

## **The complaint**

Mrs M, through a claims Management company (CMC), has complained that The Equitable Life Assurance Society (EL) allowed the transfer of her personal pension when it shouldn't have done. She feels that EL didn't carry out the required due diligence when processing the transfer request and as a result she has suffered financial loss.

## **What happened**

Mrs M has said that in 2015 she was cold called by a firm offering her a free pension review. Her CMC has said this was initially Capital Facts Limited but Mrs M has stated the firm was First Review Pension Services (FRPS) (both these firms were unregulated at the time but were linked in that they appear to have been controlled by the same people). Capital Facts then contacted EL in March 2015 requesting information about Mrs M's pension which was provided on 17 March 2015.

The CMC has said Mrs M was then visited at her home on a number of occasions by a representative of FRPS. Mrs M was advised that she should consolidate the pension she held with EL along with another one held with a different provider. She was told that by doing this and transferring her pensions to the Optimus Retirement Benefit Fund (the scheme) which was a Qualifying Regulated Overseas Transfer Scheme (QROPS) she would make significantly more in the fund than if she left her pensions where they were. She says she was also told she would be able to retire at the age of 60 without having to make any further contributions to the plans and that she would be able to access her tax free cash sum when she turned 55 (in one years' time) which she assumed was not possible without transferring the pensions.

In November 2015 EL received a letter from Mrs M authorising it to deal with Optimus Pension Administrators Limited (OPAL), the scheme manager, and Integrated Capabilities (Malta) Ltd (IC). The transfer request forms were returned to EL by OPAL at which point because of the involvement of Capital Facts which was on a EL "watchlist" EL asked Mrs M to complete a further questionnaire to ascertain the reasons for, and her understanding of, the transfer.

On 12 April 2016 EL confirmed Mrs M's pension had been transferred to the scheme. Within the QROPS the funds into which Mrs M was invested included speculative, illiquid and overseas investments, some of which have since been suspended.

Mrs M was 56 at the time of the transfer. She was, and remains, a resident in the UK.

Mrs M's CMC has said, in brief, that EL didn't pick up on, and tell Mrs M about, a number of warning signs relating to her transfer. These included the initial cold call that prompted the transfer in the first place, the presence of unregulated entities in the transfer process, and the promotion of unrealistic investment returns. Mrs M's representatives pointed to guidance published by The Pensions Regulator to support their case.

EL didn't feel it could uphold Mrs M's complaint, so it was referred to us. It was assessed by one of our investigators who felt the complaint couldn't be upheld. He was satisfied that EL

had sent TPR information about pension scams and liberation to Mrs M and had used Pension Scams Industry Group (PSIG) Code of Practice ('the Code') effectively to ascertain Mrs M's reason and understanding of the transfer and the potential implications. He felt that despite Mrs M confirming she had read the information informing her of the risks of the transfer she decided to proceed anyway.

As no agreement could be reached the complaint has been passed to me to decide.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so I am not upholding the complaint.

### What principles rules and guidance apply to this complaint?

As Mrs M's policy was a personal pension, EL was regulated by the Financial Conduct Authority (FCA, preceded by the FSA) in its operation. Both The Pensions Regulator (TPR) and FSA had issued a number of warnings on their websites during 2011 and 2012 about the dangers of pension liberation – where consumers might be cold-called by unregulated advisers and encouraged to release cash from their pensions ahead of their intended retirement age.

As a result, EL would (or should) have been aware that there was a problem in the industry by February 2013, when TPR published new guidance (the 'Scorpion' campaign) including an Action Pack for ceding schemes to carry out due diligence on pension transfers.

Although this Scorpion guidance had been directed at the occupational schemes which TPR regulates, it was endorsed by the FSA at the time – and it was the only such guidance until March 2015 when a broader piece of guidance initiated by the whole industry (TPR and FCA regulated firms) was published: the Pension Scams Industry Group (PSIG) Code of Practice ('the Code'). TPR began referring to the Code in its Action Pack.

So, I consider EL should already have been familiar with using the Scorpion guidance over the several years prior to Mrs M's transfer. This guidance didn't change significantly, apart from rebranding in July 2014 to make clear that the concern was about 'scams' and not just liberation, and the main warning signs for both were largely the same. This meant that a ceding scheme that was confident that there wasn't a risk of liberation (and the associated tax charges), might not have been as sure that there was no risk of a scam.

The definition of a pension scam has been expanded in more recent years, but TPR broadly said in a press release at that time that this was the risk of consumers '*...being scammed into moving their retirement savings into unregulated high-risk or bogus investments that could result in them losing their entire pension pot.*' It said these were '*...often overseas and unregulated. Home visits from 'introducers', offers of 'free pension reviews', claims about 'legal loopholes' and unusual investments like overseas property, storage units or biofuels are all used to fool members into thinking they're being offered a legitimate pension transfer.*'

I'm not going to set out the March 2015 update to TPR's Action Pack or Version 1 of the Code (March 2015) in full detail here as I'm aware both parties have copies of these. The Code stated that it didn't override existing regulatory guidance, but as it's a relevant indication of good industry practice at the relevant time, I'm going to take it into account alongside the Action Pack. I will summarise the key points of both below:

- The Code made clear that '*A strong first signal of [a scam] would be a letter of*

authority requesting a company not authorised by FCA to obtain the required pension information; e.g. a transfer value, etc.’ I’ve taken this into account.

- Both the Action Pack and the Code said that a 2-page leaflet (or ‘insert’) produced by the Pensions Advisory Service (TPAS) should be sent directly to the policyholder whenever a ‘transfer pack’ was requested, even by their representative. The March 2015 leaflet included a pictorial highlighting the risks of cold-calling, pension access before age 55, overseas transfer of funds, convincing marketing of returns over 8%pa, couriered paperwork and proposals for a single investment. I’ve also taken this into account.
- The Action Pack included a checklist for businesses to follow if a policyholder was asking for a transfer, involving questions of the policyholder and receiving scheme. All the questions had equal prominence in the checklist. As each transfer presents different risks, it’s reasonable to say businesses had some discretion as to how much of the checklist to complete before being satisfied that the scam risk was sufficiently low to proceed.
- The Code contained an ‘initial analysis’ stage to better assist businesses in determining how far their enquiries should go. Two ways of ‘fast tracking’ a transfer in this initial stage were where the receiving scheme was a member of an accepted club or group or had been ‘whitelisted’ after prior investigation.
- I’m not persuaded there are grounds here for a transfer to Optimus to have been fast-tracked for either of those reasons. In particular the risk of a scam inherent in a QROPS depends largely on what investments the consumer is making, so further questioning about the wider circumstances would always have been needed.
- Beyond this, it was also possible under the Code for a transfer to have been fast-tracked if it passed some initial consumer questions. These addressed the risk of liberation as well as scams, but as there is no issue in this complaint of Mrs M receiving an incentive or accessing their pension early, I’ve focused on the other scam questions. These were broadly the same in part of the checklist so I’ll summarise the key issues:
  - Did the consumer receive an unsolicited offer of a ‘pension review’ or investment opportunity by cold call, email or text?
  - Were they told they could obtain a higher tax-free cash sum by transferring? (This question is only present in the Code)
  - Were they promised a specific or guaranteed rate of return, particularly over 8%pa? (The Checklist also highlights where the marketing material alludes to new or unusual investment techniques)
  - Did the investment’s marketing or discussions they had involve transferring funds overseas?
- The Action Pack used the same pictorial as the leaflet, adding two warning signs for the business to look out for. These signs weren’t specifically in the Code’s initial analysis questions, but I think whether they were present in the transfer should have become apparent as a result of asking the questions above in any event:
  - Putting the transfer proceeds into a single investment: *‘In most circumstances, financial advisers will suggest diversification of assets.’* (This issue is not highlighted in the Code)
  - Paperwork delivered to the consumer by courier that required an immediate signature. (This is a question suggested at a later stage in the Code, but not one of the initial analysis questions)
- If this questioning process flagged up concerns about the transfer, the Code clearly indicates that a transfer shouldn’t have proceeded without full due diligence into the receiving scheme and what they had been told about that scheme.
- This is an indication of where the remaining questions in the checklist might need to be asked, in proportion to the risk present in the transfer request. The Code itself said the further questions it provided in the Code were examples, alternatives could be used and *‘there is flexibility in the evidence you require’*. I’ll set out in my findings

below what further enquiries I think were required.

- If EL considered there were material risks of a scam at the conclusion of its enquiries, the Action Pack expected it to *'contact the member to establish whether they understand the type of scheme they'll be transferring to and send them the pension scams booklet'*. And (for example) to direct them to TPAS *'...to discuss the potential consequences of the transfer, including tax repercussions...'*
- 'Booklet' here refers to a 7-page TPAS guide for consumers, which included the same pictorial as in the Action Pack (and the shorter factsheet); an example of an overseas property scam in a UK-based pension scheme; links to FCA online material about scams and checking if an adviser was regulated in the UK; and how to contact TPAS for guidance.
- If I'm persuaded that EL should have communicated further with Mrs M about the risk of a scam, I'm mindful that there are different ways of broadly meeting the same guidance – but I can look to the booklet as an indication of the type of message expected.

In considering what EL should have done above and in my findings below, I've borne in mind that it was also bound to adhere to the ever-present Principles and Rules set out by the FSA/FCA. These include that it must take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems; and must pay due regard to the interests of its customers and treat them fairly.

I've also taken into account that regarding QROPS, the Code said in 2015: *'Reported scams include 'cloned' QROPS, and promising extraordinary rates of return through unusual investment opportunities, typically offered via arrangements such as SIPPs and SSASs.'* It didn't set out detailed steps to follow for QROPS as a result: assuming the QROPS had not been 'cloned', the instruction was to follow the guidance similar to that for a SSAS.

The Action Pack didn't specifically mention QROPS but said: *'Pension scam models are also changing. Many scammers are directing members to transfer into single member occupational schemes in an attempt to escape scrutiny.'* So, I think it's fair to say that (genuine) QROPS weren't thought of as the most likely route for pension scam activity in 2015.

#### Did EL follow the guidance above

EL has confirmed it checked the status and registration of the scheme with Her Majesty's Revenue and Customs (HMRC). I have seen the letter which confirms the scheme was recognised by HMRC as a QROPS and that it had been registered since July 2014.

EL has also explained that at the time it operated a "watchlist" of high-risk companies which was checked each time it received a transfer request. This watch list was created and regularly updated from notifications received by the FCA.

EL has explained Capital Facts was on the watch list at the time of the original information request so this triggered a red flag and a caution marker was immediately put on Mrs M's file.

I've also seen that EL's letter to Mrs M dated 17 March 2015 referred to the matter of pension fraud and enclosed the scorpion leaflet issued by TPR. The letter asked Mrs M to read the leaflet and invited her to call EL if she had any questions. The leaflet also recommended she seek independent financial advice.

I am also satisfied EL followed the guidance set out in the Code.

In relation to QROPS the guidance says the status of a particular QROPS scheme should be ascertained during the due diligence stage along with the name being in that of the scheme and not another scheme with a virtually identical name (e.g. a clone scheme). It also asks a provider to consider such things as:

- How the scheme was marketed.
- What documentation has been provided.
- How was it promoted.
- Has advice been received.
- Why does the member want to transfer.
- How recently had the scheme been established with HMRC.
- Are there links with other scheme or administrators who you already suspect of pensions scam activity.

I have seen that EL used the guidance to formulate a questionnaire that was sent to Mrs M for completion in January 2016. This questionnaire asked the following questions of Mrs M:

1. Did you initiate the contact originally yourself or were you approached unsolicited regarding this transfer.
2. Confirmed the contact was made by telephone and gave the name of the person she had spoken to and confirmed the firm was First Review Pension Services.
3. Did you receive advice from this person or company regarding the transfer.
4. Have you been offered any incentives either in the form of cash or gifts to proceed with the transfer?
5. Will you be receiving any part of your pensions as a cash sum following completion of the transfer?
6. Have you been offered a loan or cash back against your pension fund?
7. Are you fully aware of all the possible charges and fees that may be incurred as a result of the transfer being made?  
Are you fully aware of the potential tax charges that could arise as a result of the transfer proceeding?
8. Are you fully aware of the immediate and proposed changes affecting pension legislation announced in the 2014 budget?
9. Is the scheme to which the transfer to be paid based overseas or are the funds from the pension scheme to be invested overseas.
10. Have you read all the relevant documentation and information about the transfer, the terms and conditions and how your pensions will be paid when you retire.
11. Since being alerted to the possibility of Pension Liberation Fraud have you sought further independent financial advice from any third party regarding the transfer?

The answers Mrs M provided to these questions match the information provided to us by the CMC so while I note the questionnaire was sent to OPAL I've seen nothing to suggest Mrs M didn't answer the questions herself. She provided full information where the questions required it providing the name of the regulated adviser she used – Strategic Wealth. She also answered “no” to questions 4,5 and 6 and “yes” to questions 7, 8, 9, 10 and 11. She also signed and dated the form as 26 January 2016.

In addition to this EL has explained that as Mrs M's answers triggered further red flags it sent TPR scorpion leaflets a further two times requesting she read them. EL says it also independently verified that Mrs M had considered the contents of the information it had provided to her in relation to the transfer and it was satisfied that it could accept what she had told them. Mrs M also signed the Confirmation to Proceed and Witness Declaration which confirmed she had been provided with and read the information EL had sent her

regarding pensions scams and liberation fraud. She also confirmed via this form that she had obtained any independent advice that she felt was necessary.

Having considered this information I am satisfied that EL followed the guidance noted above – it sent the TPR leaflets to Mrs M directly on several occasions and confirmed that she had read and understood them. I am also satisfied EL engaged with Mrs M and asked her relevant questions about the transfer in line with the checklist included in TPR guidance and the Code exploring the issues the guidance directs it to when a transfer to QROPS was involved. So overall I am satisfied EL did what it had to, to ascertain and assure itself Mrs M was aware of the potential for a pension scam and that she understood the implications of transferring her pension overseas.

The CMC has said Mrs M was being advised by Capital Facts and/or/ FRPS and/or Strategic Wealth and has said as these were all unregulated EL should have picked up on this. From what I know of these firms its more likely the advice came from Strategic Wealth. Mrs M seems to have been referred to Strategic Wealth by FRPS and she also stated this firm was her adviser when she answered the questionnaire EL had sent to her.

By way of information, Strategic Wealth was an independent adviser based and regulated in Gibraltar and was appointed as financial adviser to the QROPS. It's likely Strategic Wealth's involvement was a condition of the QROPS accepting Mrs M's business.

Strategic Wealth Limited is a company registered in Gibraltar. It is not currently authorised by the Gibraltar Financial Service Commission (FSC). Whilst historical records on the FSC register don't appear to be available Strategic Wealth's website at the time of Mrs M's transfer provides an FSC licence number. The website also shows that Strategic Wealth was placing emphasis on its sister company in the UK, Strategic Wealth UK Ltd (trading as Gibro Wealth) being FSA/FCA authorised. This isn't surprising given the cross-border transaction involved.

Given this information, I am mindful of the possibility that having seen Strategic Wealth was Mrs M's adviser EL considered the firm satisfied the reference in the Action Pack to advisers being approved by the FCA.

It is arguable EL could have spoken with Mrs M directly to ask the questions rather than write to her with them. But it didn't have to – the Code states the enhanced due diligence can be carried out verbally or in writing. And in any event, I don't think this would have made a difference. In my view EL had given Mrs M enough information to make her aware of the potential risks of a pension scam being involved. And I am satisfied she received the documentation sent to her as she has confirmed to our investigator when they spoke that she received the pension scam leaflet and information but didn't think there was an issue.

So it seems she was in possession of all the right information she needed to make a well informed decision about proceeding with her pension transfer. And it seems despite this she chose to continue with the transfer.

Its also worth noting that EL couldn't just refuse the transfer and/or insist on Mrs M taking regulated advice. And if it had failed to carry out her transfer request, it could have been seen as not treating Mrs M fairly.

I also want to point out that Mrs M also transferred another pension into this scheme and having seen a recent statement of the scheme it still exists and the monies appear to still exist at around the same value as when the transfer was made. So I am not of the view a strict pension liberation was involved in this complaint.

Overall, while I understand the position Mrs M is now in I am satisfied that EL did what it was required to do by TPR at the time of this transfer. In my view EL gave Mrs M the required warning information of the risks involved in transferring her pension to an overseas fund. I am also satisfied EL followed the Code alongside the TPR guidance and asked Mrs M the relevant questions related to her transfer. Part of this also informed Mrs M of the main risks of transferring overseas which was the loss of FCA protections and a potential tax bill. There is nothing to suggest Mrs M didn't see this documentation or answered the question herself. And she confirmed that she had seen the information. I therefore think there wasn't more that EL could do to inform Mrs M of the risks. It wasn't EL's role to advise her or assess the investments within the QROPS. I therefore think that despite being given the correct information by EL about the transfer Mrs M decided to proceed anyway of her own volition.

### **My final decision**

My final decision is that I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 31 March 2022.

Ayshea Khan  
**Ombudsman**