

Written evidence from the Fraud Compensation Fund NPS0006

Summary points

- The FCF is a fund of last resort which pays compensation to eligible occupational pension schemes where the employer is insolvent and the scheme has lost out financially as a result of dishonesty. Before FCF compensation can be paid, trustees of eligible schemes are responsible, by law, for obtaining any recoveries of value, to the extent that they may do so without disproportionate cost and within a reasonable time.
- In November 2020, we obtained clarity from the High Court, which confirmed that 'pension liberation' or 'scam schemes' could potentially be eligible to make a claim on the FCF¹. This was necessary as the legislation governing the FCF wasn't designed with this type of scam in mind, so it wasn't clear if these schemes were eligible. The applications that we are now in the process of assessing for possible eligibility to claim on the FCF are in relation to this type of historic fraudulent activity and scams, the majority of which started in the early 2010s.
- At the time of submission, in the case of the Norton Motorcycles Pension Schemes, the conditions for an eligible claim have not been met as there has not been a qualifying insolvency event. However, as with all our FCF cases, we are working collaboratively with the Schemes' trustees and are looking at ways to work flexibly and pragmatically to help progress to payment as quickly as possible. For instance, we have worked to reach a key milestone in the application - and have now reached an in-principle decision accepting there has been dishonesty.
- We are aware of a number of cases, which could be potentially eligible for FCF compensation, but are unable to progress an application as there are no trustees in place – the framing of FCF legislation means that a trustee needs to be in place in order to progress applications and process compensation. In these cases, we are reliant on The Pensions Regulator's (TPR) ability to appoint trustees before we can take applications forward.
- We are ready to support the industry, as required, in the event of eligible cases of dishonesty affecting occupational pension schemes, as well as to play a part in preventing future instances of pension fraud.

About the Pension Protection Fund (PPF)

The PPF protects the 10 million members of defined benefit (DB) pension schemes in the UK. In the event a sponsoring employer of a DB scheme becomes insolvent, if the scheme can't afford to provide its members at least PPF benefit levels, we will take it on and pay compensation to members on their lost pensions.

The PPF is a statutory corporation, established under the provisions of the Pensions Act 2004 (PA04).

We additionally manage the Financial Assistance Scheme (FAS) on behalf of the Department for Work and Pensions (DWP), which performs a similar role to the PPF, paying assistance to members of underfunded schemes which began winding up between January 1997 and April 2005.

We are also responsible for the Fraud Compensation Fund.

About the Fraud Compensation Fund (FCF)

¹ PPF v. Dalriada Trustees [2020] EWHC 2960 (Ch)

The FCF was set up under the PA04 and is run by the Board of the PPF. The FCF is a fund of last resort and pays compensation to eligible occupational pension schemes where the employer is insolvent, and the scheme has lost out financially as a result of dishonesty. However, the trustees of these schemes remain responsible for paying members' retirement benefits or securing them elsewhere.

The FCF is legally separate from the PPF. It is funded by a separate levy on all occupational DB and defined contribution (DC) schemes and has a separate Statement of Investment Principles (SIP) from the PPF's.

Most occupational pension schemes are eligible for the FCF². For information on the process for determining the eligibility of claims on the FCF, please see Annex A. For information on the requirements for paying compensation on claims on the FCF, please see Annex B.

Current position of and background to the FCF's involvement in the Norton Motorcycles Pension Schemes

At the time of submission, in the case of the Norton Motorcycles Pension Schemes ('the Schemes'), the conditions for an eligible claim are not yet met. Specifically, there has not been a qualifying insolvency event. However as with all our FCF cases, we are looking at ways to work flexibly and pragmatically (including looking at innovative solutions) to help progress to payment as quickly as possible and have worked with the trustees to reach a decision in principle to accept that the FCF dishonesty requirement has been met.

Key developments in the background to the FCF's involvement in the Schemes are as follows:

- We were first made aware of a potential application in relation to the Schemes, by the Schemes' trustees, in January 2020. However, at this point it was still unclear as to whether 'pension liberation' or 'scam schemes' could potentially be eligible to make a claim on the FCF.
- In November 2020, we obtained clarity from the High Court, which confirmed that 'pension liberation' or 'scam schemes' could potentially be eligible to make a claim on the FCF³. Obtaining this clarity was necessary in the Schemes' case as the Schemes were new creations which saw members that were unconnected to the Schemes' employers (Norton companies) transfer in.
- We carried out a review of the initial evidence submitted by the Scheme's trustees, Dalriada, in December 2022. We then requested further evidence in early January 2023 with ongoing exchanges until the last piece of evidence was provided on 16 March 2023. The case was presented to Acceptance Committee on 21 March 2023 following a final legal review.
- On 21 March 2023, we provided Dalriada with a formal 'in principle' decision that there are reasonable grounds for believing there have been scheme asset reductions attributable to dishonesty. This 'in principle' decision, as well as our guidance on the required next steps, will have given Dalriada the confidence to incur the necessary costs to establish an eligible claim. Work on potential recoveries has now taken place. An accountant has been appointed and is progressing the production of the net asset statements, which provide us with the figure for the maximum compensation payable to the scheme⁴. The net asset statements will be completed once the date for the scheme failure notice has been established - this is the date

² Exceptions to FCF eligibility are listed in [The Occupational Pension Schemes \(Fraud Compensation Payments and Miscellaneous Amendments\) Regulations 2005](#)

³ PPF v. Dalriada Trustees [2020] EWHC 2960 (Ch)

⁴ As set out at regulation 7 in [The Occupational Pension Schemes \(Fraud Compensation Payments and Miscellaneous Amendments\) Regulations 2005](#)

when the scheme will have an eligible claim. We have also discussed the need for an interim payment with Dalriada and are looking to progress this.

1. Does TPR have the powers it needs to prevent trustees acting dishonestly and in breach of their trustee duties, leading to the loss of pension scheme assets, as happened in the Norton case [according to the Pensions Ombudsman](#)?

a) Are the right regulatory arrangements [in place] to prevent a similar case happening again?

In our experience, we have seen that the powers TPR have to enable them to remove trustees are effective and we believe that they should act as a deterrent to trustees considering acting in breach of their trustee duties.

However, we believe that there may be more that could be done, without further regulation, to prevent dishonest acts by trustees, or others connected with pension schemes, taking place. Primarily, this could be achieved through raising awareness of how pension fraud and scams operate and by supporting members and other relevant parties to identify the early warning signs of trustees not being fit and proper. This might involve building on the success of TPR's Combat Scams Pledge campaign – which to date has seen more than 600 organisations make a commitment to tackle pension scams.

2. Could different regulatory arrangements have delivered a faster resolution of the Norton case, or a similar case?

We recognise that the redress landscape for pension fraud / scams is complex and may be confusing to those seeking to raise concerns. Within the financial services and pensions industries, there are a variety of fraud and pensions bodies responsible for different aspects of pension fraud / scams. As a result, member and trustees can find that they need to run the same set of facts through a number of these bodies before a monetary resolution for members of affected schemes can be achieved, and as scams continue to evolve, we anticipate that the experience of applicants is unlikely to improve unless action is taken.

In our submission in response to the Committee's call for evidence as part of its inquiry into DB schemes, we noted that:

"As scams have continued to evolve, when considering how to improve member outcomes in the future, we believe consideration could be given to what is the right form of compensation for scams recognising they can take place in a variety of ways. At present, the type of redress an affected member can receive is dependent on the way they've been scammed. Further thought could also be given to how industry can further deepen collaboration to address new types of pension fraud as they emerge."⁵

To this end, our FCF case team are already proactively engaging with TPR and TPO on a monthly basis. We have also had a number of meetings with FSCS and have discussed how we may assist each other, particularly with intelligence. We are awaiting the signature of a Memorandum of Understanding (MOU) to allow us to exchange this information. However, we believe that consideration should be given to developing Action Fraud's (the UK's National Fraud and Cyber Crime Reporting Centre) offering to members and trustees who wish to register their concerns about potential instances of pension fraud and scams. As the UK's national fraud and cybercrime reporting centre, Action Fraud could take on a clearer triage role. This - in addition to their existing role - might involve them working with their partners at the National Fraud Intelligence Bureau, to carry out an initial

⁵ committees.parliament.uk/writtenevidence/120650/pdf/ p.12

assessment of concerns and subsequently signposting those that raised the concerns to the appropriate compensatory body.

In addition to bringing greater clarity to the compensatory landscape to improve the member and trustee journey, we believe that there may be a gap in support on offer to victims of pension fraud / scams. For example, while the Pension Wise service provided by MoneyHelper may play a role in preventing members of schemes being defrauded / scammed, the support that they provide doesn't extend to helping victims to navigate the regulatory landscape. From our experience, it would be helpful if members of affected schemes were able to access support that helps them to better understand the complex regulatory and compensatory arrangements, that could direct them to the appropriate bodies and, where necessary, advocate on their behalf.

3. How could co-ordination with other (non-pension) bodies be improved?

We meet with TPO and TPR on a regular basis. We also meet with FSCS periodically and are expecting to meet more regularly going forward. We find these discussions useful for understanding the pension fraud / scam landscape, as well as to share information on relevant cases, where appropriate. However, we believe that improved information sharing with appropriate legislative gateways in place across a broader range of organisations, including public bodies and the police, could support in the earlier identification of instances of pension fraud / scams. This could play a significant role in preventing the fraud from taking place or, where it has already taken place, limiting its impact by ensuring that the relevant organisation(s) is aware of the fraudulent activity at the earliest possible point in time.

If Action Fraud and the National Fraud Intelligence Bureau were to develop their offering to potential victims of pension fraud / scams, as suggested in our response to question two, we believe that they would be well placed to facilitate higher levels of information sharing. In this capacity, they could alert the relevant bodies to developments in the pension fraud / scam landscape, who would then be better able to take the action needed to prevent further fraudulent activity from taking place and, where appropriate begin investigatory and enforcement action.

4. How could communications with scheme members of collapsed pension schemes be improved while at the same time protecting scheme assets?

Unlike the PPF where, in the event a sponsoring employer of a DB scheme becomes insolvent and the scheme can't afford to provide its members at least PPF benefit levels, the PPF pays compensation directly to members, the FCF pays compensation directly to pension schemes. These arrangements have implications for the information we have responsibility for and how scheme members are communicated with. For example, much of the information we hold in relation to FCF applications is trustee restricted information, and so, if we were to communicate directly with members, we would need to obtain trustee consent to do so.

As a result of the complexity that direct communication between the FCF and members of schemes poses, throughout the FCF's application and compensation process, the scheme's trustees retain responsibility to communicate with the scheme's members. Where we receive direct correspondence from members of schemes that have made or are due to make an application to the FCF, and where there is a trustee in place, we will refer the member back to the trustee as they are better placed to address member queries. We recognise the value of maintaining a two-way channel of communication with trustees throughout the FCF process and this has proven beneficial for improving the communications that scheme members receive. For example, where appropriate, we review communications that are to be sent out to scheme members by trustees and we are proactive in

engaging with trustees on any changes in the FCF process that may impact their application and / or claim.

We have occasionally been made aware of concerns regarding the timeliness of trustee communications – while this isn't a widespread issue across the claims that the FCF is working to process, it does highlight the challenges of trustee-only communications. Ensuring positive two-way communication between the FCF and scheme trustees enables us to rectify these issues in most circumstances. However, where greater FCF involvement in communication with scheme members may be appropriate (i.e. it doesn't muddy the waters in relation to the role of the FCF and the role of trustees) and beneficial, we would be willing to consider this.

In recent months we have refreshed the FCF website to improve the experience of members and trustees. As part of this refresh, we've started to publish a list of all the potentially eligible claims that we're investigating and that we've been notified about, including a status update and the contact details of the relevant trustee in each case.

5. How could the process for applying to the Fraud Compensation Fund (FCF) be simplified and sped-up?

How we're working to progress through applications and make the FCF process more efficient

In our 2022 – 25 Strategic Plan we set out that, over the course of the three-year period, we aim to have processed the majority of known (more particularly those related to pensions liberation or scam schemes) claims on the FCF. To support this, we have made significant operational improvements.

In relation to workforce, we have expanded our capacity to process cases in the FCF pipeline - the size of the FCF case team is now over five times the size it was in 2020.

To support a clear understanding of the FCF process, the FCF case team works closely with trustees to explain what the FCF requirements are and to support the trustees in providing what is needed – and each application is allocated a specific FCF caseworker. We also work with the trustees to understand specific issues that are affecting individual schemes, and, where appropriate, work with the trustees to find pragmatic solutions. This close liaison allows the FCF case team to plan work more effectively on pipeline cases.

For the current pipeline of historic "pensions liberation" and "scam scheme" cases, legislation is proving problematic as it wasn't drafted with these in mind. As a result, we are working flexibly and pragmatically to find practical ways around the issues that we face. For example, once we have determined that a claim is eligible for FCF compensation, we work closely with trustees to understand the position of their scheme – in particular, we work with trustees to establish whether any recoveries are attributable to offence, and if so, carry out a cost benefit analysis of recovering these assets. While we support trustees with this, it is their responsibility to obtain any recoveries of value, to the extent that they may do so without disproportionate cost and within a reasonable time. In some cases when scheme trustees are carrying out recovery actions, they may identify assets which have potential value or some value over the longer term (e.g. woodland assets), but the value of which wouldn't be recognised within a reasonable time. We are in the process of setting up a special purpose vehicle, managed by the PPF/FCF, to take over the asset that may yield a recovery in the future. This would enable the claim to be settled, whilst ensuring that the FCF and FCF levy payers benefit from any recoveries in due course.

We have also supported action by the Government to help trustees from schemes with exhausted assets to progress their applications to the FCF. Previously, trustees from schemes with no assets faced

significant challenges in moving their applications forward as they were unable to find funding to cover costs such as trustee, legal and accounting fees. The legislation introduced by the Government this year means that, where a scheme has exhausted its assets and that there has been, or may have been, dishonesty against the scheme for FCF purposes, the trustees can ask us to make an interim payment in respect of costs arising as a result of the application.

Avoiding double recovery

In some instances, it's possible that, in the context of pension liberation, some members of schemes with eligible claims on the FCF have already received money (albeit sometimes indirectly) from the scheme. We believe it is right that members of these schemes receive fair and equitable compensation and, therefore, it is our policy aim to ensure that members aren't overcompensated. To achieve this aim and so prevent double recovery, in these instances we expect trustees to write to their members to ask whether they were promised and received cashback, loans, incentives or other payments around the time of the transfer into the pension scheme. Where we have clear evidence or member confirmation of scheme assets having been indirectly released from the scheme to members, we will apply conditions to the compensation to take account of these confirmed amounts of indirect Scheme payments. Broadly there are two key conditions: (1) a reduction in the compensation payments due to the scheme; and (2) a requirement that trustees reduce the compensation distributed within the scheme to the relevant member.

Opportunities to improve the application and claims process of the FCF

While we are working flexibly and pragmatically to find solutions to the issues we encounter with legislation, this does slow down the processing of applications significantly. In particular, we are aware that our current approach to avoiding instances of double recovery is not optimal for trustees and could lead to compensation distribution issues for them. We believe that a simpler way through would be if there was more flexibility in the compensation calculation such that we could achieve the deduction that way – however, this would require change in legislation.

Although any legislative change is unlikely to come quick enough to make a material difference to our current pipeline of cases, we do think there is a case for reviewing legislation with a view to future cases of pensions fraud that may emerge and ensuring the FCF is equipped to deal with a wider range of potential claims. Based on our recent experience, reviewing whether the Board could be given more discretion and flexibility with regard to the insolvency requirement and the compensation calculation would be particularly useful. As situations involving dishonesty can interact with technical requirements like these in unforeseen and novel ways, it would be helpful to have more flexibility to navigate those scenarios in order to support good scheme and member outcomes.

6. What claims might the FCF expect in future and are there schemes which might be eligible but do not have the support to make a claim?

Since the 2020 High Court ruling⁶ clarified that occupational pension schemes set up as part of a scam were eligible to claim on the FCF, we've been processing and validating the applications received to date. Although historically claims have been low, following the High Court ruling, the fund is now facing large claims well in excess of the current funds available.

As at 30th September 2023, we were aware of 139 claims, of which:

- 1 claim has been settled in full;

⁶ PPF v. Dalriada Trustees [2020] EWHC 2960 (Ch)

- 13 claims have received their first payment;
- 37 claims have received confirmation that a fraudulent event has occurred;
- 43 are currently under investigation; and
- 45 are potential claims.

As set out in our 2022 – 25 strategic plan, we aim to have processed the majority of known claims on the FCF by the end of the three-year period (March 2025). Our subsequent goal is to process the remaining known claims by the end of March 2026.

The expected value of the claims that remain to be paid is £448.3m and the Government has taken action to ensure that the value of these claims can be met by increasing the maximum levy that the FCF can charge⁷ and by providing a loan facility.

It is, however, important to note that the applications that the FCF are in the process of assessing for eligibility to claim on the fund are in relation to historic fraudulent activity and scams, the majority of which started in the early 2010s. Despite this, we are ready to support the industry, as required, in the event of eligible cases of dishonesty affecting occupational pension schemes, as well as to play a part in preventing future instances of pension fraud.

Schemes requiring support to make an application to the FCF

The FCF looks to work collaboratively with trustees in order to process applications pragmatically and constructively. It is ultimately the FCF that makes the relevant statutory decisions, but trustees have a role in information gathering and working with the FCF to bring cases to the right conclusion. However, there are number of cases, which could be potentially eligible for FCF compensation, but are unable to progress an application as there are no trustees in place.

While it is, in principle, possible for a trust-based occupational pension scheme without assets and without trustees to apply for FCF compensation, the framing of FCF legislation means that a trustee needs to be in place in practice in order to progress applications and process compensation. This is because the legislation gives trustees a role in the following activities:

- Seeking recoveries for the scheme and consulting with the FCF in respect of those recoveries⁸.
- Receiving the compensation payment⁹. 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.

Where we encounter schemes without a trustee in place, we will typically face considerable legal and practical issues in progressing any application and paying compensation. Although applications can be made by scheme 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 our attention. The absence of a trustee also presents difficulties in collecting information about the alleged fraud and pursuing any recoveries and also for the payment of compensation as, by law, the FCF cannot pay this directly to members.

In these cases, we are heavily reliant on TPR's ability to appoint trustees – however, we understand that TPR faces some challenges when using its power to appoint trustees to these schemes. The timely

⁷ In 2022, DWP raised the maximum FCF levy charge from 75p to £1.80 a member for pension schemes, and from 30p to 65p for master trusts.

⁸ PA04, s184

⁹ PA04, s185

appointment of a trustee is crucial to our process and it is therefore important to us that TPR are resourced appropriately in order to be able to fulfil this function. Where no trustee is in place, we will always try to innovate in order to progress a potential claim as far as we can. In one particular case, we are actively engaging directly with some of the membership, with a view to gathering enough evidence to support the suspicion that an act of dishonesty has occurred. If successful, we will then re-engage with TPR with a view to getting a trustee appointed. Ultimately, however, we require a trustee to be in place in order to complete a claim.

We also run the FCF Trustee Forum, which meets on an ad hoc basis and supports our engagement with independent trustee companies appointed to schemes that have potentially eligible claims on the FCF. As there is a small pool of trustee companies that act for most of the eligible schemes through the Trustee Forum, we are, in effect, already engaging with the trustees who are likely to be appointed by TPR to schemes currently without a trustee. Through the FCF Trustee Forum we are able to better understand how many potentially eligible schemes are in the pipeline and make clear our expectations in relation to prospective applications. Through this engagement, we aim to streamline the FCF process so we can progress potential claims as efficiently as possible once a trustee appointment has been made.

Annex A

Determining eligibility for claims on the FCF

Under the Act, we are required to ensure that a number of conditions are satisfied before a claim becomes eligible for FCF compensation and can move through our process – these conditions can be summarised as follows:

- The scheme must be an eligible occupational pension scheme, and a HMRC registered pension scheme. The scheme employer(s) must be insolvent and have had a qualifying insolvency event (for example, liquidation).
- An application must have been made containing the required information, within the authorised period.
- There needs to be reasonable grounds for believing that there have been scheme asset reductions attributable to dishonesty.

In determining whether there are reasonable grounds for believing that there have been schemes asset reductions attributable to dishonesty, we will refer to relevant evidence that has been collected in each case. Evidence that we refer to includes materials from relevant investigations carried out by TPR and TPO (as well as determinations they make), court judgments and notifications of criminal convictions and, where appropriate to our decision making, we can rely upon such evidence. However, it's important to recognise that each of these organisations and the courts will make decisions at the end of investigations based upon specific legal requirements and evidential standards of proof – and the FCF too has its own.

PA04 sets out the following requirement which must be met in order for compensation payments to be made:

- “the value of the assets of the scheme has been reduced since the relevant date and the Board considers that there are reasonable grounds for believing that the reduction was attributable to an act or omission constituting a prescribed offence”¹⁰.

Additionally, regulations set out that the prescribed offence is “any offence involving dishonesty, and for these purposes dishonesty shall include an intent to defraud”¹¹.

In practice, our starting point is to review the evidence supplied and look at who was involved, and whether we consider they were dishonest (as dishonesty is the core element of all the offences involving dishonesty).

In regard to the offence involving dishonesty, we typically frame our assessment of the evidence supplied by reference to the requirements of either:

- the statutory fraud offences (for example, fraud by abuse of position if it is apparent that a trustee has actively, and dishonestly, been involved), or
- conspiracy to defraud (for example, if it is apparent that there are a number of individuals involved in dishonest agreements which prejudice member benefits).

We can consider other offences involving dishonesty, if relevant, but we often find that one dishonesty offence is adequate – insofar as it covers all movements of money from the scheme during the relevant period.

We understand that applications are typically made in the context of irregularities, unclear audit trails, and incomplete information – and we take account of this. Our aim is to work with the trustees to understand what has happened in regard to the scheme and who was involved, in order that we can assess whether there has been dishonesty. In our experience of assessing scam schemes, we find that the following information can be particularly helpful:

- Transfer brochures or presentations shared with members, promoting a transfer to the scheme – including details of proposed investment opportunities, any guaranteed returns, and statements regarding levels of investment risk.
- Member statements, as to what happened at the time of the transfer – including any details of who contacted them, any promises made, and any enticements offered.

Scheme bank statements, or other scheme financial records. In some cases, the scheme’s trustees may carry out their own investigations where alleged dishonesty has occurred. These investigations are complex and so can take time and require lots of resource as the subjects may go to great lengths to conceal their dishonesty – this comes at a financial cost and this is reflected in the fees charged by trustees.

Annex B

Requirements for paying compensation on claims on the FCF

Once the claim has met the eligibility requirements (including our assessment of whether the above dishonesty requirements are satisfied), there are several requirements, under the Act, that must be met before compensation can be paid.

Firstly, the trustees must appoint an accountant to carry out the compensation calculation as required by regulations. This calculation is designed so as to calculate, broadly, the dishonest loss that the

¹⁰ PA04, s182 (1) (b)

¹¹ The Occupational Pension Schemes (Fraud Compensation Payments and Miscellaneous Amendments) Regulations 2005, Regulation 3

scheme has suffered. However, in a scam deliberately designed to hide that money trail, the accountants' work can prove challenging.

The trustees are also required to obtain any recoveries of value, to the extent that they may do so without disproportionate cost and within a reasonable time. This may involve investigations and legal advice on the prospects of recovery and if appropriate waiting for recovery action to take place. We are required to consult with the trustees on the recoveries position, and we can only move towards payment once we have decided that further recoveries would be disproportionate or unreasonable.

We then determine the compensation amount. This is based on the compensation calculation (prepared by the accountant, as mentioned above), with any recoveries of value or interim payments deducted. We also decide whether any terms or conditions should be attached to the Fraud Compensation.

October 2023