

# news

## New moves to curb pension liberation

So-called "pension liberation" or "trust busting" sounds dramatic but what does it mean? And what are trustees expected to do about it when making transfer payments? Opra recently published Update 8 to help trustees identify pension liberation schemes and offer guidance on actions if suspicions are aroused. It has also revised its leaflet aimed at transferring members. Here we sum up some of the issues.

### The scam

A quick recap

Pension liberation or trust busting scams work by:

- members being enticed to transfer their benefits to sham schemes set up by "liberators";
- the payment of instant cash but at the price of a 20-40% commission (some members lose all of their benefits);
- members receiving fake employment contracts (there being no legitimate employer or business) to help cover the liberator's tracks.

### Trustees' transfer duties

The Pensions Act 1995

Under the Pensions Act 1995, trustees must:

- provide a statement of cash equivalent within 3 months of a member's request;
- if the member wishes, generally make a transfer payment within 6 months of the statement being issued.

### The Inland Revenue

"Improper Transfers:  
Trust Busting"

Published in May 2002, Inland Revenue Update 132 generally requires:

- transferring trustees to satisfy themselves of the receiving scheme's approval;
- receiving trustees to provide transferring trustees with authorisation to allow them to check this directly with the Inland Revenue;
- cheques to be made payable to the receiving scheme or relevant life office.

Failure to comply with Update 132 may jeopardise scheme approval or have other tax consequences.

### Opra Update 8

Suspicious features

Opra identifies several features common to liberation schemes such as:

- "unusual transfer activity";
- odd-looking scheme documents (e.g. much information is missing);
- the receiving scheme is newly established and its approval dubious;
- the employer has only recently registered as a company;
- the independent financial adviser ("IFA") may not be authorised;
- payment is requested by cheque (to conceal account details).

## Opra Update 8

### Recommended action

Trustees with misgivings about a transfer should:

- ask for a copy of the member's new employment contract (and possibly their last two payslips?);
- discuss the member's new job with them;
- follow the procedures in Update 132 (which vary according to scheme type);
- check the employer's status with Companies House and the IFA's authorisation with the Financial Services Authority;
- pay by bank transfer (this will help identify the recipient).

## Pension liberation

### Changes on the horizon

- Trustees who make transfers to bogus arrangements may not obtain a valid discharge of their liability.
- But proposed changes to the Pensions Bill 2004 look set to provide the Pensions Regulator with power to:
  - restrain a "liberator's" bank account if it believes that liberated money is held there;
  - apply to the Court for a restitution order.

## Conclusion

Ultimately, if having made checks trustees still harbour doubts, they should delay payment and contact the Inland Revenue/Opra. Helpful websites include:

- Companies House: <http://www.companieshouse.gov.uk/>
- Financial Services Authority: <http://www.fsa.gov.uk/>
- Inland Revenue: <http://www.inlandrevenue.gov.uk/>
- Opra: <http://www.opra.gov.uk/>

This edition of Sackers Extra News is one of a series produced by our Litigation and Dispute Resolution Unit, providing information to help you prevent or manage disputes. If you would like further information about pensions liberation please contact:

**Katherine Dandy** Partner [katherine.dandy@sacker-partners.co.uk](mailto:katherine.dandy@sacker-partners.co.uk)  
**Caroline Collins** Solicitor [caroline.collins@sacker-partners.co.uk](mailto:caroline.collins@sacker-partners.co.uk)

**SACKER**<sup>S</sup>  
& PARTNERS

Solicitors specialising in pensions law

29 Ludgate Hill  
London EC4M 7NX  
Tel 020 7329 6699  
Fax 020 7248 0552

[enquiries@sacker-partners.co.uk](mailto:enquiries@sacker-partners.co.uk)  
[www.sacker-partners.co.uk](http://www.sacker-partners.co.uk)

Nothing stated in this document should be treated as an authoritative statement of the law on any particular aspect or in any specific case. Action should not be taken on the basis of this document alone. For specific advice on any particular aspect you should consult the usual Solicitor with whom you deal. © Sacker & Partners August 2004