DRN-5034882

The complaint

Mrs N has complained, through her representative, that Legal and General Assurance Society Limited ('L&G') undertook insufficient due diligence when transferring her personal pension to a Qualifying Recognised Overseas Pension Scheme ('QROPS') in January 2015.

Mrs N's QROPS - the Harbour Retirement Scheme ('Harbour') -was based in Malta. Funds from her L&G pension as well as other occupational pensions she held were subsequently used to invest into loan notes on property in Germany through Dolphin Capital as well as some balanced funds. The Dolphin investment was recorded as having no value in 2020.

Her husband, Mr N, transferred his own pension at the same time. He said he was dealing with the transfers for both him and his wife, so the majority of the testimony of what happened here is from Mr N.

What happened

Mr N says he and his wife filled in a questionnaire on a plane and subsequently were contacted by a firm called Portia Financial Limited ('Portia') who offered them a free pension review. Portia introduced the couple to Servatus Ltd ('Servatus') because the transfer needed a qualified adviser. Servatus advised them to transfer to the Harbour QROPS and mainly invest into Dolphin Capital. Mr N says he was told the loan note was for five years and investment returns would be about 5% which seemed realistic and not "too good to be true".

Portia was an unregulated firm. Servatus was regulated by the Central Bank of Ireland. At the relevant time they also appeared on the FCA register as being authorised in the UK with passporting rights.

Mrs N signed a letter of authority for Servatus in April 2014 appointing them as her advisers. L&G received a request from Servatus for a transfer pack, discharge forms and any QROPS transfer paperwork on 22 May 2014 to which L&G responded a week later.

On 12 November 2014 L&G received a transfer request from the Harbour QROPS. This included transfer forms, HMRC tax forms and a letter from HMRC acknowledging the scheme was recognised (as a QROPS).

On 25 November, L&G emailed Harbour to request the correct paperwork for a QROPS. On the same day they wrote to Mrs N explaining she needed to complete a particular HMRC form and sign a member declaration form. Mrs N signed the member declaration form to confirm amongst other things that:

"B) I understand that the receiving scheme is scheme is a (QROPS)

C) I have read and understand The Pensions Regulator's leaflet which Legal & General has sent me…"

L&G also strongly recommended her to take financial advice.

Mrs N signed the forms on 11 December. Harbour returned the necessary paperwork at the end of December 2014 and the transfer completed in January 2015.

Mrs N complained to L&G in 2022 that they provided unsuitable advice and should have done further due diligence on the transfer. L&G rejected the complaint. They said they didn't provide advice, but had strongly recommended Mrs N to seek such advice. They had also sent her the Scorpion leaflet issued by the Pensions Regulator. The Harbour QROPS was regulated in Malta and the scheme was registered with HMRC as a QROPS and had been for over a year. They said they had followed the guidance at the time.

Mrs N referred his complaint to this service. One of our investigators rejected the complaint. He said the evidence suggested Mrs N had received a Scorpion leaflet which warned about pension scams. Mr N had also received Scorpion inserts from his pension provider. The investigator thought given the transfer was going overseas, L&G should have asked Mrs N more questions. However, further enquiries would have shown that Mrs N was being advised by Servatus, an EEA regulated firm with UK passporting rights which would have given them enough comfort that the scam risk was minimal. So no further warnings needed to be given. The investigator thought that even if L&G had acted as they should have done, the transfer still likely would have gone ahead.

Mrs N's representatives disagreed that L&G could take comfort from Servatus's involvement. They say foreign advice would have been unusual and should have been seen as another red flag. Mrs N also wouldn't have the same regulatory protections as from a UK adviser. L&G should have informed Mrs N about all of this. They also disagreed that Mrs N would have proceeded with a transfer if L&G had asked more questions and provided her with warnings.

As the complaint couldn't be resolved, it was referred to me for an ombudsman decision.

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, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

What did L&G do and was it enough?

The investigator set out in detail the relevant rules and guidance in place at the time of the transfer and how they would apply. Both L&G and Mrs N's representatives are very familiar with this and so I'm not going to repeat this here again in detail. However, in short I consider the Principles of Business (PRIN), COBS 2.1 and the Scorpion guidance in the version of July 2014 to be relevant for this complaint.

Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's rights. 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. In deciding how to apply the guidance, they needed to consider the guidance as a whole, including the various warning signs to which it drew attention, the case studies that highlighted different types of scam, and the checklist and various suggested actions ceding schemes might take.

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. I consider this is a reasonable expectation of personal pension providers dealing with transfer requests bearing in mind their duties under the regulator's Principles and COBS 2.1.1R.

The Scorpion insert:

Since 2013 pension providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information. This was an easy and inexpensive step to take to try and protect their customers from scams.

I'm satisfied that Mrs N likely received the relevant Scorpion insert when L&G wrote to her in November 2014 and she signed a declaration that she had read and understood it.

Due diligence:

In light of the Scorpion guidance, I think firms ought to have been on the look-out for the tell-tale signs of a pension scam and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk. L&G satisfied themselves the QROPS was properly registered with HMRC, however I don't think this was enough.

The 2014 Scorpion Action pack listed overseas investments as a possible warning sign of a scam. Given Mrs N was transferring her pension overseas I think it would have been fair and reasonable – and good practice – for L&G to have looked into the proposed transfer and the most reasonable way of going about that would have been to contact Mrs N to ask for more information about the transfer.

<u>What would L&G reasonably have discovered?</u>

From a few simple questions directed to Mrs N, L&G would have likely found out that she had been initially contacted by Portia and that she had been advised by Servatus.

Based on what Mr N told our investigator, they likely also would have learned that Mr and Mrs N were planning to retire in Gibraltar and Mr N had asked for a QROPS due to their plans to move overseas and in order to put all pensions into one. So there was a plausible reason for Mr and Mrs N to be transferring into a QROPS.

It's likely L&G would have learned that Mrs N hadn't been offered to access her pension early (both her and Mr N were over 55 at the time in any event) or had been offered any cash incentives.

The Scorpion checklist recommends that, in order to establish whether a member has been advised by a non-regulated adviser, the transferring scheme should consult the FCA's online

register of authorised firms. L&G should have taken that step, which is not difficult. Had it done so it would have discovered that Servatus appeared on the FCA register as a firm that was passported from Ireland to the United Kingdom. This means that for UK purposes throughout the period of this transfer Servatus was an authorised person under s.31(1)(b) of the Financial Services and Markets Act (FSMA) 2000 and Schedule 3 to that Act.

What should L&G have told Mrs N – and would it have made a difference?

A ceding pension scheme is not expected to act as a general pension adviser to a member who tells it they want to leave their scheme. The Scorpion guidance is aimed at spotting and averting potential pension transfer scams against the member, rather than delivering general advice about the merits of different regulatory systems or high-risk investments. So, for it to be reasonable to expect a ceding scheme to have concerns and raise these with its member, there must, viewed overall, appear to be a real risk their member is falling victim to a scam. For Mrs N's transfer, viewed overall in that way and if L&G had taken the steps it should, I don't consider that would have been the case.

Mrs N's representatives say L&G should have warned Mrs N she wouldn't have the same regulatory protections than from a UK adviser. It is correct that Servatus didn't have a branch in the UK and so Mrs N wouldn't have had any recourse via UK's complaints and investor protection institutions, like the Financial Ombudsman Service or the FSCS, as opposed to their Irish equivalents. The Republic of Ireland also has a complaints system, financial services and pensions ombudsman and a statutory investor compensation scheme, which EU countries are required to have under the EU's Investor Compensation Directive.

Servatus was passported from Ireland to the UK and so for the period of this transfer Servatus was an authorised person under FSMA 2000. The right to passport financial services from one EU country to another is a feature of the EU's internal market, which applied to the UK at the time. The right was underpinned by the introduction of EU wide standards of investor protection and harmonised conduct of business rules. So, the UK's regulatory system permitted EU passported firms, if duly registered with the FCA on its public register, to operate here as authorised persons under the FSMA 2000, and I think that, in the present case, that could have provided sufficient comfort for L&G's purposes.

As a firm that was regulated (albeit by a home-state regulator in another EU jurisdiction) the regulatory protections included the fact that Servatus would have been held to a high standard, mandated throughout the EU, by its own regulator. And as an authorised firm, Servatus would have had to follow the applicable European regulatory standards and conduct its practice in accordance with those standards. Its operations would have been under some oversight by its regulator to ensure it was acting in the best interest of its client. It therefore would have had to meet certain required standards in all of its dealings and be subject to regulation and to investor recourse under the Irish system. So, in my view, L&G could have been reassured that Servatus was regulated to EU standards that were accepted for the purpose of authorisation under United Kingdom law.

I think the knowledge Mrs N was being advised by a properly authorised adviser in this case reasonably would have given Prudential comfort the transfer was unlikely to be a scam or unauthorised pension withdrawal. In addition, Mr and Mrs N were planning to retire overseas and not having been promised early access to their pension, cash incentives or high guaranteed returns would have also been seen as reassuring.

Overall, I don't think if L&G had made further enquiries that this would have resulted in warnings to Mrs N that she was at risk of a scam.

Would further enquiries from L&G have changed her mind about the transfer?

I don’t think further enquiries would have changed Mrs N’s mind about the transfer. She and her husband were interested in a QROPS as they were planning to move overseas and the investments looked genuine. In fact Mr N said he had seen other offerings with promised returns of 10% which he saw as a red flag. So he was aware to look out for unrealistic and ingenuine investment propositions. Mr and Mrs N also had received regulated advice. So like L&G I don’t think they reasonably would have been concerned.

In summary I don’t think L&G did enough here. However, if they had done everything they should have, on balance I still think Mrs N would have transferred her pension and so she would be in the same position she is in now. So I don’t think L&G has caused the investment losses she has suffered.

My final decision

I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs N to accept or reject my decision before 10 February 2025.

Nina Walter
Ombudsman