In depth: The lasting effects of 'pension liberation'

Laura Blows hears the devastating impact the Ark pensions scandal continues to have on Sue Flood, and how this experience has motivated her to work with the government and the pensions industry to become a 'victims' champion'

"I look back and think, how the hell did this happen? You do all your research, you get a regulated adviser, you do all you can and you still end up losing everything and living this nightmare."

Moving from the UK to Spain should have been the start of an exciting new life for Sue Flood and her family. To help fund this, she and her partner sought FCA-regulated financial advice about her BBC DB pension savings and her partner's Standard Life personal pension.

When looking for an adviser, "we wanted cover of the FSA, now FCA, and having seen an advert in a newspaper about an 'award-winning company', we thought they fitted the bill", she says.

Following conversations with the advisers, one of whom Sue noted had been a government adviser, Sue and her partner believed they could have some of their pension money early, "with no adverse risk or consequences, with no downside to it at all. It was a no-brainer for us". She was not aware or informed of the minimum age for pensions access rising from 50 to 55 in 2010, she adds.

Initially, they were advised to transfer to a QROPs but "we refused because we hadn't been out of the UK for five years, so we would not be allowed to do so", Sue explains.

"The advisers then discussed transferring to a UK personal plan, which we thought, okay, fine. We had no wish to transfer our pensions, we had no wish to get involved at all, but this was at the suggestion of the advisers."

Being reassured by its registration by HMRC and The Pensions Regulator (TPR), Sue and her partner agreed for their pensions to be transferred into a personal UK pension scheme, at a combined figure of around £230,000.

The transfer into Ark

However, "it turned out to be an occupational Ark scheme and not the personal plan that I had thought I was entering into", she states.

Set up in 2010, the six Ark pension schemes promised its members the ability to access up to 50 per cent of their pensions before the age of 55 as a cash lump sum, through maximising pensions value arrangements (MPVAs) structures. This allowed members to make loans to members of other pension schemes, known as pension reciprocation plans (PRPs), which is then paid back to the PRP provider when the scheme member is eligible to claim their benefits.

The members were told that the rest of their money was to be invested in 'land-based investments'.

"Early on in this process, I had some concerns," Sue states, describing it as a "gut feeling that something was wrong".

"I started to feel greatly uneasy and it made me extremely ill. I was getting stressed because it's our life savings, it's life changing, and we began to worry that we were the victims of fraud," she explains.

Sue had requested the paperwork for the transfers, but, after weeks with no success, "this led me to think, 'God, there's something seriously wrong here'". Therefore, she employed the services of a lawyer to rescind the contract.

The lawyer's letter to Sue highlighted the lawyer's concerns. Their difficulty contacting Ark staff, along with Ark's website only having been registered in the previous year and not being active, made them consider this to be potentially a case of pensions fraud.

"That is really what tipped the balance for me and made me ill because I thought, this is definitely gone, this money, £230,000 approximately, has gone down the pan," Sue states.

The lawyer suggested Sue call Action Fraud, and involve BBC and Standard Life's administrators, which she duly did, as well as informing TPR.

Sue found that the BBC pension scheme's administrators had even looked into the legitimacy of the Ark scheme.

According to Sue, the BBC pension scheme's administrators contacted Ark's administrators, who gave their HMRC registration number. The BBC's pension scheme's administrators then rang the HMRC pension service helpline to query

subsequent tax charge, "the biggest thing that made me feel sick was the life-changing amount of money that was lost, because we'd never been dependent on anything or anyone for money before," Sue says.

"I'd worked since I was 16 and I'd never, ever claimed benefits. Not that I'm being disrespectful to people that do, I just haven't. I've always worked. Those 12-hour days at the BBC studios, etc., it was hard graft.

"I tried to take as much overtime as I could when I was working on the shows. I was diligently saving. That's the thing, I was trying my best to not rely on the state. I think when I was left in this situation, that's what I couldn't cope with. That is why I got very ill because I couldn't envisage coping on benefits.

"I had always tried to do everything 'right' and all of a sudden it all went drastically wrong. I think that's what I couldn't cope with," she explains.

The impact was not purely financial. Sue sadly had a nervous breakdown as a result of the stress.

"The hardest part of it is the effects it had on my family," Sue states, through tears. "It's something I can never take away for them, those awful memories of that time. They saw a very strong individual, someone who was a career person at the BBC for 17 years, they saw that person gone in an instant."

The stress caused many intense family arguments, "which was extremely difficult for my two children in their teens".

The result was Sue separating from her partner and returning to the UK.

"When I returned from Spain, I was frightened to spend money on anything, even for basic things like putting the lights on or spending money on food. My kids couldn't work out what was going on, and nobody was really there to help us," she explains.

Thankfully, she and her partner have since reconciled. Upon them both returning to the UK, instead of planning

Ark's legitimacy, who confirmed the scheme was registered.

Despite this, Sue and her partner still wanted to rescind on the transfer. According to Sue, this was agreed with Ark's trustees, at a cost of 5 per cent, Ark's administration fee.

However, before this could occur, it transpired that TPR was concerned that the Ark schemes were an example of a 'pension liberation' – which typically offers the saver access to their pension money before age 55, usually through a loan arrangement, without mention of the possible tax bill that may arise from this unauthorised access, and placing the rest of the money in risky investments with high charges.

As a result, in May 2011 Dalriada Trustees were appointed by TPR to take over the running of the Ark schemes, and in December 2011 the High Court ruled the Ark schemes as "fraud on the power of investment".

The High Court determined that the PRPs between the Ark pension schemes' members were 'unauthorised payments' under the Finance Act 2004 and cannot be a way of obtaining early access to pensions money before age 55. As such, members, and the schemes themselves (by way of Scheme Sanction Charges), were liable for tax charges.

Under HMRC rules, these 'unauthorised payments' are taxable at a rate of 55 per cent, in addition to the fees already charged by the PRP.

This meant that despite trying to return the money they had received, Sue and her partner were now subject to a significant tax bill.

"I'm trapped by a system that takes me to the tax tribunal, even though the Ark schemes had been recognised as 'fraud on the power of investment', which is what my lawyers told me from the start and we tried to resolve straight away," Sue says.

Financial and emotional impact

Considering the consequences of Ark's 'fraud on the power of investment' and their future retirement, they had to start again by building up a business selling recycled hardwood pallets to local companies.

"My partner works extremely hard, 12-hour days, every day of the week," Sue says. "We're at an older age now, he's 60 odd and I'm nearly 65. We've both worked extremely hard but some days you don't even want to get up; you just want to hide under the duvet."

However, we have "got ourselves back into the swing of things" she adds. Yet the Ark situation still looms over them. As Sue says: "Its 12 years on and we still do not have this resolved – it just is like a living nightmare."

In March this year, Dalriada Trustees' appeals against tax charges levied by HMRC for members of Ark Pension Schemes were unsuccessful. HMRC and Dalriada disagreed on how the tax charges following the High Court's 2011 ruling should be calculated, with the tax tribunal ruling resulting in "significant tax consequences for both the members personally and the schemes themselves", the trustee firm stated at the time.

In its letter informing members of the Ark Pension Schemes, Dalriada highlighted that the tribunal's decision centred on the application of the law as it stands and "the judge recognised that, in applying the law, this resulted in unfavourable (and, in some cases, unfair) outcomes for members".

The tribunal has left it to HMRC and Dalriada to attempt to agree the amount of unauthorised payments attributable to each member matched with the recipient of an MPVA loan.

The tribunal also concluded that it was also possible for tax to arise in accordance with Dalriada's proposed approach, so on the payment a member received, resulting in members potentially being taxed twice.

"As somebody who tried to do everything to avoid being in this situation prior to TPR's intervention and even while they were investigating these individuals, and as someone who was concerned before the government woke up *[to the potential for the Ark schemes to be pension liberation]*, I found it abhorrent that I should even be in the tax tribunal," Sue says.

However, she appreciates HMRC's viewpoint, that "they are justified in applying the law".

"You can understand that they see that people obtained monies and they are due to pay taxes. Nobody would disagree with that, albeit that we were all advised to do that by this highly qualified professional," Sue says.

"I had always tried to do everything 'right' and all of a sudden it all went drastically wrong. I think that's what I couldn't cope with... The hardest part of it is the effects it had on my family"

"Nobody disputes that. I just think it's extremely unjust to levy such horrendous, unauthorised payments, penalties, scheme sanction charges, and additionally the interest, which has been accruing now for 12 years."

Sue is still unaware of what her and her partner's final tax bill will be, as Dalriada is still determining this with HMRC, she says.

A victims' champion

However, she is keen to focus on the positives, she says, having become a 'victims' champion' to highlight the distress caused by pension scams.

To that end, she has spoken with TPR, the FCA and various MPs about the impact of pension scams, has given evidence to the Work and Pension Committee and is working with the All Party Parliamentary Group on Fair Business Banking. Sue is also providing evidence to the independent parliamentary group on investment fraud.

Within the pensions industry, Sue sings the praises of both Pension Scams Industry Group chair, Margaret Snowdon, "who is absolutely brilliant, a wonderful lady who has championed our cause" and Transparency Task Force founder, Andy Agathangelou, of whom she works with, "who understands the situation and has given us a voice in the darkness".

Sue highlights the amount of work that stills needs to be done in the fight against pension scams, particularly, she says, HMRC's tax treatment and the ease in which companies and pension schemes – legitimate or not – can become registered and therefore seem 'official', along with the need for greater scam warnings with pension communications and better victim support.

She is pleased to hear of the regulations that mean suspicious transfers can now be blocked by pension scheme trustees and managers, using a 'red flag' prevent a transfer request, and an 'amber flag' to pause a transfer until the member can prove they have taken specific scam guidance from the Money and Pensions Service.

"That's absolutely what everybody needs, that the onus shouldn't just be on consumer awareness," she says.

As her experience "was possibly one of the first instances of pension liberation", Sue says that she did not receive the level of sympathy from those within the pensions industry, and its regulators, "that I think I would've received today".

"We're a long way from 2011," she adds, "but still there's just no end to pension scams and the lasting effects they have on people. I think that's the cruellest treatment of all."

Written by Laura Blows