DRN-4918543

Financial Ombudsman Service

The complaint

Mr R has complained about a transfer of his self-invested personal pension (SIPP) provided by Liverpool Victoria Financial Services Limited trading as LV= (LV) to a small self-administered scheme (SSAS) in August 2014. Mr R's SSAS was subsequently used to invest in fractional property ownership with The Resort Group (TRG). The investment now appears to have little value. Mr R says he has lost out financially as a result.

Mr R says LV failed in its responsibilities when dealing with the transfer request. He says 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 R says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if LV had acted as it should have done.

A claims management company has helped Mr R to bring this complaint. But for ease of reading I will refer to that company's comments as being Mr R's.

Provisional decision

On 18 June 2024 I issued a provisional decision. I've copied the relevant extracts from that below.

"*What happened*

Mr R held an LV SIPP. He said that in 2014 he was cold called by a firm offering a free pension review. Subsequently a representative from a firm called First Review Pension Services (FRPS) visited him and told him he could achieve much higher returns, in the region of 9%, by investing in property abroad with The Resort Group (TRG), than he could by remaining in his SIPP. Mr R has a business card and Terms of Business for FRPS.

On 5 June 2014 a company was incorporated with Mr R as its sole director. I'll refer to this as company A. The FRPS agent witnessed Mr R's employment agreement. Mr R then signed documents to establish a SSAS with company A as its sponsoring employer. Rowanmoor Group PLC was the SSAS administrator and Rowanmoor Trustees Limited its independent trustee. FRPS wasn't regulated by the Financial Conduct Authority (FCA). But within the file information I've seen there's no evidence FRPS contacted LV directly at any point.

Instead, a firm called Wise Review Limited had requested a transfer pack from LV using a letter of authority from Mr R on 10 April 2014. LV wrote to Mr R confirming it would provide information directly to Wise Review, and there are entries on its system to provide several transfer information documents.

In August 2014 Rowanmoor applied to transfer the funds from Mr R's LV SIPP to the recently set up SSAS, using the Origo transfer system[1]. The application named a (then)

[1] Origo is an electronic platform which allows the transfer of pensions and investments which can make transfers more efficient and reduce transfer times.

regulated firm of financial advisers – Moneywise Financial Advisors Limited – as the financial adviser connected with the transfer. LV transferred Mr R's pension fund of £49,998 on 20 August 2014. At that time Mr R was 53 years old.

Mr R subsequently invested the majority of his transferred funds in fractional membership of a hotel investment abroad run by TRG. As of 2019, the TRG investments were still valued In Mr R's SSAS as a similar amount to his initial investment. The TRG investments did provide some returns into Mr R's SSAS. But from my understanding of events these payments would have dried up around 2019. And the investments are now considered illiquid and incapable of sale on the open market.

In December 2019 Mr R complained to LV. Briefly, he said that LV ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including (but not limited to) the following: the involvement of unregulated introducers or advisers; overseas investments; the SSAS was newly registered, there wasn't a genuine employment link to the sponsoring employer; and an unsolicited call offering a pension review was the beginning of the process.

LV didn't uphold the complaint. It said Mr R 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. It was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

Mr R brought his complaint to the Financial Ombudsman Service. One of our investigators looked into it. He didn't recommend upholding the complaint. Mr R didn't agree. As the Investigator was unable to resolve the dispute informally the matter was passed to me to decide.

What I've provisionally 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.

<u>The relevant rules and guidance</u>

Personal pension providers are regulated by the Financial Conduct Authority (FCA). Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority (FSA). As such LV 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 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.*

The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme if certain conditions are satisfied (and they may also have a right to transfer under the terms of the contract). This right came to be exploited, with people *encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren't entitled to – for instance, because they were below minimum retirement age. At various points, regulators issued bulletins warning of the dangers of taking such action. But it was only from 14 February 2013 that transferring schemes had formal guidance to follow that was aimed at tackling pension liberation*[2] *– known as the "Scorpion" guidance, so called after the imagery it contained.*

The Scorpion guidance was launched by The Pensions Regulator (TPR). It 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 guidance was updated on 24 July 2014 (which was before Mr R's transfer). It widened the focus from pension liberation specifically, to pension scams – which it said were on the increase. I cover the Scorpion campaign in more detail below.

<u>The Scorpion guidance</u>

The materials in the Scorpion campaign comprised:

- *An insert to be included in transfer packs (the 'Scorpion insert'). The insert warns readers about the dangers of pension scams and identifies a number of warning signs to look out for.*
- *A longer booklet issued by TPAS which gives more information, including example scenarios, about pension scams. Guidance provided by TPR said this longer leaflet was intended to be used in ongoing communications with members so they could become aware of the scam risks they were facing.*
- *An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "watch out for" various warning signs of a scam. If any of the warning signs applied, the action pack provided a checklist that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where a transferring scheme still had concerns, they were encouraged (amongst other things) to contact the member to establish whether they understood the type of scheme they were transferring to and – where a member insisted on transferring – directing the member to Action Fraud or TPAS.*

In deciding on the appropriate actions to take when dealing with a transfer request, a ceding scheme needed to be mindful of the material in the Scorpion guidance in its entirety rather than treating the guidance as a series of discrete steps to be worked through in isolation.

TPR issued the guidance under the powers at s.12 of the Pension Act 2004. Thus, for the bodies regulated by TPR, the status of the guidance was that it provided them with information, education and/or assistance, as opposed to creating any new binding rule or legal duty. Correspondingly, the communications about the launch of the guidance were predominantly expressed in terms that made its non-obligatory status clear. So, the tenor of the guidance is essentially a set of prompts and suggestions, not requirements.

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

[2] Liberation is a type of scam where pensions are accessed in an unauthorised way (before minimum retirement age, for instance). This can leave victims paying punitive tax charges to HMRC and having to deal with the consequences of having their pension invested in an inappropriate way.

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.

I take from the above that the contents of the Scorpion guidance was essentially informational and advisory in nature and that deviating from it doesn't necessarily mean a firm has 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 rights.

That said, the launch of the Scorpion guidance was an important moment in the evolution of the regulatory landscape concerning pension liberation and scams. That's because it provided, for the first time, a prompt to personal pension providers to take a more active role in assessing transfer requests. The guidance was a response to widespread abuses that were causing pension scheme members to suffer significant losses. And its specific purpose was to inform and help transferring schemes when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

In those circumstances, from February 2013 onwards I consider firms dealing with transfer requests needed to pay regard to the contents of the Scorpion guidance as a matter of good industry practice. That's because, in order to fulfil their requirements under the regulator's Principles and COBS 2.1.1R there was a greater expectation of what personal pension providers must do when responding to transfer requests.

<u>What did personal pension providers need to do?</u>

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. And where the recommendations in the guidance applied, without a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations. With that in mind, I take the view that personal pension providers dealing with transfer requests needed to have due regard to the following:

1. As a first step, a transferring scheme needed to check whether the receiving scheme was validly registered.

2. The Scorpion insert provided an important safeguard for transferring members, allowing them to consider for themselves the scam threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with the requests. So, all things considered, I think the Scorpion insert should have been sent as a matter of good industry practice and direct to the consumer when the request for the transfer pack had come from a different party – an unregulated introducer, say.

3. I also think it would be fair and reasonable for personal pension providers – operating with the regulator's Principles and COBS 2.1.1R in mind – to ensure the warnings contained in the Scorpion insert were provided in some form to a member before a transfer even if the process didn't involve the sending of transfer packs.

4. The Scorpion guidance asked firms to look out for the tell-tale signs of scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The guidance points to the warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up *actions. Therefore, whilst using the action pack wasn't an inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.*

5. The considerations of regulated firms didn't start and end with the Scorpion guidance. 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 the Scorpion guidance – 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.

<u>The circumstances surrounding the transfer and Mr R's recollections</u>

Mr R said he received an unsolicited call offering a pension review. Subsequently a named individual from FRPS visited him. We know that to be the case from that individual's signature on the employment agreement for his new sponsoring employer. The adviser told Mr R he would be looking at his pension to see if there was anything FRPS could do to make things better for him. Mr R said the adviser told him that by investing in a hotel development abroad he would receive a return of 9%, far higher than he would receive from his LV pension. FRPS didn't offer cash upfront or any other form of inducement. Mr R found the adviser persuasive and went ahead with the investment.

Mr R's complaint letter to LV acknowledges the role of "a regulated IFA", but says that much of the promotional information and advice about returns from the proposed scheme had been provided by an unregulated firm – i.e. FRPS.

For the record, Mr R has been able to provide Terms of Business for the regulated firm (Moneywise Financial Advisors Limited). And he has a letter from Moneywise dated 5 June 2014, sent to him under copy of a covering letter from FRPS and addressed to him as trustee of the new SSAS, advising him whether TRG was an appropriate investment for his SSAS for the purposes of s.36 of the Pensions Act 1995.

The letter and Terms of Business make clear that Moneywise wasn't advising on the establishment of the SSAS, the suitability of the investments in Mr R's personal circumstances, or any advice that would be regulated by the Financial Conduct Authority. (As the TRG investment appears to have the characteristics of an unregulated collective investment scheme, advice on which counts as regulated advice, it's possible that Moneywise's claim on that point could be called into question.)

<u>What did LV do and was it enough?</u>

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.

In this instance LV received a transfer pack request from Wise Review. It says that it included the Scorpion insert with all its transfer packs. Even if that is correct, that suggests the transfer pack would have gone to Wise Review. There is no evidence that it was included in the letter LV sent to Mr R acknowledging Wise Review's request, and I don't think it is reasonable to assume that Wise Review would have passed the Scorpion insert on to Mr R, for the reasons I've given above.

Instead LV went ahead with the transfer without contacting Mr R or giving him any sort of warning. So I don't think it did enough.

Nevertheless, Mr R has also been able to provide a copy of the longer TPAS booklet from the same era (pre-August 2014) as the insert LV should have provided to Mr R with the transfer pack. His copy has an imprint on the front page inviting him to sign it to say "I can confirm I have read this document. I am not party to any such pension liberation activity in any way whatsoever".

From what we know of FRPS' sales process, several copies of this booklet were usually given to clients, some to sign in case they were needed to satisfy a written application to their ceding scheme and one for them to retain. Even though a signed copy of this booklet wasn't forwarded to LV because this was an online Origo transfer request, it's possible Mr R did sign a copy of this insert at the time. But even if he didn't, he had the same opportunity to read it as if LV had sent it to him directly (and in fact, a more extensive document).

Due diligence:

In light of the Scorpion guidance, I think firms ought to have been on the look-out for the tell-tale signs of a pension scam and needed to carry out further due diligence and take appropriate action if it was apparent their customer might be at risk. LV didn't undertake any further due diligence.

Given the limited information from the Origo transfer request, the warning signs might not have been obvious to LV. Arguably one of these warning signs could have been identified, but in my view other information LV already had in its possession would have given it enough reassurance that Mr R's transfer wasn't at much risk of liberation or scam activity. I'll explain why.

Mr R's SSAS was recently registered. I accept that date wouldn't have been clear from the Origo request – it just gave the Pension Scheme Tax Reference (PSTR). But in checking the SSAS was correctly registered – which LV would have needed to have done – it would then have identified the date that happened. Or if LV didn't do this, it would have needed to assume that the SSAS was recently registered, as being single-member schemes that is the case with the majority of SSAS transfers.

However, the same source that gave LV the PSTR – the Origo online printout – disclosed that there was a financial adviser of Moneywise's name and postcode involved with the transfer. Given the whole purpose of Origo was to facilitate transfers, I think it would have been reasonable for LV to conclude that Moneywise was giving Mr R advice on the transfer itself, as Moneywise's name was unlikely to have been mentioned otherwise.

Clearly, an assumption LV might have made along those lines would have differed from the actual role we now know Moneywise would have played. But I don't think that would be LV's fault. It was entitled to take the information it was provided with at face value. Rowanmoor didn't qualify Moneywise's role or explain the nature of the restriction to the advice it was giving and it was open to Rowanmoor to do that if it wished to do so – as I have seen in cases where other SSAS operators are involved.

The Scorpion action pack said that if any of the warning signs were present then LV could use the checklist to follow up on it to find out if other signs of liberation or scams were present. As I noted above, the language wasn't instructive – as it was a matter for the ceding scheme to weigh up Mr R's right to transfer with the potential risk of that transfer being involved in pension liberation or a scam. And in the particular circumstances of this case, I *think that weighing up exercise would reasonably have been in favour of LV not undertaking further due diligence in view of the declared role of a regulated financial adviser in the transfer.*

I say this as one of the key warning signs mentioned in the Scorpion action pack was where a consumer took advice from an unregulated financial adviser. Not only did that risk the consumer falling victim to unlawful advice that was in breach of FSMA, it also meant that there were no protections the consumer had to fall back on in the event that they received unsuitable advice. But based on what LV knew in this particular case, it wouldn't have reason to suspect that Mr R was about to fall victim to this type of illegal activity or become exposed to a lack of regulatory protection.

Although, as we now know in reality Moneywise's role was somewhat different to that which LV might have thought it was from its appearance on the Origo request. However, it did give advice on the suitability of an investment for his SSAS – and it is that aspect of the advice Mr R received that seems to have caused the bulk of his loss. Moneywise is no longer trading but, by virtue of it formerly being regulated, it is open to Mr R to see if the Financial Services Compensation Scheme (FSCS) is willing to deal with a complaint about Moneywise.

I think this underlines the fact that LV was entitled to take some comfort from Moneywise's involvement, which it was told about right at the time of the transfer actually happening, and it was therefore justified in proceeding with the transfer without carrying out further checks.

<u>Would LV acting differently have made a difference?</u>

For the reasons I've explained above, I think the only material failing by LV in this case was not to send the Scorpion insert to Mr R. But the best evidence for whether that would have made a difference is the fact that Mr R received a longer version of this booklet, likely from FRPS directly, with some encouragement to read it. Even though Mr R was initially cold called (which is a warning sign set out in the booklet), the examples used are of early release pension liberation, which Mr R wasn't doing. So, I think it's plausible that if Mr R had read it, he might not have thought it applied to him. And by extension I think the same would have applied to the Scorpion insert, if LV had sent this to him at the time of providing the transfer pack.

In reaching my decision I've taken into account that the transfer took place shortly after the focus of the Scorpion campaign broadened into scams more widely. TPR's guidance didn't suggest that, having already sent Mr R the Scorpion insert (as it should've done), LV needed to send him the updated version again. In any event the updated version provides little more detail of the warning signs Mr R should look out for. I doubt he would have viewed it significantly differently to the one he should already have received (and was given a longer version of by FRPS). LV also made the transfer shortly before the FCA told firms about its new 'protect your pension pot' alert for consumers focusing on SIPP and SSAS scams (in a 'regulatory round up' during September 2014). So I couldn't reasonably expect LV to take account of the content of that campaign."

Developments

Mr R didn't agree with my provisional decision. Amongst other things he said that, as LV was transferring his funds to an occupational pension, LV had a statutory requirement to ensure he was employed in some capacity.

Mr R agreed that FRPS gave him a copy of the Scorpion guidance but doesn't believe this materially affects his complaint, which is that LV was required to do more than just sending the Scorpion insert.

Mr R added that the following warning signs should have been apparent to LV:

- The SSAS was newly registered.
- The involvement of an unregulated introducer in Wise Review
- Confusion or uncertainty around the adviser. Mr R said that while Moneywise was named on the Origo transfer, after concluding the transfer LV sent a letter to another regulated firm of financial advisers, which I'll refer to as firm E, to confirm the transfer had concluded. Mr R posed the question that if LV believed Moneywise had advised Mr R then why did it write to firm E? So he said LV had not taken comfort in the involvement of Moneywise as a regulated adviser.
- The lack of an employment link between the SSAS' sponsoring employer and Mr R's actual work.
- He was under 55 years of age.

Mr R said that LV should have done further due diligence, which went beyond just issuing the Scorpion leaflet. He said that if LV had done so the warning signs of a scam or liberation including investing in high risk, overseas, unregulated investments would have come to light and caused him to act differently.

Mr R also said that his circumstances were similar to those in a decision published by an Ombudsman colleague. In that case my colleague concluded that the personal pension provider had not met their due diligence obligations and upheld the complaint. Mr R said it was unreasonable that I could come to a different conclusion because his transfer was made through the Origo system but the facts in the two cases were otherwise the same.

Further, Mr R said I had made a mistake as to the date the FCA published its Protect your pension pot alert. He said this was in May 2014 and not September 2014.

LV didn't make any further comments.

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.

Did LV need to establish Mr R's employment status or find out if there was a link between the sponsoring employer and the SSAS?

Mr R has argued that LV should have checked he was employed and earning so as to ensure he had a statutory right to transfer to an occupational pension. He said the outcome of those checks would have caused LV concerns because of a lack of an employment link to the SSAS' sponsoring employer. But I think he's mistaken. As far as I'm aware there was no obligation on ceding schemes to check, as a matter of course, whether the transferring member was earning. And LV had no reason to think he wasn't earning either. Indeed Mr R has confirmed that he was employed at the time of the transfer application.

Also Mr R was entitled to establish an employer to create a SSAS. And I think the apparent involvement of a regulated adviser – Moneywise – in doing so wouldn't have given LV sufficient cause for concern to undertake further due diligence. So, I see no reason why LV would, or should, have probed this issue any further.

Warning signs

Mr R also referred to certain warnings signs which he believes should have led LV to take further action. I've considered each of those in turn.

The SSAS was recently registered

The Scorpion guidance at the time indicated that HMRC recently registering a receiving scheme could be a warning sign for ceding schemes like LV to look out for. But this is something that I considered when preparing my provisional decision. And in that I explained that given the specific circumstances of Mr R's case and the involvement of a regulated adviser in Moneywise, I didn't think the recent registration of the SSAS should have caused LV significant concerns which required it to do further due diligence. Other than what I've addressed below, Mr R hasn't provided any additional rationale to cause me to revisit that conclusion.

The involvement of an unregulated introducer in Wise Review

Wise Review requested information about Mr R's personal pension from LV in April 2014, which it subsequently sent to it. Wise Review was not a regulated advising firm. But there's simply no evidence that Wise Review ever gave Mr R advice. Mr R had signed a letter of authority allowing LV to share his pension information with Wise Review. So, as he had authorised LV to send the requested information to it, I don't think it did anything wrong in sending that information.

LV sent details of Mr R's pension to Wise Review on 17 April 2014. LV didn't then hear from Wise Review again. From information available on Companies House that is not surprising. That information shows that Wise Review went into administration before LV had sent it the details. In fact it dismissed its remaining members of staff on 14 April 2014 and its residual assets were sold by 22 April 2014.

Also, while Wise Review was not regulated, there is no requirement for a firm gathering information to be FCA authorised and regulated. And, as I said in my provisional decision, when LV received the Origo transfer request that clearly named Moneywise as the advising firm. And Moneywise was showing on the FCA register as a regulated firm. So, for the reasons given in my provisional decision I think it was reasonable for LV, at that time, to take comfort from the involvement of an authorised advising firm in the process. And I don't think the request from Wise Review for pension information, sent over three months earlier, should have given LV cause for concern.

Confusion or uncertainty around the adviser

I don't agree with Mr R that there was any confusion or uncertainty around who LV believed was advising him. The Origo transfer request clearly referred to Moneywise as being the advising firm. That request did not refer to firm E at all.

I also don't think there is anything confusing, uncertain or untoward about LV copying information to firm E. I'll explain that it's common for personal pension providers to have the name of an advising firm on its file associated with a particular client. It's often the case that the advising firm on file will be the firm which originally recommended that the consumer took out the personal pension in the first place. Or, equally likely, is that the advising firm had at some point taken over what's often referred to as the client's servicing rights. That is the consumer would have given the advising firm authority to make any amendments to the investments held within the personal pension. So I'm satisfied that is what had most likely happened in this case. That is LV held firm E's details on its file as previously advising Mr R or holding the servicing rights for his SIPP.

As Mr R was transferring away from a SIPP, which LV most likely understood firm E had previously advised Mr R about or held servicing rights for, LV appropriately told firm E that it was transferring. In that manner firm E would know that it no longer held any servicing rights over the – now transferred – SIPP. It also could well not have been a conscious decision LV took that firm E was actively involved in the SIPP and would want to learn of this development, but part of a standardised process to copy paperwork to the previously associated adviser.

I'll also address an error in Mr R's response to my provisional decision. He said that LV had written to firm E and its letter included the phrase *"…in accordance with your instructions…"*. It appears that Mr R interpreted that to mean that firm E had given LV instructions to make the transfer. But LV's letter to firm E did not include that phrase. Instead that was included in a letter LV sent to Mr R and which it copied to firm E. In other words LV had acted on Mr R's instruction, received via the Origo system. So, I don't think there was any confusion over who the advising firm was.

Mr R was under 55 years of age

Pension scheme members aren't usually allowed to access their pension before age 55. So transferring before that age may be a warning sign of pension liberation. We now know that Mr R wasn't trying to access his funds early or in an unauthorised way. But, LV couldn't have been sure of that at the time. However, I think for the reasons already given, LV could take comfort from the involvement of Moneywise as a regulated firm to advise Mr R on this matter. That is, it should have been well aware that Mr R wasn't entitled to access his funds before he was 55 and would have advised him accordingly. In those circumstances, I don't think Mr R's age would have caused LV to undertake further due diligence.

My colleague's decision

Mr R referred to a decision my Ombudsman colleague upheld against another personal pension provider I'll call Z. Mr R says that the facts are fundamentally the same. So he believes it is unreasonable that I would not uphold his complaint. But I disagree that the facts are the same.

I'll explain that I'm familiar with the complaint Mr R has referred to. But there are a number of key factual differences. I don't intend to refer to all of those here. However, in the other case the transfer request did **not** come through the Origo system. So Z had access to different file information than LV did in Mr R's case. The more limited role the claimed regulated adviser played in the transfer from Z was in advising on the investments only (which, as it transpires, was actually similar to Moneywise's role in Mr R's case) was disclosed upfront by the receiving scheme. But, as I've said in my provisional decision, in Mr R's case there were no such qualifications attached to the statement on the Origo request that Moneywise was advising him. Origo was a system used for transfers, not for recording who was advising the client in any other capacity.

Z had also been given details up front of the chosen investments, which LV wasn't in Mr R's case.

My Ombudsman colleague did not find that Z had persuasive evidence of a regulated adviser's involvement in the transfer process. So she concluded that Z should have done further due diligence. She found that doing so would have uncovered the involvement of an unregulated adviser in recommending the transfer (in fact the claimed regulated adviser wasn't involved at all), which should have caused Z concerns.

Each decision we make is based on the circumstances of the specific complaint and what, in the Ombudsman's view, is fair and reasonable based on the facts as they present themselves. And in the circumstances of Mr R's complaint I'm satisfied that it is fair and reasonable not to uphold it.

The FCA's 'Protect your pension pot' alert?

Mr R said I was mistaken when I referred to the FCA publishing its alert in September 2014. However, I did not say the FCA published it in September 2014. What I actually said was that the FCA told firms about its new protect your pension pot alert in a *'regulatory round up*' during September 2014. This was a newsletter, which could be subscribed to by insurers such as LV but was also published online – of some of the FCA's key messages and activities etc over the previous month or so.

I'll explain that the protect your pension pot alert was actually aimed at consumers themselves rather than pension providers. And I'm aware that from late April 2014 the FCA highlighted to consumers the increase in the use of SIPPs and SSASs in pensions scams. It also referred to an increase in the use of unregulated and/or illiquid investments. However, I think the significance of this for ceding schemes such as LV would have become clearer when it was communicated to them directly in September 2014. Even then, the apparent involvement of Moneywise in Mr R's transfer would have diminished the relevance of that alert to his situation.

My final decision

For the reasons given above and in my provisional decision I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 16 August 2024.

Joe Scott
Ombudsman