Report under s89 of the Pensions Act 2004

Issued by The Pensions Regulator (the regulator) in relation to the LPA Umbrella Trust, LPA Umbrella Trust 2, LPA Umbrella Trust 3, LPA Umbrella Trust 4, The Palace Pension Fund (collectively the Schemes).

Background

The regulator was concerned that the Schemes were established with the main purpose of providing a cash payment to the member rather than providing retirement benefits, and that this constituted misuse or misappropriation of pension scheme monies within sections 15 and 16 of the Pensions Act 2004, and pension liberation as defined in section 18 of the Pensions Act 2004.

Following an investigation, the regulator commenced High Court proceedings in July 2013 against A Admin Ltd, Warwick Pensions Administration Ltd, Lincoln Pensions Administration Ltd, Baxendale Walker LLP, and Paul Baxendale-Walker (the Defendants).

November 2014

The Pensions Regulator

The regulator was concerned that the Schemes were represented:

- to members and potential members as a legitimate means of releasing the entire cash value from their existing pension fund(s) with the intention that the member would have immediate access to their pension assets to spend as they wished; and
- to the trustees and providers of ceding schemes as being arrangements under which a cash equivalent transfer value would be applied to acquire transfer credits for the member.

The way in which the model was intended to operate, as stated in marketing material presented to members, was that members could:

- create a company under their control which would become their employer under one of the Schemes
- transfer in the value of their existing pension benefits; and
- then surrender their rights under the Scheme, creating a surplus in the Scheme which would belong to their company as employer.

Members were told this surrender was lawful because the company would hold the surplus on trust for a separate 'family trust' providing benefits for dependants.

The surplus which was refunded to the company was then typically loaned by that company to the member, on terms which in practice required neither payment of interest on the loan nor repayment of the capital amount until the member's death, when the sums due became a liability of the member's estate. This was in effect an attempt to encourage individuals to conclude that they could access their pension assets as cash without paying tax.

This model has seen over 1,400 members transfer over £134 million from occupational and personal pension schemes between August 2011 and June 2013, with fees of 11% (totalling more than £14.7 million) charged in connection with these transfers. It proliferated at such a speed by being marketed by a network of introducers, who attracted individuals by direct marketing, including cold calling.

Regulatory action/Legal proceedings

The regulator commenced High Court proceedings by applying for an injunction in order to stop the use of the model and prevent any further transfers being made to the Schemes. This action resulted in the Defendants providing undertakings to the court that they would not continue to operate the model (including operation by participating, franchising, promoting and disbursing any sums) until a full trial of the regulator's claim had taken place.

At a hearing in January 2014 the court decided that it would deal first with three preliminary issues of pensions law, namely, the regulator's contentions that:

a. the documents establishing and operating the Schemes were so unclear as to the benefits to be provided that they did not create a valid trust, and as a result the Schemes could not validly receive the transfer payments

b. if the Schemes were valid, they created rights for the member which could not be surrendered except in circumstances set out in the Pensions Act 1995; and

c. a surrender of the rights described under b) purportedly to provide benefits for dependants must be in exchange for rights under the same scheme (which would preclude a surrender giving rise to the artificial creation of a surplus to be applied outside the scheme).

Following a court hearing on 26 and 27 March 2014, Mrs Justice Rose considered these three legal issues and found in the regulator's favour on all three. The effect was that the supposed legal loophole on which the Schemes were based did not exist and the Schemes could not and did not work in the way members and potential members had been told they did.

Shortly before the hearing, the Finance Act 2004 was amended. Although these changes to tax law mean that it is unlikely that the model would continue to operate after 20 March 2014, the court did not accept the Defendants' arguments that these changes were relevant to the issues of pensions law which were to be decided at the hearing.

The full judgment can be found at **www.bailii.org/ew/cases/EWHC/Ch/2014/1378.html**.

Outcome

Further to the judgment, the Defendants have agreed to discontinue each Scheme by a deed of dissolution. This involves a declaration that the Schemes are wound up, that the relevant Defendants no longer act as trustees of the Schemes, and that the Schemes are not able to accept transfers from any other pension schemes.

It is possible that members of the Schemes may incur tax charges should HMRC take the view that an unauthorised payment has been made. The regulator’s concern was to ensure that future members were not encouraged to enter into these Schemes and risk losing their pension assets on the basis of statements about pensions law which have been proved to be incorrect. These proceedings leave the way open for those members who consider they have suffered loss to take action.

General

This case demonstrates the regulator’s commitment to tackle models that pose a systemic risk to members’ pensions, and which may, as a result, undermine confidence in the pensions system generally.

The proceedings have also resulted in a judgment which provides a clear statutory interpretation of section 91 of the Pensions Act 1995.

Information and material in relation to the regulator’s ‘Scorpion’ pension scams campaign can be found at www.tpr.gov.uk/pension-scams.

The regulator recommends that any members who have transferred their pension benefits to one of the Schemes, and have any questions as a result of this report and press release, should contact The Pensions Advisory Service on 0300 123 1047 or access their website at www.pensionsadvisoryservice.org.uk for impartial information and guidance in line with the scams campaign.

The regulator's consideration and approach to individual cases is informed by the specific circumstances presented by a case, not all of which are referred to or set out in this summary report.

This summary report must be read in conjunction with the relevant legislation. It does not provide a definitive interpretation of the law. The exercise of the regulator's powers in any particular case will depend upon the relevant facts and the outcome set out in this report may not be appropriate in other cases. This statement should not be read as limiting the regulator's discretion in any particular case to take such action as is appropriate. Trustees and other parties should, where appropriate, seek legal advice on the facts of their particular case.

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LPA Umbrella Trusts and Palace Pension Fund