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Rt Hon Stephen Timms MP
Chair, Work and Pensions Select Committee
House of Commons
London
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16 July 2021

Dear Stephen,

Eligibility for the Fraud Compensation Fund (FCF)

Thank you for your letter dated 23 June regarding the eligibility of pension schemes to apply to the Fraud Compensation Fund (FCF).

As you note, the High Court ruling last November gave welcome clarity that 'pension liberation' or 'scam scheme' cases are likely to be eligible for the FCF (which is managed by the PPF). Typically, these cases entailed pension scheme members being incentivised to transfer their pension savings into an occupational pension scheme which itself was part of a scam.

The vast majority of these 'liberation' cases have had a trustee appointed by TPR or the courts. This is important as it is difficult, for both legal and practical reasons, for cases to be effectively progressed and ultimately for FCF compensation (where applicable) to be paid where there is no active and effective trustee in place. There are a small number of cases, which could potentially be eligible for FCF compensation, where no trustee has been appointed – these cases are now being reviewed by TPR.

In answer to your specific questions:

1. Do schemes with no trustee and no identifiable assets continue to exist as entities which can make a claim on the FCF?

Yes, it is possible for trust-based occupational pension schemes without assets and without trustees to, in principle, make a claim on the FCF. However, the way the FCF legislation is framed means a trustee needs to be in place in practice in order to progress applications and process compensation. For example, the legislation gives trustees an important role in regard to the following:

- Seeking recoveries for the scheme and consulting with the FCF in respect of those recoveries so that the FCF can decide on the 'settlement date' (which is the point at which the FCF considers the recoveries involve disproportionate cost or unreasonable timeframes) (s184 Pensions Act 2004).
- Receiving the compensation payment (s185 Pensions Act 2004). The FCF must pay the compensation to the scheme, it is then for the trustees to administer the scheme benefits in accordance with the scheme rules and legislation.

In practice, trustees also have an important role in regard to ascertaining and understanding the issues and losses suffered by the scheme. This is essential in order for the FCF to determine whether compensation is due. The FCF looks to work collaboratively with trustees in order to process applications pragmatically and constructively. It is ultimately the FCF that makes the decision, but as indicated, trustees have a role in information gathering and working with the FCF to bring cases to the right conclusion.

A pension scheme which has not been formally wound up will not cease to be a pension scheme just because it no longer appears to have trustees. In practice, it is unlikely that a pension scheme will cease to have trustees; it is much more likely that there are trustees that have been appointed under the trust, but who may not be discharging their duties appropriately. TPR is reviewing the position in relation to trustees where the scheme might be eligible for FCF compensation. There is more detail on this below.

2. Compensation from the FCF can only be paid directly to scheme trustees or managers. Will TPR revisit any decisions not to appoint independent trustees for schemes which may now be eligible for compensation from the PPF?

TPR is a risk-based regulator and is willing to re-consider its position when made aware of changes to the facts of a case. As an example, whilst TPR did not initially make a trustee appointment to the Capita Oak Pension Scheme, but when approached by the Insolvency Service following the dissolution of the former trustee, TPR then appointed a trustee.

There are now only a small number of schemes, that TPR are aware of, without TPR or court appointed trustees. Where there may be the potential of making a FCF claim TPR is reviewing these schemes, with a view to assessing whether a TPR appointment should now be made. The High Court ruling from last November may mean that some or all of these schemes may be able to make an application to the FCF.

Where there is an existing trustee to contact, TPR will consider writing to them where appropriate to make them aware of the FCF. It is then for the trustee to decide whether they will make an application to the FCF.

When scams cases started to emerge over a decade ago, TPR was faced with a very high volume of potential investigations. In order to target finite resources most effectively, TPR prioritised resources to the highest risk cases. TPR also took steps to liaise with other agencies to disrupt this activity particularly where TPR did not take action. There were several reasons why TPR may not have taken action; often another agency was already acting, or was best placed to act, or the scam was no longer actively operating, and TPR had to consider whether the risks to savers would be mitigated by appointing a trustee. TPRs ability to appoint trustees was at this stage also complicated by the fact that some schemes did not have sufficient assets to enable TPR to appoint trustee, since their fees would need to be paid by the scheme.

3. Is the PPF engaging with schemes which may be eligible for compensation from the FCF, but have no trustees?

The FCF's engagement is principally with TPR in relation to the known cases in this position.

Engaging with schemes without a trustee poses significant legal and practical challenges. Firstly, although applications can be made by members or other parties, typically they come from trustees. Where there is no functioning trustee in place, often it is TPR who bring these cases to the attention of the FCF in the first instance. Secondly, the absence of a trustee presents difficulties in drawing together the detail around the alleged fraud and pursuing any recoveries. Furthermore, ultimately the trustees receive and then administer any compensation payable because the FCF, by law, can't pay compensation directly to members.

The FCF therefore relies on TPR's governance process to appoint trustees. Once the trustee governance on the cases is resolved, the FCF will then, if an application is made, be able to substantively engage with the appointed trustees to progress these claims. The FCF are working collaboratively with TPR to that end.

The FCF has established an FCF Trustee Forum to engage with independent trustee companies appointed to potentially eligible schemes. As there are only a handful of these trustee companies that act for most of the eligible schemes, the FCF is, in effect, through the Trustee Forum, already engaging with the trustees who are ultimately likely to be appointed by TPR to schemes currently without a trustee. This engagement enables the FCF to better understand how many potentially eligible schemes are in the pipeline and highlight our expectations in respect of applications which may be submitted. Through this engagement, the FCF aims to streamline the process so we can progress prospective claims as efficiently as possible once a trustee appointment has been made.

4. Has the PPF included schemes without trustees in its estimated £350 million in compensation payments claimed as a result of the High Court judgment?

Yes, the estimated £350m includes all schemes where FCF claims are expected. It does not distinguish between those where active and effective trustees are in place and those where no trustees are in place.

I hope this information is helpful, and both the FCF and TPR would be more than happy to assist if you have any further questions.

Yours sincerely,



Charles Counsell
Chief Executive, The Pensions Regulator



Oliver Morley
Chief Executive, Pension Protection Fund



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Charles Counsell
Chief Executive
The Pensions Regulator

Oliver Morley
Chief Executive
Pension Protection Fund

23 June 2021

Dear Charles and Oliver,

The High Court ruling in Board of the PPF vs Dalriada means that many members of pension schemes used as a vehicle for a pension fraud may now be eligible for compensation. I understand that the PPF is working with schemes where an independent trustee was appointed to determine whether they are eligible for the compensation from the Fraud Compensation Fund (FCF). However, there appears to be additional uncertainty around cases, such as Salmon Enterprises, where no independent trustee was appointed.

Although I realise you are unable to comment on individual cases, I would be grateful if you were able to respond jointly to the questions below:

- Do schemes with no trustee and no identifiable assets continue to exist as entities which can make a claim on the FCF?
- Compensation from the FCF can only be paid directly to scheme trustees or managers. Will TPR revisit any decisions not to appoint independent trustees for schemes which may now be eligible for compensation from the FCF?
- Is the PPF engaging with schemes which may be eligible for compensation from the FCF, but have no trustees?
- Has the PPF included schemes without trustees in its estimated £350 million in compensation payments to be claimed as a result of the High Court Judgement?

I look forward to hearing from you.

Yours sincerely,

Stephen Timms