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Legal Update
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Pension transfers – Ombudsman comments on trustee duties

The Pensions Ombudsman has decided that a scheme administrator's failure to send the Pensions Regulator's pension fraud warning leaflet to a member requesting a transfer, and to carry out due diligence checks on a receiving scheme which turned out to be a suspected scam vehicle, amounted to maladministration. The Ombudsman ordered the administrator to reinstate the member's benefits in the transferring scheme.

Background

In February 2013, the Regulator issued a pension liberation fraud action pack for pension professionals. This included guidance on identifying transfers to potential liberation vehicles, including a checklist of warning signs to look out for. It also included a member leaflet, with scorpion imagery, which schemes could send to members to help them understand the risks and warning signs of pension liberation fraud.

Mr N was a member of the Police Pension Scheme (the **"Scheme"**). In 2012, he opted out of active membership of the Scheme and became a deferred member, but remained in employment as a police officer. In July 2014, he applied to transfer his benefits from the Scheme to the London Quantum Retirement Benefit Scheme (the **"Quantum Scheme"**). The Quantum Scheme was a DC occupational pension scheme sponsored by a limited liability partnership based in London. In August 2014, Mr N received confirmation that the transfer had been made.

In 2015, the Regulator appointed an independent trustee to the Quantum Scheme. The independent trustee believes that actions taken by the previous trustee of the Quantum Scheme may have been in breach of trust and may have caused loss to the members. The independent trustee is currently trying to establish the funds, if any, that might be returned to the members.

Mr N complained to the Ombudsman that the administrator of the Scheme had failed to conduct adequate checks in relation to the Quantum Scheme, and had failed to send him the Regulator's pension fraud warning leaflet.

Provision of pension fraud warning leaflet

The Ombudsman considered that the administrator should have sent Mr N (and any other member considering a transfer) a copy of the Regulator's pension fraud warning leaflet, rather than relying on Mr N having seen a news story on pension scams that the administrator put on its website in February 2013.

Conducting checks on the Quantum Scheme

The Ombudsman noted that February 2013 marked a point of considerable change in the level of due diligence expected of trustees when considering transfer requests. He considered that the type of analysis expected by the Regulator and subsequently seen in practice in the industry was not present in this case. The administrator had ignored a number of "red flags" about the transfer and the Quantum Scheme, in particular the following:

- its sponsoring employer was a dormant company based in a location far removed from that of Mr N;
- as a serving police officer, Mr N was extremely unlikely to be working for the sponsoring employer (noting that this case pre-dated the *Hughes* High Court decision that concluded that a member did not need to have earnings from the receiving scheme's sponsoring employer in order to have a valid statutory transfer right); and
- a number of financial organisations were involved in Mr N's transfer request.

The Regulator's pension fraud action pack recommended that schemes ask a member wishing to transfer to a scheme sponsored by an employer who did not employ the member why he/she wished to transfer and how he/she became aware of the receiving scheme. Had the administrator done so in this case, it would have opened up a dialogue with Mr N which would have given the administrator an opportunity to provide Mr N with information on the risks of transferring out of the Scheme. Some level of direct engagement with members over transfer requests has been expected by the Regulator since February 2013, and in practice the administrator did not engage with Mr N at all – it processed his transfer request within 24 hours after receiving the necessary forms.

Unusually, the Ombudsman held an oral hearing in this case. Having heard from Mr N, the Ombudsman concluded that, had the administrator acted more diligently, on the balance of probabilities Mr N would not have proceeded with the transfer. The Ombudsman therefore directed the administrator to reinstate Mr N's benefits in the Scheme (subject to the administrator having a right to recover from Mr N any amounts that he might manage to retrieve from the Quantum Scheme).

Implications for trustees

The events in this case took place in the period between February 2013, when the Regulator began expecting a greater level of due diligence from trustees in considering transfer requests, and April 2015, when a requirement was introduced for members with DB benefits worth over £30,000 to take independent financial advice from an FCA-authorised adviser before transferring their benefits. Since April 2015, therefore, trustees have had a greater level of security around DB transfer requests since they know that the member will have received appropriate advice.

However, this does not absolve trustees of DB schemes of the need to carry out some due diligence in relation to receiving schemes. Moreover, trustees do not have the same level of security in relation to transfers of DC benefits where there is no obligation on the member to take advice. This case is a reminder therefore for trustees of all schemes of the need to consider whether any proposed receiving scheme raises potential "red flags". Any concerns identified through those checks should be brought to the member's attention and appropriate information on the risks of pension scams provided. If trustees do this, they should be well placed to defend any complaints regarding their actions if the member decides to proceed with the transfer and subsequently regrets that decision.

If you have any questions about the issues raised in this legal update, please get in touch with your usual Mayer Brown contact or:

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