DRN-5018661

The complaint

Mr M has complained about a transfer of their Scottish Equitable Plc trading as Aegon personal pension to a Greyfriars Self Invested Personal Pension (SIPP) in April 2014.

Mr M says he was initially offered a free review of his pension which led to an introduction to a representative of Barrington Howe. This representative recommended that Mr M transfer his pensions to the Greyfriars SIPP and to put his pension funds into high-risk unregulated investments as he could expect high rates of return.

Mr M says Aegon 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 Aegon had acted as it should have done.

What happened

On 10 September 2013, a firm regulated to provide transfer advice contacted Aegon enclosing Mr M's letter of authority and requesting information about the plan.

At some point presumably after this, Mr M says he was offered a free review of his pension and was introduced to an unregulated firm, Barrington Howe. It was recommended he transfer to a Greyfriars SIPP to benefit from high performing investment opportunities.

On 7 April 2014, Mr M completed an application for a Greyfriars SIPP. This showed he planned to transfer the Aegon pension and another smaller pension into it from another provider. The financial adviser section was crossed out. The investment section was also not filled in but a note has been handwritten that says *'to be advised'*. Aegon won't have seen this paperwork.

On 23 April 2014, Aegon received a transfer request from Greyfriars SIPP. Included within this were the relevant completed transfer papers and Greyfriars SIPP's HMRC registration certificate from October 2008.

Mr M's pension was transferred on 24 April 2014. His transfer value was around £282,000. He was 49 years old at the time of the transfer. Mr M also transferred a pension from another provider at around the same time, this was worth approximately £11,000.

Within the SIPP Mr M made a number of investments. The investigator set out the below in his view and Mr M hasn't disputed this:

'On 14 May 2014, £27,000.00 was invested into the lease of car parking space at Churchill Towers in Dubai. A further £50,000.00 was invested into a property bond for student accommodation on 22 May 2014. Further investments of £22,400.00 each were also made into 5-year loan notes with Dolphin Trust on 8 October 2015 and 15 January 2016.

From the statements I've seen, interest was received into the SIPP account from the Dubai lease and student property bond investments. This was initially for amounts in the region of £1,000 to £2,000 roughly every six months until the Student property bond matured in April 2016. There was then a further income payment of £1,215 on 25 May 2016, which I understand was from the Dubai lease. Interest continued to be received into the SIPP after this but at significantly lower amounts, initially for around £200 per payment but then dropping further to around £100 in 2017.

In April 2018, £235,000.00 was recorded as being transferred out of Mr M's pension, though I've not been shown where this went. In October 2018, Greyfriars' SIPP business was sold to Hartley Pension Limited, and Greyfriars Asset Management LLP entered into administration.

I understand Mr M later made a claim with the FSCS against Greyfriars Asset Management LLP for losses he had experienced within the SIPP. This was successful and Mr M's received an award of £61,658.73. Mr M then requested reassignment of rights back from the FSCS so he could pursue complaints against other parties who may have shared responsibility for the loss.'

In April 2022 through professional representatives, Mr M complained to Aegon. Briefly, his argument is that Aegon ought to have spotted, and told him about, a number of warning signs in relation to the transfer. Aegon didn't uphold the transfer and also felt it had been raised too late for our service to consider.

Our investigator said the complaint had been made in time but didn't think it should be upheld as there were no signs apparent to Aegon that meant it ought to have done further due diligence in relation to the risk of pension liberation. And that a copy of the Scorpion leaflet wouldn't have changed Mr M's view on transferring.

Mr M's representatives rejected the investigator's recommendation. And said, *'the fact he was approached by an unregulated introducer to invest in unregulated, high risk, illiquid investments should have caused Aegon to investigate this transfer.*

In addition to this, if Mr M had received the Scorpion warning he would have checked whether the advice he received was regulated, which would have led him to seeking proper, regulated advice, following which it is likely he would have been advised against transferring the pension to invest into these particular investments.'

Aegon said it wasn't clear if Mr M had even made a loss. And that his losses from Dolphin were long after the transfer and it couldn't be held responsible for these in any event, as they wouldn't have been apparent at the time of transfer.

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.

Firstly for the avoidance of doubt, I am in agreement with the investigator that the complaint has been made within time and is one we can consider. The transfer was more than six years before the complaint and there were events that would've triggered Mr M to be aware of losses and a potential complaint, some years prior to complaining to Aegon. But being aware something has gone wrong is one thing but for this to count against Mr M in terms of our time limits, it needs to be determined that he ought to have had awareness that Aegon was responsible for these losses or his points of complaint.

Mr M said his awareness came when his professional representative told him in 2021 that Aegon ought to have done more to warn him of the risks involved, and he then complained within three years of this. Which if taken at face value means the complaint is within our time limits. And having considered this, I've seen nothing to suggest that Mr M ought to have been aware before this that Aegon as the ceding scheme provider, had a part to play in mitigating the potential risks of transferring. So I am satisfied the complaint has been raised in time.

The relevant rules and guidance

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 Aegon 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 indeed 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 guidance to follow that was aimed at tackling pension liberation – the "Scorpion" guidance.

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 comprised the following:

- An insert to be included in transfer packs (the 'Scorpion insert'). The insert warns readers about the dangers of agreeing to cash in a pension early 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 liberation. Guidance provided by TPR on its website at the time said this longer leaflet was intended to be sent to members who had queries about pension liberation fraud.

- An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "look out for" various warning signs of liberation. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where transferring schemes still had concerns, they were encouraged to write to members to warn them of the potential tax consequences of their actions; to consider delaying the transfer; to seek legal advice; and to direct the member to TPAS, TPR or Action Fraud.

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 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 legal rights.

That said, the launch of the Scorpion guidance 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.

<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, absent 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 heed the following:

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

2. When TPR launched the Scorpion guidance in February 2013, its press release said the Scorpion insert should be provided in the information sent to members requesting a transfer. It said on its website that it wanted the inclusion of the Scorpion insert in transfer packs to "become best practice". The Scorpion insert provided an important safeguard for transferring members, allowing them to consider *for themselves* the liberation 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 transfer requests. So, all things considered, I think the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party.

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 transfer process *didn't* involve the sending of transfer packs.

4. The Scorpion guidance asked firms to look out for the tell-tale signs of pension liberation scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The action pack 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 – what does the evidence suggest happened?</u>

Mr M's told us he was offered a pension review and then put in contact with Barrington Howe (an unregulated firm), who advised him to transfer to the Greyfriars SIPP and to invest in the aforementioned investments. Limited testimony has been provided but I've looked into Barrington Howe and I can see they were advertising investment opportunities in the German Property Market – which is what Mr M did invest within after transferring. So Mr M's recollections ring true in this respect.

Mr M's motivation for transferring was better investment opportunities. And in response to the investigator's view where the investigator said the Scorpion leaflet wasn't sent but that this wouldn't have made a difference, he said if he had received it, he likely wouldn't have transferred.

There is no evidence Aegon gave any warnings to Mr M nor included the Scorpion leaflet. The information they received that directly related to the transfer was from Greyfriars Asset Management LLP, the operators of the SIPP, and they had been regulated by the FCA for ten years at the time of transfer. The Greyfriars SIPP product itself had been registered with HMRC for more than five years at the time of transfer as well.

There is no evidence to suggest Aegon ought to have been aware based on the information they received that Mr M was being advised by an unregulated party.

So based on this I make the following findings of fact:

- Mr M didn't receive a Scorpion leaflet or similar warnings.
- Mr M wasn't looking to liberate his pension.
- The SIPP wasn't newly registered.
- Mr M was advised by an unregulated adviser but Aegon was unaware of this.

<u>What did Aegon 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.

There is no evidence that Aegon did send a copy of the Scorpion insert to Mr M.

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 pension liberation and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk. Aegon checked that the Greyfriars SIPP was registered with HMRC but other than that it doesn't appear it did much further. It also said that both parties it was aware of having involvement in the transfer, were FCA regulated. The Greyfriars SIPP had been registered with HMRC for more than five years at the point of transfer and Greyfriars had been regulated by the FCA (FSA) since 2004. And the information request prior to transfer that Aegon had received was from a FCA regulated firm (this was seemingly just a coincidence.) But I think Aegon acted reasonably in taking the view that Mr M wasn't at risk of liberation based on what it knew.

This means that one of the key things prompting a ceding scheme to do further due diligence under the Scorpion guidance (a recently registered, or in this case recognised) scheme wasn't present in this case. And no other features of the transfer stood out as being warning signs of early release pension liberation.

There was always a possibility that some consumers might suffer losses from making inappropriate investments as a result of transferring to a SIPP. So it doesn't to my mind mean it would have been a proportionate response to place all transfers to SIPPs under suspicion as soon as the February 2013 Scorpion campaign gave ceding schemes a new role to carry out due diligence.

Aegon's role at this time was to balance out the risk of enabling pension liberation with the risk of unfairly holding up legitimate pension transfers that were not for the purposes of liberation. I think it was appropriate for Aegon to concentrate on which transfers were at greater risk of liberation. It was clear that TPR thought that the greatest risk lay with schemes that had only recently been registered/recognised by HMRC, and/or the member was given an unsolicited offer of early access to cash. That's for good reason, because a scheme which had remained recognised by HMRC for a longer time without issue was less likely to be involved in this sort of activity.

That was consistent in my view with the approach TPR had taken to transfers to SIPPs in the 2013 action pack checklist. Not all SIPPs were under suspicion – only those claiming to be a SIPP but which were not authorised by the Financial Conduct Authority. They would rightly be seen as at greater risk of liberation.

So I don't think there was any reason for Aegon to do further due diligence or to contact Mr M before transferring his pension to a longstanding FCA regulated SIPP provider.

I'm also satisfied Mr M wouldn't have stopped the transfer even if Aegon had sent the Scorpion insert. As the insert was focussed on the threat posed by liberation – and the consequences of taking cash from a pension before the age of 55 in particular – I don't think it would have dissuaded Mr M from transferring given he was transferring for different reasons - to gain access to investment opportunities he had been told would provide better returns.

The leaflet did include warnings about being cold called and making sure advice is given by FCA regulated advisers. Mr M may have recognised this as being relevant to his circumstances. However, these messages were framed within the context of cashing in your pension before age 55. And incentives being offered to do so. Mr M hasn't said that any of this was relevant to his situation, and the evidence suggests it wasn't. So I don't think the bits that were likely relevant to him would've registered any concern, given the overall context of the leaflet and warnings were related to pension liberation and the early release of funds from a pension. Mr M's representatives say that after seeing the leaflet he would've sought regulated financial advice and he would've been warned against the transfer. But I'm unconvinced by that argument given what I've said above about the context the warnings were given in.

Mr M's representatives argue that Aegon ought to have made enquiries and found out that Mr M had been advised by an unregulated individual following a pension review and had been offered unrealistic rate of returns. However, I think these arguments misread what should, reasonably, have been expected of transferring schemes at that time. Investigations into the receiving scheme were a means to an end: to establish the risk of liberation. Once that threat was discounted – which it could have been here - then I think it reasonable for ceding schemes to consider the scam threat as being minimal and process the transfer as normal.

My final decision

For the reasons explained above, I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 March 2025.

Simon Hollingshead
Ombudsman