With pension scams, the transfer out process is often the last stage before funds come under a fraudster's control. This makes it the last chance to prevent a scam, and is why it has been a major focus of scam prevention efforts.

In July 2018, the Pensions Ombudsman directed the Northumbria Police Authority to reinstate a member into their scheme. He had transferred his benefits to a likely scam operation in August 2014. The Ombudsman found the Authority guilty of maladministration because they "*failed to carry out reasonable checks before transferring Mr N's pension*" and failed to send him copy of the Pensions Regulator's warning material.

Had the transfer taken place before February 2013, the finding would likely have been different. In his conclusions the Ombudsman said:

"*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.*"

Schemes that have processed transfers without meeting industry best practice at that time may find themselves guilty of maladministration too, and forfeit statutory discharge for the transferred benefits. This Insight considers how the expectations of transferring schemes have evolved.

**Expectations before February 2013**

The industry had been aware that fraudsters were targeting pensions at least as far back as May 2002. As Aries reported here, the Inland Revenue (HM Revenue and Customs' predecessor) were concerned enough to release guidance on "*Improper Transfers: Trust Busting*" (Pensions Update 132). This was their name for pensions liberation.

The Revenue told schemes to be alert to improper transfer requests. It said the onus was on the transferring scheme ("TS") to satisfy itself that the receiving scheme ("RS") was a tax-advantaged arrangement. If the RS didn't provide approvable benefits on death or retirement, there was no statutory right to transfer to it. The TS could jeopardise its own tax-approved status, unless it could demonstrate it was acting in good faith.

The note also announced a change in practice. TSs were required to establish the RS's arrangement type and, for insured, self-administered, personal, and overseas schemes, note certain new restrictions (for example, making cheques payable to the Life Office in the case of an insured scheme). It also ceased to be acceptable for a transfer to go through a broker.

Schemes/practitioners were invited to inform the Revenue if they had any concerns about a scheme.

In October 2002, the Occupational Pensions Regulatory Authority ("Opra") – predecessor to the Pensions Regulator – issued a letter to occupational pension schemes urging them to take precautions to avoid transferring benefits to pension liberation schemes. We have not seen a copy of this letter, but we know it made some suggestions about due diligence schemes could undertake, and contained a leaflet they could share with members to warn them.

Then in July 2004 Opra issued "*Preventing transfers to pension liberation schemes – further guidance (Update 8)*". It warned schemes that they might not get a valid discharge of liability if they transferred to a liberation scheme. They would need appropriate controls in place to ensure they didn't make such transfers.

A common scam at the time seemed to involve taking exorbitant commission from the transfer (as much as 30%), then paying the balance to the member. The member would be told that commission payments would cover the income tax liability, but of course they didn't.

The guidance highlighted the common features to look out for, including:

- Targeting deferred members under age 50 (the normal minimum pension age at the time), "*desperate to raise extra cash*", and/or at companies following a mass redundancy.
- Using bogus occupational schemes, probably without any employment link, as the vehicle.
- They may be newly established schemes, or have an employer only recently registered with Companies House.
- They may have copied another scheme's Inland Revenue approval reference.

- Advertising the liberation scheme in newspapers and by word of mouth.
- Multiple transfer requests from members working for the same employer.
- Attempts to rush transfers through.
- Unusual or unprofessional scheme documents.
- Not being asked the sorts of questions a legitimate scheme/adviser would ask.
- Requesting payment by cheque.
- An adviser may not be authorised by the Financial Services Authority *("FSA", predecessor of the Financial Conduct Authority)* – though this was only a requirement for advice on transfers to personal or stakeholder schemes.

It suggested that schemes ask for proof of employment, such as a copy of a contract of employment or a payslip, bearing in mind they may be faked. They might also call the member to ask about their new role. When there were "*significant grounds for suspicion*", schemes were advised to delay payment, let the member know the reasons for the delay, and to pass the details to Opra.

This was the last official guidance given to schemes until February 2013.

The Pensions Regulator ("TPR") replaced Opra from 6 April 2005. It updated the scam warning for members in April 2007. It also maintained a liberation warning section on its website, though this was infrequently updated. For a period it warned about liberation schemes operating under the names "AMP Pearl" or simply "AMP". Schemes were told to review their transfers going back to 2001 and report any that might be affected.

On 25 February 2012, TPR, the FSA, and HMRC issued a joint press release warning of an increase in "*early release pension offers*".

The public were warned about being taken in "by website promotions, cold-calls or adverts" encouraging them to transfer their pension "*to access a cash payment or loan.*" The transfers would usually go to "*highly risky or opaque investment structures, frequently based overseas.*"

**The Point of Change**

A year later, in February 2013, TPR produced a "*fraud action pack*" advising schemes how to help tackle pensions liberation. It mentioned new warning signs that a member might have been targeted, including:

- Members, perhaps in financial difficulty, offered "loans", "saving advances", "cash back", or "cash bonuses";
- Advisers withholding information/documentation from members;
- Using couriers to pressure members into quickly signing documents.

Schemes were advised to look out for these six specific signs, and then to undertake further due diligence if any were present:

1. Receiving scheme not registered, or newly registered, with HMRC.
2. Receiving scheme previously unknown, but then involved in more than one transfer request.
3. Member attempting to access their pension before age 55.
4. Member pressuring trustees/administrators to carry out the transfer quickly.
5. Member approached unsolicited (calls and text messages mentioned).
6. Member informed of a "legal loophole".

The enhanced due diligence involved answering 19 questions (including the six above), such as checking Companies House to see if the scheme was sponsored by a dormant employer. TPR warned that a liberation scheme might be set up with a name almost identical to a legitimate scheme (later referred to as "clone schemes").

If there was cause for concern, the next step was to warn the member, possibly referring them to the Pensions Advisory Service ("TPAS"), and then to contact Action Fraud if concerns remained.

The guidance noted that trustees may have a statutory duty to make the transfer, if it is valid, so they need to consider whether a proposed scheme is a legitimate recipient. Schemes may wish to seek legal advice if the position is not clear.

Schemes were also expected to insert TPR's new "Scorpion warning" into transfer packs sent to members and, importantly, to "consider" whether such packs should be sent direct to members where before the scheme might have sent via a third party.

**Changes to Scheme Registration**

Checking that a receiving scheme was registered with HMRC had been a critical part of the transfer process since A Day. However, this was not much of a hindrance to scam operators before 21 October 2013. From that date, HMRC moved away from its "*process now, check later*" approach, where registration was confirmed on

successful submission of the online form, to conducting detailed risk assessment activity before deciding whether to provide a new scheme with a registration number.

At the same time, HMRC revised its process for responding to requests from schemes for confirmation of a receiving scheme's registration status. HMRC began responding to confirmation requests without seeking consent from the receiving scheme. They would now only provide a confirmation where:

(i) the receiving scheme is registered; and
(ii) the information held by HMRC does not indicate a significant risk that the scheme was set up, or is being used, to facilitate pension liberation.

Otherwise, they will respond saying that one or both conditions are not satisfied. HMRC made it clear that their risk assessment cannot be relied upon and schemes cannot rely on this check as sufficient due diligence.

**Pension Freedoms**

From 6 April 2015, the rules around accessing defined contribution funds were relaxed. The authorities took several precautions, mindful that this could increase people's vulnerability to "pension scams" (pensions liberation had, around this time, been rebranded).

Transfers of safeguarded benefits (broadly, defined benefits) to obtain flexible benefits (broadly, defined contribution benefits), with a few exceptions, required the member to obtain independent financial advice. These requirements, whilst important and helpful, weren't specifically meant to tackle pension scams and so sit outside the scope of this Insight. The requirements were covered in a previous Insight, and we cover it at Aries T1.331a.

The month before, the FCA launched the next wave of its "ScamSmart" campaign, with advice for "would-be investors" to:

(i) reject cold call offers;
(ii) check its Warning List to see if a firm is known to be problematic; and
(iii) take impartial advice.

TPR updated its own scam materials. They noted that scams had evolved in the two years since its last guidance. Single member occupational schemes (i.e. SSASs) had become the vehicle of choice for scammers. It mentioned other red flags that had emerged:

- Offers of "*one-off investment opportunities*";
- Suggestions of a "*government endorsement*";
- Convincing marketing materials that promise returns of over 8% on the investment;
- Members advised there will be no contributions paid by themselves or the employer;
- Schemes sponsored by an employer geographically distant from the member;
- Proposals to put the money in a single investment. ("*In most circumstances, financial advisers will suggest diversification of assets.*")

With the introduction of Pension Wise, schemes were directed to signpost members there to help them understand their options.

The guidance asked that schemes consider applying for an extension to the statutory six month transfer deadline "*as soon as due diligence raises concerns and they consider that the criteria to request an extension are met.*" – the criteria are covered at Aries T1.54.

**The Pension Scams Industry Group ("PSIG")**

Also in March 2015, PSIG – a working group formed of representatives from across the pensions industry – released its first Code of Good Practice ("the Code") covering transfers out. Whilst the code is voluntary, it has been widely adopted, and referred to in Ombudsman determinations, so its recommendations should be considered in determining best practice. This is in addition to, not instead of, TPR's guidance. Though there is considerable overlap.

First, the Code makes clear that the latest TPR awareness material should be sent directly to the member, even if the transfer pack is being sent elsewhere.

On receiving a request for payment, it suggests an initial, abridged analysis, most likely based on information included in transfer forms. The aim is to filter out transfers that pose a low risk of being involved in a scam that can therefore be processed faster.

If the analysis suggests there is a material risk though, they should query the status of the receiving scheme with HMRC, noting that the response may take several months. The scheme should also undertake their own enhanced due diligence. The suggested analysis in the Code is tailored depending on the receiving scheme type.

If enhanced due diligence fails to eliminate the material risk of a scam, the scheme needs to determine whether the member has a right to the transfer, possibly taking legal advice. That will inform their decision on whether to proceed with the transfer.

Other recommendations and warnings include:

- Making administration staff and, where relevant, employers aware of the risk of scams so they can be vigilant in identifying them.
- Pension scams will typically use scheme documents that have been taken from legitimate schemes. Although these may look appropriate, the scam scheme may have no intention of following them.
- Pension scams will mimic the normal transfer process. Scheme members may have completed and signed the transfer document; however, they may not have seen or signed any application form or other document.
- Scheme cloning had been mentioned before, but the Code mentions that this is particularly an issue for QROPS. Schemes should ensure the address on correspondence is consistent with its official address.
- Scheme members may be coached, by those attempting to scam them, to answer basic due diligence questions posed by trustees, providers and administrators.
- Enhanced due diligence is unlikely to be necessary if the receiving scheme has been vetted previously and schemes may wish to create an internal "white list" of schemes that do not present a pension scam risk.

The Code also suggests how to respond to application withdrawals or, conversely members insisting on a transfer despite warnings.

**Pensions Ombudsman Determinations**

PSIG's Code also mentioned three Ombudsman determinations from January 2015 that clarified certain of a scheme's duties with regards to statutory transfers. Whilst in all three the Ombudsman agreed that the complainants did not have a right to the transfers, he said that none of the schemes had carried out appropriate analysis to establish that. His own analyses are useful guides, for example:

In determination PO-3809, the receiving scheme purported to be an occupational scheme ("OPS"). The Ombudsman said two tests (identified in a High Court case from October 2013, covered at Aries CPiCon) had to be met for a scheme to meet the definition of an OPS:

1. The purpose test – the scheme should exist for the purpose of providing benefits to, or in respect of, people with service in employments of a description.
2. The founder test – the scheme should be established by persons who include at least one person who – when the scheme was established – fitted the description in section 1, paragraph (2) (a) of the *Pension Schemes Act 1993*.

In determination PO-1837, the Ombudsman found that, on the balance of probabilities, a significant proportion of the transfer fund would have gone to an introducer (and others) in fees. These payments are not, as required for a recognised transfer,

> "*for the purposes of another registered pension scheme or to represent rights under it, in connection with [the complainant] as a member of that scheme.*"

Since a significant part of the transfer fund would not meet this requirement, it would have been an unauthorised payment.

In PO-3105, and PO-7126 from June 2015, the Ombudsman determined that, while the receiving schemes were OPS, the complainants did not have a statutory right to transfer to them because they needed "*to be an earner in relation to the Scheme*" in order to secure "*transfer credits*", a requirement for a statutory transfer.

However, one complainant successfully challenged that finding in the High Court in February 2016. The Court ruled that a member only required earnings from any source, not necessarily from an employer associated with the receiving scheme. There are details of that case at Aries CHughD.

**Best Practice Updates**

TPR revamped their anti-scam campaign in March 2016 and 2017. The latter let schemes know that the Pensions Advisory Service was providing a new service to guide victims who want to rebuild their pension savings.

The only material difference to best practice was to be aware of scammers pretending to be from government organisations like Pension Wise. A press release in September 2017 also warned that rogue pension websites were shamelessly carrying TPR anti-scam warnings to appear legitimate.

In June 2018, PSIG released version 2 of their Code. Whilst maintaining the same general format, it identified evolving practices and trends in pension scams:

- Due to freedom and choice, increased targeting of those approaching retirement (who are considering what to do with their new flexibilities) and those in DB schemes who might be frustrated that those flexibilities aren't available to them.
- Shift from pension liberation to investment schemes, SIPPs, SSASs, and QROPS (though, due to the introduction of an overseas transfer charge in March 2017, so-called 'international SIPPs' had since become more popular). The receiving scheme may follow the rules, but the investment choice will be inappropriate.
- Using social media (e.g. Facebook, LinkedIn) and "factory-gating" (approaching people outside their workplace) to approach targets.
- Targeting scam victims for "secondary scamming", where a firm offers to attempt to recover the lost money for an upfront fee.

**Other Developments**

In August 2018, TPR and the FCA joined forces to launch a TV advertising campaign warning about scams under the ScamSmart banner for the first time.

This coincided with another refresh of TPR's guidance checklist for trustees. The only addition was a suggestion to check if the member had been told they will be entering into a contract of employment that isn't linked to an actual job.

The *Finance Act 2018* made amendments from 6 April 2018 allowing HMRC discretion not to register an occupational pension scheme for a dormant sponsoring employer; HMRC can also now de-register schemes with a dormant company as a sponsoring employer.

Then in January 2019, regulations were finally laid banning unsolicited phone calls about pension benefits, the so-called "cold-calling ban".

These two changes were first consulted on in December 2016. Proposals limiting the statutory right to transfer discussed in the same consultation. They were included in the October 2019 Pension Schemes Bill and so might now see the light of day.

**The Latest Position**

In June 2019, PSIG updated its Code again to reflect developments, some of which are mentioned above. It notes an:

> "*increased use of discretionary portfolios for pension scams, and in wealth managers making unsuitable investments in high risk and high charging assets for their customers. These have featured share trading accounts in which trading activity generates substantial commissions for the trader, to the clear detriment of the member.*"

It also provided guidance on how schemes could respond to claims management firms, who are increasingly taking an interest in scam victims.

The most recent version of TPR's guidance page gives examples of the types of unusual, high-risk investment used for scam victims:

- overseas property and hotels
- renewable energy bonds
- forestry
- parking
- storage units

Schemes are now asked to have a scam prevention page on their website and to post scam warnings on any social media pages.

All three versions of PSIG's Codes of Good Practice are available from the Aries Library. If you have any questions about archived guidance from any other authority, please contact us.

**Did you find this Aries Insight useful?**

If so, please share it with your colleagues and let them know that more information is available from the *Aries Pensions System*.

If you have any suggestions for topics that you would like to see covered in a future Aries Insight, then please let us know.

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