard's covering letter to the report included a paragraph setting out the features and advantages of the LQPS. It also referred to Self-Invested Personal Pensions and Small Self-Administered Pension Schemes, as being possible alternatives. However, it said that these did not offer Mrs G the investment opportunities she was looking for and were both complex and costly. The letter explained that a regulated investment strategy would struggle to match the critical yields as set out in the report.
18. Included in the pack of documents issued by Gerard, along with the letter and the report, was an application form to transfer to the LQPS and a pro forma letter for Mrs G to sign setting out among other things: that she had received the report; read the 'Scorpion Leaflet'; that she was not taking any form of pension liberation; and that she was satisfied that the LQPS was a HMRC registered scheme that did not offer pension liberation. The pro forma letter concluded by saying that she "must insist proceed (sic) with the transfer of my pension to LQPS without further delay."
19. Mrs G completed the application form on 29 January 2015 and returned this, together with the other relevant paperwork, to transfer her TPS pension, and also two small pensions with Friends Life, to the LQPS.
20. The transfer of her benefits from TPS was completed on 18 February 2015.
21. On 8 April 2015, Friends Life wrote to Mrs G flagging concerns about the LQPS and confirming that it was unable to proceed with the transfer of her two pensions which it held.
22. Mrs G said that had TP similarly flagged up any concerns regarding the LQPS she would not have transferred her pension from TPS.
23. In August 2018, Dalriada issued its seventh announcement to members of the LQPS. In this it referred to a complaint brought by another LQPS member against his previous scheme. The complaint was that the previous scheme had transferred his pension without carrying out adequate due diligence checks. Mrs G said that until she heard of this decision, she was not aware that she could complain about the transferring scheme.
24. Mrs G complained to TP under stage one of its Internal Dispute Resolution Procedure (**IDRP**) on 7 November 2018. She said that TP had not conducted any due diligence

checks on the LQPS, or if it had these were not shared with her. She said there was no communication at all from TP to flag up any concerns. She compared this to the response she had received from Friends Life, flagging several concerns about the LQPS and confirming that it was unable to proceed with the transfer.

25. TP responded on 17 December 2018. It said that it considered the checks undertaken prior to the transfer were adequate and that it had no reason to stop Mrs G from exercising her right to transfer.
26. TP said that it had received a copy of the HMRC pension scheme tax reference from the LQPS. Based on the understanding that the LQPS was a tax registered scheme, TP was able to proceed with the transfer as per Mrs G's instruction.
27. TP concluded that Mrs G had taken the decision to transfer, thereby extinguishing all her rights in the TPS and that there was no evidence of maladministration on the part of TP.
28. Mrs G was not satisfied with the outcome and, on 25 January 2019, appealed the IDRP decision. A representative of the Teachers' Pensions Policy Team at the Department for Education (**DfE**) considered her appeal. The DfE issued its final response on 14 February 2019.
29. The DfE said its role was to ensure that the Teachers' Pensions Regulations (**the Regulations**) had been applied correctly. It said that TP was not required to provide financial advice to members of the TPS. TP had checked that Mrs G was legally able to transfer her funds to the LQPS and had provided her with information to prompt her to check the suitability of the receiving scheme, including the option of taking independent financial advice, before deciding to proceed with the transfer.
30. As Mrs G had subsequently chosen to proceed with the transfer, and in doing so had extinguished her rights in the TPS, the DfE said it could not see that TP should be held culpable for her decision to affect a legitimate transfer. As DfE was satisfied TP had applied the Regulations correctly it rejected Mrs G's appeal.
31. Mrs G's complaint was considered by one of our Adjudicators who issued an Opinion on 13 August 2020 (**the Opinion**) in which he concluded that there had been maladministration on the part of TP. Both TP and Mrs G provided their comments and further information for my consideration.
32. Having reviewed the file papers and new submissions I concluded that it would be appropriate to hold an oral hearing. This was held on 3 May 2022. Evidence was given in person by Mrs G and by Mr Y, TP's Head of Policy and Technical.

TP's position

33. TP was initially approached by AWM Financial Planning Limited (**AWM**), a regulated adviser, on 19 May 2014, requesting transfer details for Mrs G. A transfer estimate was sent to AWM on 29 May 2014, showing an estimated Cash Equivalent Transfer Value (**CETV**) of £212,991.46.

34. A “Request to transfer benefits” Form was received signed by Mrs G on 24 May 2014. A Statement dated 9 June 2014 (the **9 June Statement**) was issued to AWM and a separate letter to Mrs G, also dated 9 June 2014 (the **9 June letter**), which quoted a guaranteed transfer value of £211,177.63. This guaranteed transfer value took account of Guaranteed Minimum Pension (**GMP**) figures which the previous estimate did not.
35. The “Request to transfer benefits” Form indicated that Mrs G’s Independent Financial Adviser was Bespoke Pension Services Limited (**Bespoke**), an unregulated pension adviser. As TP received no written authority to deal with Bespoke, the ‘Guaranteed Statement of Entitlement’ was sent to AWM.
36. TP was not aware that Mrs G had received advice from Gerard, given that it had not been contacted by them previously. It understands that Gerard was authorised by the Financial Services Authority (as it then was), but it has since commenced winding up proceedings from 5 December 2018.
37. TP also pointed out that Mrs G had been introduced to the LQPS by Investaco. While Investaco is unregulated itself, its website indicates that it seeks to offer its customers a “one stop shop” through a network of partners.
38. While the Adjudicator stated in the Opinion that the transfer was completed in less than three weeks, the first contact with Mrs G and her first appointed adviser, AWM, was made in May 2014. Hence, a period of over eight months elapsed allowing time for Mrs G to investigate her transfer options, culminating in her request to transfer to the LQPS.
39. TP understood that Mrs G was receiving or had received independent financial advice on her transfer from AWM.
40. TP referred to the Adjudicator’s comment in the Opinion that “...The complaint arises as it has subsequently been found that the LQPS is a pension liberation scheme.” The Regulator’s Compulsory Review Final Notice stated, however, that it is not proven that the LQPS arrangement, especially for members in the “second life cycle” of the LQPS, was used for the purposes of liberation in respect of Mrs G or other members in her position.
41. Mrs G herself indicates that she had no intention of drawing her lump sum before the age of 55. TP would assume that had Mrs G taken the maximum lump sum of 25% of the fund, this would also have been connected to the commencement of pension payments which needs to be linked to the receipt of a tax-free lump sum under HMRC rules.
42. The LQPS was first registered with HMRC on 30 April 2012 and not 15 January 2013 as mentioned in Paragraph 24 of the Opinion.

43. All the prescribed conditions were in place to meet the requirements of an occupational pension scheme. There was a sponsoring employer, a trust deed and rules, while the arrangement was registered with HMRC.
44. Mrs G was an earner, but not with QIMS. As far as TP is aware, QIMS was not a dormant company as stated in the Opinion, and Paragraph 71 of an unrelated Determination of the Pensions Ombudsman, *Mr N v Northumbria Police* [2018] (PO-12763). Instead, TP understands that QIMS continued to operate as a Limited Liability Partnership until it was dissolved following its liquidation on 17 August 2017.
45. In the case of *Hughes v Royal London Life* [2016] EWHC 319 (Ch) (the **Hughes case**), an appeal from a Determination of the Pensions Ombudsman [2015] (PO-7126), which was heard on 19 February 2016, Mr Justice Morgan ruled that an “Earner” under 3(1)(b) Social Security Contributions and Benefits Act 1992, did not necessarily have to be an earner in respect of service with the scheme employer. “Earner” was given its general meaning, rather than being related to the employment with the sponsoring employer. Mr Justice Morgan noted that “it is sometimes possible for a court to supply missing words in a statutory provision” but he was not satisfied that it was open for him to read words into the definition of “transfer credits,” as the Pensions Ombudsman had done. In the case of Ms Hughes, therefore, she was “an earner by reason of her earnings from another source or sources.” The Judge found that Ms Hughes was entitled to require the fund manager (Royal London) to transfer her personal pension scheme benefits to a Small Self-Administered Scheme. Accordingly, it was permissible for a transfer to be made from one occupational pension scheme to another in circumstances where the individual did not receive earnings from the sponsoring employer of the recipient scheme. Hence, at the time of the transfer from the TPS to the LQPS, Mrs G was an earner by reason of her earnings from her employment by a limited company owned by Mrs G and her husband.
46. As the LQPS was an occupational pension scheme, Mrs G had a statutory right to transfer her pension into the LQPS. A member has a statutory right to transfer from one scheme to another where they have completed at least 2 years’ pensionable service and have stopped accruing the benefits at least one year before normal pension age, which in Mrs G’s case was age 60.
47. Section 94 of the Pension Schemes Act 1993 (**PSA 1993**), provides that a member of an occupational or personal pension scheme has a right to a CETV of any benefits that have accrued under the transferring arrangement. Section 95(1) of PSA 1993, provides that a CETV can be taken by making an application in writing to the managers of the transferring arrangement requiring them to use the CETV in one of several ways, such as for acquiring transfer credits in an occupational pension scheme or acquiring rights under a personal pension scheme which satisfy prescribed requirements, and where the trustees or managers of the receiving scheme are ‘able and willing’ to accept the transfer. If an arrangement does not meet the requirements of a ‘recognised transfer’ under Section 169 of the Finance Act 2004, any payment made will be treated as an ‘unauthorised payment’.

48. As previously stated, Mrs G signed a transfer discharge form (Teachers' Pension reference Form 350) on 29 January 2015, which was sent to TP by Dorrioxo on 5 February 2015. Dorrioxo confirmed that the LQPS was an occupational pension scheme and enclosed confirmation from HMRC that it was a registered pension scheme with the registration number provided. The declaration signed on behalf of Dorrioxo on 5 February 2015, detailed the bank account to be used, which was in the name of LQPS. This Form also confirmed that "this transfer will be used solely for pension benefits for the transferee named above" [i.e. Mrs G].
49. By completing TP's transfer process and signing the transfer discharge form 350, Mrs G also confirmed as follows:-
- I have seen the estimate provided by Teachers' Pensions giving details of the preserved benefits available to me as an alternative to a transfer.
 - I understand that after I transfer my benefits from the TPS, if I gain access to the transferred funds in a way other than receiving a regular pension at retirement this may be considered to be an 'unauthorised payment' for tax purposes. This could also be the case if you receive a payment from a third party after the transfer.
 - If I do receive an 'unauthorised payment,' I will declare it to HM Revenue and Customs and understand that I may be required to pay tax on that payment of at least 40% together with any other charges they may require.
 - I understand that if I fail to notify HM Revenue and Customs of an 'unauthorised payment,' I may be charged penalties in addition to the tax.
 - I understand that the payment of a transfer value will extinguish any rights to benefits in the Teachers' Pension Scheme.
 - I declare that I wish Teachers' Pensions to transfer my pension benefits from the Teachers' Pension Scheme to the pension scheme named above.
50. Accordingly, Mrs G exercised her statutory right to transfer her pension entitlement and the transfer application complied with all the relevant statutory requirements.
51. The Regulator's guidance was set out in the document entitled "Pension liberation fraud," published in February 2013 (the **February 2013 guidance**). The February 2013 guidance sets out examples of cases, warning signs, checklists and other scenarios relating to individuals seeking early access to pension rights before Normal Minimum Pension Age or in a manner which could lead to significant tax charges from HMRC. The guidance provided was not statutory, but since 6 April 2015, there have been changes to overriding legislation, notably under section 48 of the Pension Schemes Act 2015, which introduced a requirement for schemes to ensure that a member receives "appropriate independent advice" i.e. that the advice:
- (a) is given by an authorised independent adviser, and
 - (b) meets any other requirements specified in regulations made by the Secretary of State...

52. TP is not a registered financial adviser and consequently TP is not authorised to provide financial advice. Accordingly, in its letter to Mrs G dated 9 June 2014, TP suggested she consider obtaining independent financial advice. It also set out the benefits of remaining in the TPS.
53. Furthermore, the 'Action Pack' for pension professionals from the Regulator stated that:
- "When processing a transfer request, trustees and administrators may be in a position to identify the warning signs that suggest that pension liberation fraud is occurring".
54. TP acknowledges that the 2014 Action Pack for Trustees and Administrators (the **2014 Action Pack**) was the relevant guidance at the time of Mrs G's transfer, and not the February 2013 guidance, which had been replaced by the 2014 Action Pack in July 2014. Relevant sections of the 2014 Action Pack are reproduced at the Appendix. However, it does not believe that following the 2014 Action Pack would necessarily have led to TP identifying the risk factors listed. The 2014 Action Pack sets out a number of common features of pensions scams for consideration:
- Phrases like "one off investment opportunities", "free pension reviews", "Legal loopholes", "cash bonus", "government endorsement".
 - Victims are approached 'out of the blue' over the telephone, via text message or in person door-to-door.
 - Transfers of money or investments overseas, meaning the money is harder to recover.
 - Access to pension pot before age 55.
 - No member copy of documentation.
 - Victims encouraged to speed up transfer of their money to the new scheme.
55. The final paragraph on page 3 then states:
- "If any of these features apply, then you can use the checklist on the next page to find out more about the receiving scheme and how the member came to make the request."
56. The 2014 Action Pack then prompts the reader to consider a check list if the features on page 3 apply.
57. TP argues that a plain reading of the final paragraph on page 3 only requires progression to the checklist if one of the features referred to in paragraph 54 above was present. It considers that no such relevant factors were present or apparent in this case.

58. TP says that the wording of the 2014 Action Pack did not require administrators to pro-actively elicit information from members. If the intention of the 2014 Action Pack had been for scheme managers to make proactive enquiries of members in all cases, then this should have been stated explicitly. Rather, the points raised would only be divulged if the member made direct contact with the Scheme as part of the transfer process.
59. The 2014 Action Pack presents a two-stage enquiry process, not a one-step checklist. Consequently, TP argues that even if it had followed the 2014 Action Pack, it was by no means likely that the checklist would have been considered, resulting in a dialogue with Mrs G.
60. Furthermore, when it came to questions about location and employment, Mrs G had previously seen a version of the Scorpion leaflet via Gerard and concluded that it did not apply to her. The LQPS arrangement was an investment vehicle with the objective of maximising return, but at risk, and these questions would not have dissuaded her from this investment.
61. TP acknowledges that the investments in the LQPS were high risk investments, but Mrs G classified herself as a sophisticated investor. In terms of due diligence, in line with the 2014 Action Pack, Mrs G had:
- appointed an approved independent Financial Adviser (AWM Financial) and provided written authority to TP;
 - applied to join a tax-registered pension scheme; and
 - while she was under the age of 55 at the date of the transfer, she has stated that she did not wish to 'liberate' her pension fund, which was also confirmed in the TPS 350 discharge form signed confirming that she was not seeking to access benefits before age 55.
62. TP argues that there is no precise definition of the term 'scam', although there is a definition of 'pensions liberation' within the Pensions Act 2004. It suggests the term 'scam' would include accessing funds for non-pension purposes and that this is demonstrated in one of the two examples in the 2014 Action Pack. TP maintains that there were no signs of a scam or liberation at the point that the transfer took place.
63. With regard to the speed of the transfer, TP argues that a precedent had been set for the timescale required for the completion of a transfer, following the Pensions Ombudsman case of Jones v Tyco Holdings (UK) Ltd CARE Pension Scheme [2011] (81625/1) issued on 15 July 2011. This made it clear that there should be no delay in issuing a transfer, thereby avoiding any loss in investment unless there was reason not to do so, for example participation in a 'scam' arrangement. But TP considers that no such factors were present or apparent and that any suggestion that Mrs G was participating in a scam arrangement or seeking to 'liberate' her pension fund would have been escalated to its Technical Team, to arrange a referral to Action Fraud.
64. TP noted the reference to the case of Jerrard [2015] (PO-3809) (**Jerrard**) in the Opinion, which set out the type of due diligence expected of a transferring scheme. It

said that in the case of Jerrard, Mrs Jerrard was seeking to transfer her benefits from the Aviva Occupational Pension Scheme to the SCCL Scheme. On 8 January 2015, the Pensions Ombudsman had concluded that Mrs Jerrard had no statutory right to a cash equivalent transfer value on account of the transfer being an 'unauthorised payment'.

65. As stated previously, in the Hughes case the judgment clarified the definition of 'earner' for the purposes of 3(1)(b) Social Security Contributions and Benefits Act 1992, meaning that Mrs G would fall under the 'earner' definition even if she was not employed by QIMS. In addition, Mrs G was not looking to take benefits before age 55 and there were no tax penalties arising. In his Determination of Mrs Hughes' complaint, the Ombudsman had quoted from the 'Action Pack' that the Adjudicator referred to as follows:

"...A year later, in February 2013, the Pensions Regulator published "Pension liberation fraud. An action pack for pension professionals" in conjunction with a number of bodies including HMRC and the FSA, directed to trustees, administrators and providers. It says:

"Looking out for pension liberation fraud

When processing a transfer request, trustees and administrators may be in a position to identify the warning signs that suggest that pension liberation fraud is occurring. If you are a trustee or administrator, and any of the following criteria apply to a transfer request you have received, then you may be about to transfer a member's pension to a scheme designed to liberate their funds."

66. TP had complied with the requirements of the 2014 Action Pack and there were no warning signs to suggest that pension liberation fraud was occurring in Mrs G's case.
67. As such, in accordance with the 2014 Action Pack, TP went on to comply with the duty to carry out the member's transfer request in line with the legislative requirements, as a valid application had been received.
68. Based on the information that was available to TP at the time and in accordance with the Regulator's guidance to pensions professionals (the Scorpion leaflet), there were no 'red flags' that would have precluded TP from effecting the transfer on 7 February 2015.
69. TP said that transfer activity that took place in 2015 should also be viewed in the context of other Pensions Ombudsman Determinations since the February 2013 guidance was issued, for example:-

Mr T and Prudential [2019] (PO-16475)

This Determination confirmed that where there are no matters of concern or 'red flags' identified as listed in the guidance to pensions professionals, then the enhanced due diligence set out later in the guidance is not required.

In Mrs G's case, consideration of those factors did not raise any concerns meriting further investigation.

Hughes and Aviva UK Life [2015] (PO-6375)

Mr Hughes complained that the transfer of his pension by Aviva to the Capita Oak Pension Scheme had been undertaken without sufficient checks having been undertaken in respect of the receiving scheme. The Determination was issued early in 2015 and, while the Capita Oak arrangement appeared to be a liberation arrangement, the Ombudsman was unable to order a re-instatement or compensation payment because Mr Hughes had a statutory transfer right.

Mr N v Northumbria Police Authority [2018] (PO-12763)

TP has argued that the case of Mr N, which also concerned the LQPS, was materially different from Mrs G's situation in two respects:

- Mrs G did not opt-out of active membership of her employer's scheme as happened in the case of Mr N. In that case, the Ombudsman had seen this as a 'red flag,' in that Mr N was taking the unusual step of transferring his benefits while remaining in employment. The Ombudsman held that this should have alerted his employer, Northumbria Police Authority, to unusual transfer activity. Mrs G, however, was a deferred member, having left her employment in teaching in 2009.
- TP is not the employer of teachers. The ruling in PO-12763 involved a Police Authority which was also Mr N's current employer, for whom Mr N continued to work after the transfer took place. TP has no ongoing relationship akin to an employer/employee in the case of Mrs G, as TP is a third-party pensions administrator.

70. TP is aware that Gerard went into voluntary liquidation on 5 December 2018. In mitigation of any actual or perceived financial loss, Mrs G could seek recourse in respect of any claim she may have against those who advised her via the Financial Services Compensation Scheme (the **FSCS**). The FSCS exists to protect customers of financial services companies that have failed, as set out in Dalriada's ninth announcement, issued in August 2019.
71. TP has given detailed consideration to Mrs G's case and the Opinion. It has every sympathy with the position that Mrs G finds herself, but as a matter of fact, the LQPS in its "second life-cycle" has not been found to be a 'scam' scheme used for the purposes of pensions liberation.
72. Mrs G was provided with all the relevant information alerting her to the need to ensure she obtained relevant independent financial advice. She signed the relevant forms authorising the transfer of her pension from the TPS to the LQPS, which included a declaration that she understood that the payment of a transfer value would extinguish any rights to benefits in the TPS.

73. Mrs G says she assumed she could only take tax free cash from TPS at her retirement age of 60 and she did not ask TP if she could take tax free cash earlier. TP accepts that the sum available at 55 from TPS would have been much less than 25% but considers that Mrs G's adviser would be expected to have investigated this point.
74. TP concluded that the transfer request received from Mrs G was a genuine request, made after having taken the required independent financial advice.
75. Furthermore, there were, and still are, legal obligations in place which the TPS must comply with to ensure that the payment of transfer values are not prevented or unduly delayed. LQPS had confirmed its HMRC registration, that it was willing to accept the transfer and that it would provide benefits consistent with the scheme registration with HMRC, and there appeared to be no legal reason for this transfer to be prevented.
76. While Mrs G took independent financial advice, it is possible that she may have signed documentation provided by Gerard that confirmed that she would be choosing to have the assets invested in a number of high-risk investments. At the oral hearing, TP acknowledged that Gerard appeared to be advising on the transfer, but not on the underlying investments.
77. On causation, TP asserts that there are four factors which support its conclusion that opening a dialogue with Mrs G would have been unlikely to have changed the outcome and that Mrs G would not have been dissuaded from proceeding with the transfer in any event.
78. The first factor is that Mrs G was not deterred by existing warnings from other parties. While it notes Mrs G's comments that she did not read all of the Gerard report, there were nevertheless clear and prominent warnings in the covering letter from Gerard which should reasonably have been noted and understood.
79. The first page of the covering letter from Gerard to Mrs G contained the following warnings:

"... We have received a limited Fact Find and Risk Profiler completed by you. This does not highlight you as a higher risk investor or qualify under the sophisticated investor category_as shown in the attached documents. Please consider the documents carefully as to proceed you need to be a sophisticated or self-certified sophisticated investor_which means you fully understand the risks_associated with the expressly requested pension investments..."

"....Risk and Risk Tolerance:

The investment strategies you have expressly requested are not regulated by the Financial Conduct Authority (www.fca.org.uk) and therefore highest risk..."

".... You will need to agree and sign a sophisticated, high net worth or self-certified sophisticated investor statement in order to proceed with a transfer of pension

benefits as these investments due to their complex nature cannot be promoted to ordinary retail investors.”

80. The summary section of the Gerard report made clear that longer term projections for retirement benefits were less favourable than remaining in the TPS.
81. Despite Mrs G’s admission that she found the Gerard report complicated and did not read it all, and that she was given brochures but undertook no further investigation herself as she trusted Investaco, she says she considered herself to be a sophisticated investor as she had run a successful business and was willing to take calculated informed risk. She said that despite the risk she was attracted to the underlying investments recommended by Investaco as they seemed more substantial, she understood her name would be on title deeds and there were guaranteed returns for five years so she was reassured about the level of risk she was taking.
82. Mrs G said that she also drew further comfort from the fact another adviser, Frozen Pensions Limited, had independently suggested LQPS to her.
83. TP asserts that Mrs G was not deterred by any of the warnings that LQPS exposed her to high risk and unregulated investments, the adverse growth projections compared to remaining in TPS and a direct steer that she was not profiled as a higher risk or sophisticated investor. Therefore, while Gerard had initially indicated that she was unsuited to this type of investment product, she was nevertheless prepared to be regarded as a sophisticated investor, even though she admits to not reading the Gerard report in its entirety.
84. TP says that if Mrs G had any residual doubts, it was open to her to seek further independent financial advice on the underlying investments, besides the transfer. While the transfer deadline may have weighed on her mind, TP argues that Mrs G has not advanced any evidence of why she did not, or could not, seek such advice urgently if she harboured any such doubts. It submits this is further evidence her mind was made up.
85. The second factor was that Mrs G challenged Friends Life’s refusal to effect the transfer of her benefits. TP asserts that Mrs G sent the pro forma insistent customer letter to Friends Life in response to its initial refusal. Following Friends Life’s second refusal, in the letter of 8 April 2015, it would have been clear to Mrs G that Friends Life would not change its position and, therefore, it is not unexpected in the circumstances that she then accepted its decision. However, the first insistent customer letter is evidence of an intention to secure transfer of the Friends Life benefits.
86. TP says that it cannot see any significance in the fact that the insistent customer letter was a proforma provided by Gerard as opposed to a letter drafted by Mrs G. TP considers that she could easily rely on the template provided by a professional firm such as Gerard so there would have been no reason for her to ‘reinvent the wheel’ by

drafting her own letter to Friends Life. The critical point is that Mrs G was happy to endorse the insistent customer letter provided.

87. The third factor is that no steps were taken to investigate a reverse transfer from LQPS. Mrs G has admitted that she was worried by Friends Life's refusal to transfer. But as the value of the funds transferred from TPS were significant and represented by far the lion's share of her pension, it would have been reasonable for her to have taken steps to explore the prospect of reversing the transfer if she had any fresh concerns over her choices. However, she took no steps to do so. Rather, concerns were only raised when she was not able to access her tax-free amount and after the first Dalriada announcement issued on 22 June 2015.
88. TP submits this is evidence that, prior to the Dalriada announcement, Mrs G intended to maintain her course of transferring and maximising her retirement lump sum. If she did have any misgivings, these were not enough to prompt her to make further investigations of LQPS.
89. The fourth factor is that Mrs G's primary motivation was to maximise her tax-free lump sum of 25% at age 55 to support her business, following the withdrawal of the WOWGR licence, even at the potential expense of the growth of her residual pension.
90. TP accepts that Mrs G's bona fide understanding was that this maximisation of lump sum could only be realised by pursuing the transfer option, and not remaining in TPS. The advice she had received from Investaco was that only LQPS could facilitate a 25% tax-free lump sum at age 55. While she could have taken benefits from the TPS at age 55 with a smaller uncommuted lump sum equating to approximately 13% of her fund, she was unaware of this.
91. Further, she was aware that transfers from public service schemes such as the TPS would not be permitted from 6 April 2015, and a transfer deadline of 31 March 2015 was evidently a time frame that she had in mind.
92. TP acknowledges that Mrs G's business continued to trade successfully even without receiving the tax-free lump sum. However, it argues that this fact cannot be used retrospectively as evidence of her thinking in the months immediately preceding the transfer. It submits that making the transfer to a collective investment to maximise her investment and the securing of the lump sum was her imperative.

Mrs G's position

93. In May 2014, she was introduced to The High Street Group by a friend who worked with them. The friend thought that Mrs G might introduce cash investors to them and earn commission. The director and Business Development Manager came to see her. During discussions it emerged that they were looking for cash investors into The High Street Group and other projects. After the visit she was sent a commission proposal for cash investors and for pension transfers. She did not, in fact, introduce any business to them.

94. The High Street Group had a cold calling team offering pension reviews. Mrs G had no intention of transferring her pension at that time, but she was curious as to how much was in "the pot", so she completed a Letter of Authority for High Street Group to obtain information about her pension under the TPS.
95. On 22 May 2014, she received an email from High Street Group asking her to fill in an Initial Request Form; at least it was put to her as an Initial Request Form and that is how she treated it. However, she notes the 9 June letter from TP refers to a "Request to Transfer Benefit" and she had been quite sure that she had never completed such a form. Having now checked through her old emails, she sees that it was called a "Request to transfer Benefit". However, the email made clear that "These forms are not the actual transfer forms for the fund, just what they need to start calculations". She is quite certain she did not pass this form to any employer to complete.
96. At the oral hearing TP agreed that the forms were what was required to start the process of calculating benefits.
97. On 2 June 2014, she had an update from High Street Group with a CETV figure, and on 6 June 2014, she received an Illustration Form, completed by High Street Group. The illustration was very brief and referred to Castle Rock, which she understood from High Street Group to be an Asset and Property Fund regulated by Guernsey FCA. She was very wary and did not progress the matter any further.
98. The Initial Request Form did not name any financial adviser, and she is not aware what other paperwork might have been attached to the request. She has never given any authority to Bespoke, nor has she received any financial advice from them either verbally or in writing. She was not aware that the Initial Request Form had been sent to TP by Bespoke. The illustration sent to her was completed by the High Street Group, not Bespoke. It seems to her that if any scheme was mentioned at all in the paperwork sent to TP by Bespoke, TP clearly did not carry out any due diligence on it.
99. At the oral hearing, TP acknowledged that it looked as though reference to Bespoke had been added to the Initial Request Form by someone other than Mrs G.
100. Some months later, Mrs G saw a marketing email from Investaco about frozen pensions. She knew Investaco as they had advised her previously on mortgages and commercial insurance. She telephoned them and initially they said there was nothing they could do to help, but she recalls that later they came back to say there was one product (LQPS) that would accept a transfer of funds from the TPS.
101. On 9 December 2014, a representative from Investaco came to visit her and she filled out a questionnaire. A transfer pack was sent through the post which she completed and returned. After that everything seemed to happen very quickly, but she understood there was a deadline of the end of March to transfer so this did not concern her.

102. She understood that Investaco would bring in other experts although she cannot recall whether they explicitly told her this. She did understand that Investaco would be her point of contact and the only meeting she had was the one with Investaco.
103. She felt comfortable about the LQPS, because, at about the same time, she had also spoken to an adviser from Frozen Pensions Limited, who was introduced by a friend. This adviser had also suggested the LQPS but with different underlying investments.
104. Although the Gerard report pointed out the investments were unregulated, it was a long, complicated report and she did not read it all. She accepts that she probably underestimated the risk but the 31 March deadline was preying on her mind. Despite the risk she was attracted to the underlying investments recommended by Investaco as they seemed more substantial, she understood her name would be on title deeds and there were guaranteed returns for five years so she was reassured about the level of risk she was taking. She was given brochures but undertook no further investigation herself as she trusted Investaco.
105. She considered herself to be a sophisticated investor as she had run a successful business, and was willing to take calculated, informed risk.
106. TP claims that it sent her the 9 June 2014 letter and has referred to it many times. She has never received this letter. She knows that if she had, she would have considered it important enough to keep hold of. The only letters she received from TP were in response to her complaint.
107. TP also says it was not aware that she had sought advice from Gerard given that it says, "we had not been contacted by them previously." It is, however, clear from an email from Investaco that the forms she had signed and sent to Gerard would have been forwarded to TP by Gerard with a covering letter. There is also a timeline in the email from Investaco which it told her would have been a cut and paste excerpt from that received by Investaco from Gerard. Unfortunately, Investaco has been unable to obtain the original email received from Gerard. However, she believes that Gerard would have been the only ones to have put together the timeline.
108. Also, if the earlier request forms were sent to TP by Bespoke, it would follow that the transfer forms sent in January 2015 would be sent to TP by Gerard.
109. TP is placing a very heavy reliance on her getting independent financial advice over many months when in fact that was not the case. There was no-one to go through the figures with her. Investaco did not advise her and said the decision was up to her. She chose not to approach Gerard because they said they were not giving financial advice.
110. She thinks she may have sent the 'insistent customer' proforma provided by Gerard to Friends Life but cannot recall if she sent it to TP. She acknowledges that this letter says that she had read the Scorpion leaflet, but she did not think it applied to her as she was not looking to access her pension before age 55.

111. She says if TP had conducted proper due diligence in the way that Friends Life did and flagged concerns about the LQPS, she would not have transferred.
112. TP says "Accordingly, [Mrs G] exercised her statutory right to transfer her pension entitlement and the transfer application complied with all the relevant statutory requirements." However, the Friends Life letter to her dated 8th April pointed out:
- "You also refer to your statutory right to a pension transfer, however I would draw your attention to two recent Pension Ombudsman determinations covering this topic (PO-3809 and PO-3105) both published on January 8, 2015. In both cases, the Ombudsman concluded that as the complainants were not in receipt of earnings from the employers sponsoring the schemes, they did not have a statutory entitlement to a pension transfer in accordance with the relevant legislation".
113. These Determinations were made prior to her request to transfer and TP should have been aware of them had it conducted proper due diligence.
114. Friends Life wrote to her on 8 April 2015. As with TP, she had applied to Friends Life on 29 January 2015 to transfer the two pensions she held with it. She had received no previous correspondence from Friends Life. It said it had concerns about the LQPS and was not prepared to transfer her pensions. While this did worry her, the TPS transfer had already gone ahead. She left the Friends Life pension as it was and did not challenge the decision.

Conclusions

115. I have considered the written and oral submissions of both Mrs G and TP.

Statutory Transfer Right

116. TP has said that Mrs G had a statutory right to transfer her benefits, and that nothing it saw at the time suggested this was not the case. As a consequence, it says it could not have prevented the transfer from happening.
117. A member's right to a statutory transfer is governed by Part 4ZA PSA 1993. Under Section 93A(1), the trustees or managers of a pension scheme must, on the application of any member, provide the member with a statement of entitlement in respect of the member's transferrable rights. In this case, TP issued the 9 June Statement to AWM with a copy to Mrs G, although Mrs G has submitted in writing and at the oral hearing that she did not receive it.
118. Section 94(1) PSA 1993, provides that a member of a pension scheme who has received a statement of entitlement under section 93A acquires a right to take the cash equivalent shown in that statement.
119. A member who has acquired the right to take a cash equivalent may only take it in accordance with Section 95 PSA 1993. Under Section 95(1A)(a), an application must be made in writing to the trustees or managers of the scheme within three months

starting on the date of the statement of entitlement. The 9 June Statement made clear that the transfer would not proceed if the new scheme failed to return all documentation by 8 September 2014.

120. Mrs G did not complete the application form to transfer her cash equivalent to the LQPS until 29 January 2015, more than four months after the expiry of the three month deadline in section 95(1A)(a). Section 98(1) PSA 1993, provides that: A member of a pension scheme who acquires the right to take a cash equivalent under Section 94(1) loses that right if no application to take the cash equivalent is made within the period required by Section 95(1A) or (6A).
121. At the oral hearing, TP said that where a member confirms that they wish to proceed after the expiry of the three months the CETV is simply recalculated and paid. It confirmed that it did not issue a follow up statement of entitlement and points out that there is provision in the Regulations for a scheme transfer value and that it complied with Mrs G's wish to transfer.
122. Nevertheless, Mrs G did not complete the application form within 3 months of receiving the statement of entitlement so TP was not under a statutory obligation to affect the transfer.

TP's due diligence

123. Even if TP did believe that it was under a statutory duty to affect the transfer, it was still under an obligation to carry out sufficient due diligence. Section 99(1) PSA 1993, operates to discharge the trustees or managers of a scheme from any obligation to provide benefits to which the cash equivalent related, provided that sections 91(a) and (b) apply:

“(a) a member has exercised the option conferred by section 95; and

(b) the trustees or managers of the scheme have done what is needed to carry out what the member requires.”

124. As set out in paragraphs 117 – 122 above, I consider that Mrs G did not exercise the option conferred by section 95 because it was made after the expiry of the three month period (section 98 PSA 1993).
125. I considered the scope of the obligation imposed on a trustee or scheme manager by section 91(b) in the case of *Mr N v Northumbria Police Authority* [2018] (PO-12763). In that case, I found that the trustees or managers could only rely on the discharge if an appropriate review of the transfer application were undertaken, taking into account the law and regulatory guidance:

““What the member requires” could only be established by ensuring that the appropriate due diligence was carried out, any warnings or concerns identified and brought to the attention of the member, and that the member then went ahead with the transfer, on a fully informed basis.”

126. TP has argued that Mr N can be factually distinguished from Mrs G's case on the basis that Mr N was an active member of the Police Pension Scheme and the respondent in that case was the administrator of the scheme as well as Mr N's employer. While I acknowledge those differences, they do not relate to the duties I held were owed by a scheme manager to a member, or the responsibilities placed on administrators by the Regulator's guidance in 2013 and 2014, which are not dependent on whether a member is active or deferred, or where there is a separate scheme administrator to an employer. In that case I concluded that, on the balance of probabilities, had Mr N received the appropriate warnings, he would have acted differently and, more likely than not would have withdrawn his transfer request.

127. I have set out below where I consider TP failed to conduct sufficient due diligence and failed to identify clear red flags regarding the transfer and the LQPS.

Mrs G's status as an "earner"

128. Section 95(2A) PSA93, states that, in the case of a member of an occupational scheme that is an unfunded public service defined benefits scheme, which includes TPS, the permitted way to take a cash equivalent transfer under section 95(1)(a) is by:

"acquiring transfer credits allowed under the rules of another occupational pension scheme if—

- i. the benefits that may be provided under the other scheme by virtue of the transfer credits are not flexible benefits,
- ii. the trustees or managers of the other scheme are able and willing to accept payment in respect of the member's transferrable rights, and
- iii. the other scheme satisfies requirements prescribed in regulations made by the Secretary of State or the Treasury;"

129. "Transfer credits" is defined as the rights allowed to an earner under the rules of an occupational pension scheme. In previous TPO Determinations, such as Jerrard, the definition of "earner" was construed as relating to the member's employment with the receiving occupational pension scheme's sponsoring employer. If the member was not employed by the sponsoring employer of the receiving scheme, they were not an "earner" for the purpose of acquiring transfer credits in the receiving scheme and consequently did not have a statutory right to transfer a cash equivalent to the receiving scheme.

130. It was later held in *Hughes v Royal London* [2016] that a member did not need to be employed by the sponsoring employer of the receiving scheme to be an "earner" for the purposes of Section 95 PSA 1993. TP's argument is that it follows that Mrs G did not have to be employed by QIMS in order to have a statutory right to transfer benefits to LQPS.

131. TP's summary of the decision in the Hughes case is correct, and Mrs G did not need to receive remuneration by the sponsoring employer of the LQPS in order qualify as an "earner" under PSA 93. However, the transfer request sent to TP by AWM on 19 May 2014, showed that Mrs G lived in Cheshire and was self-employed while QIMS was based in London. In the transfer application, dated 29 January 2015, Mrs G included her occupation as "Company Secretary." So, even if TP was indeed working on the basis that she was still being advised by AWM, the documentation showed she was transferring from the TPS to another occupational scheme, sponsored by a geographically distant company for whom she did not appear to work. I consider that this was a clear 'red flag' and ought to have prompted TP to contact Mrs G and carry out additional due diligence.

The May 2014 request

132. TP seeks to link the transfer application, made on 29 January 2015 to LQPS, with the earlier request for a transfer estimate made by AWM and received by TP on 19 May 2014, the crucial point here being that AWM was a regulated adviser.
133. At the oral hearing, TP said it believed that evidence showed Bespoke and/or AWM were advising Mrs G throughout that eight month period. It pointed out there have been instances where members have approached a number of advisers. Its position is that if she subsequently exercised her right to take a CETV it was on an advised basis. This argument is based on the fact that in the 9 June 2014 letter it recommended that Mrs G took advice and it had no reason to believe that letter was not received. Consequently, there would have been a responsibility on AWM or whoever Mrs G was consulting with to give suitable advice.
134. TP says it took the involvement of High Street Group, AWM and Bespoke, together with the delay, to mean that Mrs G was taking a considered approach to the transfer. Since it did not speak to her itself nor did it correspond with her, with the exception of the 9 June 2014 letter, this argument is not persuasive. In fact, experience in these types of cases tells me that this is a regular feature of pension liberation or scam cases, with competing parties, often involved in cold-calling seeking to persuade a member to transfer to their scheme.
135. Moreover, the transfer documentation produced in June 2014 referred to the Castle Rock Fund, not LQPS. Even if the forms had referred to LQPS, and regardless of whether Mrs G had received the 9 June 2014 letter, TP's argument is contradicted by its own conduct at the time it received the May 2014 request. Had TP thought this first request was a statutory transfer request, TP should have proceeded to take the necessary steps to effect the transfer which it did not do.
136. TP has also referred to the involvement of Gerard, another regulated firm, in support of its argument that Mrs G was being given regulated advice. There is a degree of inconsistency in TP's position. The evidence suggests that Gerard sent TP the transfer forms in January 2015, but TP says that it was not aware of the involvement

of Gerard until it reviewed the Adjudicator's Opinion. TP also does not seem to have been clear regarding to whom it was providing figures and in what capacity.

137. I do not agree that it was acceptable for TP to assume and argue that the May 2014 transfer request was part of the same request made in January 2015, or even that it amounted to a statutory transfer request at all. I also do not consider that it was reasonable for TP to have formed the view that Mrs G was being given regulated advice about the benefits of transferring from TPS to the LQPS between May 2014 and January 2015.

9 June 2014 letter

138. TP has relied on the contents of the 9 June 2014 letter as evidence that it discharged its responsibility to Mrs G. At the oral hearing, Mrs G maintained that she did not receive the letter, while TP says it has an electronic record and working instructions as evidence the letter was sent to her. Even if I were to conclude that Mrs G did receive it and has simply forgotten due to the passage of time, there is no warning included in the body of the letter about the risk of scams and fraud. When the letter was put to Mrs G at the oral hearing, she stated that, had she received it, the content of the letter would not in itself have dissuaded her from transferring. I find it concerning that the letter lacked any warning wording, particularly bearing in mind the letter appears to be a standard template. On the evidence provided by TP it is clear that this was the only contact it made to Mrs G directly.
139. At the oral hearing, TP said that its process would have been to include the Scorpion leaflet with the transfer pack issued in June 2014. While I do not doubt the veracity of this statement as it was given under oath, TP concedes there was no process of obtaining an acknowledgement or confirmation from the member that the leaflet had been received, read and understood. Mrs G states that she did not receive the letter, so also maintains that she did not receive the Scorpion leaflet from TP. However, she acknowledged that she had seen a version of the leaflet, provided by one of the other parties, possibly Gerard. She signed the checklist sent by Gerard, confirming that she had read the Scorpion leaflet. At the oral hearing, she explained that she did not think the Scorpion leaflet was relevant to her situation as she was not seeking to access benefits before age 55.

The Regulator's guidance

140. TP has stated that it conducted sufficient due diligence at the time to be satisfied that there were no warning signs to suggest that pension liberation fraud was a risk. In a number of previous Determinations, such as Jerrard, I have set out in detail the type of due diligence expected of transferring schemes. Paragraphs 25-26 of Jerrard go through the February 2013 guidance. It says that the member should be asked about why he/she is transferring to a scheme sponsored by an employer who does not employ the member; and thus how he/she became aware of the receiving scheme.
141. In its formal response to Mrs G's complaint, TP stated that it followed the Regulator's guidance throughout the transfer. However, as TP has since acknowledged, its

response quotes from the February 2013 guidance, which was replaced with the 2014 Action Pack . The 2014 Action Pack includes the checklist that the Regulator expected trustees and administrators to follow when it received a transfer request, which is set out in the Appendix. TP has provided no evidence that it used this checklist when considering Mrs G's transfer request.

142. Had TP done so, I consider that it would have been immediately apparent that a number of features of the transfer would have been a cause for concern. In particular, the checklist asks the following:

“Is the scheme to which the member wants to transfer:

Sponsored by a dormant employer?

Sponsored by an employer that is geographically distant from the member?

Sponsored by an employer that doesn't employ the member?”

As set out in paragraph 131 above, two of these features applied to Mrs G's transfer.

143. The section headed “the scheme member” posits a number of questions to a scheme trustee or administrator, which are intended to establish whether the member's transfer request presents any risk factors suggesting a scam arrangement or pensions liberation. In the column “how to establish”, the action for the scheme to take is to ask the member for more information. The overall tone of the checklist is for schemes to enter into a dialogue with the member, to seek further information about the reasons for transferring and to review information a member has received. The Action Pack advises schemes to “use the checklist...to find out more about the receiving scheme and how the member came to make a request.”

144. Had TP followed this process, it would have enabled an open dialogue about the nature of the transfer request and an opportunity for TP to provide information on the risks of transferring. TP would not have been expected to advise on the merits of the transfer and may not have been able to stop it (although it was able to in this case for the reasons set out in paragraphs 116 to 122 above) but it was entitled to delay it, to seek further information, and to warn the member of any concerns it may have.

145. I do not consider TP's arguments regarding the 2014 Action Pack to be persuasive. While it is correct that certain of the features referred to by TP in paragraph 54 above do not apply, at least one of those factors did apply to Mrs G's transfer as it did include the transfer of money or investments overseas. More generally, if TP did not know whether these features existed or not at the time, it ought to have asked Mrs G.

146. TP is now adopting an excessively technical reading of the guidance to seek to retrospectively justify why its failure to have a proper process in place at the time would have made no difference. As I have pointed out in paragraph 143 above, the overall tone of the 2014 Action Pack is for the transferring scheme to engage with the member to understand the transfer.

147. I also disagree with TP's statement that the wording of the 2014 Action Pack did not require administrators to pro-actively elicit information from members and that the points raised would only be divulged if the member made direct contact with the scheme as part of the transfer process. The points raised would also have been revealed if TP had sought to engage with Mrs G and seek more information. If TP was unaware at the time if any of the common features listed in the 2014 Action Pack applied, it ought to have confirmed this with Mrs G. Although it is accurate for TP to state that not all the features applied, it only acquired this information after the fact.
148. I consider that, had TP established a proper process based on the checklist, it would have established the involvement of an unregulated introducer rather than AWM, the type of investments being made through the receiving scheme, and the loss of protection for Mrs G. It may also have revealed the names of some of the parties involved, for example Gerard, and their previous involvement in other schemes which have been linked to pension liberation.
149. It is concerning to me that TP, by its own admission, failed to consider and implement the correct Regulator's guidance and to ask these questions. It is also surprising that TP appears to still not understand the process that the Regulator expected trustees and administrators to follow at the time it received the transfer request in January 2015. By this point, it was well known throughout the industry that widespread scams and fraud presented a serious risk to scheme members.
150. TP failed to identify a number of features of the LQPS, which other pension schemes identified as potential 'red flags' in regard to pension transfer fraud, and accordingly refused transfer requests. Friends Life clearly had concerns about the LQPS and set these out in a letter to Dorrioxo dated 16 February 2015, and to Mrs G directly in a letter dated 23 March 2015.
151. TP has not advanced a compelling case about why it had inadequate processes in place at a point in time when the Regulator had clear expectations about the responsibility of ceding schemes to conduct appropriate due diligence before transferring benefits and why it did not identify the red flags that other providers, including Friends Life, had identified.

TP's knowledge about the LQPS as a 'pensions liberation' scheme

152. TP argues that the LQPS was not necessarily a pension liberation scheme at the time Mrs G became a member. TP has also speculated that because Friends Life is regulated by the Financial Conduct Authority, it may have been party to more or earlier information about the LQPS. TP says that the LQPS eventually appeared on a warning list on 29 April 2015, more than two months after Friends Life had first refused to pay the transfer. TP also says that at the time it did not have this information and it believed LQPS was a bona fide scheme.
153. TP is using subsequent reports and developments that occurred after the transfer to support its approach that, at the time of the transfer, it had a reasonable belief that there were no issues with the LQPS. I do not accept that this retrospective line of

argument is plausible. As I have set out in paragraphs 142-148 above, had TP put in place proper processes, there was sufficient evidence, at the time of the transfer in January 2015, that features of the LQPS and the transfer would have prompted further investigation and communication with Mrs G. TP did not have to go as far as establishing that LQPS was a pension liberation scheme, its role was to investigate relevant concerns and communicate these, with appropriate risk warnings, to Mrs G so that she could make an informed decision.

154. I consider that TP's submission that it is not clear whether the Regulator's Determination panel found that the LQPS was a scam is immaterial. The fact is that TP ought to have engaged with Mrs G to find out more about the transfer. As I have already set out, had it done so a number of risk factors would have been immediately apparent and would have prompted it to warn Mrs G about the risks of transferring, regardless of whether LQPS was later described as a 'scam' or liberation vehicle by the Regulator or by Dalriada.

TP's approach - conclusion

155. In summary, TP's response to Mrs G's complaint and its formal response to my Office indicates a surprising lack of understanding at the time of the transfer of the Regulator's expectations to put proper processes in place to protect members, which was widely understood in the industry and is highlighted by the fact that Friends Life rejected the transfer.
156. Instead, the transfer was processed quickly. Mrs G's application was dated 29 January 2015 and the transfer of her benefits from TPS completed on 18 February 2015. TP says the transfer request was dealt with quickly as it had been criticised in previous cases for delaying transfers. It has also pointed to the then Deputy Pension Ombudsman's finding in *Jones v Tyco Holdings (UK) Ltd* [2011].
157. I acknowledge that there is a proportionate balance of risk to be struck between acting promptly on a member's request to transfer and being satisfied that the transfer does not present a risk to the member's benefits. But there is a difference between being dilatory and being diligent. Even taking into account the upcoming legislative change in April 2015, TP had sufficient time to carry out the due diligence. I do not consider that a desire to avoid criticism for delaying the transfer excuses TP's actions.
158. I find that TP's failures amount to serious maladministration. TP had considerable time to put in place robust and compliant pension transfer procedures to reflect the regulatory guidance but the evidence indicates that it failed to do so. Insufficient due diligence processes appear to have remained in place more than two years after the Regulator's 2013 guidance and after a number of TPO Determinations highlighted what is expected of trustees, managers and administrators.

Mrs G's transfer request

159. I am conscious that the request to transfer to the LQPS was Mrs G's to make. However, that does not mean there is no responsibility on TP, particularly as Mrs G did not have a statutory transfer right. In the absence of any proper due diligence or appropriate warnings by TP, I have to decide as a matter of fact what I consider would have been the outcome had the maladministration I have identified not taken place.
160. I must decide whether, on the balance of probabilities, Mrs G would have withdrawn the transfer request if TP had put proper processes in place and warned Mrs G about the risk of transferring.
161. Mrs G has stated, in her complaint, that she would not have transferred had she known the risks and received proper warnings. I can of course only place limited weight on this statement as it is made with the obvious benefit of hindsight.
162. The burden of proof is on Mrs G to show that it was more probable than not¹ that she would have withdrawn her transfer request at the time, had TP not committed the maladministration I have found.
163. Turning first to the report prepared by Gerard it does not wholly support Mrs G's position that she would not have transferred. Pages 5 and 6 of the report model the potential retirement benefits at age 58 and age 60 for the existing scheme (that is TPS) versus a personal pension alternative. At both ages, the quoted annual figure for the personal pension is substantially lower than that quoted for TPS, and an even lower illustration shown once the 25% tax-free cash sum was factored in.
164. The Gerard report itself does not state what the tax free cash would be under the LQPS for comparison, but I understand from other sources that 25% was permitted. This was also Mrs G's understanding, supported by contemporary correspondence from Investaco and the LQPS application form which asked what level of tax free cash she wished to receive. It also illustrated that a lump sum death benefit was available under the LQPS instead of a survivor pension under TPS. As would be expected, the Gerard report did not make an overall recommendation or offer advice, but it did state in the Introduction that it was "designed to assist in deciding whether a transfer of benefits from the Existing Scheme to an alternative pension contract would be appropriate."
165. The Gerard report is detailed and includes a large amount of information that is very abstruse to the non-technical pension investment specialist. However, Mrs G explained at the oral hearing that although some of the detail of the report was difficult to follow, she did appreciate that there was a calculated risk between receiving a larger lump sum paid earlier at 55 and receiving a lower pension later. She considered that it was an acceptable risk in the context in which she was making the decision, on the grounds that: she would be able to use or invest the lump sum

¹ Miller v Minister of Pensions - [1947] 2 All ER 372

elsewhere; she believed the underlying investments to be secure; and that she had no reason to be aware of the risk of transferring to the LQPS.

166. The covering letter to the Gerard report was clearly intended to direct Mrs G down the route of transferring to the LQPS, notwithstanding the projections in the report itself. It set out the reasons why transferring to the LQPS was advantageous and, although it acknowledged there were alternatives, these were dismissed. The accompanying documents included the LQPS application and an 'insistent customer' proforma letter template which Mrs G signed on 29 January 2015, the same date she completed the transfer application for TP.
167. The insistent customer letter could be taken as evidence that Mrs G wanted to go ahead with the transfer regardless. It was sent to Friends Life after it had initially refused the transfer. The text of that letter is identical to the proforma text provided to Mrs G by Gerard, including the same typing errors, so I conclude that the substantive text of the letter sent to Friends Life was provided by Gerard and only signed by Mrs G. So, this was not a letter that Mrs G drafted, but a proforma letter she signed among a number of other documents in the pack provided by Gerard.
168. I consider that this is an important distinction. It would have been far stronger evidence of intention to transfer in any event if Mrs G had put her mind to proactively drafting a letter to send to Friends Life herself. But the same weight cannot be placed on a pro forma letter that was signed among a pack of documents, and which is likely to have been sent to Friends Life by Gerard.
169. So, I do not agree the pro forma letter signed by Mrs G does evidence a firm intention or challenge to Friends Life. The evidence suggests it was signed before the transfer was refused. In order for the letter to be persuasive evidence of Mrs G's intention I would expect to see a letter in Mrs G's handwriting or, at the very least, a wording that was clearly hers alone. A proforma provided on behalf of the receiving scheme is not sufficient proof that this reflected Mrs G's wishes.
170. It is also significant that Mrs G accepted the decision by Friends Life to refuse to transfer the pension funds it held to LQPS and did not seek to insist on the transfer going ahead. The correspondence between Friends Life and Mrs G following its decision, shows no evidence that Mrs G personally sought to challenge Friends Life's decision. So, I do not consider that Mrs G was an 'insistent customer' willing to transfer in any circumstance.
171. In early correspondence with Investaco, Mrs G emphasised her intention to maintain 25% of her funds uninvested in the LQPS so they could be drawn as a 25% lump sum. However, that correspondence also demonstrates that Mrs G was primarily concerned about the security of the underlying investments. She sought confirmation that returns were guaranteed. At the oral hearing, she explained that she had been informed that the Dolphin investment would include her name on title deeds as security, and that the assets she selected involved property or "real" assets. Again, at the hearing, Mrs G emphasised that her focus throughout had been the security of

the underlying investments, not the security of the LQPS itself as a 'wrapper' for those investments.

172. Mrs G had also decided not to proceed with a transfer to the Castle Rock arrangement in June 2014, as she was wary of it. She added, at the oral hearing, that the projected growth rate appeared "tremendous", but as she did not understand what the fund was, she did not wish to proceed. She had also sought advice from Investaco on an investment recommended by a friend and had not been attracted to it due to a lack of security.
173. Mrs G indicated that she intended to use the 25% tax-free cash sum to support her business, which was suffering cash flow difficulties due to the unexpected withdrawal of its WOWGR licence by HMRC in 2010. After successfully appealing the decision at a tax tribunal in January 2014, the licence was reinstated in August 2017. Mrs G was also aware that a transfer request would need to be made before 31 March 2015 due to a change in legislation.
174. At the hearing, Mrs G acknowledged that the papers do show a consistent intention to receive a 25% lump sum. She explained that her aim at the time was to explore options available to her to support her business. However, she emphasised that the issue was one of reduced cashflow from the withdrawal of the WOWGR licence, not a shortage of capital. She had other assets and sources of income available to her. These included four rental properties, income from taking in a lodger and supply teaching work. She was aware of the March 2015 deadline to apply to transfer and had been informed by Investaco that the LQPS was the only scheme able to accept a Transfer from a defined benefit scheme.
175. I accept Mrs G's evidence that the lump sum was only one of a number of options available to her to support the business. I am supported by the fact that Mrs G's business continues to trade successfully, which is evidenced by records at Companies House, even without receiving the tax free cash because Mrs G has received no lump sum or benefits from the LQPS.
176. I disagree with TP's assertion that the fact that Mrs G's business continued to trade successfully even without receiving the tax-free cash cannot be used retrospectively. It is not being used retrospectively. Mrs G had a number of options available to her to ensure the survival of her business. The fact that her business survived without the lump sum is evidence supporting her statement, at the hearing, that she had other financing options and supports the conclusion that Mrs G was not motivated to proceed with the transfer at any cost.
177. I consider that at the time Mrs G was motivated to take action to receive a 25% lump sum from age 55. However, the evidence is that her motivation to transfer to the LQPS was not so strong that she would have been undeterred by appropriate warnings, or further information, being provided to her about the possible risk to her pension. Her enquiries with Investaco, her rejection of the Castle Rock proposal, and her assessment of the Gerard report demonstrate an awareness of, and a considered

approach to, risk. This is further supported by her not challenging Friends Life's refusal to effect the transfer of her other pensions to the LQPS.

178. The facts in this case are finely balanced and I could not be certain, just by reviewing the documentary evidence and written responses, what action Mrs G would have taken as a result of receiving appropriate warnings based on the further enquiries that I find TP should have made. It is for this reason I found it necessary to hold an oral hearing, primarily to test Mrs G's evidence and to assist me in making a finding on the balance of probabilities. My conclusion is that she was prepared to take a calculated risk based on the sources of information she had available to her. But the key source of information ought to have been TP, had it discharged its obligations properly. As a consequence she was unable to make a fully informed decision.
179. Mrs G was willing to take the calculated risk set out in the Gerard report of a higher lump sum earlier and a lower pension later. But in making this decision, she was not able to factor in risks of which she was reasonably not aware, which she would have been had TP put in place sufficient processes to identify and raise with her issues about the LQPS.
180. I find, taking into account the contemporary documents and the parties' written and oral submissions, on the balance of probabilities, that had TP put in place proper processes to identify transfers to potential scam arrangements and warned Mrs G of the risk of transferring her benefits from TPS to the LQPS, Mrs G would have withdrawn her transfer request. She may have sought out a more suitable and protected alternative arrangement into which to transfer, or left her pension deferred within the TPS. As a result, Mrs G has suffered the loss of her benefits within the TPS.
181. Mrs G was under a duty to mitigate her loss. She says that she did not contact the LQPS to reverse the transfer after she had received the Friends Life letter as she did not realise that reversing the transfer was possible. It would have been prudent for her to check with the LQPS whether a reversal was possible, and Mrs G was unable to provide a satisfactory explanation for her failure to do so when questioned at the oral hearing.
182. The Friends Life letter was received on 8 April 2015, some two months after the transfer completed. Dalriada was appointed as Independent Trustee of the LQPS on 18 June 2015. and its first announcement in relation to the Scheme was in June 2015. Even had Mrs G contacted the LQPS immediately on receipt of the Friends Life letter, the Regulator's investigation into the LQPS would likely have already been taking place. I consider that, on the facts, no mitigation would have been realistically possible had Mrs G contacted LQPS to request a reversal of the transfer.
183. TP has said that, as a consequence of Gerard's involvement, Mrs G may be able to seek reimbursement from the FSCS. This may indeed be the case, but Mrs G is not under a duty to mitigate her loss by making a claim to the FSCS. The FSCS is a fund of last resort which provides recourse where a financial loss is attributable to an FCA

regulated adviser, and that adviser or business has failed. However, I have found that Mrs G's financial loss is attributable to TP's maladministration.

184. I uphold Mrs G's complaint.

Directions

185. Within 56 days TP shall:-

- i. Reinstate Mrs G's accrued benefits in the TPS, adjusting for any revaluation that has taken place since the transfer was completed. If TP is unable at law to reinstate Mrs G's accrued benefits in the Scheme, then it should provide Mrs G with the equivalent benefits she would have received had she remained in the Scheme.
- ii. Pay Mrs G £1,000 to reflect the serious distress and inconvenience that she has suffered as a result of the appropriate checks not having been made, and the appropriate warnings not having been provided.

186. Should Dalriada manage to retrieve some or all of Mrs G's pension fund for her benefit and provide TP with satisfactory evidence that has happened, TP shall be entitled to recover that amount from Mrs G.

187. Should Mrs G make a successful application for compensation from the FSCS, she shall disclose to TP the sum she receives and TP shall be entitled to recover that sum from Mrs G.

Anthony Arter

Pensions Ombudsman
14 December 2022

APPENDIX

Excerpts from Action pack for the trustees and administrators

Checklist

Answering **yes** to any of these questions individually does not necessarily indicate a pension scam, but if several features are present there may be cause for concern.

The nature/status of the scheme	
Is the scheme to which the member wants to transfer:	How to establish
<ul style="list-style-type: none"> newly or not registered for tax purposes with HMRC, whether it is an occupational or personal scheme (including SIPPs)? 	<ul style="list-style-type: none"> Check the scheme is registered with HMRC for tax purposes: ask the pension scheme in question for documentary evidence of their registration. You can also write to HMRC for confirmation (see p9)
<ul style="list-style-type: none"> a personal pension (eg a SIPP) where the scheme operator is not authorised by the Financial Conduct Authority (FCA)? 	<ul style="list-style-type: none"> Check the scheme operator is authorised with the FCA (www.fca.org.uk/register)
<ul style="list-style-type: none"> a recently set up small self-administered scheme, where the member is a trustee? 	<ul style="list-style-type: none"> Ask the member
<ul style="list-style-type: none"> sponsored by a newly registered employer? sponsored by a dormant employer? sponsored by an employer that is geographically distant from the member? 	<ul style="list-style-type: none"> Obtain employer information from scheme in question Check with Companies House for details of the employer status (www.companieshouse.gov.uk)
<ul style="list-style-type: none"> sponsored by an employer that doesn't employ the member? 	<ul style="list-style-type: none"> Ask the member
<ul style="list-style-type: none"> connected to an unregulated investment company? 	<ul style="list-style-type: none"> Ask the receiving scheme for details of their investment service providers Check these providers with the FCA (www.fca.org.uk/register)

Description/promotion of the scheme	
Do descriptions, promotional materials or adverts:	How to establish
<ul style="list-style-type: none"> include the words 'loan', 'savings advance', 'cash incentive', 'bonus', 'loophole', 'preference shares', 'one-off investment opportunities', 'free pension reviews' or 'government endorsement'? allude to overseas investments? hint at unusual, creative or new investment techniques? 	<ul style="list-style-type: none"> Ask the member for copies of promotional materials, emails or letters about the scheme Ask the member about the way the receiving scheme has been described to them over email/text/phone

The scheme member	
Has the member:	How to establish
<ul style="list-style-type: none"> been contacted by an 'introducer'? been advised by a non-regulated adviser? taken no advice? decided to transfer after receiving cold calls, unsolicited emails or text messages about their pension? 	<ul style="list-style-type: none"> Ask the member about how he/she became aware of the receiving scheme Check whether the advisers are approved by the FCA at www.fca.org.uk/register
<ul style="list-style-type: none"> pressured the trustees/administrators to carry out the transfer as quickly as possible? mentioned that your pension scheme has transferred funds to this arrangement before? 	<ul style="list-style-type: none"> Check whether the member has contacted trustees/administrators to hurry along transfer since first submitting request
<ul style="list-style-type: none"> not received documentation from the new scheme? 	<ul style="list-style-type: none"> Check whether the member has received documents
<ul style="list-style-type: none"> been told they can access their pension before age 55? been misled about the potential tax consequences? 	<ul style="list-style-type: none"> Review promotional material for receiving scheme
<ul style="list-style-type: none"> been advised that there will be no contributions paid by themselves or the employer? 	<ul style="list-style-type: none"> Ask what the member has been told about contributions