

Written evidence from the Pension Protection Fund (NPS0017)

Norton pension schemes and the Fraud Compensation Fund inquiry

Thank you for your letter of 3 April 2024. We were grateful for the opportunity to give evidence to the Committee in relation to the Norton Pension Schemes and Fraud Compensation Fund. Below we have set out our responses to your questions.

Challenges in relation to the write out exercise

Often, in FCF cases involving pension liberation, members will have already received funds from the scheme. We believe it's important that members aren't compensated for payments they have already received, as this would be unfair on the occupational pension schemes that fund the compensation that we pay through the FCF levy. However, the FCF legislation was not drafted with this early release of scheme funds to members in mind – and there isn't a clear and explicit power in the FCF or wider pensions legislation that tells us how to reduce this compensation to take account of scheme funds that members have already received. This has been a challenge which we have discussed with DWP, and one that trustees have raised and discussed with us at length. We have navigated this challenge by implementing a solution which uses our broad power (in the FCF legislation¹) to attach conditions to the compensation. We typically attach a condition to:

- reduce the compensation to take account of amounts already received by members; and
- require the individual members' resulting DC benefits to be reduced accordingly.

We only make this reduction where we have reasonable evidence to support it. For example, we require a clear financial trail – which we rarely have because of the nature of fraud – or a confirmation from the member. Further to this, in the past it has been suggested we should obtain information on previous payments to members from HMRC, however, the information that HMRC would be able to provide would not give us the complete picture of the payments made out of the scheme. As a public body it is important that we use these compensation conditions in a reasonable way. That is why we work with trustees to confirm the amount each member has already received from the scheme. We have taken steps to support trustees to begin the member confirmation exercise earlier in the process, including making interim payments available to trustees for this exercise.

We have had robust discussions with trustees regarding the conditions that we set to ensure fair compensation is paid – including with Dalriada. Our solution involves a pragmatic and practical interpretation of the legislation – but we consider this is crucial in the context of dishonesty, as the facts and the law are unlikely to ever be a perfect fit. We have explained why we consider our approach to be reasonable (as outlined above) and have supported trustees' communication with members.

We are pleased to have reached agreement with Dalriada on member write out exercises commencing this year (including the Norton Pension Schemes), so that we can have the member confirmations we need to make the top-up payments. We anticipate that, moving forwards, as soon as we make our dishonesty decision, trustees will begin the member confirmation exercise.

5G Futures Pension Scheme

¹ Section 185(2) of the Pensions Act 2004: "A fraud compensation payment may be made on such terms (including terms requiring repayment in whole or in part) and on such conditions as the Board considers appropriate."

The 5G Futures Pension Scheme has been a complex case. The Scheme first made contact with the FCF in January 2015 to discuss the details of the case. At this time, it was unclear whether ‘pension liberation’ or ‘scam schemes’ were eligible under the legislation to make a claim on the FCF. However, despite this, we continued to liaise with the Scheme’s trustees and the Police, who were carrying out an investigation into the potential criminal elements of the case. Then, in November 2020, we obtained clarity from the High Court, which confirmed that these schemes could potentially be eligible to make a claim on the FCF.

In June 2022, despite it not being possible to obtain full details of the Scheme’s financial loss, the FCF was able to reach an initial dishonesty decision. However, further information was required from the Scheme’s trustees (Pi Trustees) in order to confirm the extent of the Scheme’s compensable financial loss and the FCF supported them in obtaining greater clarity on this. Following consideration of that further information, we wrote to Pi Trustees on 13 July 2023 to confirm our decision on the extent of the Scheme’s financial loss attributable to dishonesty.

Since July 2023 the Pi Trustees and their accountants have been working on the detail of the compensation calculation, as required by the regulations. This involves a detailed review of the Scheme’s financial records. This work is nearly complete, and the trustees have already written out to members to obtain information in relation to money they may have already received. We are now looking for confirmation that the trustees (who are in the process of obtaining legal advice) accept that the conditions we propose to attach to our compensation decision are reasonable, and we’re working to secure that confirmation as swiftly as possible. Given that other trustees have reached agreement with us, and the conditions we attach take the same form in all cases, we are hopeful that, having taken the appropriate legal advice, Pi Trustees will reach the same conclusion.

Pending Pi Trustees’ acceptance of our conditions, we expect to be able to make our compensation decisions and the first payment in the coming months, with a final payment to the Scheme later this financial year (2024/25). The FCF’s compensation will cover the payments to investments due to dishonesty, as well as scheme costs due to dishonesty². We hope that this provides some assurance to members of the Scheme that they will receive compensation.

Scheme background

The 5G Futures Pension Scheme was registered with HMRC on 23 May 2008 (and re-registered on 24 January 2013) and was registered with The Pensions Regulator (TPR) on 12 August 2009 as a DC trust-based occupational pension scheme.

Its principal employer is 5G Futures Ltd, which was created in May 2008, which remained dormant. The Scheme was set up by trustees Tudor Capital Management Limited (TCML), John Garry Williams³ and Susan Lynn Huxley. On 8 April 2010, the Regulator suspended TCML from acting as a trustee of any trust scheme pending the consideration of dishonesty offences against TCML. On 4 May 2010, the Scheme’s trust deed was amended to reflect the fact that TCML had resigned as trustee.

TPR issued a warning notice against the Scheme’s trustees Williams and Huxley on 4 February 2016 and on 5 July 2016, TPR’s Determination Panel granted an order prohibiting Williams and Huxley from acting as trustees of pension schemes. TPR’s Determination Panel found there had been a number of failures, including:

² We are conscious the Association of Pension Lawyers’ written evidence notes that “costs and expenses” aren’t covered by FCF compensation (paragraph 5.2.2). For clarity, we would add that while business as usual costs aren’t covered by FCF compensation, costs attributable to dishonesty are covered, including reasonable costs incurred in making an investigation into a claim.

³ Williams had a commercial relationship with TCML and had arranged for them to establish several schemes, including the 5G Futures Pension Scheme.

- a breach of investment duties
- a breach of the Financial Services and Markets Act 2000
- pension liberation
- fee failures and conflicts of interest
- misleading statements
- breaches of governance duties

TPR found that pension scheme members all over the UK were approached by introducers to the Scheme through cold calls and text messages. During the signing up process some members were promised financial incentives to transfer their benefits into the Scheme, such as lump sum payments (often described as loans or pension release) and high levels of investment return. Transfers to the scheme ranged in value from £4,000 to £250,000 and came from a wide variety of schemes. Until June 2012, there were 11 members of the Scheme. From 20 June 2012 to 19 June 2013, the membership grew by an additional 518 members and pensions transfers into the Scheme increased significantly – from approximately £700k to £20 million.

Applications for transfers into the Schemes were processed by Williams and Huxley through 5G Wealth Management Limited⁴ (5GWML). 5GWML received eight to ten years' worth of members' fees in advance, in addition to a percentage of the fund transferred. The trustees authorised payment of these monies to 5GWML out of the Scheme's funds, with a portion being paid to the relevant introducer.

The Scheme used the transferred-in pensions to make investments and to pay fees. All 33 investments made by the Scheme were executed by 5GWML, often on the basis of limited information as to what the investment entailed and without any meaningful due diligence, or investment advice being taken. As TPR's [determination notice](#) states, the majority of these investments were unregulated, with many being outside of the UK and European Union and, of the £16 million of Scheme assets invested, by July 2015 the investments were worth less than £1 million. In the view of TPR's Determination Panel "few, if any, of the investments made by the Scheme could ever be considered to be suitable investments for a pension fund".

For further information, TPR's [regulatory intervention report](#) provides an in-depth assessment of the Scheme and the events preceding its regulatory action.

We would like to assure the Committee that making sure schemes receive timely compensation is a priority for us and that is why we have worked flexibly and pragmatically to overcome the challenges posed by how the legislation governing the FCF was drafted. We are absolutely committed to processing outstanding applications and claims on the fund as expeditiously as possible and, to underline this commitment, we have set a target in our [2024/25 business plan](#) of completing 45 FCF cases this financial year.

April 2024

⁴ The directors and shareholders of 5GWML were the Trustees, and its company secretary was Ms Christine Williams (the wife of Mr Williams). Each held a shareholding of 33.33% in 5GWML. 5GWML was placed into Creditors' Voluntary Liquidation on 10 October 2013.