

Pension Liberation Fraud

Pensions Conference

Pensions Liberation
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Dalriada. A better way



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Pension Liberation Fraud

Pension liberation – What is it?

- Release of pension savings before age 55

When is it 'fraud'?

- Members mis-sold, not advised of the potential investment risks, charges and tax consequences
- Criminal fraud? – City of London Police arrests in May 2013

Disclaimer

- I am speaking about pension liberation and pension liberation fraud in a general context
- The precise taxation and legal environment is extremely complex with many remaining uncertainties
- I am using certain schemes where Dalriada has been appointed to illustrate some of the challenges faced in this area
- I am not alleging that any specific scheme has been related to fraud or any other form of criminal activity – that is a matter for the authorities

Developments in recent years

- Section 7 appointment of Independent Trustee (2011-)
- Scorpion campaign (2013)
- Project Bloom (2013)
- HMRC Announcement (2014)
- Pensions Liberation Industry Group (2014)

**Don't let pensions
become prey**



Our Experience

Since 2011, Dalriada appointed as Trustee to 44 schemes suspected of pension liberation fraud

tPR principal tool to date to appoint ITs under s7 PA95, 'special procedure' (without notice)

2,500 members,
transfers in of around
£100m

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An Example Structure – Pension Reciprocation (Ark)

- Pension Reciprocation Plan
- Immediately obtained freezing order
- Part 8 application - Dalriada v Faulds – EWHC 3391 (2011)
- Established breach of investment powers
- Loans deemed unauthorised payments
- Loans in breach of trust, void
- High risk property based investment, majority overseas, some success in recovery.
- Permission to Appeal process lasted nearly 2 years
- Part 8 application to determine allocation of funds pending
- Tax tribunal to determine tax position likely
- Still some time before being in a position of certainty.

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What have we seen?

A complete disregard for:

- Investment regulations
- Disclosure requirements
- Scheme governance
- Administration requirements
- Excessive charges

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Trustee Actions

- Need to act quickly to protect assets (freezing order), stem flow of transfers
- Legal action to clarify true status of complex structure
- Legal action to secure investments/trace assets
- Legal clarification of tax position required
- Forensic reconstruction of accounts and membership database
- Deal with uncooperative, litigious incumbent trustees/promoters
- Compulsory review of tPR appointments
- Deal with very distressed members
- Communicate a number of complex and uncertain issues
- Manage costs which are material, further impact on funds

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Investments

Unusual

Often overseas

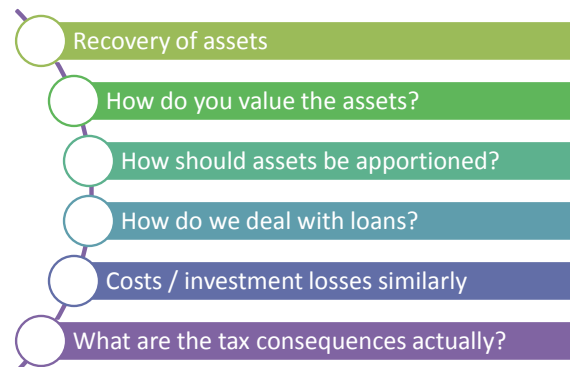
High risk

Illiquid

Opaque

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Key challenges



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Another Structure – Pennines and Mendip

- Schemes invested in preference shares in HCIG
- HCIG invests in subsidiary (HCIL)
- HCIL loans to 'third party', HCL
- HCL lends to members
- Dalriada v Woodward EWHC 21626 (2012)
- Disputed Compulsory Review with Oral Hearing

Slightly more sophisticated but Summary Judgment application dismissed, Dalriada's claim had 'real prospects of success' – still pending

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Other Developments

- Feeder schemes
- Umbrella Trusts
- Overseas insurers
- Schemes where liberation perhaps secondary

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Are these schemes really Occupational Schemes?

- Dalriada v Nidd Vale Trustees & Ors [2013] EWHC 3181 (2013)
- Ruled schemes were Occupational Pension Schemes
- Purpose test
 - Based on documents not the mind of founder
 - “Sham” argument not heard – could be in future
- Founder test
 - Based on narrow individual circumstances
 - Could be different for other models

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Responsibilities of trustees

Members have a statutory right to a transfer (PSA93, s94)

... but

Scorpion campaign sets out guidance for trustees

... so don't pay?

... but

tPR cannot sanction a breach of Regulations

... so pay?

... but

If it's not a "recognised transfer", no statutory discharge (PSA93, s99), potential unauthorised payment, Scheme sanction charges?

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Responsibilities of trustees

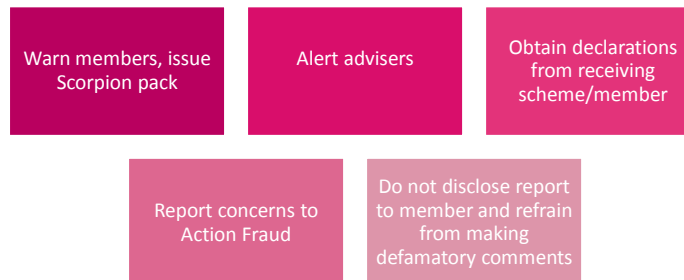
Basic due diligence:

- Follow Scorpion guidance
- Receiving scheme not registered, or only newly registered, with HMRC
- Receiving scheme sponsored by new or dormant employer
- Member attempting to access pension before age 55
- Pressure for quick transfer
- Member informed of 'legal loophole'
- Member advised by an 'introducer'?

Generally not difficult to spot!

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Responsibilities of trustees



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Responsibilities of trustees

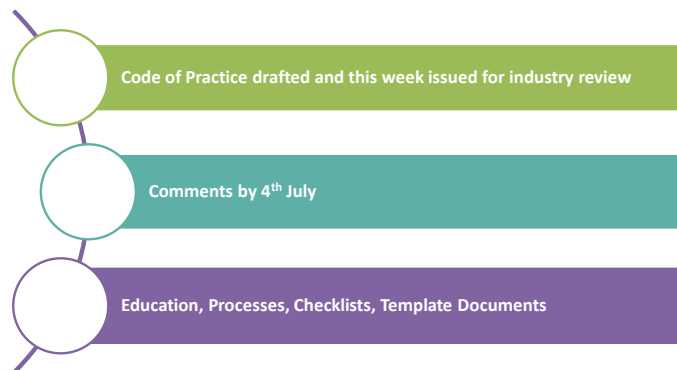
Balance the risks...

If you don't pay:	If you do:
<ul style="list-style-type: none">• Complaint to Ombudsman?• tPR sanctions? – unlikely if followed guidance	<ul style="list-style-type: none">• Potentially not a recognised transfer, no discharge (less of a risk post OPS judgment)• Consequences for your member

Pensions Ombudsman

- Announced in February – 40 complaints about blocked transfers
- Smaller number post transfer – frozen by regulatory action
- Announced on 9 June - decisions near but not before July

The Pension Liberation Industry Group



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The Future

- Will the Budget changes curtail demand for liberation?
- Will the Code of Practice be effective?
- These schemes are set up to profit from high fees and poor investments – liberation is only a hook? – are there other hooks?
- Why should members joining Occupational Schemes have poorer protection than the public buying financial products?
- A long road ahead for those caught up in these schemes
- Please do spread awareness!

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Thank you

Thank you.
Any questions?