

## High Court guidance on statutory transfer rights

In a recent case concerning a transfer request to a suspected pensions liberation vehicle, the High Court has provided further guidance on when members will have a statutory transfer right.

### Background

A pension scheme member has a statutory right to transfer his or her benefits to an occupational pension scheme if, among other things, the transfer payment will be used to acquire “transfer credits” in the receiving scheme. “Transfer credits” are defined as rights allowed to an “earner” under the rules of the receiving scheme by reference to the transfer payment. An “earner” is defined as a person in receipt of any remuneration or profit (“earnings”) derived from an employment.

### What happened in this case?

The member applied to transfer her benefits under a personal pension scheme to an occupational pension scheme. The scheme provider refused to make the transfer on the grounds that it was not satisfied that the transfer payment would be used for the purpose of providing appropriate pension benefits under a registered pension scheme.

The member complained to the Pensions Ombudsman who rejected the complaint. The Ombudsman held that the statutory definition of “transfer credits” implicitly meant that the individual should have earnings from a receiving scheme employer, not merely earnings from a potentially unrelated source. As the member did not have earnings from a receiving scheme employer, she would not therefore acquire transfer credits in the receiving scheme and so did not have a statutory right to make the transfer.

The member appealed to the High Court which upheld the appeal. The Court held that under previous case law, it had to be sure of three matters before it could read additional words into a statutory provision:

- the intended purpose of the statutory provision in question;
- that by inadvertence the draftsman and Parliament have failed to give effect to that purpose in the provision; and
- the substance of the provision that Parliament would have made (although not necessarily the precise words that Parliament would have used), had Parliament recognised the error in the provision.

Having considered the relevant statutory provisions as originally enacted and as they stood at the time of the member’s transfer request, the Court concluded that it was not satisfied as to any of these three matters, and that it was not therefore open to it to read additional words into the definition of “transfer credits”.

### What does the decision mean for schemes?

This decision is likely to mean that most members will satisfy the requirements for a statutory transfer right relatively easily – effectively, they will just need some employment-related earnings. Absent any other reason to refuse the transfer, schemes will be obliged to make the transfer even if they are concerned that the receiving scheme is a pensions liberation vehicle. Schemes should therefore ensure that they provide members requesting a transfer with information on the risks associated with pensions liberation.

If you have any questions about the issues raised in this Legal Update, please contact:

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