DRN-4959976

The complaint

Mr M complains about the transfer of his personal pension – a SIPP ("self-invested personal pension") with Hargreaves Lansdown Asset Management Limited ("Hargreaves") to the European Financial Planning Group Diamond Personal Pension Plan ("EFPG plan"), a Qualifying Recognised Overseas Pension Scheme ("QROPS"). Mr M is unhappy with the level of due diligence Hargreaves completed before it allowed the transfer to proceed. Because of Hargreaves' actions (or inactions) Mr M now says his QROPS is worthless. He says had Hargreaves acted fairly it would've refused the transfer which would've meant he remained in the Hargreaves SIPP.

What happened

Mr M's complaint has been considered by one of our investigators who issued a very detailed view. Neither Mr M nor Hargreaves has said that what the investigator said about what led up to the complaint was incorrect. So I've largely adopted here the investigator's summary as to the background along with the list he set out of the parties involved.

Mr M held a SIPP with Hargreaves which he'd opened in August 2017 with a transfer value of £54,412.23 from another provider. The SIPP had been invested in cash until 2019 when he invested in XBT Provider AB Bitcoin Tracker One, XBT Provider AB Bitcoin Tracker Euro and Canaan Inc. Mr M then disinvested all three investments in 2021 and returned the funds to cash.

On 8 March 2021 Hargreaves processed a letter of authority from Blacktower Financial Management Group ("Blacktower Group"). The authority contained two sets of regulatory details. The first, Blacktower Financial Management Ltd ("Blacktower") who is based in the UK. And the second, Blacktower Financial Management (International) Ltd ("Blacktower International") who is based in Gibraltar. The contact details on the form show the adviser was based in Gibraltar and contact between Hargreaves and the adviser about discharge papers confirm Blacktower International were the firm acting on Mr M's behalf.

Previous to this Mr M had enquired about transferring away in November 2020 and Hargreaves issued correspondence pertaining a potential transfer to him at this time. Subsequently, the request to transfer to the EFPG plan was received from Mr M directly on 12 March 2021. The covering letter said it enclosed the relevant discharge papers and that he wanted things to progress as a "matter of urgency" due to specific deadlines he needed to meet to get the funds invested.

Hargreaves say the transfer was completed following due diligence checks on 19 March 2021 with a value of £228,213.72. Of that, some £219,509.35 was invested in the EMB Fund.

Mr M complained to Hargreaves through his representative on 24 August 2023. In brief the complaint letter said Hargreaves:

- Ought to have identified the instructions to transfer involved a significant risk of detriment to Mr M. It should've declined the transfer because it was not supported by

advice from a regulated adviser.
- Failed to ascertain how the QROPS scheme came to Mr M's attention.
- Failed to establish what marketing information was being provided to Mr M.
- Failed to establish what advice was being provided and if any by who, not just in relation to the QROPS but also the underlying investments.

Overall Mr M's representative said had Hargreaves refused the transfer Mr M wouldn't have proceeded with the transaction and would've remained in his SIPP.

Hargreaves responded to the complaint but didn't uphold it. In summary it said:

- Hargreaves provides an execution only service meaning it's not required to assess suitability of investments or advise consumers in relation to them. It also says Mr M wasn't required to take advice to transfer his pension to the QROPS.
- Hargreaves complied with its due diligence obligations. When Mr M first enquired about transferring, Hargreaves sent the relevant forms and enclosed a copy of the pension liberation leaflet. It says one was also enclosed with correspondence acknowledging the transfer on 15 March 2021.
- At the time Hargreaves had processes in place for due diligence on QROPS requests. It considered the registration status of the scheme, the bank account details and confirmed the EFPG plan was a genuine QROPS provider.
- It also held the letter of authority from Blacktower Group whose entities Blacktower and Blacktower International are regulated by the Financial Conduct Authority ("FCA") and the Gibraltar Financial Services Commission ("GFSC") respectively.

Because Mr M didn't agree with Hargreaves' outcome, he referred the complaint to our service for consideration.

Parties involved

- European Financial Planning Group Diamond Personal Pension Plan ("EFPG plan") – This is the receiving scheme involved in the transfer. And is an individual defined contribution pension scheme administered by European Financial Planning Group Limited and recognised by HMRC as a QROPS.

- European Financial Planning Group Limited ("European FPG") – This firm is registered in Gibraltar and is authorised and regulated by the GFSC (license number FSC00812B). Before 2020, it previously passported services to the UK and was authorised by the FCA (FRN: 477862). European FPG is the administrator of the EFPG plan.

- Blacktower Financial Management Group ("Blacktower Group") – This is the parent organisation of Blacktower Financial Management Ltd and Blacktower Financial Management (International) Ltd. A letter of authority was received for Hargreaves to provide information to these two firms for Mr M's SIPP.

- Blacktower Financial Management Ltd ("Blacktower") – This firm appear on the letter of authority sent to Hargreaves as part of the transfer request. It's the UK based advisory arm of the Blacktower Group and is regulated and authorised by the FCA (FRN:188611). Other than being named on the letter of authority this firm wasn't involved in Mr M's transfer.

- Blacktower Financial Management (International) Ltd ("Blacktower International") – This is an advisory firm regulated and licensed by the Gibraltar Financial Services

Commission ("GFSC"). It's on the FCA register under FRN 530659 and is detailed as being able to provide services within the UK using its 'passport in' permissions. This is the firm Hargreaves authorised on Mr M's SIPP and is connected to Effective Financial Planning Group.

- Effective Financial Planning Group ("Effective FPG") – The financial advisers of this firm are members of 'Nexus Global' which is a division of Blacktower International. And its website (efpg.net) matches the email address of the adviser (who I'll call Mr A) detailed on the letter of authority sent to Hargreaves. Its website suggests it works in conjunction with European FPG to recommend savings and pensions products to clients.

- EMB Fund – This is the investment that 100% of Mr M's transferred pension was invested in. It's a Cayman Islands domiciled fund which has since been suspended and believed to have little or no value.

The investigator didn't uphold the complaint. Mr M didn't accept the investigator's view. His representative made a number of comments. I've summarised the main points.

- We'd referred to Mr M's arrangement with Hargreaves as a SIPP but it wasn't. The SIPP funds were chosen and verified by Hargreaves, not Mr M. A SIPP is where the customer can choose the funds and assets, from the whole of the market. Mr M had asked Hargreaves if he could invest in the EMB Fund and was told it wasn't part of Hargreaves' fund choice and so he'd need to use another provider.
- Mr M had never heard of 'Blacktower' in whatever guise until his complaint was investigated. He thought he'd been dealing with EFPG throughout. He suggested his signature had been copied.
- The investigator had said that an overseas adviser should've caused Hargreaves to raise further queries and that Hargreaves should've told Mr M not to transfer. And a QROPs is an unusual choice for a UK based investor. The timelines from EFPG were as the investigator had recognised and should also have led Hargreaves to raise additional questions about the validity of the transfer. And although we'd asked Hargreaves what additional checks they'd undertaken as the pension would be overseas, Hargreaves hadn't said. Hargreaves should've checked as to why a QROPS was being used as both this service and Hargreaves know that this is very unusual for a UK based investor.
- Mr M had no idea that the EMB Fund was based in the Cayman Islands – as far as he was concerned it was with Barclays Bank.
- He was unaware of the Scorpion campaign and he wasn't provided with the Scorpion insert or longer booklet. Hargreaves was relying on an incorrectly dated version to support their position that they sent it to Mr M. But the Scorpion Pack which Hargreaves are relying on is dated after the transaction was completed. We'd allowed Hargreaves to raise a defence based on incorrectly dated records.
- The Scorpion leaflet wasn't highlighted to Mr M. All Hargreaves said was "As part of a government initiative to tackle pension liberation fraud, please read the HMRC Pension Liberation Leaflet carefully before applying to transfer". Mr M wasn't transferring to a SSAS ("Small Self Administered Scheme) and he wasn't seeking to liberate his pension, that is, release funds before age 55. A link to what was described as a "Pension Liberation Leaflet" didn't and wouldn't have alerted him to the risk of a scam or raise any red flags.
- Hargreaves failed to comply with the FCA's Principles of Business 2, 3 and 6 and COBS 2.1.1R. And, as pointed out by the investigator, Hargreaves should've addressed all three parts of the checklist set out in the PSIG Code of Practice. And taken greater steps to establish the validity of the transfer, who was actually advising

on the transfer and subsequent investment, especially as it was a transfer to an QROPS. Despite that Hargreaves hadn't been held accountable or required to redress Mr M.

- The investigator had said that, in all probability, the transfer would've proceeded anyway, so, in effect, treating Mr M as an insistent investor. That was an uninformed assumption that the investigator wasn't in a position to make
- Mr M denied it was his signature on various documents. It wasn't credible to suggest his financial position was as indicated. And the investigator had assumed, as Mr M had invested in the XBT Bitcoin Tracker Funds, that he was a sophisticated and experienced investor. But it was the only investment Mr M had made and it had been promoted by Hargreaves on the internet and available for its SIPP clients. Hargreaves had undertaken due diligence on the Fund which was set up and traded by Hargreaves, with input (apart from the capital) from Mr M.

An ombudsman's decision was requested so the complaint has been referred 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.

The relevant rules and guidance

Personal pension providers are regulated by the FCA. As such Hargreaves is subject to the 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 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. This guidance referenced the potential dangers posed by "pension freedoms" (which was 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.

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 for members looking for more information on the subject.

The March 2015 Scorpion guidance asked schemes to ensure they provided their members with "regular, clear" information on how to spot a scam. It recommended giving members that information in annual pension statements and whenever they requested a transfer pack.

It said to include the pensions scam “leaflet” in member communications. 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 when members sought further information on the subject.

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, SIPPs, SSASs 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 a member's interest.

The Code has been updated since 2015. The relevant PSIG Code here – where Mr M's transfer was in March 2021 – was version 2.1 which applied from 10 June 2019. And by then the Scorpion guidance in use was the July 2019 version.

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?

Mr M says he was approached by a representative of the EFPG plan itself, who told him it had a lucrative investment run by Barclays Bank on offer and to access it he'd need to transfer his pension. He recalls speaking with an adviser – Mr A – who told Mr M he was regulated by the FCA, although Mr M now understands this wasn't the case – and that he'd get an average return of 2% per month and he'd be able to retire on a monthly pension of £5,000.

Mr M says he was contacted out of the blue and, although he'd not heard of the scheme before, he assumed the investment would be safe as he thought he was dealing with Barclays. He wasn't aware his funds were to be invested in the EMB Fund or that it was based in the Cayman Islands – as far as he was concerned it was with Barclays.

When the investigator spoke to Mr M about what had happened, he asked about what Mr M recalled receiving from Hargreaves during the process. And whether he saw a copy of the Scorpion leaflet. Mr M said he only remembered being issued the discharge papers which he thinks may have been forwarded to him by Mr A rather than Hargreaves. Whilst he couldn't recall getting a copy of the Scorpion leaflet, he acknowledged that it didn't mean he wasn't sent one. But more recently Mr M has said that he didn't get the Scorpion leaflet. And he's unhappy that the copy that Hargreaves produced during the investigation as having been sent to him in March 2021 couldn't have been the one sent as the version Hargreaves supplied was only introduced later.

The investigator told Mr M that Hargreaves had said that a firm called Blacktower Group – who had a branch in the UK as well Gibraltar – had requested information about his pensions and asked what Mr M could recall about speaking or dealing with them. Mr M said he didn't receive anything from them and all his dealings had been with the EFPG plan and he hadn't spoken to anyone else during the process. Mr M has also more recently suggested that his signature on the letter of authority which Hargreaves received from Blacktower Group had been copied.

Mr M has also said that the signatures on some of the other documents weren't his. And it wasn't credible to say he had £8.26 million current assets in 2021. Mr M explained his financial circumstances at the time – he was divorced and his only financial asset after his divorce was his pension fund of £50,000. He was homeless and living in his car for about six months (and I note from what Mr M has told our service that situation may have very unfortunately continued). Court proceedings for non payment of rent had been commenced against him by the landlord of his rented property.

He then made the Bitcoin investments via his SIPP which were a success (and the Canaan Inc Fund also returned a profit) and increased his pension fund to £230,000 after about two years. That was his only experience of investments so he wasn't an experienced or sophisticated investor. The Bitcoin investments had been promoted by Hargreaves on the internet and were available for Hargreaves' SIPP clients. Hargreaves had undertaken due diligence and the investments were set up and traded by Hargreaves, with no input (apart from the capital) from Mr M.

Mr M said he'd tried to speak with European FPG, the administrators of the EFPG plan about his pension but was told it couldn't do anything now. Around the start of 2023 the EFPG plan transferred him the remaining funds in his pension, which equated to roughly £1,800. He was told there wasn't anything else the EFPG plan could do to help him and that's when he got in touch with his representative who explained the transfer shouldn't ever have been allowed to go through.

I've considered very carefully Mr M's evidence, the documentation we've seen and the wider circumstances in reaching conclusions as to what's likely to have happened. I accept what Mr M says about having been contacted out of the blue. He's said he was approached by someone representing an organisation called 'EFPG' but think it's likely this was Effective FPG rather than, as he recalls, European FPG. That's because we've been able to establish that Effective FPG made recommendations for European FPG products, such as the EFPG Plan. And that explains why Hargreaves was sent a letter of authority for Blacktower International, because of Effective FPG's connection to that organisation. In support of that, the adviser's email address on the letter of authority was one for Effective FPG.

As to whether Mr M signed the letter of authority for Blacktower Group, I'm not a handwriting expert. But the signature which appears on the letter (and which shows, in the top right hand corner, a logo and Blacktower, in capitals, underneath) appears to be the same as Mr M's known and genuine signature. I'm comparing here his signatures on his complaint form to us and the application form he signed in August 2017 to open his SIPP with Hargreaves. So, if Hargreaves had checked the signature on the letter of authority against the one held on its records for Mr M, I don't think there'd have been any reason for Hargreaves to have suspected that the signature wasn't Mr M's genuine signature. So, even if there was some irregularity in the way in which Mr M's signature to that form was procured, I don't see that Hargreaves could've been expected to recognise that.

Mr M has pointed to other documents as not having been signed by him – high net worth, certified sophisticated investor and asset statements. He's asked for the originals so the signatures can be compared and examined as necessary. It's a matter for Mr M if he wants to pursue that route, possibly with a view to taking action against any other party involved who he considers may have procured his signature to any documents illegitimately. But I don't think the outcome of any analysis of Mr M's signatures is necessary for me to fairly decide his complaint against Hargreaves. And when, in processing the transfer, the documents Mr M has pointed to as not having been signed by him, didn't feature. In reaching my conclusions, I've taken into account all Mr M has said about his financial position, including why he wasn't a high net worth client and his investment experience (or lack thereof) and which he says meant he wasn't an experienced and sophisticated investor.

Mr M has also suggested that his pension arrangement with Hargreaves wasn't a SIPP. While I don't see anything turns on this, I don't agree with what Mr M has said and in particular that a SIPP is characterised by allowing whole of the market investment. SIPP providers will generally set some limitations on what investments are permitted. If the EMB Fund wasn't on Hargreaves' list of permitted investments, Hargreaves didn't do anything wrong by telling Mr M that, if he wanted to invest in that Fund, he'd need to do so via another provider.

What did HL 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.

From what I've seen I'm satisfied that Hargreaves emailed a copy of the Scorpion leaflet to Mr M on 16 November 2020. Hargreaves says a further copy was sent in March 2021 however I haven't seen evidence of this. The copy shared by Hargreaves as part of its submission is is dated November 2022, so can't have been the exact copy Mr M received. However, the current version of the leaflet at the time (produced in July 2019) was very similar and included the same warnings.

Due diligence

In light of the Scorpion guidance and PSIG code, I think firms ought to have been on the look-out for the tell-tale signs of pension liberation and scams. Therefore, they needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk. Mr M's transfer request was received by Hargreaves in March 2021. So, the guidance in the July 2019 Scorpion action pack as well as the PSIG code (version 2.1 applied from 10 June 2019) is relevant to this case.

Based on the information Hargreaves had at the time there was one immediately apparent feature of Mr M's transfer that was a potential warning sign of scam activity – he was transferring to a scheme and authorised an adviser to obtain information about his policy, which was geographically distant – based in Gibraltar. The July 2019 action pack (pg.2) says: "Find out where the adviser is located geographically – often big distances indicate something unusual". Given this warning sign, I think it would've been fair and reasonable – and good practice – for Hargreaves to look into the proposed transfer and the most reasonable way of going about that would have been to turn to the check list in the action pack to structure its due diligence into Mr M's transfer.

The check list provided a series of questions to help transferring schemes assess the potential threat by finding out more about the receiving scheme and how the consumer came to make the transfer request. Some items on the check list could have been addressed by checking online resources such as Companies House and HMRC. Others would have required contacting the consumer. The check list is divided into three parts (which I've numbered for ease of reading and not because I think the check list was designed to be followed in a particular order):

1. The nature/status of the receiving scheme

   Sample questions: Is the receiving scheme newly registered with HMRC?

2. Description/promotion of the scheme

   Sample questions: Do descriptions, promotional materials or adverts of the receiving scheme include the words ‘loan’, ‘savings advance’, ‘cash incentive’, ‘bonus’, ‘loophole’ or ‘preference shares’ or allude to overseas investments?

3. The scheme member

   Sample questions: Has the transferring member been advised by an ‘introducer’, been advised by a non-regulated adviser or taken no advice? Has the member decided to transfer after receiving cold calls, unsolicited emails or text messages about their pension?

Opposite each question, or group of questions, the check list identified actions that should help the transferring scheme establish the facts.

I don’t think it would always have been necessary to follow the check list in its entirety. And I don’t think an answer to any one single question on the check list would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the check list to establish whether liberation was a realistic threat.

Given the warning sign, the relatively limited information Hargreaves had about the transfer and the fact that Mr M was transferring to a QROPS and had engaged an overseas based adviser, I think in this case Hargreaves should’ve addressed all three parts of the check list and contacted Mr M as part of its due diligence.

Furthermore, the June 2019 PSIG guidance in the section about QROPS (6.4.4) also explains: “The term ‘QROPS’ does not signify whether the scheme is of the occupational or personal type. The status of a particular QROPS should be ascertained during the due diligence stage, in any request for payment of a transfer from a UK scheme to a QROPS. Rather than complicate this Code by offering separate sets of due diligence questions for both occupational QROPS and those comparable to personal pension schemes, it is suggested that, broadly, those due diligence questions detailed in 6.4.3 in relation to SSAS should be considered, in regard to QROPS.”

A SSAS is a type of single-member occupational pension scheme based in the UK, which in some cases had been exploited for pension scams in the past in a similar way to some QROPS. The Code went on to add for a QROPS, “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.”

So, although Mr M’s QROPS was comparable to a UK-based personal pension plan, PSIG had formed the view that it was appropriate for Hargreaves to broadly follow the guidance set out for SSAS’s, with a particular focus on why Mr M was transferring to, and taking advice from, overseas entities.

In addition to highlighting the rationale for moving funds offshore, section 6.4.3 provides example questions for pension providers to put to transferring customers either in writing or by telephone as part of its due diligence. For example:

- How did you become aware of the adviser/receiving scheme? Did sales agents for the underlying investment or the receiving scheme/adviser make the first contact? What was the method of communication?

- Have you received any advice in connection with transferring your pension benefits? If so, please provide details of the organisation or company that provided you with that advice.

It doesn't appear that the EFPG plan was a newly registered scheme when the transfer request was received in 2021 – HMRC had recognised the scheme on its list since at least 2013. However, had Hargreaves contacted Mr M as part of its due diligence, in addition to the fact he was moving his pension overseas, it would've identified the transfer was initiated by a cold call and that he had no plans to move abroad. Moreover, Mr M would've told Hargreaves he was being advised by 'EFPG', a firm he believed to be the receiving scheme.

European FPG, the scheme administrator, hadn't been regulated by the FCA in the UK since 2020. However, receiving advice from a scheme itself is unusual, and so this should've prompted Hargreaves to investigate further. On doing so, as we've been able to, Hargreaves could've established the link between the different 'EFPGs' and Blacktower International. In essence, it could've confirmed Mr M was taking advice from an overseas adviser who was detailed as being able to provide services within the UK using 'passport in' permissions. In my view Hargreaves could've established this without the need for the further contact with Mr M. That's based on the letter of authority received from Blacktower Group which showed the firm's address was in Gibraltar and the adviser had an '@efpg.net' email address.

But, equally, it wasn't clear from the information Hargreaves had received at that point that advice had been given. And no advice documentation has been provided by Mr M or his representative. That said, PSIG guidance (6.2.2, pg. 29) asks pension providers to consider the following: "(i) If financial advice has been received, does the adviser have the appropriate permissions?"

And; "It should be noted that EEA inward passported advisers do not have permissions as the advice is not within IMD or MiFID passporting regimes. Such an adviser may however apply to the FCA for a Part IV Top up permission as outlined in Section 13A.7 of the FCA Handbook and, if granted, this will enable the adviser to advise on pension transfers."

However, I haven't seen evidence to confirm Effective FPG/Blacktower International had these permissions, or that Hargreaves checked this at the time. If Hargreaves considered that the Blacktower Group's advice was given by its Gibraltar offshore entity, rather than being adopted and therefore also given by its UK onshore entity, that advice was likely in breach of the Financial Services & Markets Act 2000, which requires all firms giving advice in the UK to be appropriately authorised or exempt from authorisation.

To be satisfied there wasn't a potential problem here, I think Hargreaves would've needed to check with Mr M directly if Blacktower (in the UK) had played a part in giving him the advice he'd received. This is because Mr M has confirmed to our service, he had no recollection (other than the letter of authority he signed and it seems he may now be saying he didn't in fact sign that) of dealing directly with a firm of that name. In essence, I don't think it's clear the firm Mr M would've pointed to as advising him was legally allowed to give advice on the transfer which took place. And I think the guidance at the time shows Hargreaves ought to have identified this from the information it had, as well as that which it could've obtained through further contact with Mr M.

Whilst, based on the guidance at the time, Hargreaves wouldn't have been able to deny Mr M his right to transfer, it ought to have provided Mr M with a specifically tailored warning about the potential risks involved with his transfer. Notably that he'd been speaking with an overseas adviser who was, in all likelihood, breaking the law to give that advice – and provided him the tools to check the regulated status of an adviser.

Hargreaves could've added concerns around the fact Mr M the transfer was initiated by cold call as well as the importance of not being rushed into a decision. This latter point coming from the fact the transfer request was received directly from Mr M citing that it needed to be completed as a "matter of urgency". Although Hargreaves couldn't give Mr M advice – beyond pointing out the risks involved – the Scorpion guidance recommends referring him to the Pensions Advisory Service, who could provide further assistance at no cost to him.

What I've said above echoes much of what the investigator said in his view. That's because, first, the prevailing regulatory regime and the Scorpion and PSIG guidance is a matter of fact and record. Secondly, there's no real dispute about what Hargreaves did, or more pertinently, didn't do. That said, there's an issue about whether Hargreaves did send a second copy of the Scorpion leaflet. But, as I've said above, I don't think much turns on that, given I'm satisfied a copy was emailed to Mr M in November 2020. And, thirdly, I agree with the investigator and for the same reasons he gave, that Hargreaves should've done more in connection with Mr M's transfer, hence my findings about that are correspondingly similar.

Mr M doesn't disagree with a finding that Hargreaves fell short. But it isn't enough for me to say that Hargreaves didn't do all it should've done – I need to go on to consider if Hargreaves' failings caused Mr M's losses. That isn't allowing Hargreaves to 'get away' with doing something wrong. Rather it reflects the legal principles of causation – the causal effect of the defendant's (to use a legal term) conduct and the end result.

In reaching my findings about that I've paid particular attention to Mr M's comments in response to the investigator's view, some of which play back findings made by the investigator as to what Hargreaves should've done and the warning signs it failed to pick up on. I can understand why Mr M may feel that the greater the extent of Hargreaves' failings, the more reason there is to say that Hargreaves should be responsible for his losses. But I don't think that directly follows. What I have to consider is if, had Hargreaves done all it should've done, the outcome for Mr M would've been different.

Whether Hargreaves should've picked up on one warning sign or more and if the failure to do so was in breach of obligations under the Scorpion guidance, the PSIG Code, COBS or PRIN or all of those provisions, the next step would've been the same: Hargreaves should've undertaken further due diligence and conducted enquiries across all three parts of the checklist. So we end up in the same place – what, in that scenario – and Hargreaves having highlighted concerns to Mr M – he'd likely have done.

Mr M challenges very strongly a finding that he'd have gone ahead anyway. I do understand his position. As is now apparent, the transfer to the QROPS and the investment in the EMB Fund had catastrophic consequences for him. A finding that, despite failings on its part, Hargreaves isn't responsible for his losses, may feel very unfair. Especially as we can't now say for certain what would've happened had Hargreaves done all it should've – a finding about that is necessarily based on a hypothetical situation. We reach our conclusions about that on the balance of probabilities – that is what we consider is likely to have happened, taking into account all the available evidence and information and the wider circumstances. We avoid looking at things with the benefit of hindsight and we'll focus instead on what happened at the time and what light that sheds on whether someone would've acted differently.

Unfortunately for Mr M, having considered things very carefully, I can't say that he'd likely have acted differently even if Hargreaves had done all it should've done. I share the investigator's views and I agree with the reasons he gave as to why, on balance, Mr M would've gone ahead anyway.

In reaching that conclusion, I've taken into account the Scorpion leaflet which was emailed to Mr M on 16 November 2020. I'm satisfied he did receive it but it's unclear if he read it or not. I note here what he's said about why, as Hargreaves described it as a "Pension Liberation Leaflet", it wouldn't have alerted him to the risk of a scam or raised any red flags with him. So that might mean he didn't read it because he didn't think it applied to his situation. But, given it had been sent to him by Hargreaves because he'd indicated that he wanted to transfer away, I think, acting reasonably, he should've read it. On balance and given there was a link to the document in Hargreaves' email, I think Mr M would've looked at it. I don't see he'd have ignored something which Hargreaves had sent to him and so was something that, despite the reference to it being a leaflet about pension liberation, Hargreaves considered was relevant to what Mr M was doing.

Mr M would've seen that it did highlight some factors which he'd have recognised as being features of his transfer and which could point to a pension scam. In particular, it cited having been contacted out of the blue and being under pressure to act quickly. And it urged consumers to check who they were dealing with by accessing the FCA's register and making sure the firm was FCA authorised and permitted to give pension advice. I recognise that any warnings given by Hargreaves would've been direct and personal to Mr M, rather than the more generic warnings contained in the leaflet. But nevertheless I'd agree with the investigator that the leaflet went some way to making up for a warning from Hargreaves and, in my view, ignoring this suggests that Mr M wouldn't have listened to similar warnings from Hargreaves.

I bear in mind what Mr M says about not being a high net worth individual or a sophisticated investor. The two concepts are often linked in that a sophisticated investor usually refers to someone with investment knowledge and experience as well as having sufficient capital or net worth to engage in more complex types of investments. I can accept that Mr M's financial position may have been to some extent at some stages exaggerated. And I note all he's said about his financial position following his divorce.

Further, I recognise, although his SIPP fund was relatively modest, it would've nevertheless been valuable to him. Its value then increased so, naturally, Mr M wouldn't have wanted to lose the gains he'd made. He's said he understood the EMB Fund wasn't high risk and was backed by Barclays. But I don't think it's credible that he'd have been prepared to invest in the Fund simply on the basis of being told it was a good investment and was backed by Barclays. He was investing a considerable sum and I think he'd have wanted to find out more details before committing his money.

I note here too the questionnaire Mr M had to complete in order to allow the Bitcoin investments. I understand that was an online questionnaire which Mr M would've completed himself and some years before the transfer to the QROPS came about and with it Mr M's concerns that he may not have signed all of the forms himself. He ticked a box to describe himself as having a professional background in finance or investment, so I think it's difficult for him to successfully argue now, and for the purposes of his complaint, that his position was in fact different to what he'd said.

Mr M says that his SIPP investments don't demonstrate that he was an experienced or sophisticated investor when it came to deciding to invest in the EMB Fund. I think his point is that his situation wasn't that he had a wealth of investment experience, gained over many years in a variety of financial products. I accept that may be the case. But equally the SIPP investments don't support him being a novice investor. The XBT Provider Bitcoin Tracker Funds – even if Mr M had only become aware of those investments via Hargreaves – were highly specialist, complex and higher risk investments. Mr M had also invested in Canaan Inc – a China based computer hardware manufacturer specialising in Bitcoin mining – that is Bitcoin transaction processing. I wouldn't expect to see those investments included in a

SIPP portfolio (except perhaps as a small proportion) of an inexperienced investor. I think the very fact that Mr M invested as he did indicates a level of investment expertise and confidence and denotes someone who is able to evaluate and assess the risks and merits of a particular investment.

From what I've seen Mr M had been thinking about moving away from Hargreaves for some time as evidenced by the letter of authority Hargreaves received in November 2020. On 11 March 2021 he made a transfer request direct to Hargreaves and asked Hargreaves to complete transfer urgently. Mr M has pointed to that as being a warning sign which Hargreaves failed to pick up on. But, equally, it's indicative of his commitment and that he viewed it as a time limited opportunity which was too good to miss.

From what I've seen, by the time his transfer request was made to Hargreaves, Mr M was committed to the transfer. He called Hargreaves' Helpdesk on 16 March 2021 (and there's been earlier calls too) to check if all the paperwork had been received and if Hargreaves was in a position to process the transfer. Mr M was unhappy and frustrated that Hargreaves had said, the day before, that all its requirements were complete, only to tell Mr M when he called to make sure that the transfer was going to be actioned, that discharge forms from the receiving scheme were still outstanding.

I note that Mr M offered to contact Mr A to chase up anything that was still required and with a view to ensuring the transfer went ahead as quickly as possible. Mr M also referred to a deadline for making the new investment – a Monday which I assume was 22 March 2021 – and which he was asking Hargreaves if it could meet. And Hargreaves did – the transfer payment was made on 19 March 2021.

I know Mr M may say that his position would've been different if Hargreaves had expressed doubts. But I'm unable to say that would've been the case. I can't see, if Hargreaves had warned Mr M against going ahead, that he'd have been deterred. In my view, he'd likely to have regarded any reservations that Hargreaves expressed as unhelpful delaying tactics and he'd have maintained his position and repeated his request for the transfer to be processed urgently. Essentially I think he'd formed a settled intention to transfer to the QROPS so he could invest in the EMB Fund. I don't think he'd have changed his mind if Hargreaves had expressed reservations and suggested he might want to reconsider.

I have considerable sympathy for Mr M. As I've said I can completely understand that he'll feel it very unfair that Hargreaves has "escaped liability" and doesn't have to pay redress even though it didn't do all it should've done. But if I can't say that Hargreaves' actions (or inactions) caused Mr M's losses then I can't hold Hargreaves responsible for those losses. In a nutshell, there were failings on the part of Hargreaves. But, even if Hargreaves had done all it should've done, my view is that it wouldn't have changed the outcome as Mr M would've gone ahead anyway. So Hargreaves' failings didn't cause his losses. On that basis I'm unable to uphold the complaint and say that Hargreaves should pay redress to Mr M.

My final decision

I don't uphold the complaint and I'm not making any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 September 2024.

Lesley Stead
Ombudsman