DRN-5027339

The complaint

Mr D has complained about a transfer of his Legal and General Assurance Society Limited ("L&G") personal pension policies to a Qualifying Recognised Overseas Pension Scheme ("QROPS") in 2016. Mr D says the QROPS was subsequently used to invest in inappropriate assets, including in The Resort Group ("TRG"), an overseas hotel venture that has since run into trouble.

Mr D says L&G 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 in place at the time. Mr D says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if L&G had acted as it should have done.

What happened

In early 2016, Capital Facts Limited (which appears to be an unregulated 'introducer' of investments to individuals) contacted L&G requesting QROPS discharge forms and information on Mr D's personal pensions. Mr D had previously given Capital Facts his authorisation to approach L&G. He says this followed a cold call.

L&G wrote to Mr D with the requested information and documents. It said it was up to Mr D to forward this on to Capital Facts. It looks like L&G wrote to Mr D on several occasions with this information (I can see similar letters dated 11, 18 and 25 January). Nevertheless, Mr D appears to have chased L&G for it, telling it in March 2016 that he was making the same request for the third time.

On 14 June 2016, Harbour Pensions Limited wrote to L&G requesting a transfer of Mr D's L&G policies to the Harbour Retirement Scheme ("the Harbour Scheme"). It enclosed a number of documents, including:

- letters, signed by Mr D on 26 May 2016, authorising L&G to provide information to Harbour Pensions Limited on his L&G policies;
- a completed L&G "overseas receiving scheme declaration and discharge form", signed by Mr D on 26 May 2016, for his L&G policies;
- a completed L&G "transfer instruction form", signed by Mr D on 26 May 2016, for his L&G policies;
- completed HMRC APSS263 and CA1890 forms;
- bank details for the receiving scheme;
- a HMRC letter confirming that the Harbour Scheme was a QROPS;
- Deed and Rules for the Harbour Scheme.

Mr D also signed a letter saying he wanted to transfer to the Harbour Scheme and wanted to do so with "no further delays". It's not clear if this was sent separately (L&G's comments suggest as much) or whether it was included in the transfer documents listed above (it was signed by Mr D on the same day as the other forms so this is a plausible scenario too). Either way, it's clear L&G did receive this letter.

The transfer values of the two L&G policies were received by the Harbour Scheme on 28 June 2016 and 18 July 2016. The combined transfer value was just short of £80,000. Approximately £21,000 was invested in TRG. Approximately £50,000 was invested in four assets/funds on the Novia platform. The latest QROPS statement provided by Mr D shows all four as having grown in value although the statement isn't up to date.

Mr D was 51 at the time of the transfer. He was, and remains, resident in the UK.

Mr D, through his representatives, complained to L&G in 2019. In his complaint letter, Mr D's representatives said, in brief, that the Harbour Scheme is likely to have been a scam; Mr D's transfer proceeds appear to have been put into high risk, speculative and illiquid investments; and Mr D is likely to face a 55% tax charge on the amount of his pension that was liberated. They say this could have been avoided if L&G had done the appropriate amount of due diligence and provided the warnings (in particular the anti-scam "Scorpion" leaflet) expected of it under the guidance in place at the time. Mr D's representatives also say L&G failed to adhere to its regulator's principles and rules.

L&G didn't think it had done anything wrong. It said it had sent Mr D the Scorpion leaflet. It said the Harbour Scheme was registered with HMRC and The Pensions Regulator ("TPR"). It said Mr D had signed the relevant discharge forms, along with declarations confirming (amongst other things) that he had read and understood the various warnings L&G had sent, including warnings about the tax charges that could arise from accessing a pension before the age of 55. L&G also pointed to the letter it received from Mr D to confirm that he wanted to transfer with "no further delays" as evidence of Mr D's willingness to progress the transfer.

I provisionally concluded that the complaint shouldn't be upheld. L&G had no further comments. Mr D made a number of comments which I address below.

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.

Rather than repeat everything I said in my provisional decision, I will focus on what Mr D has said in response to those findings (L&G having had nothing further to add). My provisional decision is, however, attached and forms part of my final decision.

In my provisional decision, I took the view that Mr D had read and understood the Scorpion insert. I said this because Mr D signed L&G's "overseas receiving scheme declaration and discharge form" which included the following declaration:

"I declare and confirm that…I have read and understood the Pensions Regulator's document which Legal & General has sent me"

In response, Mr D points to case law which, in his view, indicates L&G couldn't just rely on his signed declaration as being sufficient evidence of his understanding of the Scorpion insert.

The insert was designed to be easily understood so I don't think it would be fair and

reasonable to say L&G should have presumed Mr D wouldn't have understood it. And even if Mr D didn't understand it, I see no reason why L&G would, or should, have questioned his signed declaration to the contrary. But ultimately the key point here is that the Scorpion guidance didn't expect ceding schemes to check receipt and understanding of the insert – it was enough to have sent it. So, in that respect, L&G went further than it needed to.

Mr D is correct to point out that the sending of the Scorpion insert wasn't enough in itself – businesses had other responsibilities when dealing with a transfer request. But I covered this in my provisional decision, in which I discussed at length what L&G should have done in addition to sending the Scorpion insert. Mr D disagrees with me on whether L&G did enough in this respect. I cover those arguments below. But, as a preliminary point, it's important to note that my position isn't (and never was) that sending the Scorpion insert was enough in itself to absolve a business of its due diligence responsibilities.

Turning to those responsibilities, Mr D says L&G should have contacted him to make further enquiries but failed to do so. In his words, L&G failed to ask him "any questions whatsoever" and "processed the transfer with no questions asked".

It's important to note that Mr D is incorrect to say L&G didn't contact him or ask him any questions about the transfer. I covered what L&G asked Mr D in my provisional decision, but it's a point worth repeating here. In its transfer instruction form, L&G included the following declarations:

I confirm that I have received guidance from Pension Wise on my options. Yes/No

If you answered "NO" you are signing to confirm that you are happy to proceed even though this may not be the most appropriate option as you have received no guidance on your personal circumstances.

I have taken advice from a Regulated Financial Adviser. Yes/No

Please provide your financial adviser's name and company (if applicable)

"No" has been ticked for both statements. Mr D signed and dated the form.

So L&G did ask Mr D about his transfer. This is in addition to sending the Scorpion warning materials. As discussed previously, L&G also asked whether Mr D had read and understood those warning materials. It also checked the credentials of the receiving scheme (which included receiving a copy of its trust deed and rules, despite Mr D's argument to the contrary). In short, L&G *didn't* process the transfer "no questions asked."

However, the point Mr D appears to be making is that L&G should have *spoken* to him and that the results of that conversation would, inevitably, have caused L&G to be concerned about various features of his transfer, which he goes on to document. Not all of those would have been as concerning as Mr D makes out. For example, being under the age of 55 would only have been a concern if Mr D was planning on accessing his pension – which he wasn't intending to do and, presumably, he would have told L&G that. And, at various points, Mr D refers to a Scorpion action pack that had been superseded by the time of his transfer. There also wasn't a requirement for L&G to have spoken to Mr D. That said, as I explained in my provisional decision, some further contact was warranted here, and that contact may have revealed things about the transfer that weren't apparent from just Mr D's transfer documents.

But I come back to what I said in my provisional decision, which is whether L&G ought reasonably to have concluded Mr D was likely to have been falling victim to a scam. For the

reasons given in my provisional decision, and above, I'm satisfied L&G wouldn't have come to that conclusion. My view remains as it did in my provisional decision:

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

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

I recognise Mr D said, in response to my provisional decision, that Felicitas was not "directly involved" in the transfer. But it was involved – Mr D paid it over £3,000 in total shortly after his two transfers went through. And I'm satisfied its involvement would have given L&G comfort about the transfer given its presence on the FCA register, as I explained in my provisional decision.

Mr D also points to the "pre-drafted, typed" letters that were prepared for him by an unregulated party. Those letters were marked with a cross for Mr D to sign – which he did – and sent to L&G in order to accelerate the transfer. In Mr D's view, it ought to have been evident that he hadn't drafted those letters which should have been concerning to L&G and a prompt for further enquiries on its part. Instead, L&G appears to have taken the opposite view, as indicated by its response to Mr D's complaint which Mr D quotes:

"[Mr D] sent us a letter while the transfer was being processed, to confirm Harbour Pension were to be his new scheme and they should have full authority to be able to speak to us directly about his pension plan. He also confirmed that he was happy for the transfer to proceed and would appreciate it to go ahead without any further delays and the letter was signed."

In addressing this, it's worth noting first of all that Mr D also wrote a hand-written note to L&G significantly before the letter referred to above, in which he chased for information on his policies that had failed to materialise on two previous occasions. So it isn't true that Mr D only signed pre-prepared letters, or that he signed documents all in one go whilst an unregulated introducer was in his house.

But even putting this to one side, the letter referred to above appears to be an accurate reflection of Mr D's intentions: the Harbour Scheme was his new pension; he presumably did want L&G to be able to speak to that scheme in order to ease the transfer process; he did want the transfer to proceed; and he likely wanted it to happen as soon as possible. So there's a plausible reason why he signed the letter in question – because it was a true reflection of his wishes. This would be a more plausible scenario to me than Mr D signing the letter despite disagreeing with it. And it's a more plausible scenario than Mr D just putting his signature next to the cross provided without having read its contents because he had to sign all his transfer documents, in his words, "there and then". After all, Mr D was making a significant financial decision – the transfer of two pension policies which were worth, in total, more than £80,000. In that context, it seems to me that Mr D would have reviewed a short,

easy to understand, letter before signing it. The same applies to the other typed letters Mr D signed, none of which were obviously suspicious in the way Mr D has argued.

Nevertheless, I recognise the point Mr D is making which is that the mere presence of signed, templated, letters in his transfer documents meant L&G, couldn't (in his view) have properly discounted the possibility of someone leading him through a process against his will (which is what he seems to be hinting at) or, at the very least, in a manner that was not in his best interest. But I find the counterargument far more compelling here, which is that it was reasonable for L&G to have taken its customer's signed declarations – including the letter referred to above – at face value. That strikes me as being a more reasonable, considered, approach to due diligence than second guessing every document signed by Mr D.

Mr D has also pointed to other ombudsman decisions in order to support his case. He says I have a duty to follow "lead decisions". Two of the decisions he refers to were from a different ombudsman service – The Pensions Ombudsman – so there would be obvious practical difficulties in following decisions made by a different scheme with a different remit. And the decision he attached in his latest submission, which was by an ombudsman at the Financial Ombudsman Service, relates to very different circumstances to his own transfer. But Mr D's starting assumption is mistaken anyway. I don't have duty to follow other decisions; I have a duty to decide a case on its own individual merits.

Mr D has questioned whether I have considered everything he has said, in particular in relation to the advice he says he was given by an unregulated introducer and the potential for rules around the promotion of unregulated collective investment schemes to have been breached. For the avoidance of doubt, I have considered everything Mr D has said. But, for the reasons given in my provisional decision and above, there would have been no reason for L&G to have questioned Mr D's adviser given his answer on his transfer paperwork indicated he wasn't being advised by anyone, whether regulated or not. And, even if L&G had probed this further, I see no persuasive reason why Mr D would have given a different answer. Indeed, any further probing on this would likely have revealed the presence in the transfer process of Felicitas which was on the FCA register at the time. With all this in mind, and taking into account everything else L&G would have known about the transfer, or reasonably found out about the transfer, I'm satisfied it wouldn't have considered Mr D was about to fall victim to a scam – which is the question it needed to address.

Finally, I note that Mr D says I've relied on out-of-date information on Mr D's investments. Mr D is correct in so far as I've reviewed the information he has provided to me which is, unfortunately, out-of-date. But he is incorrect to imply that this has had a bearing on the outcome of the complaint. The value of Mr D's investments doesn't change my view on L&G's actions at the time of the transfer.

For the reasons given above and in my provisional decision, I don't uphold Mr D's complaint.

COPY OF PROVISIONAL DECISION

The complaint

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What happened

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L&G wrote to Mr D with the requested information and documents. It said it was up to Mr D to forward this on to Capital Facts. It looks like L&G wrote to Mr D on several occasions with this information (I can see similar letters dated 11, 18 and 25 January). Nevertheless, Mr D appears to have chased L&G for it, telling it in March 2016 that he was making the same request for the third time.

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latest QROPS statement provided by Mr D shows all four as having grown in value although the statement isn't up to date.

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L&G didn't think it had done anything wrong. It said it had sent Mr D the Scorpion leaflet. It said the Harbour Scheme was registered with HMRC and The Pensions Regulator ("TPR"). It said Mr D had signed the relevant discharge forms, along with declarations confirming (amongst other things) that he had read and understood the various warnings L&G had sent, including warnings about the tax charges that could arise from accessing a pension before the age of 55. L&G also pointed to the letter it received from Mr D to confirm that he wanted to transfer with "no further delays" as evidence of Mr D's willingness to progress the transfer.

Our investigator was unable to resolve the dispute informally, so the matter was passed to me to decide. Mr D has provided further evidence and arguments since we started to investigate his complaint, most notably in relation to the regulatory status of the party he says advised him.

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.

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 L&G was subject to the FSA/FCA Handbook, and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA/FCA rules governing how personal pension providers deal with pension transfer requests, but the following have particular relevance here:

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

In February 2013, The Pensions Regulator (TPR) issued its Scorpion guidance to help tackle the increasing problem of pension liberation, the process by which unauthorised payments are made from a pension (such as accessing a pension below minimum retirement age). In brief, the guidance provided a due diligence framework for ceding schemes dealing with pension transfer requests and some consumer-facing warning materials designed to allow members 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. A further update to the Scorpion guidance (but not the PSIG Code) followed in March 2016.

The March 2016 Scorpion guidance

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

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

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

The PSIG Code of Good Practice

The PSIG Code was voluntary. But, in its own words, it set a standard for dealing with transfer

requests from UK registered pension schemes. It was "welcomed" by the FCA and the Association of British Insurers (amongst others). And several FCA regulated pension providers were part of the PSIG and co-authored the Code. So much of the observations I've made about the status of the Scorpion guidance would, by extension, apply to the PSIG Code. In other words, personal pension providers didn't necessarily have to follow it in its entirety in every transfer request and failure to do so wouldn't necessarily be a breach of the regulator's Principles or COBS. Nevertheless, the Code sets an additional benchmark of good industry practice in addition to the Scorpion guidance.

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

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

- The PSIG Code includes an observation that: "*A strong first signal of [a scam] would be a letter of authority requesting a company not authorised by FCA to obtain the required pension information; e.g. a transfer value, etc*." This is a departure from the Scorpion guidance (including the 2016 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 2016 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 2016 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 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 D says he received an unsolicited approach from Capital Facts and, as a result of that, agreed to allow Capital Facts to review his pension. According to Mr D, this led to him transferring his pension to the Harbour Scheme in order to invest in TRG and four other funds/assets held on the Novia Global platform. Mr D says Capital Facts advised him to transfer even though it wasn't authorised by the FCA to do so – something he says L&G should have discovered and warned him about.

It's evident Capital Facts did contact Mr D. Mr D signed a letter of authority on 15 December 2015 allowing it to investigate his pensions. Capital Facts forwarded this on to L&G on 4 January and L&G responded (to Mr D) later that month.

However, after 4 January, Capital Facts disappears from the documentary evidence. From this point on, correspondence is between L&G and Mr D until Mr D gives L&G permission to speak with the Harbour Scheme. Mr D also hasn't given a particularly compelling account of the steps Capital Facts took during the transfer process. For instance, he hasn't named or described the person he says advised him, or given any sort of account of the meetings that took place – location, frequency, duration and so on. And some of Mr D's recollections are somewhat inconsistent. For instance, he says he was pressured into transferring by Capital Facts. But he doesn't explain how Capital Facts pressured him, which seems an unusual omission given its significance. Mr D just points to the three times he chased L&G for policy information, and his request to L&G for the transfer to proceed "with no further delays", as proof of the pressure he was put under. Given it took over six months for a transfer request to materialise, it doesn't strike me as likely that Mr D was pressured into transferring by Capital Facts.

Whilst none of this precludes the possibility that Capital Facts acted in more than just an information-gathering "introducer" capacity at the start of the transfer process, Mr D's recollections and the supporting evidence don't support such a conclusion.

Furthermore, I note here that Mr D didn't initially provide us with any sort of detail as to the type of investments his QROPS made. This undermined his case because he said L&G should have spotted that his investments were – in his words – "high risk, illiquid and speculative" even though he never told us the specific investments that should have prompted such concern. Mr D has since provided evidence of those investments (which I summarised earlier). In so doing, he has also pointed to the presence of a different entity in the transfer process, one that sheds a different light on matters.

Mr D's QROPS statement shows two transfers were made from L&G. One was received by the QROPS on 28 June 2016, the other on 18 July. Shortly after each transfer an amount for "IFA fees" was paid to a firm referred to as "FELICITAS NGT" and "FELICITAS MNGT" respectively. This is Felicitas Management Investment Services Ltd. This aligns with a valuation report that Mr D also provided, which was produced by "FMG Clients". It also aligns with my experience of other transfers to the Harbour Scheme because these also involved Felicitas, and 4% was charged by Felicitas in those transfers – the same amount as here.

Mr D hasn't mentioned Felicitas at all. But given he didn't (as far as I'm aware) complain about the 4% his pension paid to this firm on two occasions (which amounted to over £3,000 in total), I can only conclude he agreed to pay Felicitas and did so because it was involved in the transfer process. Based on my experience of other cases, Felicitas most likely provided a report for Mr D giving him information on his options, including information on the Harbour Scheme and on his proposed investments.

Felicitas Management Investment Services Ltd was a Cyprus-based firm. It had 'passported' into the UK which means that, although it wasn't regulated from the UK, the FCA had become its host regulator and it appeared on the FCA register. It had a "services passport" which means it didn't have a physical presence in the UK. I will come on to what all this means for Mr D's complaint later.

I note here that Mr D has argued at several points that the Harbour Scheme was a liberation scheme. There is no evidence to support that. If it had been a liberation scheme, it likely wouldn't have remained on the QROPS list for over two years prior to Mr D's transfer. Also, it doesn't appear as though Mr D was offered early access to his pension or some sort of cash incentive to transfer, which

would be a typical indicator of a liberation scheme. It appears Mr D transferred in order to achieve better returns for his pension rather than 'liberate' it.

What did L&G 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.

Mr D signed L&G's "overseas receiving scheme declaration and discharge form" which included the following declaration:

"I declare and confirm that…I have read and understood the Pensions Regulator's document which Legal & General has sent me"

I'm satisfied the document in question is the scorpion insert (or the longer version that schemes could also send) because I'm not aware of any other TPR documents L&G would have been expected to send in response to a transfer request. Therefore, as Mr D signed and dated the declaration to say he read and understood the document in question, there appears to be little doubt Mr D was sent the necessary Scorpion warning materials and was aware of their contents.

Due diligence:

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

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

- Did receiving scheme/adviser or sales agents/representatives for the receiving scheme make the first contact (e.g. a cold call)?

- Have you been informed of an overseas investment opportunity?

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

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

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

Not every question would need to be addressed under the Code. Indeed, the Code makes the point that it is for scheme administrators to choose the most relevant questions to ask (including asking

questions *not* on the list if appropriate). But the Code makes the point that a transferring scheme would typically need to conduct investigations into a "wide range" of issues to establish whether a scam was a realistic threat. With that in mind, I think in this case L&G should have addressed all four areas of concern and contacted Mr D in order to help with this.

What should L&G have found out – and would it have made a difference?

L&G did establish the legitimacy of the QROPS. I've previously listed some of the documents it would have reviewed as part of that process, so I won't repeat those now. Suffice to say, I'm satisfied L&G did enough to consider the destination scheme as being legitimate.

However, L&G didn't satisfactorily address Mr D's rationale for transferring. If it had asked Mr D about this – which it should have done, as outlined above – it would have found out he was transferring to a type of arrangement more commonly used by people living overseas even though he wasn't intending to do that. The reason for transferring was to invest, in part, in TRG – an overseas property scheme of the type that was also highlighted as an area of concern in the PSIG Code. And if L&G had followed the Scorpion action pack, similar findings would have followed.

Against this, L&G sent Mr D the Scorpion insert, which he confirmed as having read and understood. The insert pointed the reader to a number of scam warning signs, including cold calls, free pension reviews, transferring money overseas, undiversified investment portfolios, unrealistic investment returns and being rushed or pressured into transferring. By extension, L&G could have taken comfort from the fact that Mr D was aware of, and understood, those warning signs and must, logically, have considered them as not being applicable or as being of no concern when the transfer was considered in the round.

L&G also asked Mr D about the advice he received. Its transfer instruction form, included the following declarations:

I confirm that I have received guidance from Pension Wise on my options. Yes/No

If you answered "NO" you are signing to confirm that you are happy to proceed even though this may not be the most appropriate option as you have received no guidance on your personal circumstances.

I have taken advice from a Regulated Financial Adviser. Yes/No

Please provide your financial adviser's name and company (if applicable)

"No" has been ticked for both statements. Mr D signed and dated the form. So L&G could, reasonably, have taken the view that Mr D wasn't being advised by anyone – he was acting on his own initiative. Therefore, without an obvious scammer leading Mr D through the transfer process, the likelihood of there being a scam would seem to diminish drastically. With all the above in mind, there would be no grounds for blocking the transfer and no reason to provide Mr D with any warnings about the transfer.

I note here that Mr D says he was advised by Capital Facts so he could potentially argue he would have told L&G the same thing if it had asked further questions on the subject. And this would account for why he said "no" when asked whether he had taken advice from a regulated financial adviser – he may well have been aware that Capital Facts wasn't one and his answer was therefore an accurate reflection of that.

Answering in this way doesn't strike me as being likely. Most people wouldn't proceed knowing their representative wasn't regulated for the activity they're undertaking. (And if Mr D did so, it would hardly help his complaint.) So I'm more inclined to think he answered in the way he did because he wasn't being advised by anyone – regulated or not – and L&G could have taken that into consideration. This would also explain why the presence of Capital Facts appears so limited in the transfer process.

Even if I assumed L&G should have probed further into who, if anyone, was acting on Mr D's behalf, I'm satisfied it wouldn't have discovered anything that would have caused it concern. For the reasons given previously, I'm satisfied L&G would have discovered the involvement of Felicitas, which was on

the FCA register. I think the involvement of a firm on the FCA register at the end of the process would, reasonably have given L&G further comfort that Mr D wasn't likely being scammed – which was the question it, ultimately, needed to answer.

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

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

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

- Cold calls – Mr D says he was cold called by Capital Facts.

- Being pressured into making a decision – Mr D says he was pressured into the transfer by Capital Facts. I've explained why this doesn't seem particularly plausible earlier in my decision. But if Mr D did feel pressured, the Scorpion insert ought reasonably have given him cause for concern.

- Overseas transfer of funds – Mr D could hardly have been oblivious to this given he had signed forms to send his pension to Malta and was investing in TRG, an overseas hotel group.

Mr D signed to say he had read and understood the Scorpion insert. So it strikes me as being unlikely that he would have been diverted from transferring given the warning signs he evidently did ignore. And L&G's questions would have been just that – questions. For the reasons given above, there were no explicit warnings that it should, reasonably, have given to Mr D. Mr D also signed to say he was proceeding without guidance from Pension Wise and without taking regulated financial advice which doesn't suggest, to my mind, the actions of someone likely to be deflected from their chosen course of action. So, all things considered, I don't think Mr D would have changed his mind about the transfer had L&G asked further questions about his rationale for wanting to take that step.

It follows from the above that I don't intend to uphold Mr D's complaint.

END OF PROVISIONAL DECISION

My final decision

My final decision is to not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 28 October 2024.

Christian Wood
Ombudsman