

**PENSION SCHEMES ACT 1993, PART X
DETERMINATION BY THE PENSIONS OMBUDSMAN**

Applicant	Mrs Sharon Jerrard
Scheme	AVIVA Personal Pension Scheme (the Aviva Scheme)
Respondent	Aviva plc and relevant subsidiaries (Aviva)

Subject

Mrs Jerrard, represented by Warwick & Eaton Administrators Ltd (**Warwick & Eaton**), complains that Aviva refused to act on her request to transfer her benefits from the Plan to the SCCL Pension Scheme (**the SCCL Scheme**).

Summary of the Ombudsman's determination and reasons

The complaint is not upheld. Mrs Jerrard does not have a right to transfer, primarily because the SCCL Scheme is not an occupational pension scheme as defined in the relevant legislation.

Background

Pension liberation

1. This case is connected to what is known as “pension liberation” or “pension scams”. Currently the issue has a high profile in the UK pensions industry so this and other decisions concerned with the same matter will be of wide interest.
2. To begin with the basics: present tax legislation is designed to prevent access to pension funds before the age of 55 (other than in ill-health or as benefits following death) as part of the policy that encourages pension saving by giving tax advantages, with penalties if the advantages are abused by using funds other than for authorised purposes. There was also, at the material time, a limit on the amount that could be taken as cash at any age.
3. The practice of pension liberation involves a transfer away from a genuine pension scheme intended to allow access to a scheme member’s pension savings before the age of 55, or to more cash than would normally be allowed. It is recognised as being contrary to the broad policy of encouraging pension savings and is of concern to the regulatory and tax authorities and those responsible for national pension policy. The businesses active in persuading people to indulge in such arrangements are likely to be doing so with their own financial gain put before the long term interests of the people with whom they deal. Charges made by businesses for making such arrangements are high and significant tax penalties that a member is likely to suffer may not have been explained. Some transfers have been fraudulently diverted to the advantage of the persons advertising the schemes and there is a suggestion of the involvement of organised crime in some pension liberation schemes.
4. Pension liberation is recognised in statute in sections 18 to 21 of the Pensions Act 2004, under which pension money is defined as having been liberated where a transfer value is paid from a pension scheme on the understanding that it would be secured to be used in an authorised way by the recipient, but it has not been. The Pensions Regulator is given power to make restraining and repatriation orders and the courts are given powers to order restitution. These provisions have no direct relevance to the matter I have to consider, however.

The statutory right to a transfer value

5. Section 94 of the Pension Schemes Act 1993 (**PSA93**) provides that a member of an occupational or personal pension scheme has a right to a “cash equivalent transfer value” of any benefits which have accrued under the transferring arrangement.
6. Section 95(1) of PSA93 says that a cash equivalent transfer value can be taken by making an application in writing to the managers of the transferring arrangement requiring them to use the cash equivalent in one of several ways set out in subsequent paragraphs. In summary, and so far as relevant, they are:
 - for acquiring “transfer credits” in an occupational pension scheme; or
 - for acquiring rights under a personal pension scheme;
 which satisfies prescribed requirements in each case and where the trustees or managers of the scheme are able and willing to accept the transfer.
7. The definition of “occupational pension scheme” for this purpose is in section 1(1) of PSA93:

““occupational pension scheme” means a pension scheme -

 - (a) that -
 - (i) for the purpose of providing benefits to, or in respect of, people with service in employments of a description, or
 - (ii) for that purpose and also for the purpose of providing benefits to, or in respect of, other people,

is established by, or by persons who include, a person to whom subsection (2) applies when the scheme is established or (as the case may be) to whom that subsection would have applied when the scheme was established had that subsection then been in force, and
 - (b) that has its main administration in the United Kingdom or outside the EEA states,

or a pension scheme that is prescribed or is of a prescribed description;”
8. Subsection (2), referred to in the definition above as describing persons who can establish an occupational pension scheme, limits them to, in fairly complex terms that I do not need to reproduce here, employers of people who are in an employment of the description referred to in paragraph (a)(i), or persons who are themselves in an employment of that description, or persons representing the interest of either. Subsection (3) says that where a person in an employment is an office holder, their employer will be taken to be the person responsible for paying them.

9. Transfer credits are defined in section 181(1) as follows:

““transfer credits” means rights allowed to an earner under the rules of an occupational pension scheme by reference to a transfer to that scheme of his accrued rights from another scheme (including any transfer credits allowed by that scheme)”

10. That in turn leads to the definition of “rights” in the same section, being:

““rights”, in relation to ... transfer credits, includes rights to benefit and also options to have benefits paid in a particular form or at a particular time;”

Where “benefit” and “benefits” are undefined.

11. The definition of “earner” cross refers to section 3 of the Social Security Contributions and Benefits Act 1992.

“(1) In this Part of this Act and Parts II to V below—

- (a) “earnings” includes any remuneration or profit derived from an employment; and
- (b) “earner” shall be construed accordingly.”

12. The prescribed requirements under section 95(1) in relation to transfers from occupational pension schemes are set out in Regulation 12 of the Occupational Pension Schemes (Transfer Values) Regulations 1996 (**the Occupational Schemes Transfer Regulations**). The requirements for transfers from personal pensions are in the Personal Pension Schemes (Transfer Values) Regulations 1987 (**The Personal Pension Transfer Regulations**). The relevant requirement is the same in each, being that where the transferring scheme is registered under section 153 of the Finance Act 2004 (**FA04**) the receiving scheme should also be registered under that section.
13. Section 99 of PSA93 requires the trustees or managers to carry out the member’s requirements within a specified period – basically within six months of application, or, in the case of salary related occupational pension schemes, six months of the date of guarantee of the amount of the cash equivalent. It also provides:
- that the Pensions Regulator can extend the six month period in specified circumstances;
 - for notification to the Pensions Regulator where payment is not made; and

- in the case of occupational pension schemes, for civil penalties to be imposed by the Pensions Regulator on trustees or managers who have not taken reasonable steps to comply.
14. In relation to transfers from occupational pension schemes, Regulation 13 of the Occupational Schemes Transfer Regulations specifies the circumstances in which the Pensions Regulator may grant an extension to the period for compliance with the member's request. In particular the Pensions Regulator may do so where the member has not taken all the steps that the trustees or managers may reasonably expect in order to satisfy them of any matter needing to be established, or has not provided the information that the trustees or managers reasonably need. There are no equivalent regulations relating to transfers from personal pension schemes, so there are no circumstances in which the Pensions Regulator or any other regulator can extend the six month period.

Tax legislation

15. Section 153 of the Finance Act 2004 (**FA04**) provides for the registration of schemes by the Inland Revenue. One condition of registration is that the instruments or agreements of the scheme do not entitle a person to "unauthorised payments".
16. Section 164 of FA04 lists types of payments that are regarded as "authorised member payments", which include "recognised transfers" under section 169. Section 169 says that a recognised transfer is a transfer of sums or assets to another recognised scheme (or a qualifying recognised overseas scheme).

"A "recognised transfer" is a transfer of sums or assets held for the purposes of, or representing accrued rights under, a registered pension scheme so as to become held for the purposes of, or to represent rights under-

- (a) another registered pension scheme, or
 - (b) a qualifying recognised overseas pension scheme,
- in connection with a member of that pension scheme."

17. "Member" is defined in section 151 of FA04 as follows:
- "(1) In this Part "member" in relation to a pension scheme, means any active member, pensioner member, deferred member or pension credit member of the pension scheme.
 - (2) For the purposes of this Part a person is an active member of a pension scheme if there are presently arrangements made under the pension scheme for the accrual of benefits to or in respect of the person.

- (3) For the purposes of this Part a person is a pensioner member of a pension scheme if the person is entitled to the present payment of benefits under the pension scheme and is not an active member.
 - (4) A person is a deferred member of a pension scheme if the person has accrued rights under the pension scheme and is neither an active member nor a pensioner member.”
18. Sections 208 and 209 of FA04 provide that, where an unauthorised member payment is made, an unauthorised payment charge, and potentially an unauthorised payment surcharge, will be levied on the member (where living).
19. Section 239 of FA04 provides for a “scheme sanction charge” to be paid by the person identified as the administrator of the scheme. A scheme sanction charge could (subject to some conditions not relevant) be payable if an unauthorised member payment was made. It would be at 40% of the payment subject to a deduction where an unauthorised payment charge has been paid.
20. Also relevant are sections 157 and 158 of FA04 which provide that a scheme that makes ‘unauthorised payments’ that exceed a permitted threshold could face de-registration. If registration is withdrawn the trustees or managers become liable to pay a de-registration charge, assessed at a rate of 40% of the assets held by the arrangement immediately before registration was withdrawn.

General obligations

21. Regulation of pension schemes is divided between the Financial Conduct Authority (**FCA**) and the Pensions Regulator under different statutory regimes. Before the FCA came into existence, the Financial Services Authority (**FSA**) had the same responsibilities and there are no material differences between the regulatory regimes of the FSA and the FCA. (For convenience in this document I use “FCA” where I might otherwise have said “the FCA and the FSA before them”.)
22. The FCA’s jurisdiction broadly includes providers of all pension schemes other than occupational pension schemes (activities concerning which are excluded from being a “regulated activity” in the relevant legislation). The FCA expects all firms within its jurisdiction to act in accordance with certain principles, which include acting with integrity, due skill, care and diligence, and treating customers fairly. More specifically, in relation to retail investment business (which includes pensions) the FCA expects firms to “act honestly, fairly and professionally in accordance with the best interests of its client”.

23. Trustees and managers of occupational pension schemes have general obligations in law, which there is no need to rehearse here in depth, to act in the best interests of beneficiaries, with due care, etc. However, since, as stated above, managing an occupational pension scheme is not a regulated activity, businesses and persons managing such schemes are not required to be authorised by the FCA.

Regulation

24. In February 2012 the Pensions Regulator published a press release directed to the public headed “Warning against early release pension offers”. The Pensions Regulator noted that it had published details of investigations in two cases, which had resulted in the appointment of an independent trustee, and including advice to pension scheme members about pension liberation schemes, including comments from HM Revenue and Customs (**HMRC**) and the FSA. At the same time, the Pensions Regulator published a factsheet “Pension Liberation Fraud” giving information for scheme members and the FSA published its own material directed to consumers.
25. 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. Here are some of the things to look out for:

- Receiving scheme not registered, or only newly registered, with HM Revenue & Customs
- Member is attempting to access their pension before age 55
- Member has pressured trustees/administrators to carry out transfer quickly
- Member was approached unsolicited
- Member informed that there is a legal loophole
- Receiving scheme was previously unknown to you, but now involved in more than one transfer request”

26. The action pack goes on to set out check lists that could be used if any of the above applied.

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 registered with HMRC? • if the scheme is a self-invested personal pension (SIPP), not registered with the Financial Conduct Authority (FCA)? 	<ul style="list-style-type: none"> • Ask the pension scheme in question for documentary evidence
<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' or 'preference shares'? • 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 advised 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 advisers are registered with 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 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 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

27. The pack continues:

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

...

Next steps if you have concerns

Contact the member to establish their understanding of, for example, the type of scheme they'll be transferring to. You may also want to direct the member to the Pensions Advisory Service (TPAS), who can help them understand the potential tax consequences of the transfer if any part of the arrangement is deemed as unauthorised. ...

Communicating with the member may also allow you to establish answers to more of the questions above, where you've been unable to answer them with the information you have available. If your concerns remain then you should alert the relevant authority ...

Delaying a transfer when you have concerns over liberation

Should you have concerns regarding a transfer request you may wish to seek your own legal advice. Trustees have a duty to carry out a member's transfer request where the legislative requirements are met. This includes a member having made a valid application requesting the transfer.

If, for example, a member requests a transfer to obtain transfer credits in an occupational pension scheme, but the trustees of the transferring scheme have reason to believe that the receiving arrangement is not a legitimate occupational pension scheme they should consider carefully whether the application is validly made, and if not whether they have any duty to process the transfer.

For example, in certain circumstances where a scheme describing itself as an occupational pension scheme is sponsored by a dormant company, which has never actually traded, the trustees may conclude that it does not have the necessary characteristics of an occupational pension scheme.

We can't predetermine any future regulatory action we may take on any particular case. However, where the transferring trustees or administrators have reason to believe that member funds may be liberated and can evidence their concerns, then this would be a relevant factor to the regulator when deciding whether it would be appropriate to take action in respect to a non-payment of a transfer.

For example, where a trustee has obtained evidence that subsequent to a member's transfer then monies would be passed back to the member before their normal minimum pension age, this factor would be given significant weight by the regulator in assessing whether it would be appropriate to pursue any action in relation to a non-payment of a transfer.

The Pensions Regulator would expect trustees/managers to be able to demonstrate that they have taken steps to establish the legitimacy of an arrangement where they have delayed making a transfer for that reason."

28. The Pensions Regulator's guidance was updated in July 2014. It is not significantly different and, of course, any changes significantly postdate the events to which this Determination relates.

The issue

29. The issue that arises in this case can be straightforwardly expressed and is typical of one presenting itself across the pensions industry in relation to pension liberation. Put simply, it concerns where the balance lies for those responsible for the management of a scheme when a transfer request is thought possibly to be for the purpose of pension liberation. On the one hand, the member has statutory transfer rights and, usually, transfer rights under the transferring scheme. On the other, the trustee, manager or provider has regulatory and other general responsibilities to act in the member's interests and with due care – and it must act consistently with the tax legislation or risk financial penalty.
30. I understand that there has been a range of approaches across the industry, with some schemes and providers taking a protective attitude towards their members, building (and sharing) databases to help them to identify transfer requests that are likely to be for pension liberation, and others adopting a more permissive stance.

Also, schemes and providers may have modified their respective approaches over time as experience has grown.

31. No doubt in some cases in which a scheme or provider contacts the member offering information and/or asking questions, as advocated by the Pensions Regulator, the member will simply drop the application – whether because they realise from the information that the transfer is not in their interests or they retain their original impulse but give up in the face of an obstacle.
32. In those cases, the scheme or provider will not need to look beyond the *prima facie* evidence that the transfer was for the purpose of pension liberation. But where the member persists, the trustee, manager or provider will need to make a judgment about what evidence is needed and how much further to look for it before concluding whether or not the member has a right to transfer.

Basis of my decision

33. I have jurisdiction to decide complaints of injustice due to maladministration and disputes of fact or law. The two often overlap. There will not have been maladministration by a body that makes a reasonable decision in an honest belief that it is acting correctly. However, where I am determining legal rights, I must do so in accordance with legal principles – in substance reaching a decision equivalent to the decision that a court could have reached, and I must provide the same legal remedy as a court would in the same circumstances. The position is helpfully summarised in *Arjo Wiggins Limited v Henry Thomas Ralph* [2009] EWHC 3198(Ch), paragraphs 13 to 15.

Mrs Jerrard's case: Material Facts

The Aviva Scheme

34. The Aviva Scheme was originally established by Deed Poll but is now under trust. The trustees are Aviva Pension Trustees UK Ltd. Aviva Pension Trustees UK Limited are also the Scheme administrator. However, in practice, the day to day management of the Plan is carried out by Aviva Life and Pensions UK Ltd, whose relevant activities are regulated by the FCA (and previously by the FSA). I refer to them jointly as “Aviva”.
35. The material rules of the Plan are set out below.

“1.1 The *scheme* is a personal pension scheme registered under Chapter 2 of Part 4 of the Act. Its purpose is to make *authorised*

payments as described in the scheme documents. The scheme administrator may make any authorised payment that it considers appropriate and deduct tax from it.

Notwithstanding anything to the contrary in the scheme documents, no member, other beneficiary or employer will be entitled to receive or benefit from an unauthorised payment as defined in Part 4 of the Act.”

“10 Transfer Out of the Scheme

TRANSFER PAYMENTS

10.1 The scheme administrator will at the written request of a member transfer the member’s fund to one or more registered pension schemes or qualifying recognised overseas pension schemes.

The scheme administrator may allow an assignment or transfer in specie to one or more registered pension schemes or qualifying recognised overseas pension schemes.

If the scheme administrator agrees, partial transfers of uncrystallised benefits may be permitted. However no transfer or partial transfer to a qualifying recognised overseas pension scheme may be permitted until the member has provided evidence to the satisfaction of the scheme administrator of the amount of lifetime allowance (if any) available to him at the time.

10.2 The transfer must be made between the scheme administrator and the administrator or trustee of the other scheme. The transfer will not be paid or passed through a financial intermediary or broker. In a way that meets the requirements of section 266 of the Act, if the transfer is to an insured scheme, the transfer must be paid either to the scheme administrator of the transferee scheme or the insurer of that scheme.”

The receiving scheme

36. The arrangement to which Mrs Jerrard wished to transfer is known as the SCCL Pension Scheme (the **SCCL Scheme**). By a trust deed dated 19 August 2013, a trust was established by SCCL Limited, defined as “the Principal Employer” (**SCCL**), and Barclay Cavendish Trustees Limited, defined as “the Trustees” (**Barclay Cavendish**), the sole director of which, a Mr Simon Walker, is also a director of Warwick and Eaton.
37. Clause 1 of the Trust Deed says “The Principal Employer has decided to establish a trust with effect from the date of this deed (the “Commencement Date”) for securing benefits under a pension scheme (as defined in section 150 of the Finance Act 2004 (the “Act”) to be known as the SCCL Pension Scheme...”

38. Clause 7.1 of the Trust Deed says “Any employer may participate in the Scheme as a Participating Employer by means of a deed executed by the Principal Employer, the Trustees and the employer concerned, in which the employer covenants to comply with the provisions of the Trust Deed and Rules.”

39. The Rules of the SCCL Scheme say:

“1. Eligibility

The Scheme is an occupational scheme and a Registered Scheme. Membership of the Scheme is at the discretion of the Principal Employer upon such terms as may be agreed individually between each Employee, his Employer and the Principal Employer.

2. Membership

Upon an Employee being offered membership of the Scheme a letter (“the Letter”) setting out the terms and conditions (including contributions to be made by the Employer and the Employee respectively and benefits to be provided) will be prepared signed by an authorised signatory of the Principal Employer and given to the Employee. The terms of the Letter shall be subject to the Trust Deed and Rules.”

40. The clauses relevant to benefits provide (in summary) that a member can elect to have the “Member’s Individual Credit” (being the amount of contributions by or in respect of them, transfer payments, any other sums credited by the Trustees) applied in providing a lifetime annuity, a lump sum, a dependants’ lifetime annuity or a lump sum death benefit.

41. The Schedule to the Rules contains the following definitions:

““Administrator”	the person or persons responsible for management of the Scheme for the purposes of the Act [FA04];”
““Employee”	an employee or director of an Employer in the permanent Employment of the Employer, a partner of a firm which is an Employer or, with the agreement of the Principal Employer, an employee, director or partner of any other firm, company or organisation;”
““Employer”	that one of the Employers in whose Employment that Employee is at the relevant time or by which that Employee or former Employee was last employed, the firm of which that Employee is a partner or the firm, company or organisation who has agreed with the Principal Employer that it will pay contributions in accordance with Rule 7;”

““Employers”	the Principal Employer and the Participating Employers”
““Employment”	employment as an Employee with any of the Employers;”
““Member”	each eligible person that has agreed the terms and conditions with the Employer under which he is to become a Member of the Scheme and having agreed the Rules and been accepted by the Trustees as a Member and in respect of whom benefits are payable, or a prospectively or contingently payable, under the Scheme ;”
““Participating Employer”	Means an employer admitted to the Scheme in accordance with Clause 7.””

42. Clause 7.1 says:

“Any employer may participate in the Scheme as a Participating Employer by means of a deed executed by the Principal Employer, the Trustees and the employer concerned, in which the employer covenants to comply with the provisions of the Trust Deed and the Rules.”

43. Rule 7.1 says:

“Each of the Employers shall pay annual or other contributions of such amounts and at such times as the Trustees may agree in the case of each Member...”

44. Rule 15 “Transfers in” says:

“The Trustees may accept, in their absolute discretion, a transfer payment from a Registered Scheme or from any other source permitted by HMRC, provided that the continued status of the Scheme as a registered Scheme is not prejudiced. On receiving the transfer payment, the Trustees will credit the Member with such benefits as they shall decide.”

45. According to the records held at Companies House, the Principal Employer is an active UK based company incorporated on 15 August 2012. The registered address is in Stockport, Cheshire and the nature of business is listed as “Dental Activities”.

46. The SCCL Scheme was registered with HMRC as a registered pension scheme on 9 October 2013. The registration was submitted by SCCL.

47. On 7 November 2014, almost two years after Mrs Jerrard applied to Aviva for a transfer to the SCCL Scheme, a “Deed of Participation” was entered into. The parties were SCCL, Barclay Cavendish and W McMullin and Sons (a removals and storage business based in Plymouth, Devon, purportedly Mrs Jerrard’s employer). By clause 1 of the Deed, SCCL admitted W McMullin and Sons as a Participating

Employer with the consent of Barclay Cavendish. W McMullin and Sons executed the Deed “acting by a partner”. The signature is Mrs Jerrard’s and underneath it is written “Self-employed – (Partner in this business)”

The transfer application

48. Mrs Jerrard was born on 12 June 1965 and was 48 when she made her application to transfer to the SCCL Scheme.
49. Mrs Jerrard is a contributing member of the Aviva Scheme, paying regular monthly premiums via her employer, W McMullin and Sons.
50. The transfer application to the SCCL Scheme was the third enquiry that Mrs Jerrard had made about transferring. Aviva say that was relevant to their decision in relation to the SCCL Scheme application so I describe the first two briefly below.
51. In December 2012 a company called Assure Today wrote to Aviva, on Mrs Jerrard’s behalf, and asked for details about Mrs Jerrard’s fund in the Aviva Scheme.
52. On 19 December 2012 Aviva issued a statement which said that the fund value was £5,368.84.
53. On 8 January 2013 Mrs Jerrard signed a transfer form asking Aviva to transfer the value of her fund in the Aviva Scheme to the “Sharon Jerrard Ltd Pension Scheme”. Aviva refused to make the transfer. The form was sent to Aviva by Greenchurch Capital Limited, who described themselves as the “pension administrator” of the Sharon Jerrard Ltd Pension Scheme.
54. On 22 February 2013 Aviva wrote to Mrs Jerrard telling her that they were not going to proceed with the transfer. The letter contained warnings against early release pension offers and of the potential taxation penalties if an unauthorised payment were to be made. According to notes on Aviva’s file there was pressure from a Mr Saxton of Greenchurch Capital Limited and from another company to complete the transfer, which resulted in Aviva dealing with the matter as a complaint. Their notes say that in early March 2103 they rang Mrs Jerrard who said she had never heard of Mr Saxton and that after explanation she was “more than happy” that the transfer had been declined.
55. On 19 July 2013 Mrs Jerrard wrote to Aviva and said that she did not want to transfer to the Sharon Jerrard Ltd Pension Scheme and that she had issued fresh instructions with her letter.

56. On 24 July 2013 Mrs Jerrard signed a further transfer form asking Aviva to transfer the value of her fund in the Aviva Scheme to the Bothbridge Pension Trust. The form was sent to Aviva by Craighead Administration Limited, who described themselves as the “scheme administrator”. Aviva refused once more to proceed with the transfer.
57. On 24 October 2013 Mrs Jerrard wrote to Aviva and said that she did not want to transfer her pension fund to the Bothbridge Pension Trust but that she would issue fresh instructions shortly.
58. On the same day Mrs Jerrard signed a third transfer form asking Aviva to transfer the value of her fund in the Aviva Scheme to the SCCL Scheme. The transfer form, along with the HMRC registration letter and the SCCL Scheme Trust Deed and Rules was sent, on 14 November 2013, to Aviva by Warwick & Eaton who described themselves as “the duly appointed ‘Administration Company’ for the SCCL Pension Scheme”.
59. On 20 November 2013 Aviva wrote to Warwick & Eaton and said that they would not be proceeding with the transfer. The letter said “...we have introduced extra due diligence procedures to our transfer process. This is to ensure we are acting in the best interest of our plan holders by transferring their pension benefits only to fully registered schemes and that the proposed transfer will be used for the sole purpose of providing pension benefits on retirement.”
60. Mrs Jerrard responded to Aviva on 26 November 2013 and said that she was fully aware of the rules around pension liberation. She confirmed that she had read the ‘Scorpion’ documentation (being the material produced by the Pensions Regulator) and asked that her funds be transferred as soon as possible. Her letter said “I wish to transfer my pension in order to take the opportunity to invest in a variety of funds, amalgamate my pension pots into investments which are not available through yourselves”.
61. Aviva responded on 19 December 2013 and said that their position remained unchanged.

Submissions made on behalf of Mrs Jerrard by Warwick & Eaton

62. Aviva has refused to transfer Mrs Jerrard’s pension into the SCCL Scheme without an explanation being provided. A failure to provide a rational explanation prevents a meaningful challenge to Aviva’s due diligence.

63. The application to transfer is to a registered scheme. Should a ceding scheme ask HMRC about the registration status of a receiving scheme HMRC will only respond that the scheme is registered if HMRC do not hold information to suggest that there is a significant risk of the scheme being set up to facilitate pension liberation. HMRC are confirming to those that ask that the SCCL Scheme is a registered pension scheme.
64. The other schemes to which Mrs Jerrard attempted to transfer are unconnected to the SCCL Scheme and Warwick & Eaton.
65. Mrs Jerrard will have been through written and verbal checks that she understands the process she has entered into with the SCCL Scheme and that she has not been offered any inducements to enter into it.
66. In response to some specific questions from Aviva:
 - Mrs Jerrard became aware of the other pension providers as she was a client of a PPI company who offered her a pension health check.
 - Warwick & Eaton have no knowledge of Sharon Jerrard Limited.
 - SCCL Limited trades in Dental Practice Activities. SCCL's accountant has confirmed that it is VAT registered and PAYE/NI registered. It is a trading company that employs people.
 - Mrs Jerrard's investments have been made known to HMRC. If Mrs Jerrard wanted Aviva to know what pots were being amalgamated she would have informed them.

Summary of Aviva's position

67. Mrs Jerrard's transfer was declined because Aviva had serious concerns about the potential security of her pension fund in the event of a transfer for the following reasons:
 - This was Mrs Jerrard's third attempt to transfer to a pension scheme in respect of which Aviva had concerns about possible pension liberation.
 - Aviva were aware that was still paying regular monthly contributions via her employer in Plymouth.
 - Warwick & Eaton was incorporated on 13 August 2013, less than three months before Mrs Jerrard's request to transfer.

- The letter dated 26 November 2013 was purportedly from Mrs Jerrard but was virtually identical to letters received from other Warwick & Eaton customers assuring Aviva that she was not intending to liberate her pension.
- The SCCL Scheme's Principal Employer was stated as being SCCL Limited, a company incorporated in August 2012. It is listed as being a dental practice in Cheshire. Aviva understands that Mrs Jerrard is a secretary based in Plymouth. Aviva are not aware that SCCL Limited has ever traded, but were concerned as to a lack of any potential relationship between a Cheshire-based dental practice and a Plymouth-based secretary. Given this fact, and that the Scheme's Rules permitted non-employees of the Principal Employer to join the Scheme Aviva were concerned that the SCCL Scheme might not be a genuine occupational pension scheme.
- The Pensions Regulator's advice also warns providers to be vigilant in relation to transfer requests where the customer is not receiving advice from a regulated adviser, and where there is pressure to complete the transfer as quickly as possible – both elements of which were present in Mrs Jerrard's case.
- Aviva's principal concern (apart from the guidance issued by the Pensions Regulator, HMRC and others) was compliance with the regulatory requirements in the FCA Handbook: that is, Principle 6 - A firm must pay due regard to the interests of its customers and treat them fairly; Principle 10 - A firm must arrange adequate protection for clients' assets when it is responsible for them; COBS 2.1.1 - A firm must act honestly, fairly and professionally in accordance with the best interests of its client; SYSC 3.2.6 - A firm must take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime; and SYSC 6.1.1 - A firm must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the firm including its managers, employees and appointed representatives (or where applicable, tied agents) with its obligations under the regulatory system and for countering the risk that the firm might be used to further financial crime.

- There are already examples of cases in which people have lost part or all of their life savings and there is reason to believe in the involvement of organised crime. In that context they say, “If we allow ourselves to be duped into transferring our policyholders’ money to people who then steal it, we are risking being used for the purposes of financial crime.”
- Aviva’s regulatory obligation to act in Mrs Jerrard’s best interests extended to preventing her from putting them where they were at risk of misappropriation or being spent before retirement.
- Once potential concerns about documentation and membership are published, they will be circumvented and they will have no option but to proceed, even where they consider there is a substantial likelihood of loss on the policyholder’s part.
- The documentation provided and the administration company did not pass the due diligence tests and therefore the request was declined.
- They did not ask Mrs Jerrard the questions on the Pensions Regulator’s checklist nor refer to the Pensions Advisory Service because, in their experience, such questions are referred to the new scheme provider which gives generic answers which may not be true, but whose veracity cannot be checked. Asking the questions is a waste of time, and people who have been persuaded to move their pensions by those involved in pension liberation are not minded to take advice from third parties.

Conclusions

68. As I note in paragraph 33, I must determine the matter in accordance with the law. So the primary question is whether Mrs Jerrard had a legal right to transfer. My approach is first to look at her rights under the Aviva Scheme and under statute. Also relevant are the tax and regulatory questions, but, in particular, she could not be deprived of a statutory right by regulatory or other guidance (and there is no suggestion otherwise from the Pensions Regulator).

The Aviva Scheme rules

69. Rule 10 of the Plan makes a transfer to a registered pension scheme (or qualifying registered pension scheme) mandatory on request: it says “The scheme administrator will at the written request of a member transfer the member’s fund to one or more registered pension schemes ...”. That might appear to place Aviva at a disadvantage

in this case because, on the face of it, Mrs Jerrard had a right as a beneficiary of the trust. She had made a request; the sole requirement was that the receiving scheme should be a registered pension scheme, which the SCCL Scheme was - and there is no discretion. In not complying, Aviva (or more particularly Aviva Pension Trustees UK Ltd) were in breach of trust – unless there was a conflicting obligation under the trust, of which there were potentially two..

70. First, Rule 1 (see paragraph 35) contained an overriding provision that there was no entitlement to an unauthorised payment. I deal with this in paragraphs 94 to 97 below, concluding that the payment would have been an unauthorised payment, so the overriding provision applies and so the Rule 10 right does not apply.
71. Second, there was the general requirement to act in the best interests of the beneficiaries (although there can only be limited circumstances in which it is appropriate for a trustee to set aside a beneficiary's right under a trust on the grounds that it would not be in their best interests to grant it, particularly where there is no doubt as to their capacity to act for themselves).

The statutory right to a transfer value

72. But, of course, in the absence of a right under the rules, there could have been a statutory right. So I now consider whether Mrs Jerrard's application met the statutory requirements for a request for a cash equivalent transfer value.
73. First, the receiving scheme needed to be an occupational or personal pension scheme. The SCCL Scheme superficially has the characteristics of an occupational pension scheme with its references to the inclusion of employers, employees and so on. The tests for an occupational pension scheme were considered in some detail by Morgan J in *Pi Consulting v The Pensions Regulator* [2013] EWHC 3181 (Ch). That case related to nine schemes to which the Pensions Regulator had appointed a trustee on the grounds that the schemes were devised for the purpose of pension liberation. The judge considered two tests to arise under the definition in PSA93 (see paragraph 7), the "purpose" test corresponding to (a)(i) and (ii) of the definition and the "founder" test corresponding to the rest of paragraph (a). (I do not need to set out Morgan J's judgment in any detail here.)
74. In that case, the judge assumed that the schemes were not mere shams. I take the same starting position here.

75. The minimum requirement for the SCCL Scheme to pass the purpose test is that it should be “for the purpose of providing benefits to, or in respect of, people with service in employments of a description”.
76. Clause 7.1 of the Trust Deed says “Any employer may participate in the Scheme as a Participating Employer...” subject to execution of a deed with appropriate covenants.
77. A simplified interpretation of the SCCL Scheme’s documents, described more fully in paragraphs 36 to 46, gives the following (I have for the time being set aside the extension of “Employee” to any employee of any firm company or organisation, and the words “or the firm, company or organisation who has agreed with the Principal Employer that it will pay contributions in accordance with Rule 7” in the definition of “Employer”):
- a Member has to be an Employee (from Rules 1 and 2);
 - an Employee is an employee in permanent Employment of the Employer (from the definition of “Employee”);
 - Employment is employment as an Employee with any Employer (from the definition of “Employment”);
 - An Employer must be one of the Employers – whichever the Employee in whose Employment the Employee is at the relevant time, or was most recently (from the definition of “Employer”);
 - The Principal Employer and any employer that executes the required deed under Clause 7.1 are Employers (from the definitions of “Employers” and “Participating Employer”)
78. That is not easy to make sense of, being extensively self-referential (and the definition of “Employment” adds little or nothing). But the effect is that members must be, or must have been, employed by either SCCL Limited as the Principal Employer, or another employer that has, with the Principal Employer and the trustees, executed a deed under Rule 7.1.
79. However, returning to the parts of the definitions that I previously omitted we see first that “Employee” also includes...“with the agreement of the Principal Employer, an employee, director or partner of any other firm, company or organisation”. Such a person classed as an “Employee” would become a member on terms agreed with their Employer and the Principal Employer under Rule 1. Such a person’s employer

cannot be one of the Employers (otherwise they would have been eligible under the unextended definition of “Employee”). It seems that the extension of the definition of “Employer” is intended to bring in the employer in question.

80. That extension is to “...the firm, company or organisation who has agreed with the Principal Employer that it will pay contributions in accordance with Rule 7.” Rule 7 only relates to “Each of the Employers ...” and yet, as stated above for the extended class of employee, their employer is not one of the Employers as defined.
81. As will be clear, I have struggled to extract any substantial meaning from the SCCL Scheme’s Trust Deed and Rules as to what employments are covered by the SCCL Scheme. There might have been employments that are “of a description”, being employments with SCCL or with employers that have covenanted with the Principal Employer and Trustees. But then there seems to have been an attempt to extend potential membership to persons in any other employment which has made the description of employments uncertain.
82. If I am right and this was an attempt to widen employments to include all employments, then, in my view, had it succeeded it would have had the result that employments to which the scheme relates were not “of a description” (because that phrase requires some specificity).
83. The uncertainty that has been created by the unclear wording has exactly the same effect. The employments are not “of a description” – or at least not one from which those employments can be identified – and so the SCCL Scheme is not an occupational pension scheme.
84. In reaching that conclusion, I have taken into account that (a)(ii) of the definition of “occupational pension scheme” extends the possible purpose to providing benefits to or in respect of “other people” as well as to people with service in employments of a description. So it might be argued that since there are apparently *some* employments of a description, that will suffice, with all employees in uncertain employments being “other people”. I do not think that analysis is correct in this case, though, essentially because the base position is that it should be possible to identify a closed list of classes of employment to which the scheme relates, and it is not.

85. There being no employments of a description, the SCCL Scheme fails the founder test as well as the purpose test. If there had been, it would have met the test, since SCCL Limited was to be regarded as the employer of its office holders, who were said to be eligible.
86. In view of the present interest in these cases (and in case the above conclusion is wrong) I continue to consider whether the other statutory requirements for the payment of a cash equivalent transfer value were met and notwithstanding my remarks above, for the remainder of this Determination I shall assume that the SCCL Scheme was an occupational pension scheme.
87. So the next test is whether Mrs Jerrard's application required Aviva to use the cash equivalent transfer value for securing transfer credits, being rights allowed to her as an earner (a person with remuneration or profit from an employment) under the rules of the SCCL Scheme.
88. Mrs Jerrard was not an employee of SCCL Limited or any other employer that had agreed to participate under Clause 7. She was employed by a firm entirely unconnected to the SCCL Scheme, which was, on Aviva's evidence, paying monthly contributions on her behalf to the Aviva Scheme. However, as the definition of "Employee" extends to an employee of any other company, she falls within it. But the definition of "Employer" requires an employer that is not one of the Employers (ie has not agreed to participate) to agree that it will contribute under Rule 7. Mrs Jerrard's employer had not agreed to do so.
89. For Mrs Jerrard to become a "Member" (which would have been necessary for the acceptance of a transfer value under Rule 15) she would have needed to agree terms of membership with her "Employer" under Rule 1 (and as reflected in the definition of "Member"). Since she had no employer that was an Employer as defined, that was impossible.
90. So Mrs Jerrard could not have been allowed rights under the SCCL Scheme at all.
91. To that I would add that though there is nothing in the legislation that expressly states that Mrs Jerrard's status as an earner had to be in relation to a scheme employer, I find that it would have had to be. It would be a very strange result if people not employed by a Participating Employer who were earners in some other context (with earnings, however small or irregular, from some completely unconnected enterprise) could require a transfer value to be paid to the scheme,

when people not in “employments of a description” but with no earnings could not. It would give the reference to “earner” arbitrary consequences if it just means a person with any earnings from any source.

92. For the reasons given above I find that Mrs Jerrard’s request for a cash equivalent transfer value was not for securing transfer credits - and therefore she would have had no statutory right to take a cash equivalent transfer value.
93. As an aside, I should comment on the fact that Mrs Jerrard’s employer *has* now apparently adhered to the SCCL Scheme. That is not directly relevant to the matter which I am investigating, but anyway the Deed referred to in paragraph 47 prompts more questions than it answers. Mrs Jerrard is described as self-employed, which is not consistent with the purpose of the document; I have not seen evidence that Mrs Jerrard is authorised to sign on behalf of W McMullin and Sons (though I have no particular reason to doubt it); and the purported witness is the same for all three signatures and gives an address in Stalybridge near Manchester, so either he or Mrs Jerrard travelled a considerable distance for the purpose (though I have no evidence that they did not). I make no finding about whether the Deed was effective in any sense, and note that even if it had been it leaves unaffected my finding that the SCCL Scheme is not an occupational pension scheme.

The Tax legislation

94. It is a condition of registration under section 153 of FA04 that scheme rules do not entitle a person to unauthorised payments. It follows that, in relation to transfers, authorised payments must have been defined at least sufficiently broadly to cover transfers to which there is a right under PSA93. Otherwise a PSA93 right that amounted to an unauthorised payment would be in conflict with the requirement (though it could not be withheld).
95. The relevant requirements for Mrs Jerrard’s intended transfer to be a “recognised transfer” were that it was to be held for the purposes of another registered pension scheme or to represent rights under it, in connection with Mrs Jerrard as a member of that scheme.
96. As set out in paragraph 17, “member” is defined in FA04 as being one of an active member, a deferred member, a pensioner member (and a pension credit member, which is not relevant). The most likely category of membership would be an active member, for which there would have had to have been “presently arrangements

made under the pension scheme for the accrual of benefits to or in respect of' Mrs Jerrard. She was not presently accruing benefits and under the rules of the SCCL Scheme could not have been because she could not have been a member of it under its own terms (see paragraph 89).

97. Had Mrs Jerrard been a member of the SCCL Scheme, then to the extent that it would have been able to accept a transfer in respect of her, there would have been arrangements made for the accrual of benefits – even if actual accrual was contingent on a transfer¹.
98. However, because she was not a member of the SCCL Scheme under its own terms – and so there could not have been arrangements for the accrual of benefits even on acceptance of a transfer value – a payment to it would have been an unauthorised payment.

Regulatory matters

99. As I observed earlier, had a regulator's guidance or rules been inconsistent with legal rights, then clearly those rights would have taken precedence.
100. The application to transfer to the SCCL Scheme was made after the action pack of February 2013 was issued as referred to in paragraph 25. The guidance in the action pack makes references to the Pensions Regulator not taking action where transfers were delayed is not directly relevant since there are no penalties that the Pensions Regulator can levy in relation to a personal pension scheme. (And it is my understanding that the FSA/FCA would be unlikely to penalise a firm in relation to a single delayed transfer). Strictly the Pensions Regulator's statements about trustees are not relevant to Aviva as an FSA/FCA regulated provider. But the guidance was endorsed by the FSA, so it is understandable that Aviva had regard to it – as well as to the earlier guidance for members issued by both the Pensions Regulator and the FSA.
101. The guidance aside, the relevant regulatory obligations were those described in outline in paragraphs 21 and 22. They are consistent with the general legal obligations that Aviva would have owed Mrs Jerrard.

¹ Transfers to arrangements such as "section 32" policies and deferred annuities are presently permitted by HMRC and this reading of the definition is consistent with that. If the definition was read so as to only include as members those who were actually accruing benefits, then such transfers would not be authorised payments. (An alternative reading would be that on acceptance of the transfer value they become a deferred member – but it is not necessary for me to decide that point.)

- I02. Aviva have mentioned obligations set out in the part of the FCA handbook that deals with systems and controls. I do not think they are particularly relevant, however.
- I03. My first reason is that they do not say anything directly about the dealings between a firm and its customers. They do say what the systems and controls in place should be designed to achieve – and certainly one of the objects is to counter the risk of the firm being used for financial crime or to further it. But the regulatory requirement is to have in place processes capable of preventing Aviva's products and services being misused in that way – and assurances for senior people that those processes were effective. The dealings with Mrs Jerrard may have been a *consequence* of those systems and controls being in existence, but that part of the handbook does not say anything about the way she, or any other individual case, should have been dealt with.
- I04. The second is that even if the transfer had been for pension liberation purposes, there was no indication that Aviva itself would have been used for the purpose of financial crime or to further it in this case. Accessing pension funds before age 55 is not itself a crime, even though it may be unwise and costly. And although there are some people active in persuading others to transfer pension money with their own, sometimes criminal, interests at heart, Aviva would not have been *used* for the purpose of such a crime, even if there had been a clear indication that one would take place. (I am here specifically considering Aviva's regulatory responsibilities, not any general moral responsibility to try to prevent crime where one was thought likely.)
- I05. Aviva also refer to Principle 10 of in the FCA handbook, being that they must arrange adequate protection for clients' assets when they are responsible for them. It seems to me to require an awkwardly broad reading of that principle to take it to include protecting the assets from Mrs Jerrard's decision to move them away from Aviva and invest in a way that they thought might have been risky, unwise or even illegal - but only when Aviva were *no longer* responsible for them.
- I06. So in my view the relevant regulatory requirements can be summarised simply as being to act "honestly fairly and professionally in accordance with the best interests" of Mrs Jerrard. It would be understandable if Aviva thought that acting in her best interests did not include making a payment that was at substantial risk of being misappropriated. They were in an extremely difficult position. In the end, though, once Aviva had followed all the relevant steps, the individual's right to make what

might be a life-changing mistake must take supremacy over Aviva's obligation to help them not to.

The approach that Aviva took

- I07. In the foregoing paragraphs I have subjected the SCCL Scheme and Mrs Jerrard's position in relation to it to detailed analysis in order to establish whether it was a proper destination for a transfer to which Mrs Jerrard had a legal right. It fails the test on a number of grounds.
- I08. That was not the approach Aviva took exactly. Mrs Jerrard applied on 14 November and on 20 November Aviva told her that they would not make the transfer. They originally explained their decision as being because the SCCL Scheme had not passed Aviva's due diligence procedures. They have subsequently listed a number of other grounds for concern. And one can have some sympathy for them, because those grounds were in some cases consistent with the warning signs that the Pensions Regulator mentioned in its guidance issued a few months before they rejected Mrs Jerrard's application.
- I09. But, though I have no doubt that Aviva were acting with the best of motives, they went beyond the Pensions Regulator's guidance, whilst referring to it as supporting their stance.
- I10. For example, the check lists include a "how to establish" column with suggestions that the member and others should be asked relevant questions. Aviva did not ask any. And "Next steps if you have concerns" suggested contacting the member to establish what they understood about the receiving scheme, directing them to the Pensions Advisory Service and so on. I have seen no evidence that Aviva took any of these actions. Aviva say that it would have been "a waste of time", because people in such circumstances tend to refer the matter to those with an interest in the transfer going ahead, and they are not minded to take advice. I am not surprised to hear that, but such a defeatist stance sits uncomfortably with all of the education work that the Pensions Regulator and others have initiated. It might be that Mrs Jerrard was beyond influence and/or that replies on her behalf would have been unhelpful, but simply assuming that to be the case does not seem to be in Mrs Jerrard's best interests. First, there was a possibility, however slim, that Aviva or the Pensions Advisory Service might have modified her apparent wish to transfer. Second, it begs the question (in the true sense) in that it assumes the fact of pension liberation as justifying missing out a step intended to establish whether it was. Third, if the transfer

was not in Mrs Jerrard's best interests there would be no harm in using up time with legitimate enquiry – if only in the hope that she might have seen the light.

111. Aviva did not ever tell Mrs Jerrard that they did not think she had a statutory right or that the payment would be unauthorised. I do not think they ever considered it. But I cannot see why the burden lay with Mrs Jerrard to prove that the transfer was an authorised payment and/or that she did have a statutory right. In my view, reflecting the different balance of power between the parties, Aviva needed to satisfy themselves that she did *not* have a right to the transfer.
112. Aviva say that if they had exposed their rationale, that would have made it easier for potential liberators/fraudsters to strengthen their schemes in future. That is a further manifestation of the difficult position that Aviva were in. But in this case, as I have said, I do not think that Aviva considered Mrs Jerrard's statutory rights and the tax position in any detail. They rejected her application quickly and without explanation, and I have no doubt that they could have gone further than that without (as they might see it) giving guidance on how to construct more effective schemes in future.

Overall conclusions

113. Mrs Jerrard had no statutory right to a cash equivalent transfer value. She would have had a right to the payment of a transfer value under Rule 10.1 of the Aviva Scheme, had it not been for the overriding prohibition on unauthorised payments in Rule 1.1. A transfer would have been an unauthorised payment because Mrs Jerrard was not a member of the SCCL Scheme under its own terms.
114. I therefore find that Aviva's decision not to pay the transfer value was consistent with the law. I do not uphold Mrs Jerrard's complaint.

General closing observations

115. Pension providers, trustees, managers and administrators find themselves in a highly unenviable position. They must decide between complying with what might have initially seemed a legitimate transfer request, and delaying the transfer, making further investigations and, potentially refusing it. If they comply with the transfer request, they are at risk of having made an unauthorised payment, with potential tax consequences. If they delay or refuse they are at risk of the member seeking to enforce the statutory right and succeeding, possibly claiming a financial loss. The strength of their reputation as an effective guardian of their customer's money is also at risk.

116. That a regulator, or other source of intelligence, indicates that a transfer may be for pension liberation purposes (perhaps because the receiving scheme and/or those connected with it have a history) may be good reason for delaying the transfer and asking relevant questions during the statutory period allowed for the transfer. As I noted in paragraph 31, those questions may result in the application being withdrawn – and where they do, that may be the “right” outcome, as long as the scheme member has not been misled or unfairly pressurised.
117. But there is no direct link between a transfer being for pension liberation purposes and (a) its not being a recognised transfer or (b) there being no statutory right to the transfer. It may be probable in any individual case that all three go together. But providers, trustees, managers and administrators will want to keep in mind that strictly they can only refuse to make the transfer beyond the end of the statutory period if there is no statutory right to it. They should satisfy themselves of the position, on the balance of probabilities and a correct interpretation of the law, based on such evidence as they can obtain from the member or receiving scheme or other sources - and reaching a decision may include drawing inferences from a failure to provide evidence. Where they find that there is no right to transfer they should be expected to be able to justify that to the person asserting the right.

Tony King
Pensions Ombudsman

8 January 2015