

Work and Pensions Committee

Oral evidence: Norton Pension Schemes and the Fraud Compensation Fund, HC 145

Wednesday 20 March 2024

Ordered by the House of Commons to be published on 20 March 2024.

[Watch the meeting](#)

Members present: Sir Stephen Timms (Chair); Debbie Abrahams; Nigel Mills; Selaine Saxby; Sir Desmond Swayne.

Questions 85 - 186

Witnesses

I: Dominic Harris, Pensions Ombudsman; Anthony Arter CBE, Interim Chair of the Pensions Ombudsman and Interim Deputy Pensions Ombudsman.

II: Tony Raymond, General Counsel and Director of Governance, Risk and Assurance, The Pensions Regulator; Maria Evgenidou-Wright, Head of Enforcement Proceedings, The Pensions Regulator; Sara Protheroe, Chief Customer Officer, Pension Protection Fund; David Taylor, Executive Director and General Counsel, Pension Protection Fund.

Written evidence from witnesses:

[The Pensions Ombudsman \(NPS0004\)](#)

[The Pensions Regulator \(NPS0005\)](#)

[Fraud Compensation Fund \(NPS0006\)](#)



Examination of witnesses

Witnesses: Dominic Harris and Anthony Arter.

Chair: Welcome, everybody, to this meeting of the Work and Pensions Committee's inquiry into the Norton pension schemes and the Fraud Compensation Fund. A warm welcome to the two witnesses on our first panel. May I ask you both to tell us briefly who you are?

Dominic Harris: I am Dominic Harris. I have been the Pensions Ombudsman for just over a year now. Prior to that, I was a partner at a private-practice law firm in the City, specialising in pensions.

Anthony Arter: I was the Pensions Ombudsman until January 2023, and I was the Pensions Ombudsman during the period of the Norton case. I took over as interim chair for this year after the sad demise of the previous chair, Caroline Rookes. I am also the Deputy Pensions Ombudsman; I took on that role to deal with the aftermath of the dishonesty cases where I had held oral hearings and also to deal with any conflicts that Dominic may have. In addition, I have been appointed to the determinations panel of the Pensions Regulator.

Chair: When did your appointment as chair take place?

Anthony Arter: In January this year.

Q85 **Chair:** Thank you. I will put the first question to Dominic. If a pension scam victim complains to the ombudsman, what should they expect to happen now?

Dominic Harris: If I may, I will start wide and then narrow it down. The Pensions Ombudsman is there to deal with pension complaints that are brought to us by a member. We are a lot like a court: we will make a decision on the basis of law; we will investigate the allegation they make. If we find in their favour, we have the ability to make unlimited awards. We are binding on all the parties, subject only to an appeal to the High Court. A member will, in essence, get the same help that they would if they went to a court.

The big difference, though, is that we are free. There is no cost to them, and there is no cost risk to them either, unlike with the courts. We are very much levelling the playing fields between them and the potentially better-resourced trustee or wrongdoer, whoever that might be.

For scams, we would be doing exactly that: a member would bring their allegation, and we would look at the potential wrongdoer. If we found in the victim's favour, we would hold the wrongdoer to account in the form of a published determination. In an ideal world, we would be getting some money back for the member as well.

We would look to find liability against the individual trustee if the trustee was the wrongdoer. As well as ordering that moneys could be paid from



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the scheme, we could also potentially find personal liability against that individual trustee that would then have to be paid back to the scheme and potentially distributed to the members. That is essentially what they are getting: access to the court system, but for no cost and with no risk to them.

We are very different from the Pensions Regulator. The regulator, as the name suggests, is a regulator. It is much more proactive; it goes out looking for problems and looking to deal with them. We are a little more reactive, because we have to respond to the complaints that are put to us by individual members.

Q86 Chair: Thank you. The second question is probably for Anthony Arter. You or the institution have made the point that your Norton determination signalled an important change in your approach. Can you tell us what was significant about it and why you took it on, given that by the time you did, the Pensions Regulator was on the case and had appointed Dalriada as independent trustee?

Anthony Arter: Indeed. During that whole period, I was getting increasingly frustrated by the number of members of the public who were cold-called and persuaded to transfer from a safe pension arrangement to a completely unsafe pension arrangement with either spurious or extremely risky investments that usually resulted in nothing and then losing their whole life pension savings.

Q87 Chair: You say it was during that period. What was the period?

Anthony Arter: Well, the period really started in 2015 when I took over, so it was a long period.

Q88 Chair: It was already happening by that point?

Anthony Arter: This was all happening during that period. In fact, I made a decision in a case called *Hughes v. Royal London* where I refused to allow a transfer. It was a statutory transfer—quite tricky. I used an area of the law that I knew could be challenged; it was challenged by the company that was behind the investment and it won in the High Court. But it brought about the cold calling legislation, so although I lost in the High Court, I was very pleased that it got a change in legislation and also ultimately—

Q89 Chair: Sorry, Anthony: in that particular case you lost, but the transfer went ahead, did it?

Anthony Arter: The transfer went ahead. It was just £8,000 and they lost everything. Well, maybe in the long term that amazing investment would have paid off, I don't know, but as far as I was concerned it was extremely risky. Then the transfer regulations that we have now brought in the earnings stipulation for a company that is set up to have an occupational pension scheme, which was something that I said was missing in the original case. So that was a precursor.



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Then we had a number of complaints regarding the three Norton pension schemes. My deputy dealt with three of them, and I dealt with the fourth. When the fourth came in, it was all about transfers: people had asked for a transfer from one of the three schemes, but that had not been recognised either by Liddell Dunbar, the administrators, or by Mr Garner. He did not respond to those complaints.

I determined that the transfer should go ahead. Nothing happened. We then had a number of other complaints come in: 31 in total. On the fourth determination, I reported Mr Garner to the regulator. That was in early 2019.

During that period in early 2019, we had a number of other complaints come in and I decided we should change our approach: we should take these 31 complaints that I had together, and deal with them together, looking at the way in which Mr Garner had taken those moneys, used individuals who we subsequently discovered had all been convicted in 2013 of fraud, and transferred the moneys into his solely owned company, Norton Motorcycles, through an employer called Manorcrest. It was quite important for me to highlight this issue, because we have dealt with a number of others since then; this was the second one, but the first major one that I decided to take down this path.

Q90 Sir Desmond Swayne: You have just indicated that it was the transfers, and the failure to abide by the law in respect of transfers, that brought Norton to your attention. But the trustee firm Capital Cranfield reported concerns to the Pensions Regulator in 2013-14. Do you know what it did in response to that then?

Anthony Arter: I was not privy to that information. I didn't know that they did that.

Q91 Sir Desmond Swayne: All right. You found that Garner had assistance in setting up the scheme from Andrew Meeson and Peter Bradley, directors of T12, who were jailed for tax fraud in a separate case in 2013. Do you agree with the scheme members and with HMRC that the Pensions Regulator should have picked up on that and prevented the scheme from being registered in the first place?

Anthony Arter: Again, I am not privy to the information that it had or what it did about that at the time. This is a big proviso, because I don't know quite what was going on with the regulator, but I knew that it was taking action of sorts. I was looking at it purely from a member point of view, regardless of what the regulator was doing or not doing.

I was aware that it was taking some action. With regard to T12 and the tax fraud, obviously in an ideal world it would have taken action in this case but I don't know what other pressures, information or resource it had at the time to deal with it. I just do not know that. It is very difficult for me to carte blanche say, "Yes, they should do this," without having that information and the caveats that they would provide.



Q92 **Sir Desmond Swayne:** What is your judgment of the impact of the failure to have acted much sooner?

Anthony Arter: There are two aspects. One is that I believe that the moneys had disappeared by 2013, but that is not the whole point here. You have individuals whose lives have been ruined—absolutely ruined. I had so many give evidence at my oral hearing. It was absolutely heartbreaking listening to those cases. Those individuals went through years of stress as a result of what Mr Garner had done. Put yourself in their position. People have lost their homes. There was a daughter whose father was dying who tried to get the moneys to her, the daughter, and could not do it. Another person was trying to use the money for education for his son; he couldn't do it. There are so many different cases among those 254 people who were members of those schemes who really suffered. That is the problem with the delay in dealing with a case such as this.

Q93 **Nigel Mills:** Did you ever consider whether the pension schemes that allowed the transfers into this sham should have allowed those transfers or whether they could have effectively stopped this from ever happening?

Anthony Arter: It would have been nice to see the transfer regulations come in much earlier. That wasn't the situation at the time. It was quite a straightforward system where someone could register a pension scheme with HMRC. It was tightened up in 2014, but not sufficiently to prevent these scams from happening.

What amazes me is that companies such as Liddell Dunbar could set themselves up as administrators. Ms Dunbar, when she gave evidence to me at my oral hearing, admitted that she knew nothing about the regulations of pensions. She absolutely was not the person who should have been administering a pension scheme. There were definite holes in the whole system and the approach.

Dominic Harris: In case it helps, we still see a similar issue today, even with the new transfer regulations in place, where there is a tension between people who want to make a transfer and are very much pushing their transferring scheme to do it as quickly as possible, and the need to protect people from themselves, to a large extent.

Although I totally agree that there is culpability on some occasions on the transferring scheme—both Anthony and I have found against transferring schemes in the past for not having done sufficient due diligence, even before the new transfer regulations came in—there is a balance to be struck between allowing people their statutory right to transfer, quite often to their advantage, and helping them to avoid these scams and pitfalls.

Q94 **Nigel Mills:** Yes, I occasionally get constituency cases where a very insistent person is adamant that they want to do something, even though it does not look a particularly wise thing to do. I suppose at some point it



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is their money, so it is their choice, isn't it?

One of the frustrating things, Mr Arter, is how long it took and how much people suffered. As I think we heard last week, finally the fraud system has paid some money to the pension trustees to distribute, but that is another few years on from your determination. Effectively, you found dishonesty here, but that was not enough to trigger compensation from the fraud compensation process; that had to wait until the bankruptcy and the liquidation had proceeded far enough. Then they had to do a separate determination of fraud.

Do you think we could get to a better system? From what you are saying, I think it was clear to you that by 2013 there was no money, so you could find all you like against the trustee, against Mr Garner personally or against his businesses, but that was all for the birds—there was no money to come back. People have had to wait another five years to get anything back.

Anthony Arter: It is very sad that people have had to wait so long—there is no doubt about that. The trouble is that it is catching up all the time. Take the Fraud Compensation Fund, which when I made the determination in 2020 was just being set up. There was no case, really, until June 2020,¹ which was that of Dalriada and the Pension Protection Fund, where it was recognised that for defined contribution schemes it could actually pay moneys in a case such as Norton.

In fact the legislation was not there. There is always a delay in the process. It is almost as if the accident happens and then we deal with it for the future, but of course Norton suffered as a result, so there was a delay with the whole process.

The way it works at the moment, it is not just a question of the ombudsman finding a case of dishonesty and that being the trigger for the payment to be made; there are other hoops to go through. Perhaps you want to add to that, Dominic.

Dominic Harris: Not much more. Simplistically, that is right. Our test is not the same as the test that the Fraud Compensation Fund follows. Perhaps in an ideal world—we have been exploring it offline over the past year or so—you would have tests that match together, but I understand from our colleagues the Fraud Compensation Fund that that is not the cause of the delay in making payments, to the extent that there is a delay.

There are other hoops, such as relevant insolvency events and the need to ensure that money is being claimed from elsewhere before the Fraud Compensation Fund starts paying out. I think the very nature of processes such as this is that there just are a lot of hurdles to go through. This was the first one to be done; I am sure that with the

¹ Witness clarification: When I referred to the case being in June 2020 I meant to say November 2020.



benefit of experience, it will be a lot quicker now. Hopefully there will be far fewer scams, though, for them to do it with.

Anthony Arter: They still have to go through the insolvency process to see if there are any other moneys before they pay out the moneys from that fund, which is obviously taxpayers' money.

Q95 **Nigel Mills:** We accept that, but it was apparent pretty early on that there was no money there. What was it: a few hundred quid left in the pension scheme and a business with very few assets? You have to wait until you are pretty confident, but whether you have to wait several years until you are absolutely confident is another thing.

You say that you have had discussions with the Fraud Compensation Fund about whether you could align. Presumably that means that either you would align with them, they would align with you or you would both meet in the middle. What is the obstacle?

Dominic Harris: Theirs is set out in legislation and we follow the legal system, essentially. I am sure Anthony can talk about how we did this in Norton. We are making a finding of dishonesty on the civil burden of proof², which, if the evidence is there, potentially allows us to start to pursue the individual trustees for breach of trust. One is just on a statutory regime; the other is on a general common law regime.

Q96 **Nigel Mills:** Does the Fraud Compensation Fund need to get to a higher burden of proof³?

Dominic Harris: A different burden of proof⁴. It is a strange amalgam of criminal—they can speak better to it than I can, but it is not the same as ours.

I ought to say that the fund has been willing. With TPR as well, it is part of the discussions we have been having to see how we can make these processes better. In general terms, scammers have first mover advantage. They are the ones looking at the system and how they can game it. Unfortunately, the regulatory regime, as we have been discussing in relation to the transfer regs, is often trying to fill the gaps that the scammers have found. That seems to be the case here, where we are trying, as a group in the pensions firmament, to fill those holes afterwards.

Q97 **Chair:** You mentioned the tensions around the transfer regulations. We heard last week from Dalriada that it has been appointed to a couple of schemes where the transfers have taken place since the regulations came in. Are there some loopholes in the regulations? What are the tensions that you have mentioned?

² Witness clarification: Burden of proof should read 'standard of proof'.

³ Clarification: Burden of proof should read 'standard of proof'.

⁴ Witness clarification: Burden of proof should read 'standard of proof'.



Dominic Harris: The particular tension I was thinking of is that the first determination I have made in relation to the new transfer regs has not been one where someone has been scammed, but it is a trustee that has very properly identified—I do not want to get into the technicalities, but it was one where the receiving scheme had overseas investments and the transferring trustee took a very purist view of whether or not that triggered the amber flag that then required the individual to go off and get advice from MoneyHelper.

The member concerned and their IFA were very aggrieved, because they thought it delayed the process, that it was very unnecessary, and that it was an entirely reputable scheme that they were transferring to. They claimed that it resulted in loss to the member. Here you had a member saying, “Come on, you have to get on with it. I am missing out on investments,” and so on, and the trustee very properly has sent them to MoneyHelper.

That is what is happening now. It is what you will see in two or three years’ time where people who have made a transfer that has not had the benefits that they expected—because of either a scam or just general regret risk—say that they have moved out of a DB scheme to a DC scheme. That will be the moment when you will start to see the complaints from people who should have been sent to MoneyHelper.

That is where the tension is: between people who are desperate to move to get the investment returns that they can see out there, and trustees trying to operate the new transfer regs. Legislation is legislation; there will always be tension when it is aligned with the real world.

Q98 **Selaine Saxby:** Anthony, you have already touched on this, but can you explain why you focused on determining Mr Garner’s personal liability for the loss of the pension scheme assets?

Anthony Arter: Yes. I focused on it because he was the one who had set up this scheme. He was the sole owner of Norton; he was the trustee. It was a matter of finding what his actions were as trustee and making sure that those investments were properly regulated and invested in the right way. He was the individual whom I wished to hold to account in this dishonesty finding and his actions.

Q99 **Selaine Saxby:** Did you make any assessment of whether he would realistically be able to pay the amount directed?

Anthony Arter: We do not have the ability to work it out. It would all be hearsay as to how much money he had. At the time I actually took on the complaints, as far as I was concerned it was not about looking at whether he had the moneys; it was a question of holding him to account. I did not have the facility—I do not have the support, if you like—to find out what his assets are. I heard several rumours, such as that he owned a safari park, but who knows whether that was true or not. There were plenty of rumours, but all I was focusing on was the state that those poor



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members were in and taking action against Mr Garner in respect of what he had done. For me, that was the priority.

Hopefully money is at the end of the process. That is really important, but ultimately it took me 15 months from start to finish, which, given the complication of the process, is actually quite quick for an investigation of this magnitude, where one has to have an oral hearing. When you are accusing someone of dishonesty and other aspects, you have to give the individual a chance to defend himself or herself. That is really important.

Also, going through the evidence, giving a preliminary decision and hearing the defence takes time. For me, the problem with it is that it also gives time for the money to be dissipated. That is a risk that when we go through this whole process, at the end of that process the moneys are not there.

Q100 **Chair:** I should know this, but I don't: in your work, did you take evidence from Mr Garner himself?

Anthony Arter: Mr Garner was due to attend the oral hearing. He was, unfortunately, doorstepped by ITN the night before the hearing, and there was a broadcast on the ITN news about the allegations against him. He rang one of my lawyers to say he was too frightened to attend the oral hearing because he might be attacked by members. I explained that we had security and he would be perfectly safe. So, no, he didn't turn up.

In fact, when I look at the first three determinations that were made against Garner, he didn't respond at all. I think he only started to respond when he realised determinations had been made and it was looking pretty bleak for him.

Q101 **Debbie Abrahams:** Following on from Selaine's question about the personal liabilities and your focus on that, why did you not look at his business, because he was the sole owner of that business?

Anthony Arter: Because I was looking at the trustee. The company is separate. I am looking at the responsibilities of the trustee and the pension schemes—so at the administrators and the trustee of the scheme, not the company.

Q102 **Debbie Abrahams:** Thank you. From your response to Sir Desmond about TPR, I had a sense that you did not want to criticise its actions or what it did. Rather than saying, "Should it have done that in an ideal world?" and forgetting the context of their commitments and so on, would you expect the regulator to be able to have prevented the type of scam that they would be aware of?

Anthony Arter: Absolutely. I do not try to avoid questions; I speak from the heart. The reality of it is that it is very difficult for me. If I were in the place of the regulator, all things being equal, and there were no other issues that I had to deal with that might detract from certain actions, obviously, ideally one would take action.



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I would say that with scams, one of the issues is that they are quite clever, the fraudsters. They will set the scam up, people will transfer their moneys and they will keep in touch with them to say, "It will be a little while before you get a return on this," so people do not tend to complain straight away. You already have delay in that scheme being set up and the person suddenly realising, "Hang on a minute, this is a scam, my money has gone," and they start to write. There is a process there that you have to take account of. It will not happen instantly when that scam has been set up; it will be a number of years later.

With regard to this and the information they had: if there is nothing else that I don't know, if I were in that position and I had the resources and all the other aspects, obviously, ideally, yes.

Q103 **Debbie Abrahams:** That information had been sent to TPR in 2013, and your investigation started when?

Anthony Arter: It started in March 2020.

Debbie Abrahams: There you go: that is seven years.

Anthony Arter: Sorry, March 2019. My report was June 2020.

Debbie Abrahams: Six years. That is a long while, isn't it? You would expect that if information had been provided to the regulator, the regulator would respond, act on it and escalate it.

Anthony Arter: I wish I had all the information for the regulator but what I would say is that it did appoint the independent trustee, which was very helpful to me in May 2019. That was very useful, because that enabled me to make my determination in respect of all 254 members, not just the 31, and for moneys to be returned to those members. That was very important. I was able to bring Dalriada in as a complainant, which made a huge difference. That one act really helped me in how I responded. But I am completely separate; I am looking at it from a member's point of view.

Q104 **Debbie Abrahams:** There may be more members knocking on your door from other schemes. This was a big case. You said that it was the second biggest case of this nature that you had to investigate, so it must have taken up a huge amount of resources. I do not know how large the ombudsman is.

Anthony Arter: Very small.

Debbie Abrahams: If we were thinking about what this meant for other investigations that you might be undertaking, what would you say?

Anthony Arter: It was a big decision to make. I was passionate about dealing with cases such as Norton and others where people have been scammed. I felt it was a very important area that we should focus on. Sometimes other things had to give way that were perhaps, in my view at the time, less important.



Also, if you think about it, I had 31 different complaints. If they had all been investigated separately, that would have taken considerable resource and perhaps there would have been some overlapping and it would have been a complete waste of resource. It therefore made sense not only from the point of view of Dalriada and the 254 members altogether, but also from that of dealing with the separate complaints. It is a balance based on the resource that we required for those. I might have had more complaints. I didn't know if that was going to be the end at 31 complaints; others might have come in. It was important to marry that up.

Dominic Harris: It might be helpful to give you an idea of how we think at the moment. It also comes back to Ms Saxby's point as to whether or not we were looking at whether we could recover any funds during Norton. Obviously I was not there at the time, but that is the sort of issue we now have to look at. We are a small organisation; our resources are limited. Many more cases of this nature have come in. At the moment we have nine cases on foot, we have a further 14 that are paused. The reason they are paused is simply about resources.

We are having to make pragmatic decisions on which ones are most likely to get justice. For example, we will go after cases that set a particular type of precedent. The ombudsman obviously does not set precedent in the same way a court does but, in the case of Norton, that was the first big one and it was setting a precedent for the industry. It was showing what was going on. It was important that we did it, even if moneys were not recovered.

Now we are looking more at pragmatic decisions, such as which ones we are most likely to get returns for the members on, which ones we are most likely to act as a deterrent on, and which ones show a new type of scam or a new way that we can deal with something. I do not wish to bore you with technicalities, but in most cases with personal liability, the trustees are individual trustees, so it is much easier to get at their own personal assets. Where trustees set themselves up as companies and sit behind the corporate veil as a director, it is much more difficult. We are looking, for example, at one case—

Debbie Abrahams: Don't give them any clues!

Dominic Harris: No. We are looking at that sort of case at the moment to see whether it is possible to pierce the corporate veil. Even if there is no actual recovery there, that would be an important case to deal with those sorts of issues, so people do not think that that is the right way to go to try to protect the wrongdoer from liability. We do go through the pragmatic decisions to try to work out which ones are going to bring justice to members, which ones are going to get the most bang for the buck in the industry. It is an important thought process to go through.

Q105 **Debbie Abrahams:** You said you had moved on the criteria for determining which cases you are going to investigate. Do you publish the



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criteria? How do you come up with them?

Dominic Harris: No, it is on a case-by-case basis.

Q106 **Debbie Abrahams:** I understand your reasoning for looking at Norton as a group, but were there any losers as a result of that? Who were they? Not the individuals, but was it the strength of their—

Anthony Arter: It was the individual evidence that was very useful collectively, which helped me in making that determination. That was very important. Rather than looking at each claim separately and what happened to them individually, it was much easier, much more efficient and much stronger from my point of view in looking at the case and making my decision. And it was much less likely for any appeal to the High Court to succeed.

Q107 **Debbie Abrahams:** My final question is about the Pensions Dishonesty Unit. Given you are a small organisation, that must have been, or is, a big commitment from you. Does that suggest that you are expecting to get more and more of these cases and that they are going to take up more of your overall resource?

Dominic Harris: I ought to say that it is a commitment not just from us, but from the DWP. The DWP gave us pilot funding for two years to help us with those cases; we are coming into the last year of that pilot funding. We have more flexibility to take on cases. Frankly, without that additional funding, we probably wouldn't be doing all nine of the cases that are on foot.

We expect to still see cases. There is a lot of money in pensions. If ever there was an industry that was going to attract scammers and wrongdoers, it is pensions. Although cases of the type that we saw with Mr Garner may be a thing of the past, or there may be fewer of them because of things like the transfer regulations, I do not think scammers are going to stop trying or finding new loopholes or new ways to try to deal with pension schemes.

I am still deciding cases. Particularly in small self-administered schemes, there are quite a lot of investments going wrong there. I think there is a real need for something similar to the PDU going forward, whether it is the PDU or a more general scams and complex cases unit, that is something to discuss. But yes, the need is definitely not going away.

Q108 **Nigel Mills:** Going back to a thread that I was looking at earlier, do you think we have the regulations in the right place now and that we are stopping all the scams we can? Is there urgent stuff that we should be trying to tighten up, or is it just a case of having to play catch-up every time somebody finds a loophole we have not yet thought about?

Dominic Harris: I was having a think about this exact point before the hearing—a good thing, too, as the question has been asked. I think the answer is no, for reasons that Ms Abrahams and I were just discussing.



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Scammers are attracted to the industry, they are clever and they have first mover advantage, so I suspect there will always be loopholes and you will only discover them after the event.

From my perspective, you need flexibility in powers given to the regulator, to the ombudsman or to people charged with dealing with these issues. A prescriptive, narrow set of regulations does not allow for the agility to cater for changes in scammers' behaviour and actions in the future. The more flexibility you give someone, the easier it is to cater for those changes. That is where the ombudsman has a real advantage, because rather than using a very prescriptive set of regulations, we are using the flexibility given to us in law. To his credit, Anthony's creativity in finding a way to go after them with Norton is an example of that.

There are things you can do now as well. The best way to deal with scams is to stop these people coming into the pensions universe in the first place. I ought to declare an interest that my wife is an independent trustee; I am not saying this for that reason, but having a reputable independent trustee on every scheme is useful. SSASes, for example, used to have pensioner trustees appointed, and then some time ago the requirement for pensioner trustees was removed; I cannot remember when, forgive me.

Having an independent, reputable body dealing with that sort of thing is important, as is having professional indemnity insurance covering those trustees to a reasonable level. I have just found against an independent SSAS trustee that is likely not to survive as a result of what I have done. I suspect the members who have claims against that SSAS trustee will now not be able to recover the moneys that they are due, so having PI cover for when things go wrong is important.

There is no strict regulatory regime for pure third party administrators as opposed to scheme administrators under the taxes Act. They have to be reputable as well, so you avoid the issues that Anthony was talking about with Norton.

To my mind, the entry point and flexibility are the areas where you can get most bang for your buck in trying to avoid these scams. Education is the other area—probably not for us, but in the sense of educating members, as the regulator and so many people are doing, that what looks too good to be true usually is.

Q109 **Nigel Mills:** It sounds as if you think you have enough powers. You have only been in the job a few months, but you seem to be saying that the way you are set up, the powers you have work. You are not sat here saying, "For God's sake, give me this power so I can do a lot more."

Dominic Harris: Our powers are very flexible. Our cases, particularly in this field, are necessarily long. Think of us in comparison with the criminal justice system. If someone is arrested by the police, the police do the work of trying to decide whether or not there was wrongdoing; the



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Crown Prosecution Service decide whether there is a charge; barristers and solicitors prepare the cases and advocate to a judge; and then a judge makes a decision at the end of it. We do all of that. We do the investigation, the preparation and the final judgment.

We are necessarily long, and because of that necessarily long process, for all the reasons Anthony gave, you will end up with assets disappearing off into the ether. In an ideal world, you would be able to freeze both scheme assets and individuals' assets so that if personal liability were found there would be assets there to give justice and redress to the members. For separation-of-powers reasons, I rather suspect that that probably shouldn't lie with us because we are doing all of those jobs. The best place for it to lie is with the regulator. The regulator has those powers at the moment. Certainly over the last year, it has been a completely open door from my perspective. With Nausicaa, Erica Carroll and Tony, we have been having lots of discussions how we can make our powers work better together and be more complementary so that where there are issues, we can share information and they can do the things that they should rightly be able to do. That, in turn, can give our determination more fangs and get the members in a better place by the end of the process.

Q110 **Nigel Mills:** If the regulator has the power to freeze scheme assets, does it have the power to freeze an individual trustee's assets?

Dominic Harris: That is obviously a question for them. My understanding, because I have been discussing it with them, is that they have something similar to a production order power. I know Tony is behind me and you might be speaking to him in a minute—I hope he has researched this, because I suspect there may be a question on it as a result—but I think they do have abilities to do that. Certainly in my discussions with them, it was something that they were going away to explore.

You are absolutely right that there is a big difference. Assets in a scheme are easy to freeze: you can put in an independent trustee and close the scheme bank account, and then the wrongdoer does not have access. But if funds have been spirited out or sent to the companies through employer-related investments, they are out of the scheme. At that moment, the wrongdoer gets to do what they want with them and they disappear. That is what we must stop.

Q111 **Nigel Mills:** That is quite a challenge. In this situation, you would basically have been stopping Norton trading, because that would have been the asset you were after. How do you stop a business buying stock or taking on people or whatever? It is one of those powers that you could see being used to stop a house being sold, stop a safari park being sold or whatever.

Dominic Harris: Exactly that. It comes back to the similar tension we were discussing over the transfer regs. There are people who rightly want



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to do things with transfers that we should not be stopping, and the same is true here. I should not be given an oppressive power to just stop a business from growing. Finding that balance is the key thing, and that is where flexibility, checks and balances and oversight come in.

Anthony Arter: It is important to remember impartiality. We have to be very careful about we react to these cases until we have proper evidence.

Q112 **Chair:** You told us that you have dealt with quite a number of cases. Looking back on the work that you have done, how exceptional was the Norton case?

Anthony Arter: Norton was exceptional. There was another case just prior to Norton: the Henry Davison pension scheme. Mr and Mrs Davison set the pension scheme up; it had 54 members, and £2.4 million was gone. Again, they were spurious investments. That was the very first case where I decided—it was just prior to Norton—to hold this collective process and hold Mr and Mrs Davison responsible and personally liable for the loss of moneys.

That was the first case and Norton was the second, but Norton was far bigger and much more important in terms of the number of people affected. The Davison case had a lot of people who were semi-professional investors or liked to think of themselves as such—not all, but some—whereas with Norton these were perfectly innocent members of the public who had been persuaded by people, who ultimately were convicted, to transfer their very safe pension arrangements in various schemes into Norton. Some were motorcycle enthusiasts, so they liked the idea of it and were persuaded on that basis. For me, it was the catalyst for setting up the dishonesty unit from that point on.

From June 2020 when I made my determination, I kept the DWP informed all the time. The DWP and the Minister supported the moneys we needed to continue dealing with these scams, of which there have been a number since. There was one last Christmas: £13.5 million. Without that resource, without that money, we could not have continued dealing with those cases in that way. As you quite rightly pointed out, the resource needed for looking at that case is considerable. When I started, we were only about 60 people. We are not hundreds of people, and we have other complaints coming in all the time that have to be addressed.

It is a question of priorities, but we did have the moneys to set up that separate unit. For me, that was really important because the scams at that time, which were still coming through, needed someone to represent the individuals who were complaining and let them have their day explaining what had happened to them. That was a very important part of the process. Rather than just having bits of paper going backwards and forwards and notes from different organisations and so on, it is important for people to have their day when they can explain exactly how they feel.



Dominic Harris: I can give you a couple of figures, Chair, if that would help. We have 12 months or just over 12 months until the PDU pilot comes to an end. Over the 12 months, we have £31 million of funds at risk in the investigations that we are focusing on. More importantly, that is 600 members who are affected. Even if you say that there are only two schemes or two scams, you have to look at it from a member perspective as well: there are 600 members who are having their lives absolutely ruined. Those are just the ones we are dealing with over the next six months. There will still be legacy ones that come through, and there will be different scams. Things like Norton are big-ticket and unusual, but there are still plenty more.

Q113 **Chair:** Do you know how many schemes you have dealt with over the 10 years?

Dominic Harris: I wouldn't know. I can come back to you on that if it would be helpful.

Q114 **Chair:** It might be useful to know. From what you are saying, Norton was exceptional because of the size of it and the number of victims. Have there been others of a comparable scale that you have looked at?

Anthony Arter: With Optimum, £13.5 million was taken. That was a big case. It is very interesting who the individuals involved in some of these cases are. Some of them are very intelligent—we have had chess grandmasters involved with scams. We are not talking about your local criminal who might suddenly get involved. Some of these individuals are quite clever; they work out how they can extract these moneys and get rid of the moneys very quickly through different companies and organisations.

Q115 **Chair:** Which scam was the chess grandmaster involved in?

Anthony Arter: Focus, I think. Can I come back to you on that? I think it was the Focus scheme, but I will confirm that for you.

Q116 **Chair:** The fact that you determined that there was dishonesty in the Norton case has proved very important, because it has opened the possibility of successful applications to the Fraud Compensation Fund. The judge who dealt with the prosecution by the Pensions Regulator of Mr Garner said that if the Pensions Regulator had said there was dishonesty, Mr Garner would have gone to prison. You have spoken to Mr Garner, from what you said to us earlier. Do you think he should be in prison?

Anthony Arter: I personally would like to see him in prison, but that is a personal thing. The point about it is, of course, is that it is on a different standard of proof. For us, it is a civil standard of proof, the balance of probability, and that is the standard that I judged. Looking at the evidence, I came to the conclusion that Mr Garner had been dishonest on the balance of probability. A criminal prosecution depends on the offence being prosecuted, and it is a question of proving the matter beyond reasonable doubt. It is a question for the prosecutors to decide on



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balance whether they will achieve a finding from the jury, the magistrate or the court that this was definitely beyond reasonable doubt.

There was no doubt that Mr Garner would put all sorts of defences in place. The question is whether a jury or a magistrate might take those into account: "He was very naive, he was taken in." Mr Bradley was one of those convicted in 2013; his brother, Matthew Bradley, was a solicitor with Bradley and Jefferies. Matthew Bradley was Mr Garner's personal commercial solicitor—quite interesting connections all through there. You could see that he might throw a defence that he was just taken in by these individuals and was completely innocent and did not understand pensions. Of course, he should not have become a trustee if he did not understand pensions, but that is beside the point.

When you look at a criminal prosecution, it might be trickier than it would be for me to look at that evidence, consider the standard of proof required on the balance of probability and find that he was dishonest. It is a tricky one, but of course personally I would have liked to see him prosecuted and imprisoned for the offences. All those people have suffered so much.

Q117 **Chair:** Dominic, can I ask how things are at the moment? How long is complaint assessment and then adjudication taking at the moment?

Dominic Harris: "Too long" is the short answer to that. It needs to improve.

Q118 **Chair:** What is the average?

Dominic Harris: Essentially, in very simple terms, if a complaint comes in, there are two routes you can follow. One is an informal route to a resolution team, where we essentially try to mediate and have both parties accept whatever the outcome may be and make a payment one way or the other. The wait time is currently 11 months for one of our resolution team members.

If it follows the more formal route, there is an investigation. We talked about the criminal justice analogy and how the investigation process is necessarily longer. You first go through an assessment process where we look to see whether it is within our jurisdiction, whether it hits the time limits and so on. At the moment, the waiting time for that stage is around 12 months. If you go through that, this then becomes cumulative; you then go into our adjudication queue for the investigation and potentially a determination by me or Anthony as DPO. The waiting time for that is 12 to 15 months, so it is much too long. It can be shorter if it is a less complex case, or it can be longer, depending on specific issues.

To give you one example, there is quite a tranche of overpayment cases where members have been overpaid and the scheme is trying to recover it. A number of those cases got stuck awaiting a Court of Appeal decision that we got last November. You can get stuck behind those sorts of things, but it is still too long.



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When I sat in front of you before my appointment last year, I talked about evolution, not revolution. Now, being on the inside, there is no more talk about evolution. We need to get a grip on these things, and we are. We are going to sort them out.

Q119 **Chair:** The wait is coming down, is it?

Dominic Harris: It depends on how you look at things. The annual report and accounts came out, and it was coming down: for the first time in many years, we resolved more cases than we received. On that basis, it was coming down.

Unfortunately, we suffered a bit of an IT/cyber issue last year. That resulted in our IT systems being closed for a little while and in our being less efficient than we should be, so regrettably I suspect that those inroads would not have continued this year. If it helps, I can talk through what we are doing about it.

Q120 **Chair:** I suppose the question in my mind is whether you have the resources to reduce the waits to an acceptable level over the next couple of years. How do the prospects look?

Dominic Harris: If we start from first principles, what is the cause of the waiting times? It is really a function of supply and demand, and demand keeps going up. On average, it is by around 10% to 12%; we predicted a 12% increase in demand for the last annual report and accounts, and it ended up being 17%. We are a popular service, as befits a very complicated area. There were about 5,500 complaints in 2020-21; that went up 30% to 7,200 in 2022-23. That gives you an idea of just how much things are going up.

On the supply side, funding has not kept up with demand. Our funding comes from the general pensions levy. We are very grateful for some temporary increases that have been granted to us by the DWP; we work very closely with it and it has been helping us where possible. But ultimately those temporary increases are not enough to deal with both the increases and the historical backlog, which are the two issues. Every year we get a temporary increase and it effectively keeps our head above water for the increase in demand, but it does nothing to erode that historical backlog. Of course, temporary increases also cause us an issue with recruiting people and training them up to deal with what is, frankly, a pretty complicated area.

Having said all that, we also need to grapple with the levers that we have, because it is not just about funding. To my mind, there are effectively three levers you can pull as an ombudsman. The first is funding, which is a hard one for me to pull because it is not strictly in my gift, but we have—I hope, election depending—a spending review due this year, and that is our chance to reset our baseline funding.

We also have a public bodies review that was delayed from last year. We would very much like to discuss the prospect of a demand-led funding



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model similar to that which the Financial Ombudsman Service has, so that when we have unexpected increases in demand, we can flex with it rather than being perpetually in this discussion over what happened last year and what we need this year, which then gets overtaken by increases in demand the following year as well.

There are really two levers that I can pull. The first, on the supply side, is by making us a much more efficient organisation. Towards the second half of last year, we commissioned an operating model review. At the end of this month and the beginning of next month, we are going to finalise that, present it to our friends at the DWP and then, hopefully, start to move into an implementation phase. We are looking at earlier closures, fewer handovers—all the things you would expect us to be looking at.

To give you one example, we would like to be much more like a court. A court can deal with cases through summary judgment at a very early stage. I should not be looking at things as a determination that are very simple cases that have been in our queue for three years. There must be a way of disposing of that more quickly. At the moment, however, the legislation says that every member has a right to take it through to determination. At the moment, we cannot even put them through to our resolution team without their consent.

Our resolution team is really successful: they close 80% of the cases they receive and resolve them at that stage. We need to be able to send the appropriate cases through to resolution to get those cases resolved early, because we are here to help the individuals. We have to be able to close similar things earlier through summary judgment. That will mean that we are concentrating and dealing with only the most complicated cases, like Norton. I do not know whether you have had the pleasure of reading Norton, but it is 100-odd pages. If we did that for every single determination, we would just grind to a halt. We have to be much more pragmatic. We are looking at lots of things like how you triage things when they come in.

The other lever that I can pull is, surprisingly, on the demand side: plucking lead cases out before they get to us. To give you one example, you might have seen in the news that lots of members of the Boots pension scheme are aggrieved at what has happened as their scheme has moved to buy-in. I think that there are quite a few hundred of them moving through dispute resolution.

What I suggest doing in that situation is reaching out both to the union sponsoring it and to the trustees of the scheme to try to find an example lead case that we could accelerate and determine quickly. If you do that, it sets the principle that before it gets to us, the trustees can say, "Actually, we lost during dispute resolution. Mea culpa—we did it wrong," and it stops it getting through to us. Equally, if we find for the trustees, hopefully the members can then see that there is no point in bringing it



through to us. If we set that precedent, we can stop stuff coming through the door.

We try to shape the industry. We go out there and say how people should be dealing with overpayment cases, and try to make sure that members exhaust dispute resolution before it gets to us. It is about stopping that stuff coming through the door. Those are the two levers that we are concentrating on at the moment.

Q121 **Chair:** Finally, I would like to raise with you a different case that we have not mentioned so far: the case of AEA Technology, the commercial subsidiary of the old Atomic Energy Authority. Do you agree that members of that scheme have not yet had an adequate appeal opportunity?

Dominic Harris: I think everyone should have an appeal opportunity, but only within the law. A point worth remembering is that we are an independent ombudsman bound by law. I have not had any of these come across my desk, but Anthony has. As I understand it, in that particular case they are blocked by a number of issues with us, the first being that they are out of time. We cannot give a remedy that the court cannot give. In cases such as this, there is a 15-year longstop in the Limitation Act that would prevent me from looking at these issues.

Secondly, our jurisdiction is limited. I gather that in this particular case they were particularly aggrieved with the Government Actuary's Department. It is not clear to me, even after the changes made to our jurisdiction in 2004-05 or whenever it was, that GAD would fall within our jurisdiction. We are independent, and we would need to then go off and actually decide whether or not they had a case. In principle, yes, I do agree that everyone should have an opportunity to find access to justice.

Q122 **Chair:** Do you think that you are the right body to provide that opportunity?

Dominic Harris: It depends on who it is against. If it is against a trustee, I think they are the right body. If it is a technical pensions issue, we are the ones with technical pensions expertise. Equally, GAD is a Government agency, so PHSO might be an appropriate port of call; I think that that is a matter for gentlemen and ladies in this place to think about. I will deal with whatever cases are put in front of me within my jurisdiction, and I will decide them independently.

Q123 **Chair:** Do you think that this example points to the need for some expansion of your jurisdiction, or are you not seeking that?

Dominic Harris: Either us or PHSO. To the extent that there is a gap and there is not access to ombudsman justice—this is a nice segue back to what I said at the beginning—the value that the ombudsman adds to the world of consumers and the man on the street is that we are giving access to justice without cost or cost risk.



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To the extent that you have a group of individuals whose only course of action is to go to the courts with all the pain and cost that that entails, yes, absolutely, someone needs to do it. I would be happy to because it is technical pensions and I enjoy technical pensions—that is our value-add—but equally I could see an argument for PHSO as well.

Chair: Thank you both very much for your time and for answering all our questions.

Examination of witnesses

Witnesses: Tony Raymond, Maria Evgenidou-Wright, Sara Protheroe and David Taylor.

Chair: Welcome, everybody, to our second panel in this morning's meeting of the Work and Pensions Committee inquiry into the Norton pension schemes and the Fraud Compensation Fund. Can I ask each of the four members of this panel to tell us very briefly who you are?

David Taylor: I am David Taylor; I am executive director and general counsel at the Pension Protection Fund, which oversees the Fraud Compensation Fund.

Sara Protheroe: Good morning. I am Sara Protheroe, chief customer officer at the Pension Protection Fund. I am responsible for the operational management of the Fraud Compensation Fund.

Maria Evgenidou-Wright: Hello. I am Maria Evgenidou-Wright. I have been with the Pensions Regulator for over 20 years in a variety of roles. Over the past five years I have been head of enforcement, and in that capacity I had oversight of the Norton case from 2020 onwards.

Tony Raymond: I am Tony Raymond. I am general counsel and director of governance, risk and assurance at TPR. I have been at TPR for 16 years and have had a variety of roles while I have been there.

Q124 **Chair:** Thank you all for joining us. I will put the first question to the TPR witnesses. In October 2011, your determinations panel suspended Tudor Capital Management from acting as a trustee, its directors Andrew Meeson and Peter Bradley having by then been charged with tax fraud. Why did you nevertheless register the Norton pension schemes in 2012?

Tony Raymond: By way of context, first of all: over that period between 2010 and 2013, TPR had a very high volume of scams and liberation—as we called them—types of cases. At that point we were focusing our resources on disrupting those models as we saw them arise.

At that stage, as you say, we suspended Tudor Capital Management. That was as a consequence of receiving information from HMRC that it was arresting Bradley and Meeson in relation to pensions tax matters. We then also took action in relation to a number of related schemes of Tudor Capital Management Limited, TCML, and T12.

It is obviously fair to say that TPR received a whistleblowing report in 2013 relating to Norton. We referred that to Action Fraud, and we did not prioritise that case because of the other cases, many of which had even more egregious features than the Norton case, although that is not to diminish the importance of Norton.

Those were cases where members were receiving, for example, reciprocal loans from other schemes, where there were inter-company loans



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between different entities, and models where there were attempts to try to generate a surplus, extract that surplus and liberate it back to the pension scheme members, so at that stage it was a prioritisation decision.

Q125 **Chair:** You registered the Norton schemes in 2012, despite the fact that Tudor Capital Management had been suspended. Was that because you were not checking thoroughly enough at that stage? I take the point that there was a lot going on at the time but, looking back on it, given the information that you had at that stage, would you now say that you should not have authorised it? Or were there other criteria that meant that it was appropriate to authorise it?

Tony Raymond: At that stage—just to paint a picture of that period—the scheme would have to register first with HMRC, and then it would register at TPR as an occupational pension scheme if it had two or more members. That registration process is not an authorisation process in any way, shape or form. It is simply that information is being put on our register, so at that point, as far as I was aware, there were no checks in the way that you have described.

I know that HMRC tightened up those registration provisions in 2013 and 2014, because it was seen that the ease with which registration could take place was a key enabler for scam activity. There was then an introduction of different checks that enabled HMRC to challenge whether there were concerns around having a scam. It had powers as well to de-register and to impose penalties. Then in 2014 it had checks that enabled an assessment of fitness and propriety on the part of the scheme administrator, so it really tightened up that framework. It actually led to about an 80% reduction in registrations at that time.

Q126 **Chair:** Was the reason that you registered the Norton pension schemes that you did not check at that point?

Tony Raymond: It is difficult for me to answer that question, because I have not been able to access a lot of the records to be able to answer definitively. So that would be my best view.

Q127 **Chair:** Right. We have certainly heard that HMRC was not making checks. You would just fill in a form and it issued the registration. From what you have said, it was the same at the Pensions Regulator?

Tony Raymond: I believe so.

Q128 **Chair:** Right. How has it changed now? What are the checks that you make now before registering a scheme?

Tony Raymond: There have been a number of changes to the framework generally. Obviously the Committee has heard today and last week about the flagging system, which you are aware of, but from HMRC's perspective there are also checks that the employer is a going concern, so it is not just a shell entity. There was also a ban around cold



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calling in 2019. All of those mechanisms have been quite important in hardening up the framework in so far as it concerns scams generally.

Q129 **Chair:** Can you shed any light on why there were no checks 10 to 12 years ago? It is easy to say now, but were there any particular reasons why they were no checks?

Tony Raymond: I have to say I do not know—that is the honest answer, although I worked at the regulator at that time. To an extent, the information is provided to TPR by way of registration. It is not a mechanism to actually check all the elements of the scheme once that information is provided to us. That was obviously the case as well for HMRC, which registered in the first place. That was then changed, and I think that was a very helpful change in terms of disrupting this type of activity.

Q130 **Nigel Mills:** I did not hear you express any regret or apology for the fact that the whistleblowing referral was not followed up on. With hindsight, do you think that that was the wrong decision? Do you wish that you had managed to take some action a decade ago that could have saved some people some pretty miserable times?

Tony Raymond: It is fair to say that the impact that this case has had on the individuals of this scheme has been utterly devastating. The regulator does absolutely everything it can in this space. It is not just in this case, but in a large number of cases that members have had a similarly devastating impact. If we could turn the clock back and do it differently, yes is the simple answer, and obviously to that extent I apologise.

There are good reasons for why things have happened as they have. I have talked about the prioritisation that we had to do back at that point. I have some personal recollection of that because, over the period from 2010 to 2013, I was a litigation lawyer who was involved in a lot of those cases, and those other cases that I mentioned earlier on were particularly egregious. They had investment models that were obviously shams and there were reciprocal arrangements to loan pension members the money, which was obviously liberation. Those were the cases that we particularly focused on to disrupt.

Over that period, the importance of educating the market also became clear. We have done an awful lot of work in that space, as well as seeking to disrupt this before it happens, because the truth of the matter is that once these models are established, it is sometimes too late. The key is to disrupt it before that happens, by way of taking down websites, for example, if people are seeking to advertise this type of activity.

Q131 **Nigel Mills:** Did you have any realistic expectation that referring it to Action Fraud was not much the same as sticking it in the wheelie bin outside your office? Did you ever get any feedback from Action Fraud that anything ever happened?



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Tony Raymond: I am not aware that we did, but that was not necessarily unusual. At the time, the best view was that that was the appropriate mechanism and the appropriate portal. I know that some years ago the Committee asked questions about Action Fraud, and I know quite a lot of improvements have been made in how that mechanism operates.

Q132 **Nigel Mills:** Finally, you said you had not been able to access certain records. We are trying to establish what happened here. You are appearing before a parliamentary Committee. Is that “not able” because the records are not available or because somehow IT means that you cannot get at them, or did you just not quite try in time?

Tony Raymond: Some records have been destroyed because of our retention period timeframe. That is the simple answer.

Q133 **Nigel Mills:** Really? In relation to a case that has been going through various courts and fraud processes, still ongoing, you have destroyed records?

Tony Raymond: Well, obviously we have records in relation to this case. We received a whistleblowing report in March 2013, and I can help the Committee with that. The question that I was answering about records related to what we did around registrations back then, just to clarify the answer to that question.

Q134 **Chair:** We heard from the Pensions Ombudsman that it identified a need for change in the law. Was TPR aware of that as well? Did you ask DWP to make any changes in the law?

Tony Raymond: Over that period, we were talking to colleagues in DWP as well as other organisations. I think some of the changes that I have talked about were in some measure to do with the discussions that TPR was having as well. Cold calling, for example, was an important change; the ban on cold calling made a huge difference. That was a lot to do with our work with Project Bloom, which is now the Pension Scams Action Group. I think those things did make a difference to hardening up the framework.

Q135 **Chair:** Were there other things that you were pressing for at the time?

Tony Raymond: I have mentioned the registration of schemes, which is a matter for HMRC. What else would I mention? Flagging, which the Committee has already heard about, was also another important disruptor, and I think it has made a big difference in reducing the number of these types of transaction.

Q136 **Chair:** The changes that were eventually made on transfers—did you identify the need for restrictions there or constraints on transfers?

Tony Raymond: Yes. That is one of the key points in the story: the checks that take place around the transfer. Having the flagging system provides for that; unless it is a transfer to a collective defined



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contribution, master trust or public sector scheme, there needs to be some employment relationship with the receiving scheme. I think that has been really important. I know that DWP commissioned a review last year that looked at data from December 2021 to February 2023, and I think 2,000 transfers were disrupted as a consequence of that flagging.

Q137 **Chair:** My question was really, "If we could go back 10 years to when the transfer that we are focusing on occurred, were you identifying at that point that there was a problem with transfers that something ought to be done about?"

Tony Raymond: To the best of my knowledge, yes, but I think that we were also focusing on education and liaising with law enforcement to get an enhanced intelligence picture.

Q138 **Chair:** Having identified the need, did you raise it with DWP?

Tony Raymond: I have to confess that I don't know.

Q139 **Chair:** If you are able to come back to us and let us know, that would be of interest.

Tony Raymond: Yes, of course.

Chair: Thank you.

Q140 **Sir Desmond Swayne:** Dalriada told us that it was appointed to two schemes in 2023, "which were active and to which legitimate schemes had made transfers after the 2021 regulations were put into place, which suggests the 2021 regulations are not being as rigorously applied as they should be". Discuss.

Tony Raymond: This is a slightly difficult question for us to answer because it is a live investigation, so there is a limit to what we are in a position to say in relation to it. It is perhaps the exception—

Q141 **Sir Desmond Swayne:** Perhaps in general terms, then: are the regulations being sufficiently enforced?

Tony Raymond: I would probably reiterate the point I made about DWP's analysis of the number of transfers that have been disrupted as a consequence of those new flagging regulations. Obviously we can write to the Committee when it is a less sensitive issue about that particular case, but we do not want to prejudice what is going on.

On the whole, I think that we are satisfied that those flagging systems are helpful. Would it eliminate all types of this activity? Probably not, for the simple reason that scammers will try to find gaps in the system. It is important to be on our mettle to engage with law enforcement in this space. To put this issue at the top of the national fraud agenda is important, and that is something we have been working hard to do with the National Economic Crime Centre, as well as producing threat assessments last year with the National Fraud Intelligence Bureau. Those



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things are important and we need to continually re-examine that framework to ensure that we are disrupting this activity.

Q142 Nigel Mills: To follow up on where we were before, TPR was clearly aware that T12 were not—to put this generously—the most competent or reliable of scheme trustees, given that you appointed independent trustees to replace them over a three-year period between 2011 and 2014, I think. It seems a bit of a surprise that when you had a whistleblower for another scheme they were involved with, you did not think, “Oh God, it’s them again. We’d best do something.” Was that just the same prioritisation?

Tony Raymond: Looking at the situation now, it obviously feels uncomfortable. I cannot get around that, and this case has gone on for a while. However, I can recall that at the time we had a very high volume of cases which were even more egregious than the one this Committee is looking at today. Those were the cases to which we had to allocate our scarce resources to address by way of trustee appointment and so on. I recognise the issue and the point you are making.

Maria Evgenidou-Wright: Perhaps I could just come in specifically on the Norton schemes. T12 was the administrator for these schemes. As you rightly pointed out, we had concerns about the administrator. Obviously, T12 was not the trustee; in fact Mr Garner replaced T12 as administrator very shortly after with another company.

Q143 Nigel Mills: This was quite egregious, though. We had some criminal administrators and we had an unqualified trustee moving money out of a pension into his own business over a decent period of time. There is a collection of stuff here that is completely against any kind of sensible observation of the rules. I suppose that is 10 years ago. You did finally launch an investigation in 2018, but it took until May 2019 to appoint Dalriada as independent trustee. Do you know why it took quite so long?

Maria Evgenidou-Wright: Yes. We launched an investigation in 2017. We received another whistleblower report in 2017, but initially we carried out quite limited inquiries. That was because there was an ongoing police investigation with South Wales police, who asked us to limit our investigation while they were prosecuting an individual called Simon Colfer who was what is called an introducer to the Norton schemes, and Mr Garner was a witness for the prosecution in that case.

We had some limited inquiries in 2017, but from 2018 we expanded our investigation, and that is when we contacted Mr Garner directly. The reason why it took another year or so before we appointed a trustee using our powers was that Mr Garner was co-operating. He admitted himself that he was not a competent trustee and that he was not able to take care of the schemes, and he said he was going to voluntarily appoint an independent trustee. He had spoken to a number of trustees, I think, including Dalriada, and it looked like he was taking the right steps to make the appointment himself. However, after it became apparent that



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he was being very slow and there was not enough progress with the appointment, we started the process to formally use our powers.

The process takes some time. We have to follow the procedure. We have to go out to the various trustee companies on our register and ask them to tender for the appointment. We then have to follow what is called the case lead procedure. We have to go out to everyone affected to allow them to put in their representations before we go to our independent determinations panel and they make the decision to appoint the trustee.

Q144 **Nigel Mills:** Did you think the request from South Wales police was reasonable? Is that common? It is a bit like saying, "Would you mind not stopping these pension scheme members from being robbed a bit more because we are doing this case, and it might hurt our case?" It is a slightly strange thing for you to decide not to exercise your powers on something that was not really related to that case.

Maria Evgenidou-Wright: We would have established that by that point there was no immediate risk of scheme assets dissipating, as I think the Committee has—

Nigel Mills: That is because they had been dissipated already.

Maria Evgenidou-Wright: The money had already gone into Norton by that point. If we had thought that there was an immediate risk, of course we would have used our powers immediately.

Q145 **Nigel Mills:** We heard in the previous panel that you not only have the power to freeze pension scheme assets, but may have the power to freeze individual assets. At that point—when you are saying that you knew that the money had been taken by Mr Garner, completely contrary to what regulations allow—were you not tempted to use those powers to try to freeze the assets?

Tony Raymond: TPR has powers, where scheme assets have been misused and misappropriated, to go to the High Court for injunctive relief. There is an assessment as to the immediacy of the risk of those assets being dissipated in circumstances where there is a trustee appointed. At the point at which the trustee in this instance was appointed, the title to those assets vested with that trustee. At that point there is a protection, if you will, against immediate risk. There would not be a need for us to go off to the High Court at that point.

Q146 **Nigel Mills:** Again, I am slightly intrigued that you say you did not need to do anything in relation to the pension scheme in 2017, because you knew that the assets had already been transferred into Mr Garner's own name or into his solely owned businesses, but you did not think, "Let's go and use the powers that we have to stop those assets being further dissipated."

Tony Raymond: It is often the case in instances where TPR appoints a trustee that the trustee takes on that mantle. Indeed, in previous cases—



Nigel Mills: But this was two years before you appointed a trustee.

Tony Raymond: Yes—sorry, I was speaking generically. Where we appoint a trustee in circumstances where there is a concern, they will often take on the mantle to try to protect the assets and will sometimes go to the High Court themselves. In this particular instance, we took various decisions and, as my colleague was saying, at that stage the money had already been invested in the preference shares, as the Committee is aware.

Q147 **Nigel Mills:** I am intrigued that you got as far as knowing that, but you did not think, “That is completely contrary to what is allowed. Should we not step in and try to stop that money being further dissipated?”

Maria Evgenidou-Wright: In this case, obviously the way the investments were made was illegal. As it turned out, the investments themselves were inappropriate and ended up not being worth anything. We do not have powers to get the assets back from an investment that that has been made that is a valid and legal investment.

Q148 **Nigel Mills:** Okay. I am intrigued about how you appoint independent trustees and the deal they get. I think what we heard last week was that they only get paid if there are any assets at the end. If there had not been effectively a successful claim on the Fraud Compensation Fund, Dalriada would not have got paid at all for this.

Is that a sensible way of remunerating independent trustees? Either it is a very risky business that I get myself into and it is not attractive, so I might prefer to go and do other stuff, or I will set my charge-out rates such that if I only get paid in one in three, I am still making a profit, so I will charge a very high amount to these schemes I get landed with. Does this feel like a fair and sensible structure?

Tony Raymond: The fact that it is now the position that the Fraud Compensation Fund can pay schemes after a certain point is helpful. Your point is a fair one, in terms of the difficulty we have in circumstances where the scheme has insufficient assets to pay an appointed trustee and the company to which the scheme is linked is a shell entity.

That was certainly a difficulty that we encountered from the beginning. Could there be some legislative alteration to assist with it? I think so: I think you could have some kind of publicly funded trustee in that instance. But it has been enormously helpful that the Fraud Compensation Fund can now pay where it has received an application.

Maria Evgenidou-Wright: I think it is fair to say that prior to the court ruling that clarified that these schemes are eligible for compensation, there were a number of schemes where we were not able to make appointments for the reason that there were no assets in the scheme of the employer. They were not commercially attractive to any of the firms on our register. That is why there is now a backlog of schemes where we are looking to appoint now that we have a compensation route.



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Q149 **Nigel Mills:** Do you recognise the point I asked about? The risk is that costs get inflated because there is so much risk that I may not get anything back that I have to effectively do it on a portfolio basis, and the risk is that scheme members end up getting clobbered for more than they probably need to.

Tony Raymond: I am sure colleagues from PPF will talk to this. To the extent that the fees relate to the dishonesty, those are recoverable. We have a process when we appoint trustees on our register; they have to be fit and proper and have the requisite experience. We go through a tender exercise when we appoint trustees. We check the fees against that tender exercise originally. There are checks and balances.

Q150 **Nigel Mills:** Do those tenders show hourly rates higher than you would generally see quoted to administer a normal trustee situation?

Maria Evgenidou-Wright: I think it is fair to say that these types of appointments require different skills from a normal trustee appointment, and specialist skills. There are very few trustee firms that have the capability to do these appointments. Yes, the rates would be different; it is a different kind of work.

Q151 **Nigel Mills:** So we get to the happy situation where the Fraud Compensation Fund seem to be picking up 95% of the cost on this scheme, as I think we heard last week. It seems slightly generous that they get paid 95% of their costs and the scheme members do not get very much back of what they really lost. Are you happy with that effectively being how the system works?

David Taylor: May I step in on that? Thanks to the case in 2020, clearly the Fraud Compensation Fund can pay those costs. Those costs will not be to the detriment of the members. We will pay the hole in the pension scheme caused by the fraud and those extra costs to pursue the claims and so on. The 5% that I think Dalriada talked about last week is the ongoing costs of the normal scheme.

To pick up on the earlier point, there are a number of things that have happened since that court case that make it easier to get the independent trustees in. The first is the fact we know that their costs will be paid ultimately. We are also able to give an earlier indication of whether we think the case is a runner or not through the indication of the dishonesty test that I am sure we will talk about later. Also, DWP helpfully changed the regulations so that we can make payments as we go along, so people do not have to wait until the end for all their cash. I suspect Sara might want to say something about how we keep control of trustee fees as well.

Sara Protheroe: We are dealing with the regulators' agreed rates for this work, so we are working within their framework, but we always ask trustees to seek permission from us before they undertake any legal action or pursue legal fees. We want to understand that. As we are



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developing our own expertise, we find that that is less and less necessary. We can deal with much of it ourselves.

Similarly, when trustees are considering pursuing recoveries activity, which can be extremely costly, we get involved to advise on whether or not we think that that is a sensible use of funds. We seek to control the costs as far as we can as we move forward. Of that recent payment to the Norton scheme, for example, of £9.5 million, about 10% represents third-party costs and 90% will be for the benefit of the scheme and therefore ultimately the members.

Q152 Nigel Mills: Do you constrain how much money the trustee can spend communicating with scheme members? I think Dalriada suggested that it had to balance giving members the communication some members seemed to have wanted with how much it costs to do that.

Sara Protheroe: No, we do not impose constraints in that area. Clearly, the Fraud Compensation Fund moneys come from members of other occupational pension schemes, so we have to have regard to both the members who will stand to benefit from the Fraud Compensation Fund and those members who stand behind the levy.

We absolutely understand that members need to be kept well informed. We look at all communications that make reference to the Fraud Compensation Fund and we work with trustees, for example, on documents for them to send out to find out about moneys that members have received already. We are closely involved in communications and support communication activity with members.

Q153 Nigel Mills: Thank you. Ms Evgenidou-Wright and Mr Raymond, I think that Dalriada told us last week that there needs to be clearer reporting channels for schemes and advisers to flag concerns and allow for a better flow of intelligence to TPR. Do you agree that these reporting channels need to be improved or do you think they work?

Tony Raymond: It is something that we updated last year. We updated our web page about reporting. There are clearer signposts now as to where a trustee would need to report. We continue to promote our pledge campaign. I think that the Committee may have heard about this a few years ago: this is a campaign we support with the Pension Scams Industry Group, with the code of practice, and we are getting schemes to sign up to that pledge. The code of practice includes a large compendium of documents to support trustees with what to do in this type of situation. It includes templates, risk assessments and so on. We have had 640 schemes sign up to that pledge. We are particularly focused on the master trust area: 70% of master trusts have signed up to that pledge as well.

Q154 Sir Desmond Swayne: The Pensions Ombudsman found that Mr Garner had committed "multiple dishonest breaches of trust and maladministration". How do you justify to scheme members that you did



not pursue him for dishonesty in your prosecution?

Tony Raymond: The simple answer to your question is that we are led by the evidence and we took the case where we considered there would be the most likelihood of conviction. I will pass over to my colleague Maria to talk a bit more about that.

Maria Evgenidou-Wright: Thank you. Yes, TPR does prosecute for a variety of offences. Some of it is in pensions legislation, but we also pursue fraud prosecutions and we have had a number of successful convictions in that area. Of course, we have to focus our resources in the case where we think we have the best case for a successful conviction.

In this particular case, we investigated and, based on the evidence, we made the decision to pursue Mr Garner for pensions legislation-related offences. I was personally involved at that time and I can assure the Committee that we weighed the evidence very carefully and looked at all the information we had before making this decision. Ultimately, we determined that we had the best chance by going for the employer-related investment offences.

We stand by our decision. We think that it was the right thing to do in the circumstances, as was shown by the fact that we got a swift conviction in the case and Mr Garner received a suspended prison sentence. He was also disqualified from being a director and ordered to pay costs.

Q155 **Sir Desmond Swayne:** Am I wrong in my understanding that one can pursue a miscreant on a number of charges? Even if you are unsuccessful in sustaining a charge of dishonesty, you could still get him on the other charges.

What is so galling to members of the scheme is that their perception of the dishonesty—and indeed it was detected by the ombudsman—was obvious. It is a matter of incredulity that it was not pursued, even on the basis that you might not have been able to sustain it. You would have still got him on the other charges.

Maria Evgenidou-Wright: I understand why members will feel frustrated in this case. I have the greatest sympathy for the victims. My team and I can see at first hand the devastation that scams cause to people's lives. In all our cases, we talk to victims, we gather evidence from them and we take personal impact statements from them to put before the court when it is sentencing, as happened in this case. We made sure that the judge was aware of the impact that Mr Garner's offending had on the members. Indeed, the judge's comments in sentencing reflect that.

Ultimately, in the prosecuting decisions we make, we have to be led by the evidence. Also, as the Pensions Ombudsman mentioned, the standard of proof is different. They would have to show on the balance of probability that there was dishonesty. We would have to prove it to the criminal standard beyond all reasonable doubt.



Q156 **Sir Desmond Swayne:** Yes, but you could have had a go and you did not.

Tony Raymond: I am not sure I can add a great deal to my colleague's comments. The only thing I would add is that dishonesty does not necessarily equal fraud; I am sure the Committee is not suggesting that it does. There are other elements to that offence that we would need to establish to secure a conviction—for example, the intent of the party to cause loss or gain as a consequence of their abuse of position. Although obviously the ombudsman found that dishonesty, it does not equal the criminal standard or the offence itself of fraud.

Sir Desmond Swayne: Looking at what the judge said at the time, the absence of dishonesty was something that he emphasised. That was not part of the deal and the sentence would have been significantly different if dishonesty had been part of the indictment, but there it is.

Q157 **Chair:** Can I pick up on Sir Desmond's point? You could have gone with both, couldn't you? What would have been the downside of pursuing a dishonesty fraud prosecution alongside the employer-related offences prosecution?

Tony Raymond: It is incumbent on a prosecuting authority to consider the strength of the evidence as to the appropriate indictment that you lay. As I said, we looked at the evidence and took a view as to the appropriate case to take forward on that basis.

Q158 **Sir Desmond Swayne:** Can I move on to the Fraud Compensation Fund? Again, the Pensions Ombudsman made his finding of dishonesty with respect to Garner in June 2020. Why did it take the fund until March 2023 to reach an in-principle decision?

Tony Raymond: I assume that question is for colleagues to my right.

Sara Protheroe: In June 2020, we were still in the midst of a court hearing to clarify whether these kinds of pension scams could actually be eligible for compensation from the Fraud Compensation Fund. That clarity came in November of that year. It was not until September 2022 that we received evidence from Dalriada in respect of the Norton case. They had first drawn it to our attention back in January 2020, alongside 100 pension scam cases. For Dalriada, there was a question of prioritisation of those cases. As I say, they first presented evidence to us in September 2022 and we reached that decision in March 2023, six months later.

Q159 **Sir Desmond Swayne:** Are you saying that you cannot just accept a finding from the Pensions Ombudsman; you have to go through your own determination?

Sara Protheroe: Yes.

David Taylor: Yes, that is correct. It came up in the previous evidence session that there is a slightly different test for us to be able to pay out compensation. I think that it is important to flag that or to recognise that



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if there has been a prosecution, or if there has been action like the ombudsman's, of course we take into account the information that has been provided.

The test for us is that there are reasonable grounds to believe that there has been a dishonesty offence and that it has caused loss to the scheme. It is a slightly different test. We have found that it is not a hugely difficult test to satisfy in the cases that have come through. Of the cases that have actually applied to us in the big batch of cases that Sara talked about, of all the ones that have gone through that process, we have ultimately found that dishonesty test to be passed. It is not massively holding up that process. As Dominic said earlier on, there are a whole pile of hurdles that we have to get through, of which this is one. Yes, the test is slightly different, but I would not want to overemphasise the extent to which that makes the process difficult.

Since the 2020 case, where it was clarified that we would have to pay out on these claims and therefore the Government lent us money in order to be able to pay and all of that stuff, we have looked at all these different hurdles in the legislation and have tried to find practical ways to get through them as quickly as possible, given that it is such a terrible situation and the members have already been waiting so long by the time the application actually gets to us.

Sara Protheroe: To clarify progress, we have made the decision that dishonesty has taken place in 85 schemes so far. We have made 26 substantial payments, but where there may be top-up payments to come, and we have completed payments to two schemes that have now reached members, the Andavis and Speed-E-Cash schemes.

Q160 **Sir Desmond Swayne:** Last week we were told that it would be a significant improvement if the fund were able to start making payments much earlier, with recovered assets being assigned to the fund. Would that be possible without primary legislation?

David Taylor: I think you are referring to the question whether we have to wait for all recoveries into the fund, because we are a fund of last resort. The legislation says that we cannot pay out until all reasonable recoveries have been made. Again, that is not a sort of no-stone-unturned process. We apply the expertise we have internally to encourage the trustees to bring that to a conclusion quickly and not pursue pointless avenues.

We are currently working within the existing legislation to say that we can make it a condition of the money we pay out that if there are any further recoveries into the scheme, we get the money back. We are looking at the prospect of taking an assignment of those claims, which is along the lines that I think the witness last week was talking about. To formally stand in the shoes of the creditor, which I think is what was being suggested, would need a primary change, but I think we can



largely effect the same outcomes within the structure we are using at the moment.

Sara Protheroe: Perhaps I can give a practical example. On the Pablo schemes, where we first received evidence in February 2022, we were really helped by some convictions that the regulator had made against the trustees in that case for fraud by abuse of position. We made our dishonesty decision in August 2022 and paid out £13.2 million in November 2023. There are assets still due in from those cases, and we have made it a condition that should recovery subsequently come through, they will be transferred to the Fraud Compensation Fund. That demonstrates the point that David is making: that we are already in a position where this does not need to hold us up from getting that compensation through to schemes and subsequently to members.

Q161 **Selaine Saxby:** To what extent will the Fraud Compensation Fund put Norton pension scheme members back in the position that they would have been in if there had been no dishonesty?

Sara Protheroe: To a very large extent. We will pay out in full for the loss of those members.

Q162 **Selaine Saxby:** Is it fair that they will miss out on the growth in their pensions that would have occurred had they not been victims of a scam?

Sara Protheroe: We have to calculate in accordance with the formula set out in legislation. That allows for the loss of money that members have originally transferred into the scheme, but there is no allowance either for inflation or for investment growth. That would require a change to the law.

Q163 **Selaine Saxby:** As of 10 March, £9.4 million has now been paid to Dalriada. Why is it taking until November for scheme members to get the money that they are owed?

Sara Protheroe: One of the principles that we think is important is that members should not be overcompensated for their loss. They should not receive money twice over. We know that in the vast majority of these scam cases, members received some of the money from their funds when they first transferred. Now we need to understand the extent to which members have already received money from the schemes. Dalriada will now write to the members of the Norton schemes to establish that, and as soon as we have the facts, we will seek to make a top-up payment so that payments can move through to members.

Q164 **Selaine Saxby:** Given that this has been ongoing for some time, why has that work not already been done?

Sara Protheroe: That is a reasonable question. We would anticipate that, going forward, as soon as the Fraud Compensation Fund determines an act of dishonesty, trustees will get on with the work exactly as you describe. Unfortunately, the legislation in this area is not clear. The moral



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argument is, but the legislation has proved tricky. There have been extensive discussions between us and trustees to get comfortable with the right way forward. We have now reached a conclusion and that will enable the member write-round exercise to happen.

To give you an example, our biggest claim to date relates to the 5G scheme, which will perhaps claim up to £28 million and has 530 members. The write-round exercise is already happening for that scheme, even though we have yet to make the first payment. That is exactly what we would like to see going forward. There is no reason for delay once we have found that an act of dishonesty has taken place. As has already come up, legislation is now in place to allow us to make interim payments to trustees. If assets have been depleted, we can fund the costs of those write-round exercises once the decision of dishonesty has been reached.

Q165 Selaine Saxby: Given the evidence that we heard earlier this morning about the level of distress that this has caused the people waiting on this money, is there any opportunity to speed up this process, given that they now know that the money owed to them is sat with Dalriada?

Sara Protheroe: I think that in this particular case we will move as quickly as we can and we will support Dalriada every step of the way. We absolutely agree with you: if I were a member, I would think that there is no acceptable time now to wait until I receive my compensation. We will be working with them.

We have also been trying, at the systemic level, to find our way through legislation drafted 20 years ago, which is not ideal for these circumstances, and to be flexible and pragmatic in finding solutions so that we can move cases forward as quickly as possible. That is demonstrated by those 85 decisions of dishonesty I referred to, with the 26 payments and two payments in full.

We are now moving at pace through the pipeline of scam schemes. We committed in our strategic plan to completing the majority of cases by March 2025 and the remainder by March 2026, and we are on track to achieve that.

Q166 Chair: In the case of Norton, has the whole payment now been made to the trustee?

Sara Protheroe: We have paid the majority, but the maximum claim would be £12.9 million, so there are some additional funds there. This depends on the extent to which members had already received funds from the scheme, which will determine the extent to which we top up the £9.5 million that we have already paid.

Q167 Chair: Previously to the clarification that you have just told us about, the trustee was not able to seek this information about previous payments to members. Is that correct?



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Sara Protheroe: Had it been comfortable that that was the right thing to do, then yes, it could have sought that, ever since we reached our decision of dishonesty back in March 2023. However, because the law is unclear, there were some important discussions that we needed to have with the trustees to get it comfortable with the approach that needs to be taken. It is now comfortable and is proceeding.

As I mentioned earlier, on two cases such exercises have already been completed successfully. There was an excellent participation rate from members; members came back quickly and the money has reached members. We are confident that this is an approach that can work in practice.

Q168 **Chair:** When was this resolution of getting everybody comfortable achieved?

Sara Protheroe: Very recently.

Chair: In the last couple of weeks?

Sara Protheroe: Yes.

Q169 **Chair:** All right. Can I turn back to the Pensions Regulator? You explained to us that you had a whistleblowing report in 2013. You did not pursue it at that point. If you had decided then to pursue it, is it right that you would have had the basis for a prosecution on employer-related investment grounds as early as 2013?

Tony Raymond: Yes.

Q170 **Chair:** Having decided in 2013 to not pursue the matter any further, did you keep Norton on any sort of watchlist, or was the file closed and not opened again until you received the 2017 whistleblower report?

Tony Raymond: To clarify, the 2013 whistleblower report related to conflict; the 2017 whistleblower report related to employer-related investment. I am not aware that there was any active casework or monitoring of the scheme between those two dates.

Q171 **Chair:** If you had investigated in 2013, you would have found this employer-related business.

Tony Raymond: With the benefit of hindsight, of course, yes, we would have.

Maria Evgenidou-Wright: Our approach at the time was not to take our own prosecution, so we would have referred them to Action Fraud or other law enforcement agencies. We now have our own internal capability to take criminal investigations and prosecutions, but we did not have that until around 2018.

Q172 **Chair:** Can I ask about a couple of other points? Defined contribution master trusts are stringently authorised. They are unlikely, they say—and



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probably correctly—to trigger claims to the Fraud Compensation Fund, but if costs go up, the levy increase will fall disproportionately on them. Do you agree that the per-member levy means the burden falls disproportionately on mass market auto-enrolment schemes that are used by low earners?

David Taylor: We are aware of that debate. Ultimately, the maximum levels of levy for ordinary schemes and DC master trusts are set by DWP. At the moment, given the situation and the rate at which we are paying schemes out, we are simply charging the maximum levy that we are allowed to within those caps. Since 2022, the DC master trusts have paid a lower per-member rate precisely for the reason that you describe. Previously, it was the same all the way across. They have a good point that they are lower-risk. They are probably not zero-risk. The FCF was set up for frauds going on in otherwise perfectly legitimate, well-run schemes. Where the level is set for the relative levels for the two schemes is a question for DWP.

Sara Protheroe: It is perhaps worth mentioning, though, that we are looking at two cases in our existing pipeline that we believe are master trusts. While we would absolutely agree that they would generally represent low risk, that evidence shows that the risk is not non-existent.

Q173 **Chair:** Is there a case to be made to DWP that the current levy is unfair to DC master trusts?

David Taylor: I do not think that we would particularly have a view. As I say, from our point of view the critical thing is that there is enough levy to make the payments.

Q174 **Chair:** We understand that the regulator, together with the Fraud Compensation Fund, is putting together a list of orphaned schemes with no trustee that might make an application to the Fraud Compensation Fund. Can you tell us how many there are? Do you think you know about all of them, or are you looking for more? What is the picture?

Maria Evgenidou-Wright: Yes, as you say, we have been working closely with the Fraud Compensation Fund for the last two years, and with the Pensions Ombudsman, because it will be aware through member complaints of schemes that we might not have on our list. We have been building up this list of orphan schemes. We are currently aware—putting aside the ones that are already on the FCF pipeline that have been mentioned and that are already going through the process—that the regulator has 13 schemes it is actively investigating and looking to appoint a trustee for.

Q175 **Chair:** Is that on top of the 100?

Maria Evgenidou-Wright: Yes, that is on top of the 100. We are aware of at least another 24 orphan schemes without a trustee, and we will work our way through the list. We are recruiting additional resource. We had some money from DWP in relation to the Pension Scams Action



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Group to increase our resource in this area. We will use some of that to help us to work through the pipeline of schemes and appoint trustees to these legacy schemes.

To be clear, these are all old legacy scams where there are no assets in the scheme or the employer, and the only route is through compensation from the FCF. We are fairly confident that we know of most of them. However, we are constantly building our intelligence picture, and there are occasionally schemes that come to light.

Sometimes when Dalriada or another trustee is appointed to one scheme, they might find information about another scheme that is linked and that we did not know about. As you can appreciate, a lot of records are non-existent, or the processes for registration and so on have not been followed. Sometimes we find out about new schemes that we did not previously know about.

Q176 **Chair:** You mentioned 100 plus 13 plus 24, which is 137, but you are looking for more, or at least you are alive to the possibility that there could be more.

Maria Evgenidou-Wright: Yes, that's right.

Q177 **Chair:** Do you have a feeling for what the upper limit will be?

Maria Evgenidou-Wright: I am not expecting us to find a lot more. There could be a handful more. As to the earlier questions around current live scams, we are definitely not seeing too many of those. Obviously we have mentioned that there is a recent case, but it is the exception. We are not inundated with live scams at the moment.

Q178 **Chair:** How will you encourage professional trustees to take on these orphaned schemes? For example, Dalriada suggested to us that prior assessment of eligibility for the Fraud Compensation Fund might—

Maria Evgenidou-Wright: Yes, this is one of the things we are working on with the Fraud Compensation Fund. For some schemes, where we are able to investigate between us and uncover evidence that there has been dishonesty, the FCF can give a preliminary view that there would be dishonesty. That gives the trustees some comfort that they would be able to have their fees paid out of the Fraud Compensation Fund.

Q179 **Chair:** So that procedure ought to be in place?

Maria Evgenidou-Wright: Yes, this is what we are doing at the moment.

Q180 **Chair:** Are you working on it or is it in place at the moment?

Sara Protheroe: We have already used it in one case—Salmon Enterprises, which I think you may be familiar with. At the FCF, we did a high-level investigation between October and December of last year to provide some confidence to the regulator, and to any trustee firm that might consider taking the case on, that we think that there is a strong



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chance that dishonesty can be proven in the case. We let the regulator know the results of our investigation at the end of December. I think that it will be appointing a trustee shortly.

Maria Evgenidou-Wright: Yes, this is one of the 13 cases that I mentioned.

Q181 **Nigel Mills:** Has this changed the fee schedule for any prospective tenders because the risk of not getting paid drops away very substantially at that point?

Maria Evgenidou-Wright: That is an interesting point, and something that we will pick up as part of the tendering process. Ultimately, we have to allow a competitive process to take place, and we look at all the tenders that we receive to see what gives the best value for money. We do not just look at cost; we look at the trustee's skills and expertise. But it is a competitive process, so we will scrutinise the fees put forward as part of that process.

Q182 **Nigel Mills:** You would expect more people to tender if there is a much higher chance of getting paid. That would be a good test of whether the market is working.

Maria Evgenidou-Wright: I would hope so. It is a much better market if it is competitive in that way. We would hope that trustees on our register would come forward to take these appointments.

Q183 **Chair:** Maria, how long do you think it will take to work through that pipeline that you have described to us?

Maria Evgenidou-Wright: The 13 plus 24? It is difficult to say, because I do not know—particularly for the ones that we have not started investigating yet—what complications we might find in the evidence. It is a much quicker process in some cases, for example the Salmon case, because we already have the finding from the FCF. In other cases, we already have findings from the Pensions Ombudsman, so we can use its evidence and its findings, and it is a much quicker process then to do the appointment.

Q184 **Chair:** Do you expect to finish this year or next year?

Maria Evgenidou-Wright: I do not think it will be this year, but hopefully it will be within the next couple of years.

Chair: Within the next couple of years. Okay, thank you.

Finally, Sara, you mentioned what sounded like a very large case that I had not heard of before: 5G.

Sara Protheroe: That is correct.

Q185 **Chair:** Can you tell us what that is about?



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Sara Protheroe: That was actually the first case of this type of scam scheme that we became aware of back in January 2015. As I mentioned, it has 530 members, a claim of up to £28 million and 30 investments. It is a complicated case for us to make our way through, but we are almost there. We expect to make our first and most substantial payout on that case by June of this year at the very latest.

Q186 **Chair:** Was this a scheme that was set up to defraud people? What was the 5G scheme?

Sara Protheroe: I must admit that I do not personally know details of the scheme, but we could follow up with the Committee if you would like to understand it further.

Chair: We would be interested, given the scale of it, to know a bit more about what was going on there.

Sara Protheroe: Absolutely. I am very happy to do that.

Chair: Thank you. That concludes our questions. Thank you very much for joining us this morning and for the helpful answers that you have given us.