

The complaint

Mr M has complained through his representative about a transfer of three personal pensions he held with Phoenix Life CA Limited, trading as Sun Life Financial of Canada ("Sun Life") to a Qualifying Recognised Overseas Pension Scheme ("QROPS") in May 2016. Mr M's QROPS was subsequently used to invest in inappropriate assets, including The Resort Group ("TRG"), an overseas hotel venture that has since run into trouble.

Mr M says Sun Life failed in its responsibilities when dealing with the transfer request. He says that it should have done more to warn him of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance he says was required of transferring schemes at the time. Mr M says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Sun Life had acted as it should have done.

What happened

Mr M held three personal pensions with Sun Life since 1993 and 1997. He has told us that in early 2016 he was contacted out of the blue by First Review Pension Services (FRPS), an unregulated firm, and offered a free review of his pensions.

He says he was told that his existing arrangements were not performing to their maximum potential and that there were better alternatives for him.

He agreed to meet with an individual who he has describes as an adviser at his home. He has said the adviser told him Sun Life was at risk of being taken over and that his existing funds were uncertain. The adviser suggested he transfer his pension to the Harbour Retirement Scheme (the QROPS) where the funds would subsequently be split between the investment in TRG, bonds and a liquid portfolio.

Mr M hasn't provided anything to confirm who gave him the advice to transfer but he has said in making his complaint that FRPS as well as Felicitas Management Group (Felicitas) gave him the advice to transfer his pensions to the QROPS. Felicitas also helped Mr M in applying for membership of the QROPS. Felicitas was an advisory group based in Cyprus. And there are documents that confirm Felicitas was appointed as investment adviser to the scheme.

At the time Mr M was 52 years of age. He was unemployed and had no savings or investments except for a small buy to let portfolio. He also wasn't intending to move abroad.

Mr M contacted Sun Life in February 2016 himself to request the pension information and transfer forms. He also confirmed in this letter that he wanted to transfer to the QROPS. Then in April 2016 Sun Life received the completed transfer forms from Harbour Pensions, the administrator of the QROPS. Included in this pack was a letter from HMRC confirming that the QROPS was registered. There was also notification that The Harbour Retirement Scheme had been registered with the Malta Financial Services Authority in February 2013. Sun Life also received the declaration completed and signed by the receiving scheme and completed and a signed APSS263 HMRC form.

Also included was a form that Sun Life had sent to Mr M as part of its transfer process, which asked questions around how the transfer came about and its circumstances. This was entitled the “Pensions transfer – customer additional information and declaration” which I will refer to as “the form”, and had been completed and signed by Mr M on 11 April 2016 and in answering the questions in this form he confirmed the following:

- That he hadn’t been offered a loan, savings advance, cash incentive or bonus for making the transfer.
- He hadn’t been told he could take money out of the pension before the age of 55.
- He confirmed that the transfer hadn’t been recommended by a financial adviser or that he had been encouraged to speed up the process.
- He did however in the same form confirm that he had received a cold call which had led him to making the transfer request.

Where Mr M signed the form he also declared he had read and understood the “predators stalk your pensions” leaflet which outlines the risks involved in transferring his pension.

Upon receipt of these documents Sun Life has confirmed that it checked the QROPS was correctly registered with HMRC, verified Mr M was the pension holder and checked all the forms had been completed correctly.

Sun Life has also shown that while carrying out its checks in line with its own internal checklist used at the time some queries were raised about the transfer - specifically it was noted that a QROPS was an unusual scheme for a member to transfer to if they were remaining in the UK and that Mr M had been cold called initially. As a result of this Sun Life has told us that the transfer was referred internally for review and advice on how to proceed.

The transfer of Mr M's pensions to the QROPS - a total of around £99,000 - was completed in early May 2016 and was invested in the following manner:

- £22,500 in the fractional ownership of a unit at the Dunas Beach Resort in Cape Verde operated by TRG;
- TRG corporate Bond;
- Two equity based funds;
- A small element of cash.

Mr M has said the investments in TRG are entirely illiquid now and incapable of sale on the open market and therefore considered to be of nil value.

Sun Life didn’t uphold the complaint. It acknowledged that Mr M had told it he had been cold called, that he was under 55, wasn’t planning on moving outside of the UK and no financial adviser was involved. However, it carried out additional checks and Mr M had signed the additional information and declaration form which confirmed he had read and understood the Scorpion insert (so called due to the imagery of its front page, which I will cover in more detail later in this decision) which it had provided a website link for. So overall it was satisfied that it had applied the appropriate level of due diligence at the time. It also felt that Mr M had a legal right to transfer and that none of the information it had about the transfer at the time gave it cause for concern.

Our investigator was unable to resolve the dispute informally, so the matter 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.

I've taken into account relevant: law and regulations; regulatory rules; guidance and standards; codes of practice; and (where appropriate) what I consider to have been good industry practice at the relevant time.

Where the evidence is incomplete or inconclusive, (as it is here), I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened given the available evidence and wider circumstances.

The relevant rules and guidance

Personal pension providers are regulated by the FCA. Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority (FSA). As such Sun Life was subject to the FSA/FCA Handbook, and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA/FCA rules governing how personal pension providers deal with pension transfer requests, but the following have particular relevance here:

- Principle 2 – A firm must conduct its business with due skill, care and diligence;
- Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;
- Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and
- COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

In February 2013, The Pensions Regulator (TPR) issued its Scorpion guidance to help tackle the increasing problem of pension liberation, the process by which unauthorised payments are made from a pension (such as accessing a pension below minimum retirement age). In brief, the guidance provided a due diligence framework for ceding schemes dealing with pension transfer requests and some consumer-facing warning materials designed to allow members to decide for themselves the risks they were running when considering a transfer. The Scorpion guidance was described as a cross-government initiative by Action Fraud, The City of London Police, HMRC, the Pensions Advisory Service (TPAS), TPR, the SFO, and the FSA/FCA, all of which endorsed the guidance, allowing their names and logos to appear in Scorpion materials.

The FSA's endorsement of the Scorpion guidance was relatively informal: it didn't take the form of Handbook Guidance, because it was not issued under s.139A of the Financial Services and Markets Act (FSMA), which enabled the FSA to issue guidance provided it underwent a consultation process first. Nor did it constitute "confirmed industry guidance", as can be seen by consulting the list of all such FSA/FCA guidance on its website. So the content of the Scorpion guidance was essentially informational and advisory in nature. Deviating from it doesn't therefore mean a firm has necessarily broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's right to transfer.

That said, the launch of the Scorpion guidance in 2013 was an important moment in so far it provided, for the first time, guidance for personal pension providers dealing with transfer

requests – guidance that prompted providers to take a more active role in assessing those requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance's specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

In those circumstances, I consider firms which received pension transfer requests needed to pay regard to the contents of the Scorpion guidance as a matter of good industry practice. It means February 2013 marks an inflection point in terms of what was expected of personal pension providers dealing with transfer requests as a matter of fulfilling their duties under the regulator's Principles and COBS 2.1.1R.

The Scorpion guidance was updated in July 2014. It widened the focus from pension liberation specifically, to pension scams more generally – which included situations where someone transferred in order to benefit from “too good to be true” investment opportunities such as overseas property developments. An example of this was given in one of the action pack's case studies.

There was a further update to the Scorpion guidance in March 2015, which is relevant for this complaint. This guidance referenced the potential dangers posed by “pension freedoms” (which were about to give people greater flexibility in relation to taking pension benefits) and explained that pension scams were evolving. In particular, it highlighted that single member occupational schemes were being used by scammers. At the same time, a broader piece of guidance was initiated by an industry working group covering both TPR and FCA regulated firms: the Pension Scams Industry Group (PSIG) Code of Good Practice. The intention of the PSIG Code was to help firms achieve the aims of the Scorpion campaign in a streamlined way which balanced the need to process transfers promptly with the need to identify those customers at material risk of scams. A further update to the Scorpion guidance (but not the PSIG Code) followed in March 2016.

The March 2016 Scorpion guidance

When the Scorpion guidance was launched in 2013, it included two standard documents that scheme administrators could use to warn their members about some of the potential dangers of transferring: a short “insert”, intended to be sent to members when requesting a transfer, and a longer booklet intended to be used where appropriate (for instance, when members requested more information on the subject).

The March 2016 Scorpion guidance asked schemes to direct their members to the Scorpion booklet. In the absence of more explicit direction, I take the view that the member-facing Scorpion warning materials were to be used in much the same way as previously, which is for the shorter insert (which had been refreshed in March 2015) to be sent when someone requested a transfer and the longer version (which had also been refreshed) made available where appropriate.

When a transfer request was made, transferring schemes were also asked to use a three-part checklist to find out more about a receiving scheme and why their member was looking to transfer.

The PSIG Code of Good Practice

The PSIG Code was voluntary. But, in its own words, it set a standard for dealing with transfer requests from UK registered pension schemes. It was “welcomed” by the FCA and the Association of British Insurers (amongst others). And several FCA regulated pension providers were part of the PSIG and co-authored the Code. So much of the observations I've

made about the status of the Scorpion guidance would, by extension, apply to the PSIG Code. In other words, personal pension providers didn't necessarily have to follow it in its entirety in every transfer request and failure to do so wouldn't necessarily be a breach of the regulator's Principles or COBS. Nevertheless, the Code sets an additional benchmark of good industry practice in addition to the Scorpion guidance.

In brief, the PSIG Code asked schemes to send the Scorpion "materials" in transfer packs and statements and make them available on websites where applicable. The PSIG Code goes on to say those materials should be sent to scheme members directly, rather than just to their advisers.

Like the Scorpion guidance, the PSIG Code also outlined a due diligence process for ceding schemes to follow. However, whilst there is considerable overlap between the Scorpion guidance and the PSIG Code, there are several differences worth highlighting here, such as:

- The PSIG Code includes an observation 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."* This is a departure from the Scorpion guidance (including the 2015 guidance) which was silent on whether anything could be read into the entity seeking information on a person's pension.
- The Code makes explicit reference to the need for scheme administrators to keep up to date with the latest pension scams and to use that knowledge to inform due diligence processes. Attention is drawn to FCA alerts in this area.
- Under the PSIG Code, an 'initial analysis' stage allows transferring schemes to fast-track a transfer request without the need for further detailed due diligence, providing certain conditions are met. No such triage process exists in the 2015 Scorpion guidance – following the three-part due diligence checklist was expected whenever a transfer was requested.
- The PSIG Code splits its later due diligence process by receiving scheme type: larger occupational pension schemes, SIPP, SSAs and QROPS. The 2015 Scorpion guidance doesn't distinguish between receiving scheme in this way – there's just the one due diligence checklist which is largely (apart from a few questions) the same whatever the destination scheme.

TPR began referring to the Code as soon as it was published, in the March 2015 version of the Scorpion action pack. Likewise, the PSIG Code referenced the Scorpion guidance and indicated staff dealing with scheme members needed to be aware of the Scorpion materials. Therefore, in order to act in the consumer's best interest and to play an active part in trying to protect customers from scams, I think it's fair and reasonable to expect ceding schemes to have paid due regard to both the Scorpion guidance and the PSIG Code when processing transfer requests. Where one differed from the other, they needed to consider carefully how to assess a transfer request taking into account the interests of the transferring member. Typically, I'd consider the Code to have been a reasonable starting point for most ceding schemes because it provided more detailed guidance on how to go about further due diligence, including steps to potentially fast-track some transfers which – where appropriate – would be in the interest of both parties.

The considerations of regulated firms didn't start and end with the Scorpion guidance and the PSIG Code. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn't involve anything specifically referred to in either the Scorpion guidance or the Code – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's principles and

COBS 2.1.1R.

The circumstances surrounding the transfer: what does the evidence suggest happened?

As set out earlier in the decision Mr M has told us that he was cold called by FRPS in early 2016 and offered a free review of his pensions. Interested in getting more out of his pension savings he agreed to meet what he has described as an adviser. He hasn't confirmed which firm the adviser was from but again as already stated he has said that he received advice from both FRPS and Felicitas to transfer his pensions.

I find Mr M's recollections that he was in receipt of advice plausible. He had little experience of pensions and investments so it was quite unusual for someone in his position to become aware that he could transfer to a QROPS or become aware of the overseas TRG investment. So it's very unlikely he found his way to the QROPS and the subsequent investments on his own.

Furthermore, Felicitas is recorded as being the investment adviser to the scheme. So, while I know this doesn't confirm Felicitas advised Mr M on the transfer out it does indicate that Felicitas was involved and given it gave some advice to Mr M, not being experienced, it's not unreasonable that he has named Felicitas as one of the parties giving advice, very likely not being aware of the different types of advice involved in such a transfer.

Furthermore, FRPS obviously had some lengthy discussions with Mr M so again it's not unreasonable that Mr M would have perceived this as advice.

We know FRPS was very much involved with the QROPS in this case and in promoting it and introducing potential clients to the scheme. And we also know that Felicitas was regularly providing advice to potential members, advice which covered the transfer as well as the investments within the QROPS. So I think it's more likely that Felicitas was involved in advising Mr M on the transfer and the investments – something that has also been acknowledged by Mr M and his representatives.

And overall what is important is what Mr M would have said about any advice he received had he been asked directly, as I think he should have which I will come on to later in this decision.

So despite answering the questions about receiving advice as "no" in the form provided to him by Sun Life for the reasons I have just explained above I think Mr M did receive advice and that this advice came from Felicitas.

What did Sun Life do and was it enough?

The Scorpion insert:

For the reasons given above, my view is that personal pension providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information.

Sun Life didn't send Mr M a paper copy of the Scorpion insert. But the updated 2016 Scorpion action pack stated that providers were to signpost their members to the government's Pension Wise Service to understand their options. It also asked providers to direct their members to the Scorpion booklet which set out how to spot a scam. There is nothing in the guidance that states how the signposting/direction to the Scorpion guidance/insert was to be provided. So while I don't think providing a paper copy would have been

difficult for Sun Life to do I can't say it didn't adhere to the guidance in providing Mr M with the link to the guidance in its cover letter of the 29 February 2016.

Furthermore, Mr M had confirmed to Sun Life that he had read and understood the details in the Scorpion insert online and was aware of Pension Wise and had taken its guidance on board when making his decision to transfer. Therefore, Mr M must have used the link to read the information around the Scorpion guidance because I see no reason why Mr M would have made this declaration.

Due diligence:

As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mr M's transfer in that light. But I don't think it would make a difference to the outcome of the complaint if I had considered Sun Life's actions using the 2015 Scorpion guidance as a benchmark instead.

The transfer request didn't come from an accepted club such as the Public Sector Transfer Club and Sun Life hadn't already identified the receiving scheme/administrator as being free from scam risk. So the initial triage process should have instead led to Sun Life asking Mr M further questions about the transfer as per section 6.2.2 ("Initial analysis – member questions"). I won't repeat the list of suggested questions in full, suffice to say, at least two of them would have been answered "yes":

- Did the receiving scheme/adviser or sales agents/representatives for the receiving scheme make the first contact (e.g. a cold call)?
- Have you been informed of an overseas investment opportunity?

Under the Code, further investigation should follow a "yes" to any question. The nature of that investigation depends on the type of scheme being transferred to. The QROPS section of the Code (Section 6.4.4) has the following statement:

"The key items to consider are the rationale for moving funds offshore, and the likelihood that the receiving scheme is a bona fide pension scheme, as if HMRC determine retrospectively that it is not, there may be a scheme sanction charge liability regardless of whether the receiving scheme was included on the list or not."

In order to address those two items – the rationale for moving funds offshore and the legitimacy of the QROPS – the Code suggests the transferring scheme should broadly follow the same due diligence process as for a SSAS, which outlined four areas of concern under the following headings: employment link, geographical link, marketing methods and provenance of the receiving scheme. Underneath each area of concern, the Code set out a series of example questions to help scheme administrators assess the potential risk facing a transferring member.

Not every question would need to be addressed under the Code. Indeed, the Code makes the point that it is for scheme administrators to choose the most relevant questions to ask (including asking questions *not* on the list if appropriate). But the Code makes the point that a transferring scheme would typically need to conduct investigations into a "wide range" of issues to establish whether a scam was a realistic threat. With that in mind, I think in this case Sun Life should have addressed all four areas of concern and contacted Mr M in order to help with this.

What should Sun Life have found out – and would it have made a difference?

Sun Life did establish the legitimacy of the QROPS as I have explained earlier in this decision. So I am satisfied it did enough to consider the destination scheme as being legitimate.

It also asked some questions of Mr M in its additional information form such as why Mr M wanted to transfer (to which he answered for “better growth”). It also found out via this form that Mr M wasn’t planning to move away from the UK even though he was transferring to a QROPS, that he had been cold called and that he had apparently not taken advice.

However, the framework outlined above, had Sun Life followed it, would have provided it with more and complete information about the transfer such as the fact the intended investment was in part in TRG – an overseas property scheme of the type that was highlighted as an area of concern in the PSIG code and the Scorpion guidance.

However, against this Sun Life did provide a link to the Scorpion guidance which Mr M had confirmed as having read and understood. The guidance pointed the reader to a number of scam warnings, including cold calls, free pension reviews, transfer of money overseas, undiversified investment portfolios, unrealistic investment returns and being rushed or pressured into transferring. So it isn’t unreasonable having received the signed declarations from Mr M that Sun Life could have taken comfort from the fact he was aware of and understood those warning signs and must logically have considered them as not being applicable or as being of no concern when the transfer was considered in the round.

Sun Life also asked in the form whether Mr M had received advice, to which he had answered no. As I have covered above, in my view I think this answer should have seemed odd to Sun Life because it was very unusual for someone with Mr M’s lack of experience in pensions and investment to have decided on his own to transfer his pensions to an overseas scheme and then invest in part in overseas property schemes. So there’s an argument that Sun Life should have questioned Mr M further about this matter.

As covered earlier Mr M has said in his complaint that he was advised to transfer and said that FRPS and Felicitas gave him that advice. So it follows that if Sun Life had probed this area further, as I think it should have done, I think Mr M would have named both firms. Sun Life could then in turn have reasonably assumed that the advice would have come from only one of the firms and that was most likely from Felicitas, predominantly because FRPS was a known introducer, and it was commonplace for an unregulated party to introduce customers to regulated parties for advice.

In terms of Felicitas, if Sun Life had delved deeper and discovered its presence, I don’t think it would have had reason to be concerned. Enquiries into Felicitas would have shown that it was passported from Cyprus to the UK and so during the period of this transfer they were authorised persons under FSMA 2000.

The right to passport financial services from an EU country to another is a feature of the EU’s internal market which applied to the UK at the time. The right was underpinned by the introduction of the EU-wide standards of investor protection and harmonised the conduct of business rules.

The UK’s regulatory system permitted EU passported firms, if duly registered with the FCA on its public register, to operate here as authorised persons under FSMA 2000 and I think that in this complaint that could have provided sufficient comfort for Sun Life’s purposes that despite the presence of some warning signs (cold call, overseas investments, moving to a QROPS without moving abroad) the risk of a scam here was minimal as a regulated adviser had been involved in advising on the transfer and provided Mr M with information about it.

So overall I don't think if Sun Life had made further enquiries this would have likely resulted in warnings to Mr M that he was at risk of a scam. And this was essentially the purpose of PSIG and Scorpion guidance, for ceding schemes to take additional steps if they thought a customer was likely being scammed. They weren't expected to provide general advice to the customer about the transfer, the investment risks or the possible differences in regulatory protection when using an EEA regulated firm with service passporting rights.

I am therefore of the view that Sun Life's due diligence would therefore have given it sufficient comfort that Mr M wasn't falling victim to a scam. He was transferring to a legitimate scheme – one that hadn't done anything in nearly three years to attract the attention of HMRC. The warnings as presented by the Scorpion guidance – cold calls, sending money overseas, unrealistic returns and so on – evidently didn't concern Mr M. He wasn't liberating his pension. And his answers on Sun Life's discharge form indicated he was acting in a self-directed manner. Any probing on this would in any event have likely revealed the involvement of Felicitas which was on the FCA register.

Keeping in mind a firm needed to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer properly and in line with a member's statutory rights I think Sun Life would reasonably have taken comfort from the aggregate picture here which is that Mr M didn't appear to have been falling victim to a scam.

What would have happened if Sun Life had asked further questions about the transfer?

Mr M received the Scorpion insert/guidance which warned against cold calls and overseas transfers of fund. This in itself didn't seem to worry him even though he had been cold called and knew he was investing overseas. I don't think Sun Life asking further questions about who advised him and why he wanted to move to a QROPS would have concerned him. I think he would have taken some comfort from the fact that Felicitas was involved and was a regulated party. And as I have said I don't think it would have been unreasonable for Sun Life to not provide further risk warnings once it learned a regulated adviser was involved. So I think Mr M would have proceeded with his transfer.

I recognise the simple fact of asking someone about why they wanted to transfer and how they came to be interested in transferring in the first place can prompt a change of heart. But I don't think that would have applied here. Mr M had already overlooked the warnings contained in the Scorpion insert many of which ought reasonably to have resonated with him. Specifically, the insert warns about the following:

- Cold calls
- Overseas transfer of funds – Mr M couldn't have been oblivious to this given he had signed forms to send his pension to Malta and was investing in TRG, an overseas hotel group.

Mr M signed to say he had read and understood the Scorpion insert. So it strikes me as being unlikely that he would have been diverted from transferring given the warning signs he evidently did ignore. And Sun Life's question would have been just that – questions. For the reasons given above there were no explicit warnings that it should reasonably have given. Mr M had also signed to say he had taken account of the information on The Pension Wise website when deciding whether to transfer which doesn't suggest to me the actions of someone likely to be deflected from their chosen course of action. So all things considered, I don't think Mr M would have changed his mind about the transfer had Sun Life asked further questions about his rational for wanting to take that step.

I understand that my decision will be very disappointing for Mr M and I have great sympathy

for the position he has found himself in. However, I need to consider that even if Sun Life had done further due diligence, I think the transfer would have happened anyway. So it hasn't caused Mr M's losses and it wouldn't be fair or reasonable to hold it responsible for this.

Summary

Overall, I think the presence of an EU regulated firm along with the signed declarations Mr M had provided to Sun Life confirming he was aware of the Scorpion guidance was sufficient to give Sun Life comfort that Mr M was aware of the risks and had accepted them and was being guided through this transfer process by a regulated firm. Therefore, it was unlikely Mr M was falling victim to a scam. Furthermore, I am satisfied that Sun Life did ask some pertinent questions about the transfer to Mr M and while it could have followed the guidance in the Code more closely, I don't think any further contact and/questions from Sun Life would have changed Mr M's mind about proceeding with the transfer.

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 Mr M to accept or reject my decision before 7 March 2025.

Ayshea Khan
Ombudsman