

## Ombudsman's Determination

<b>Applicant</b>	Mr N
<b>Scheme</b>	The Police Pension Scheme ( <b>the Scheme</b> )
<b>Respondent</b>	Northumbria Police Authority ( <b>the Authority</b> )

### Complaint Summary

1. Mr N has complained that the Authority transferred his pension fund to a new pension scheme without having conducted adequate checks in relation to the receiving scheme, and failed to provide him with a sufficient warning as required by the Pensions Regulator. Mr N is concerned that his entire pension fund may have been lost or misappropriated.

### Summary of the Ombudsman's Determination and reasons

2. The complaint is upheld against the Authority because it failed:
  - to conduct adequate checks and enquiries in relation to Mr N's new pension scheme; to send Mr N the Pensions Regulator's transfer fraud warning leaflet; and.
  - to engage directly with Mr N regarding the concerns it should have had with his transfer request, had it properly assessed it.
3. Having considered all the available evidence, I am satisfied, on the balance of probabilities, that but for the Authority's maladministration Mr N would not have proceeded with this transfer and suffered a loss.
4. To put matters right, the Authority shall reinstate Mr N's accrued benefits in the Scheme, or provide equivalent benefits, adjusting for any revaluation that has arisen since the transfer. To avoid 'double counting', the Authority will be entitled to recover from Mr N the amount of his pension fund that the trustees of the new pension scheme are able to retrieve for him, if any.
5. Also, the Authority shall pay Mr N £1,000 to reflect the materially significant distress and inconvenience that Mr N has suffered as a result of the appropriate checks not

having been made by it, and the recommended warning information not having been given directly to Mr N.

## Detailed Determination

### Material facts

6. Mr N has been employed by the Authority as a police officer for over fourteen years. He was a member of the Scheme.
7. He made an application to stop paying contributions into the Scheme, which was approved on 12 December 2012. He did this because he was considering reducing his working hours and taking a greater role in childcare. On the cessation of his contributions he became a deferred member of the Scheme.
8. In February 2013, the Pensions Regulator issued an action pack for pension professionals headed "Pension liberation fraud – The predators stalking pension transfers". On page 12 this said that:

"Government enforcement agencies and advisory services have worked in conjunction to produce a short leaflet that you can use to help pension scheme members understand the risks and warning signs of pension liberation fraud. The member leaflet is available at [www.pensionsadvisoryservice.org.uk](http://www.pensionsadvisoryservice.org.uk) and you may want to include a copy with any member correspondence that you issue."

9. Like the action pack, the leaflet that it mentioned (the **scorpion warning**) depicted distinctive scorpion imagery to illustrate the threat to people's pensions.
10. Under the heading, "Looking out for pension liberation fraud", page 8 of the action pack said:

"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

If any of these statements apply, then you can use the check list on the next page to find out more about the receiving scheme and how the member came to make the request."

11. In March 2013, Mr N applied to the Authority to reduce his working hours, and this was approved in October 2013.
12. Mr N was concerned that his pension under the Scheme would not be accessible until he retired at age 60, as he was unsure whether he would remain employed by the Authority until that age.
13. Additionally, he was worried that the Scheme's normal pension age would be raised from age 60 to age 65 before he had the opportunity to retire.
14. At the age of 39, he therefore sought advice on the possibility of transferring to another pension provider which would let him access his pension at age 55, and in August 2013, he contacted a company called Pension Transfer UK.
15. He received a follow up phone call around two weeks later from Viva Costa International, an unregulated introducer of work to independent financial advisers, and was referred to Gerard Associates Limited (**Gerard**), a firm of financial advisers.
16. The London Quantum Retirement Benefit Scheme (**London Quantum**) was subsequently recommended to Mr N. Based on the information available, London Quantum appears to be a defined contribution occupational pension scheme established in 2012. The sole sponsoring employer of London Quantum was Quantum Investment Management Solutions LLP, based in offices in London. That company is now in liquidation. London Quantum was originally administered by Dorrixo Alliance (UK) Limited (**Dorrixo**). Dorrixo became the trustee of London Quantum in 2014.
17. In November 2013, Mr N submitted a transfer request and an application form to join London Quantum.
18. In April 2014, Mr N signed a form for Gerard to obtain a cash equivalent transfer value (**CETV**) quotation from the Authority.
19. On 26 June 2014, Mr N met with a representative from Gerard to discuss a transfer, and was provided with further documentation including its "pension transfer analysis" document and a CETV quotation from the Authority. Mr N signed an agreement to transfer his benefits from the Scheme to London Quantum.
20. On 15 August 2014, Mr N received confirmation that the transfer payment (£112,077.66) had been made from the Scheme to London Quantum. Gerard took a fee of nearly £5,000 out of the transfer payment.
21. On 11 November 2014, Mr N received confirmation that the transferred funds had been invested.
22. In 2015, Mr N looked again at the documents that he had been given in 2014, and was concerned to note that he had signed up to a high risk investment as a

sophisticated investor. He was unable to obtain satisfactory responses from Gerard or Dorrixo about this.

23. On 18 June 2015, Dalriada Trustees Limited (**Dalriada**) was appointed by the Pensions Regulator as an independent trustee to London Quantum. Dorrixo remains a trustee of London Quantum but can no longer exercise any powers in relation to it.
24. Dalriada believes that actions taken by Dorrixo may have been in breach of trust, and members of London Quantum may have suffered a loss as a result.
25. Dalriada is currently trying to reconcile the remaining assets of London Quantum and establish the funds, if any, that might be returned to scheme members.
26. Mr N brought a complaint against Gerard to the Financial Ombudsman Service. In January 2016, this was rejected as being outside the Financial Ombudsman Service's jurisdiction on the basis that no regulated activity had been carried out by Gerard.
27. Gerard's position was that it had not given advice to Mr N, who appeared to have consulted with and possibly been advised by a separate unregulated person or firm.
28. In March 2016, Mr N brought a complaint under the Scheme's internal dispute resolution procedure (**IDRP**), but this was not upheld. Mr N then contacted this office regarding the actions of the Authority.
29. On 18 September 2017, following our investigation, we issued a preliminary decision (**the Preliminary Decision**) upholding Mr N's complaint. Both Mr N and the Authority provided their comments and further information for my consideration.
30. Having reviewed the file papers and new submissions I concluded that it would be appropriate to hold an oral hearing. This was held on 16 February 2018. Evidence was given by Mr N and by Mrs G, the Authority's Payroll and Pensions Manager. Their legal representatives also attended. Mr N and Mrs G were then cross-examined.

### **Summary of Mr N's position**

31. When he applied to transfer out of the Scheme, his intention was to ensure that he could start his pension at age 55. He was not interested in "liberating" his pension benefits.
32. Despite the forms he signed in 2014, he was not a sophisticated investor and was not looking for a high-risk investment strategy. He was told that the independent financial adviser (**IFA**) would find the best pension for him. All of the correspondence he received from Gerard said that it was an FCA approved company, and he was confident that an FCA approved company would find the best pension for him.
33. He trusted (as experts) the professionals that he spoke to about transfers.

34. The fact that London Quantum was an occupational pension scheme was not mentioned to him initially; Gerard had originally talked to him about transferring to a self-invested personal pension plan.
35. He was not aware of pension scams when he transferred out of the Scheme and did not think that could happen. He certainly did not think that the police would transfer his pension into a scam.
36. There is a lot of information on the intranet and he does not recall viewing the news item about pension scams which the Authority said had been a featured story on its intranet for employees. If he had been told during the transfer period it would have made a significant difference.
37. The Authority should have refused to implement his transfer to London Quantum, and should firstly have informed Mr N of its serious concerns about London Quantum, bearing in mind the scorpion warning.
38. According to another employee of the Authority, there was nothing on the Authority's file to indicate that it acted upon the Pensions Regulator's pension liberation guidance when his transfer to London Quantum was being processed.
39. The Authority did send him an email about the downside of opting out of the Scheme and recommending that he took financial advice. He did read this email, however it was not relevant to the transfer out of the Scheme, which happened later. He had valid reasons for opting out of the Scheme. He wanted more time with his children, his own mother having died at 62 years of age, and this led to him reducing his hours at work. The £400 per month he was paying into the Scheme was a big expense and so he decided to opt out and look instead to pay around £150 per month into another pension arrangement. This is separate to the transfer issue.
40. There were several features that should have flagged a potential pension liberation scam, which included:-
  - London Quantum was a newly registered scheme.
  - London Quantum was sponsored by a newly registered employer.
  - The employer was in London, geographically far from the member.
  - The sponsoring employer of London Quantum did not employ Mr N.
41. The Authority should have made appropriate checks and then informed Mr N of its concerns, including sending him a copy of the scorpion warning. However, Mr N was not sent a copy. Indeed, the Authority did not correspond with him in writing or verbally when it received his transfer request, or at any time before it completed the transfer.
42. Dalriada had informed him that there were many more enquiries about potential transfers into London Quantum than actual transfers, because many pension

providers had refused transfer requests due to the “red flag” warnings; unfortunately, the Authority had failed to respond to these ‘red flag’ warnings and identify that he was at risk.

43. If the Authority had alerted him to the possible risks associated with the proposed transfer, he would not have gone ahead with a transfer to London Quantum. The Authority should therefore reinstate his benefits in the Scheme.
44. The Authority’s conduct in this matter had caused him extreme stress and anxiety, and the Authority should also compensate him for this.
45. He should also be reimbursed by the Authority for his legal costs, as it was reasonable for him to take legal advice on this complicated matter. He had entered into a damages-based agreement with his lawyers, whereby he would have to pay them a percentage of any award that he received, so he should be reimbursed for that.

### **Summary of the Authority’s position**

46. When Mr N submitted his transfer request, the Authority obtained confirmation that London Quantum was currently registered with HM Revenue & Customs, and had been registered for about two years before the transfer was made, so it was not a new scheme that would cause suspicion. There were no signs of cash incentives or time-limited offers being made to transferees, so the transfer application did not raise concerns of being a pension liberation scam.
47. Mr N was not seeking to access his pension before the minimum age permitted; he was seeking to ensure that it would be available to him at the permitted age of 55, against a background of increases in the normal pension age in public sector pension schemes. As Mr N’s intention was not to liberate his pension but to find a low risk pension scheme which would allow him to access his pension at an earlier age than the Scheme, the Authority did not believe he was entering a liberation scheme, and thought that information about pension liberation was of no relevance to him.
48. Page 12 of the Pensions Regulator’s action pack, issued in February 2013, said that “you may want to include a copy [of the scorpion warning] with any member correspondence that you issue”. This was not mandatory: there was no instruction that the scorpion warning must be enclosed. Therefore, sending a link to the scorpion warning via a message on the employees’ intranet newsfeed was sufficient. Mr N had accepted that the Authority had done this, although he admitted that he had not read it.
49. Although the Pensions Regulator’s action pack referred to several features to look out for, none were relevant to Mr N.
50. Nowhere in the action pack is it said that all members should be asked about why they were transferring to a scheme sponsored by an employer who does not employ the member and how they became aware of that scheme.

51. Even if the Authority had sent the scorpion warning directly to Mr N, he probably would not have read it or been influenced by it, as he admitted that he did not read the transfer documentation thoroughly until 2015, several months after his transfer had been completed.
52. Mr N's evidence at the oral hearing was consistent with the Authority's position that even if it had taken further steps to bring the scorpion warning to his attention at the time of the transfer request, it simply would not have made a difference. Mr N took no independent advice, other than consulting his wife, in making the decision to transfer his pension in August 2014, including the decision to reduce his working hours and/or when opting out of contributions to the Scheme, notwithstanding an email from the Authority stating: "We strongly recommend that you take personal financial advice prior to making any decision".
53. Mr N's trust and confidence in his IFA overrode any written information he received regarding his pension transfer. Specifically, during the oral hearing when I questioned Mr N on the wording of the document, dated 20 June 2014, setting out the nature of the investments and risks arising from the proposed pension transfer. Asked about the circumstances in which Mr N came to sign that document, Mr N said: "Even if I had skim-read it, I put my trust in an FCA approved IFA to find the right pension for me".
54. Mr N had discussions with some of his work colleagues about the Scheme and they were generally critical of his proposal to transfer out. The fact that he still went ahead, demonstrated that he was eager to do so, and was unlikely to heed any warnings given.
55. All of the evidence supports the finding that even if the scorpion warning was included in correspondence to Mr N at the time of his transfer request, notwithstanding that it was available on the work intranet and there was no obligation at the time to do so, Mr N would not have read it, just as he did not read other important documents relating to and containing clear warnings regarding his pension transfer, and even if he had read it he would have proceeded anyway as he had complete confidence in his IFA.
56. As several financial organisations were involved in Mr N's request for a CETV, this indicated that he was taking a considered approach to the transfer, and was not being rushed into it.
57. It was not merely a box ticking exercise for the Authority; the Authority gave necessary consideration to Mr N's transfer request. It did not contact Mr N at all in relation to the transfer because it had been provided with a signed letter of authority by Mr N to deal with his representative.
58. The Authority's duties to its employees did not require it to protect Scheme members from their own bad decisions.

59. The fact that the Authority's Payroll and Pensions Manager confirmed at the oral hearing that the Authority's procedures have changed since August 2014 in light of new guidance and information, is irrelevant. The action taken up to August 2014 must be viewed in light of the procedures and guidance at the time, not what they have since become. Assessed against the information and guidance available at the time, the Authority complied with its duties and in accordance with the relevant guidance.
60. The complaint should not be upheld, and it would be unreasonable for Mr N to recover his legal costs; the issue was not particularly complex, and I do not usually award legal costs. It was irrelevant that Mr N had chosen to instruct lawyers whose fees would be calculated as a percentage of any successful claim.
61. As a matter of law it is not clear how, in the event that the complaint is upheld, Mr N's benefits could be reinstated into the Scheme as indicated in the Preliminary Decision. The 1987 Scheme from which Mr N transferred is now closed to new members and it is not clear on what basis under the applicable regulations Mr N's benefits could be transferred into the 2015 Scheme. The benefits to which members of the 2015 Scheme are entitled differ materially from those in the 1987 Scheme. In either case there does not appear to be an applicable power enabling the Authority to accept a transfer in respect of the regulations neither is there a power of augmentation to address the revaluation envisaged in the proposed directions.
62. The effect of section 99(1) Pension Schemes Act 1993, is that the trustees or managers of the scheme are provided with a statutory discharge where the member has exercised his statutory right to transfer out of the scheme and the trustees or managers have "done what is needed to carry out what the member requires". The discharge applies in respect of the 1987 Scheme to which Mr N transferred out and so there is no statutory basis on which the Authority could have prevented Mr N from completing his transfer out. It follows that the Authority is entitled to the relevant statutory discharge.
63. There would be significant cost to the Authority should I find in Mr N's favour. Incurring a liability in the sum of £124,000 would be broadly equivalent to the salary costs of employing four police constables at a time when the Authority's resources are under intense strain. This would not come from the national pension fund.

## **Conclusions**

64. I note that Mr N's transfer request was received by the Authority in November 2013, nine months after the Pensions Regulator's pension liberation fraud guidance of February 2013 was issued, and his transfer was completed in August 2014. The pensions industry was aware of pension scams before the scorpion warning was published.
65. In a number of previous determinations, we have said that February 2013 marked a point of considerable change in the level of due diligence expected of trustees, managers and administrators when considering transfer requests. In complaints we



have seen relating to events since that date, we have noted the increased levels of enquiry and due diligence that have been employed throughout the industry. Indeed, many of those complaints alleged that providers were delaying too long in making a legitimate transfer due to the obligations they had to fulfil.

66. Although that could amount to a valid maladministration complaint for undue delay, the overriding consideration for a scheme trustee or administrator must be to evaluate the transfer application carefully in order that a valid statutory transfer right is complied with and an invalid transfer application is legitimately withheld.
67. The type of analysis contained in those determinations and expected by the Pensions Regulator, and subsequently seen in practice in the industry, is not present in the Authority's actions in this case.
68. The Authority has admitted that it did not send Mr N a copy of the scorpion warning. It considers that providing such information via a link on its newsfeed, in February 2013, which is accessible to all employees (but not necessarily scrutinised by them) was sufficient. I do not agree. Firstly, the Authority's newsfeed was updated frequently, and the Authority has been unable to say for how long the pension scam information was mentioned on the front page. The Authority has also been unable to provide any evidence that a broadcast relating to the news story was sent to employees. Secondly, most of the Authority's employees would have no interest in the scorpion warning. However, it would have been of great interest to the few employees who were contemplating a transfer out of the Scheme. The scorpion warnings were designed to be sent individually to scheme members. Even if the Authority had taken the view, in February 2013, that it did not need to send the scorpion warning automatically to a potential transferee, it should have changed its approach over the next few months as public concerns about pension liberation increased, and certainly before August 2014 when Mr N's transfer was made, some 18 months after the news story on the intranet on which the Authority relies.
69. At the oral hearing, the Authority stated that it received very few transfer enquiries despite employing several thousand police officers. This is perhaps unsurprising, as a public sector scheme with its inherent protections. Therefore it would have been both straightforward and appropriate to focus on those few requests to transfer which were made, and ensure that appropriate warnings were given. But it did not do that. So, I am satisfied that maladministration has occurred.
70. The next question is whether the Authority only had to send the scorpion warning to Mr N, or should have done more. I consider that it should have done more.
71. I accept that when Mr N made his transfer request London Quantum was not a new scheme. However, the Authority ignored a number of features which other pension schemes identified as potential 'red flags' and accordingly refused transfer requests to that arrangement. These included that London Quantum was sponsored by a

dormant company that was registered at an address far removed from the scheme member.

72. Some pension providers would not know whether the member was employed by the sponsor of the new pension arrangement and therefore would be likely to ask, particularly if the member was distant from its location. The Authority was fully aware, however, that although Mr N was a deferred member of the Scheme he was still employed as a policeman in Northumberland and he was still living in that county. The question of why he was requesting a transfer to an occupational pension scheme sponsored by a company that he did not work for, and based at the other end of the country, appears not to have concerned the Authority. I consider that the Authority should have had concerns about London Quantum, even the name might have rung alarm bells for a North-Eastern employer, and therefore it should have made some enquiries about London Quantum before it allowed the transfer to be made. Unfortunately, it failed to do so.
73. Although the Hughes v Royal London High Court appeal case ([2016] EWHC 319 (Ch), clarified that a transferring member did not necessarily have to be employed by the new scheme employer in order to acquire transfer rights, the judgment was not issued until 2016, so this point was undoubtedly a cause for concern and further enquiry in 2013. In that case Ms Hughes was self-employed, so joining a small self-administered pension scheme with her own company as sponsor would not necessarily be of concern. In contrast, Mr N's proposed transfer was to another occupational pension scheme sponsored by a dormant company based several hundred miles away. The Authority should have been aware that there were only limited circumstances in which a serving police officer would be allowed to have a second employment, so he was unlikely to be working for the employer sponsoring London Quantum. This should have been noticed by the Authority, and additional due diligence should then have been carried out.
74. The Authority took the view that Mr N's proposed transfer had none of the features of a potential pension transfer scam. However, I do not agree.
75. In several previous determinations (for example Jerrard PO-3809), we set out the type of due diligence expected of transferring schemes. Paragraphs 25-26 of Jerrard, for example, go through the action pack provided by the Pensions Regulator to pension professionals. It says that the member should be asked why he is transferring to a scheme sponsored by an employer who does not employ the member, and how he became aware of the receiving scheme.
76. This type of dialogue should have enabled an open discussion about the nature of the transfer request and an opportunity for the Authority to provide information on the risks of transferring, or benefits of remaining in the Scheme. The Authority is not expected to give advice on the proposed transfer, but it is entitled, if it has concerns, to delay it, to seek further information, and warn the member of any issues that it may have.

77. Seeking further information would, in all likelihood, have identified the involvement of an unregulated introducer, the type of investments being made through the receiving scheme, and the loss of protection for Mr N. It may also have revealed the names of some of the parties involved and their previous involvement in other schemes which have been publicly linked to pension liberation.
78. It would have been good practice for the Authority to do this even if it was of the view that none of “the things to look out for” on page 8 of the action pack, applied to Mr N. Furthermore, it is not clear if the Authority considered properly whether Mr N had in fact been “approached unsolicited”.
79. I have also seen no indication that the Authority obtained a copy of the trust deed and rules of London Quantum to ensure that it met the statutory requirements for a transfer. Although that would not necessarily be required in all cases, where there are areas for concern, as I consider there to have been in this case, I would expect these to be obtained to ensure as far as possible that the receiving scheme was indeed an occupational pension scheme which was able to accept Mr N’s transfer and provide him with pension benefits. Otherwise, the transfer may not have been legally valid, and unauthorised payment charges could be levied by HM Revenue & Customs on both Mr N and the Authority.
80. I note that several financial organisations were involved in Mr N’s request for a CETV. The Authority says it took this to mean that he was taking a considered approach to the transfer and not being pressured. Since the Authority did not speak to Mr N about this, this assumption 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 an unsophisticated member to transfer to their scheme. There are often a number of companies carrying out separate stages of the process. The impression is often that each company is seeking to minimise its role to something less than advising on or arranging, so as not to be brought within a regulatory regime or commit an offence.
81. The Authority says that as Mr N’s intention was not to liberate his pension, and he did not believe he was entering a liberation scheme, information about pension liberation was of no consequence to him. Neither I nor the Authority can be sure of what the unregulated introducer said to Mr N. It is for this reason that trustees, managers and administrators, must make their own review of the information available, seek more information where necessary, and provide appropriate information to the member to ensure they are aware of any risks to them. Transferring from a defined benefit scheme, at Mr N’s age, to another scheme which was otherwise unknown to the Authority carried security risks for Mr N.
82. If the appropriate warning had been given to Mr N, he would have been made aware of the potential for pension transfer scams, and have had the opportunity to find a legitimate pension arrangement, if his intention was still to transfer to a pension arrangement that would permit a retirement age of 55.

83. I cannot be certain what action Mr N would have taken as a result of receiving the scorpion warning, and the receipt of any further information from the additional enquiries that I consider the Authority should have made. It is of course entirely possible that he might have chosen to press ahead with the transfer anyway. The Authority said that some of his colleagues had conversations with him about this and may have tried to talk him out of it. However, this is hearsay, not evidenced formally, and the content of any such discussions is disputed by Mr N, who pointed out at the oral hearing that there were only four other officers on his shift. I can, therefore, give it little weight. Mr N also pointed out that a warning by a professional within the Authority dealing specifically with the proposed transfer of his pension would have been received by him quite differently to any alleged comments made by Mr N's colleagues, and I agree. Likewise, the Authority has stated that because of the trust Mr N placed in his IFA he would have simply ignored warning by the Authority. I am not persuaded by this.
84. Mr N signed forms to indicate that he was a sophisticated investor seeking a high-risk investment. This paperwork appears to have been completed with the unregulated introducer, before being provided to Gerard, who says it had no reason to question the paperwork. It does not appear that the Authority saw this documentation, though it could have obtained it if it had made the type of enquiries I have referred to above. Mr N says that he is not the high risk sophisticated investor made out in the signed papers. Again, such issues would likely have been discussed and clarified had proper due diligence been done and if the Authority had spoken to Mr N directly to discuss the reasons for his proposed transfer and the concerns that should have been considered.
85. The Authority has argued causation, in other words that Mr N would have transferred to London Quantum anyway, regardless of any action the Authority may have taken, because he was so persuaded by his introducer that nothing would have stopped him. In the recent complaint of Mr R (PO-10365), I concluded that there were strong reasons to find that this was so.
86. That, as here, was a case-specific decision made on the individual facts. It will generally be a difficult one to make as it requires going back in time to consider a slightly different state of affairs: better awareness and notification of the issues; and a subjective view of the likely decision-making of the member in those circumstances. That is one of the reasons why I decided to hold an oral hearing, to test the evidence and enable me to make a finding on the facts as to the decision I consider Mr N would have made if the situation had been different.
87. I accept that the decision was Mr N's to make, and he should be free to make what many may consider, and may turn out to be, a potentially poor financial decision, if that is the path he ultimately chooses to take. However, that does not mean there is no responsibility on his existing pension provider.

88. In my view, in Mr N's case, there is maladministration by the Authority and it is of a sufficient level to justify awarding compensation to Mr N. From February 2013 the Authority had a considerable amount of 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 even though other pension providers, and indeed, in our experience, the vast majority of the industry, took a more cautious approach. The Authority appears to have relied upon inadequate due diligence processes to prevent pension fraud some 18 months after the Pension Regulator's guidance was issued, and a considerable time after a number of our determinations were published which highlighted what we considered good practice and governance by scheme trustees, managers and administrators.
89. Although it is true that there have not been many court cases in this area to assist providers, that makes it all the more necessary for those providers to ensure fair, consistent and good practice is adopted, by consulting/monitoring others' processes and paying particular heed to guidance issued by the Pensions Regulator, and/or determinations from the Pensions Ombudsman.
90. In the absence of adequate due diligence or appropriate warnings by the Authority, I have had to decide what I consider would have been the outcome had the maladministration not taken place.
91. Mr N says that he would not have transferred had he known the risks and received proper warnings. Having carefully reviewed all the information received and the evidence provided through the investigation of this case, including the evidence given at the oral hearing, my view is that Mr N's motivations for transfer were not so strong nor pressing that he could not have been deterred by appropriate warnings or further information being provided to him on the possible risk to his pension savings.
92. Put simply, there should have been some direct engagement from the Authority before it finalised Mr N's life-changing request. This has been expected by the Pensions Regulator since February 2013. In practice, the Authority did not engage with Mr N about his transfer request at all, and in fact it processed his request within just 24 hours after it had received all the necessary application forms.
93. As the Authority points out, it had a process in place for dealing with requests to opt out of the Scheme and become a deferred member. I note that the Authority's acknowledgement email included warnings about the disadvantages of opting out. However, there were none in place for a member requesting to transfer his benefits out of the Scheme, despite the gravity of that decision. From the evidence provided I am not satisfied that adequate due diligence was carried out by the Authority.
94. I find that had the Authority acted more diligently, as I consider it should, Mr N would, on the balance of probabilities, not have gone ahead with this particular transfer. There was simply too much for him to lose, with little in the way of potential discernible gain. If Mr N had received and read the scorpion warning and been asked

questions concerning London Quantum to establish the nature of the connection and the approach made to him, the real risk would have become apparent and he may have sought a transfer to a safer pension arrangement, or kept his pension in the Scheme. I note from the evidence presented at the oral hearing that the Authority subsequently changed its procedure on transfer requests, requiring additional information to be provided. Unfortunately, that change came too late for Mr N.

95. It follows that it is my view that this complaint should be upheld, because the Authority failed to conduct reasonable checks in relation to London Quantum and failed to send Mr N a copy of the scorpion warning. I find that without this maladministration, Mr N would not have suffered the loss of his pension fund. At this stage it is not clear whether Mr N will receive any benefits from London Quantum (through Dalriada's recovery efforts). If he does, they should be taken into account so that he does not receive a financial advantage.
96. Turning to the Authority's comments in respect of being entitled to rely on the relevant statutory discharge, I have found that the Authority failed to carry out reasonable checks before transferring Mr N's pension and for this reason I do not find that it can rely on section 99(1) Pension Schemes Act 1993. It did not do "what is needed to carry out what the member requires". "What is needed" includes appropriate review of the transfer application, 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. Although the Authority says it would not have been able to prevent Mr N from transferring out, I have found that Mr N would have acted differently had he received the appropriate warning from the Authority. On the balance of probabilities, I have found that he would have withdrawn his request.
97. I have noted the Authority's comments in relation to the significant cost to the Authority should I find in Mr N's favour. However, that is not a reason for me to not uphold Mr N's complaint, although I do have sympathy with the Authority's comments in respect of the cuts made to its resources.
98. I have also noted the Authority's comments in relation to the reinstatement of Mr N's benefits into the Scheme. However, I have not seen anything specific from the Authority to support its suggestion that it is prevented from complying with this. In any event, the purpose of the proposed redress is to place Mr N in the position he would have been but for the Authority's maladministration. If the Authority is unable to reinstate Mr N's benefits in the Scheme then it should make arrangements to provide Mr N with the equivalent benefits he would have received had he remained in the Scheme. How the Authority does this is a matter for the Authority.
99. However, although I will uphold Mr N's substantive complaint, it would not be appropriate for me to award Mr N his legal costs, as it was his own decision to instruct lawyers. He could have made his complaint to us without legal

representation, like most applicants do, or made use of the free help and guidance service offered by The Pensions Advisory Service. I also accept the Authority's comment that the method of remuneration that has been agreed between Mr N and his lawyers is not relevant.

### **Directions**

100. Within 28 days of the date of this Determination the Authority shall:

- (i) reinstate Mr N's accrued benefits in the Scheme, adjusting for any revaluation that has arisen since the transfer was completed. If the Authority is unable at law to reinstate Mr N's accrued benefits in the Scheme then it should provide Mr N with the equivalent benefits he would have received if he had remained in the Scheme; and
- (ii) pay Mr N £1,000 to reflect the materially significant distress and inconvenience that he has suffered as a result of the Authority not making appropriate checks in respect of London Quantum, and not giving Mr N the appropriate warnings.

101. If the trustees of London Quantum manage to retrieve some or all of Mr N's pension fund for his benefit and provide the Authority with satisfactory evidence that has happened, the Authority shall be entitled to recover that amount from Mr N.

**Anthony Arter**

Pensions Ombudsman  
11 July 2018