

## The complaint

Ms M has complained, with the help of a professional third party, about the transfer of her personal pension to an occupational pension scheme ('OPS') in June 2015.

Ms M says Equiniti Financial Services Limited ('Equiniti') failed in its responsibilities when dealing with the transfer request. She says that it should have done more to warn her of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance she says was required of transferring schemes at the time.

Ms M says the investments made through her OPS now have little value and she has lost out financially. She says she wouldn't have transferred, and therefore wouldn't have put her pension savings at risk, if Equiniti had acted as it should have done.

Ms M also applied to transfer three other pensions she held to the OPS. I understand only one of these other three pensions was ultimately transferred – from a business that I'll refer to as 'Firm K'. Some of the circumstances of the transfer of Ms M's pension from Firm K, as well as the applications to transfer her pensions from two other businesses (which I'll call 'Firm A' and 'Firm C') are relevant to this complaint, and so I've referred to them below.

## What happened

On 7 October 2013, Ms M signed a letter to Equiniti asking for information about her pension.

On 16 October 2013, Equiniti wrote to Ms M in response, providing a transfer pack – details of Ms M's pension and its value and forms to complete to enable the transfer of her pension benefits to another provider.

In February 2014 a business called Fast Pensions Limited wrote to Equiniti providing a transfer request on behalf of Ms M to transfer her pensions to the Elphinstone Retirement Scheme. Fast Pensions Limited was not authorised or regulated by the Financial Conduct Authority ('FCA'). The Elphinstone pension was administered by Money Plus Legal Ltd which also wasn't regulated by the FCA.

Amongst the information sent by Fast Pensions Ltd were two forms of ID for Ms M which were certified by a representative of Female Independent Ltd ('FIL'). FIL was authorised by the FCA.

I can see that Equiniti wrote to HMRC to confirm the registration details of the Elphinstone pension. And it wrote to Ms M at the same time, explaining it had requested information from HMRC as part of the *"new procedures to combat pension liberation fraud"*. The letter to Ms M provided links to online information about pension liberation provided by HMRC, the Pensions Regulator ('TPR') and the Pension Advisory Service ('TPAS'). And it said this included *"a more detailed leaflet"* about pension liberation. The leaflets and booklets published by TPR are commonly referred to as the 'Scorpion' leaflets, because of the imagery they include.

Shortly afterwards Equiniti also asked Ms M to complete a 'Pension Liberation Control Measures – Member Questionnaire'. This asked seven questions in relation to the proposed transfer. These included had Ms M been given descriptions referring to a loan, savings advance or cash incentive, had she been told about investing overseas, in holiday property or in unusual or creative investments. It requested confirmation of Ms M's employment status. Equiniti also asked if she'd been contacted unsolicited about the transfer by FIL and what advice that business had given her. And it separately asked whether she was considering the transfer because of unsolicited contact from Fast Pensions Limited.

Ms M completed the questionnaire and signed it on 2 March 2014. She confirmed she was employed and answered no to all the other questions, also noting that she'd not heard of FIL. And I can see HMRC confirmed in June 2014 that the Elphinstone pension was registered.

On 10 July 2014, Ms M wrote to Equiniti saying she no longer wished to transfer her pension to the Elphinstone pension. The letter said Ms M had now appointed an FCA regulated business to provide a full report on her existing pensions, after which she'd decide what to do.

Also on 10 July 2014, Ms M signed a letter of authority ('LOA') giving Equiniti permission to provide information about her pension to Gerard Associates Ltd ('GAL'). GAL was authorised and regulated by the FCA. On 18 July 2014, Equiniti provided a transfer pack to GAL.

There appears to have been no further communication about the Equiniti pension for approximately six months. But on 24 July 2014, another of Ms M's pension providers, Firm C, wrote to GAL providing an illustration of her retirement benefits.

Ms M signed a further LOA in respect of GAL on 22 January 2015. And I can see that GAL sent this second LOA to Equiniti on 17 February 2015 and requested another transfer pack. Equiniti replied with an updated transfer pack on 26 February 2015. It appears that Firm C sent an updated statement of retirement benefits to GAL at around the same time.

On 13 March 2015, Firm K wrote to GAL providing a transfer value for Ms M's pension held with it. This was a defined benefit ('DB') pension scheme. The transfer value was less than £30,000.

On 30 April 2015, Firm A wrote to Ms M saying it too had been contacted by GAL and notified that she was considering transferring her pension benefits it held to another scheme. This letter said it enclosed TPR's Scorpion leaflet about pension scams. It also explained that Ms M would need to take appropriate advice from an FCA regulated adviser. This was because, I understand, the transfer value of her pension with Firm A was greater than £30,000 and the pension was also a DB scheme.

On 26 May 2015, Equiniti was sent an application to transfer Ms M's pension benefits to the Incartus Investment Pension Scheme 2 ('IIPS'). The covering letter was signed by an administrator. And the letter head explained that the IIPS was administered by AFM Administrators – which wasn't authorised by the FCA. Included in the application was a letter of authority signed by Ms M. This authorised both AFM Administrators and Incartus Investments Ltd ('IIL') to obtain information about her pension. IIL was authorised by the FCA.

Information about the IIPS was provided. This included a list of 'scheme employers' – the sponsoring employer and other scheme employers as declared by the administrator. The business that Ms M was employed by at that time was noted as being a scheme employer. I've seen a separate explanation from AFM that a scheme employer was one that *"had been*

*accepted into the scheme by the scheme administrators*". There was also information stating the IIPS had been registered with HMRC on 6 June 2014.

Ms M's application form contained a section titled 'Intermediary details' which was to be completed by the agent / consultant. This said the company / trading name of the intermediary was 'GT Business Consultants'. This business was not regulated or authorised by the FCA. And this business appears to have been incorporated in May 2014 but dissolved in December 2014 – before the application was made. Amongst the declarations that Ms M agreed to were that she had *"not received any advice on transferring my pension fund to the scheme"* and she understood *"the anticipated investment is a loan to Incartus Investments Limited"*.

On the same day an application to transfer a pension Ms M held with Firm C was submitted by AFM. And on 8 June 2015 an application was submitted to Firm A to transfer Ms M's benefits, again from AFM.

I've seen a copy of the member information form that Firm A sent along with its earlier letter to Ms M, which was signed by her on 12 May 2015. This appears to have been submitted alongside the application to transfer. This explained that TPR and HMRC were concerned by the number of people that had been drawn into pension scams. There were a number of questions for Ms M to answer. Amongst the answers given she said she'd become aware of the receiving scheme from a "relative" but also that she worked for an employer that sponsored or participated in the OPS. Ms M confirmed she hadn't been pressured, offered incentives to transfer or told she could access her pension before age 55. And she said she had received advice from GAL. The signed declaration confirmed the answers in the questionnaire were correct and that Ms M had read and understood the Scorpion leaflet.

AFM Administrators / IIPS also sent additional documents to Equiniti on 8 June 2015 - the forms that Equiniti had provided to GAL in February 2015 signed by Ms M. The declaration within these forms included Ms M confirming she had read the *"pension liberation leaflet"* provided by Equiniti.

Equiniti confirmed to IIPS on 12 June 2015 that it had transferred Ms M's pension benefits as requested. The amount transferred was £4,278.79. Ms M was 42 years old at the time.

On 27 June 2015, Firm C wrote directly to Ms M acknowledging her request to transfer. It said it enclosed a booklet from TPR about the things to watch out for regarding pension transfers. Firm C said it strongly recommended she consult a financial adviser registered with the FCA and provided a link to a website to find advisers in her local area. And it asked Ms M to provide additional information and complete an enclosed declaration.

Ms M signed the declaration from Firm C on 14 July 2015. This document included questions about the receiving scheme and how Ms M had come to decide to transfer. Amongst other things she said that her reason for transferring were "potentially better returns", she'd been made aware of the receiving scheme by a "friend" rather than the scheme having contacted her through a cold call and she answered no when asked if she'd been given advice about the transfer.

Firm K wrote directly to Ms M on 22 October 2015 acknowledging her request for a transfer value and setting out what documents would be needed to enable a transfer. The letter said one of the enclosures was TPR's Scorpion leaflet. It also said, in a separate text box, that the trustees recommended seeking independent financial advice. A signed application to transfer the Firm K pension was then submitted in November 2015. In the application, Ms M was asked to indicate if she'd received financial advice or not and provide the details of her adviser. Ms M ticked to say she had not received financial advice.

Firm K transferred Ms M's pension benefits to the OPS in December 2015.

The transfers from Firm C and Firm A do not appear to have gone ahead. I note that Firm A wrote to Ms M on 28 June 2016 to say it had asked for an extension to the deadline for carrying out the transfer. And it also said that it needed some further information and provided a list of questions Ms M may wish to ask her independent financial adviser. A response was sent in Ms M's name on 8 July 2016, saying Ms M was more than satisfied with her decision to transfer, she'd read Firm A's points, she had a statutory right to transfer, and she was frustrated with the transfer not having concluded.

In January 2017, TPR appointed Dalriada Trustees Limited ('Dalriada') as independent trustees of the IIPS. Announcements from Dalriada have explained that investments through IIPS were primarily loans to Incartus Ltd which then invested in UK based property and gas and oil projects in the United States. They also said records obtained from the previous trustees indicated many members may have received regulated advice to join the scheme from a number of businesses that were no longer trading. And if members identified any paperwork showing they were provided any form of written advice from one of these businesses, they should contact the Financial Services Compensation Scheme ('FSCS'). One of the businesses referred to was GAL.

Ms M subsequently made a claim to the FSCS against GAL. The claim, which seems to have primarily related to the transfer of her pension with Firm K, said that GAL had told Firm K the transfer was appropriate. It said, to the best of Ms M's knowledge, GAL had not contacted her directly at any stage but had convinced Firm K to agree to the transfer. Ms M said she had only dealt with GT Business Consultants ('GT'). She said GT had advised her to transfer her pension and had been the only party she had met with. She said no paperwork had ever been left with her for review and she'd just been directed to sign documents – which she had done. As explained earlier in the decision GT wasn't authorised by the FCA.

In February 2022, the FSCS wrote to Ms M saying it was unable to complete its investigation and / or pay compensation for the claim against GAL. This was because it said Ms M hadn't provided sufficient evidence for the FSCS to establish she'd incurred a loss.

Ms M complained to Equiniti in 2021. She said she didn't think Equiniti had done sufficient due diligence and, if it had, it would have established this *"was not a suitable pension transfer"* and could have warned her about the possible risks.

Equiniti didn't uphold the complaint. It thought it had carried out sufficient due diligence, including checking that the receiving scheme was registered with HMRC and details about Ms M, which included that she was employed by a participating employer in the IIPS. Equiniti said it had provided Ms M TPR's Scorpion leaflet which Ms M had signed to say she understood. And she had a statutory right to transfer.

The complaint was referred to the Financial Ombudsman Service. I issued my provisional decision in December 2024 explaining that I didn't intend to uphold Ms M's complaint. Below are extracts from my provisional findings, explaining why, which form part of my final decision.

#### The relevant rules and guidance

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

*The process of transferring Ms M's pension benefits first appears to have started in October 2013. The initial application was withdrawn and then a further one begun, which meant the*

*transfer didn't go through until June 2015. There were a couple of updates to the Scorpion guidance during that period.*

*The guidance, originally published in February 2013, focussed on pension liberation and preventing consumers falling victim to this.*

*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. 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.*

*The March 2015 update to the 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 to be sent when someone requested a transfer pack and the longer version 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 the interest of both parties.

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?

Ms M says she was looking at her pensions and finances, and began speaking to an adviser, GT, after being put into contact with them by her husband. Ms M said she thought it’d be easier to merge her pensions. In her claim to the FSCS Ms M said GT told her that her pensions were losing money as they weren’t accruing interest but charges were being

taken out and that if she transferred them to an OPS she'd earn returns of 8% per annum. Ms M says everything went through GT from the outset and that she had no dealings with any of the other businesses that were involved. She said GT would have been responsible for the decision to abandon the initial transfer. Ms M says she thought GT must have been FCA regulated. And she told the FSCS that she just signed the documentation that GT presented.

Ms M says she had a business card for GT saying they worked for PGP Wealth Solutions Ltd ('PGP'). PGP was an appointed representative of an FCA regulated business from 2008 to January 2011. It was not FCA regulated at the time she transferred her pensions. And PGP was not referred to in any of the documents that I've seen.

I don't have any reason to doubt that Ms M discussed her pensions with GT as she has said. I can't see that she had any connection to the first OPS that she intended to transfer her pension too. So, I think it is likely that this was suggested to her. And while Fast Pensions Ltd and FIL were referred to in some of the documentation relating to that transfer, Ms M went as far as saying she didn't recognise those businesses when Equiniti asked her about the transfer. So, on balance, it was likely GT she was speaking to at that time. And I think what she's said she was told – that the returns after transferring would be better than those of her existing pensions, which were said to be losing money – motivated her to transfer and appears to represent advice to do so.

I also have no reason to doubt what she has said about her continuing to deal with GT in respect of the applications to the IIPS.

I do note though that her employer was a scheme employer under the IIPS. Which I think might reasonably have played some part in its selection as the destination scheme for consolidating her pension. I also note that GAL was involved in relation to all four of her pensions from July 2014.

Ms M said to the FSCS that to the best of her knowledge GAL never contacted her directly. I haven't seen any letters between the two. And, given she has said that she just signed documents that GT presented to her, it is possible that this included the relevant LOA's and that she didn't have direct dealings with GAL. But I note that Firm A wrote to Ms M directly at the end of April 2015 in relation to a potential transfer of her benefits. And it specifically stated that GAL had contacted it on her behalf. I haven't seen any evidence of Ms M taking any action following this letter, which was correctly addressed directly to her, to say that this was incorrect. Which I think indicates she was likely at least somewhat aware of GAL's involvement, although I appreciate she may no longer recall this.

I also note that, in the member information form completed as part of the application to transfer her pension from Firm A, Ms M said she had been advised by GAL. But again, based on what's she said, this information may have been completed by GT – given the requirement for her to take regulated advice in respect of that policy – with her just signing the form when presented to her. Which I think is likely, given this appears inconsistent with the other applications, which all indicated Ms M hadn't received advice. Indeed, if Ms M had thought GAL had advised her, I think she'd have likely mentioned this in her claim to the FSCS. So, I find her testimony plausible that GAL didn't advise her.

In terms of the investments made through the IIPS, the updates from Dalriada indicate that these investments are likely illiquid and that investors may well have incurred some loss. However, the extent of any such loss is not yet clear and Dalriada has indicated it hopes to recover money for investors.

What did Equiniti 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.*

*Equiniti wrote to Ms M following the initial request to transfer to the Elphinstone OPS. And its letter talked about the Scorpion guidance and suggested that the shorter booklet was included with the letter – as it said longer leaflets were available online.*

*It appears that Equiniti also likely sent a Scorpion insert in response to GAL's request for transfer information in February 2015. I say this because, Ms M signed a declaration, as part of the application, saying she'd read the pension liberation leaflet Equiniti had provided. It isn't clear if this was sent directly to Ms M as I haven't seen a copy of a corresponding letter from the time. But I think on balance it likely was sent and Ms M had read the leaflet, given the contents of the declaration that it asked Ms M to complete.*

*This would've been the version of the Scorpion leaflet from July 2014. The Scorpion information was updated shortly after this, while the application to transfer was ongoing. But I don't think Equiniti, as a matter of course, needed to send the updated booklet to all customers with ongoing transfer requests.*

*And in any event, the evidence I've seen indicates that Firm A, Firm C and Firm K, all sent a copy of the Scorpion insert directly to Ms M, after this was updated in March 2015.*

*On balance therefore, I think Equiniti likely did as I'd expect, by sharing the Scorpion information with Ms M. But even if it had not, I don't think this would've made a difference as her three other pension providers also appear to have provided this information to her.*

*Due diligence:*

*Equiniti received the transfer request in May 2015, after the introduction of the PSIG Code, And so I think it ought to have carried out due diligence in line with the Code and I've considered the transfer on this basis. But I don't think it would make a difference to the outcome of the complaint if I had considered Equiniti's actions using the Scorpion guidance as a benchmark instead.*

*It doesn't appear that Equiniti carried out any due diligence in respect of the IIPS, beyond considering the documents that were sent as part of the application. That led it to ask for Ms M to sign a form that had been missed. But no other questions appear to have been asked of either Ms M or the new scheme administrators. The application documents did show that the receiving scheme had been registered with HMRC in June 2014, just under a year before the application to transfer. They also demonstrated that Ms M's employer was a scheme employer. The declaration Ms M completed confirmed she'd reviewed the Scorpion leaflet and hadn't been advised about the transfer.*

*I think it would have still been good practice for Equiniti to have considered the information it had having regard to Section 6.2.2 ("Initial analysis – member questions") of the PSIG Code. Looking at the documents I don't think Equiniti had enough information to answer all of the questions in section 6.2.2 of the Code. I won't repeat the list of suggested questions in full. But if it had gathered further information in order to be able to address each of these, I think at least one would have been answered "yes". Specifically, "Have you been promised a specific/guaranteed rate of return?" – which I think would've been answered yes by Ms M because she indicated in her claim to the FSCS that an annual return of 8% had been mooted when the transfer was discussed.*

*Under the Code, further investigation should follow a “yes” to any question in section 6.2.2. The nature of that investigation depends on the type of scheme being transferred to. The OPS section of the Code (Section 6.4.1) gives six areas under which ceding schemes can gather information to help make a decision about whether a scheme or administrator poses a pension scam risk. Underneath each area, 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). And businesses needed to take a proportionate approach to transfer requests. The Code does make the point though 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.*

*What should Equiniti have found out – and would it have made a difference?*

*Had it carried out further enquiries, I’m not sure that Equiniti would’ve found anything to give it significant cause for concern.*

*The Code didn’t mandate that Equiniti had to ask for information in a specific way. So, it could reasonably have made further enquiries in writing – much like Firm A, Firm C and Firm K appear to have done. And I think Ms M’s answers to enquiries from Equiniti would likely have been consistent with those given to the other businesses.*

*As I’ve already explained, Ms M’s employer was linked to the OPS, as confirmed by the scheme documents and in one of the other applications. So, she appeared to have a genuine link to the OPS, through her employment.*

*Ms M has said that she was put in touch with GT by her husband. And in documents relating to some of her other applications, she mentioned being introduced to the receiving scheme by a relative – on balance likely meaning her husband – and a friend – which may have been a reference to GT if she was introduced through her husband. I think it is likely she’d have given a similar answer to any enquiries from Equiniti. And I think it is likely she’d have also confirmed to Equiniti, in the same way she did in some of her other applications, that she hadn’t been cold called, offered an incentive to transfer or access to her pension early.*

*The scheme had a significant number of ‘scheme employers’ involved, including Ms M’s employer – which was a genuine business. In addition, the scheme had a connection to an FCA regulated business, IIL, which appeared to be in relation to how funds would be invested. So together with the information it likely would have received from Ms M I don’t think the transfer would have given Equiniti significant cause for concern.*

*It appears that GT, whom Ms M says was the party she had been dealing with, was not authorised or regulated by the FCA. And if Equiniti had found that GT had provided advice on the transfer, this should have given it cause for concern, as being advised by an unauthorised firm to transfer benefits from a personal pension plan would have been a breach of the general prohibition imposed by FSMA. But again, Equiniti was not required to make enquiries in a specific medium. It could have asked questions in writing. And in respect of the other three applications, Ms M signed to say either that she had not received advice or that GAL had advised her. And in the declaration Ms M signed as part of the submitted application, she told Equiniti she hadn’t be advised about transferring. Ms M wasn’t required to take advice. So, I don’t think it is likely that Equiniti would have become aware of GT’s involvement if it had made further enquiries.*

*With all that in mind, I don’t think Equiniti would have found anything that would have led it to*

*be overly concerned that Ms M was at risk of falling victim to a scam.*

*At most, it may, had it discovered that Ms M had been told she'd receive returns of 8%, have been prompted to provide the updated Scorpion leaflet, from March 2015, to her which set out guaranteed returns as a potential warning sign of a scam. But I don't think doing so would have made a difference here. I say that because, all three of Ms M's other pension providers appear to have shared this information directly with her. And this didn't dissuade her from continuing with those applications. While it is true that two transfers seem to have not proceeded, I haven't seen anything to suggest that this was due to Ms M changing her mind. And indeed she has indicated that she trusted GT and was happy to transfer based on the discussions she'd had.*

## **Responses to my provisional decision**

I gave both parties an opportunity to make further comments or send further information before I reached my final decision.

Equiniti accepted my provisional findings and said it had no further comments.

Ms M's representative said that they did not agree with my provisional findings.

On the point of whether Ms M's employer was connected to the receiving scheme, the representative provided evidence to show that employees of AFM were automatically eligible to join the IIPS. But people with no association to AFM could also join. And, in the event an application to join was successful, the new members employer would be declared as a scheme employer. And the employer may have no knowledge of this. So, the representative disagreed that Ms M's employer was connected to the IIPS.

They also said that, while acknowledging IIL was shown on the FCA register at the time of the transfer, this was only from February 2015. And they said the information on Companies House for this business (which was first registered in 2011) should have been a cause for concern.

The representative added that as this was a second request to move to an OPS in a short space of time, this should have concerned Equiniti.

And lastly, while not disagreeing with my finding that Equiniti was not required to contact Ms M in a specific way, the representative said they thought this should have taken the form of a direct call, which would, in their view, have led to further concerns being discovered.

## **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 think it is important to remember that it was not Equiniti's role to assess the suitability of the transfer or advise Ms M. Rather, as the ceding scheme, it needed to consider the industry guidance and best practice when transfer requests were received. And this asked ceding schemes to be on the lookout for the telltale signs of a potential pension scam while taking 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.

The information that Ms M's representative has now provided does appear to indicate that her employer was unlikely to be aware of being recorded as a scheme employer by the IIPS. And suggests that Ms M is unlikely to have known of the IIPS through her work. However,

the document it has provided is from October 2015 – several months after the transfer from Equiniti took place. So, I can't see that Equiniti would have been aware of this.

What Equiniti did have was confirmation that the IIPS was registered with HMRC, evidence of the scheme rules which named Ms M's employer as being a scheme employer and an application to join the IIPS, signed by Ms M, confirming she'd had notice of the rules. And given this, I don't think I can reasonably say that Equiniti ought to have had reason, at the time, to question what it had been told about Ms M's employer.

At the time of the application the IIPS was also linked to IIL, which was FCA regulated. Ms M's representatives have said IIL being newly registered with the FCA and the information about its history on companies house – that it had changed names and appeared to potentially not have traded in the past – should have concerned Equiniti. But I don't think I can reasonably say Equiniti should have questioned the FCA registering IIL. And I'm not suggesting IIL advised Ms M to transfer or that Equiniti could have been reassured for this reason. Rather it formed part of the information available at the time about the receiving scheme when, coupled with the IIPS being HMRC registered, and having been so for almost a year, would I think have suggested to Equiniti that the transfer was unlikely to be a scam.

The status of the receiving scheme, and the apparent connection between Ms M's employer and it, was not the only reason I thought Equiniti was unlikely to consider the risk of a scam to be significant or why I didn't think the complaint should be upheld.

Ms M has been clear that she wasn't cold called about the potential transfer. And she said she wasn't told she could access her pension before age 55 nor was she offered any incentive to transfer. So, none of these warning signs were present.

Ms M's representative is correct, as I've set out, that there had been an earlier application to transfer her Equiniti pension to a different OPS. But Equiniti had a signed letter saying that had been abandoned because she'd appointed an FCA regulated business to provide advice. It had then subsequently received two requests from GAL, an FCA regulated business, for information, along with letters of authority signed by Ms M. So, I don't think it would've been unreasonable for Equiniti to think GAL was assisting Ms M or for it to think that the decision to abandon the earlier transfer was a cause for concern.

I appreciate that Ms M's representative thinks Equiniti's due diligence ought to have taken the form of a call to her. But, as they have acknowledged, this wasn't a requirement. I think it would've been perfectly reasonable for any questioning as part of due diligence to be carried out in writing – in the same manner Firm A, Firm C and Firm K asked further questions. And while Ms M has said in her complaint that GT had advised her, in all of the written information at the time, which she signed, she either stated that she hadn't been advised or that GAL had advised her. And based on that evidence, I think it is unlikely she'd have told Equiniti differently.

Equiniti needed to check for the risk of pension liberation and scams in a way that was proportionate to the warning signs. I don't think Equiniti necessarily did everything that it should have in terms of carrying out due diligence. But even if it had done more, I'm not convinced it would've discovered anything that would have given it significant cause for concern about the proposed transfer or prompted it to provide explicit warnings or to delay the transfer further.

On balance I think Equiniti provided Ms M with the relevant Scorpion information, which contained general warnings, at the point a transfer pack was requested. And I'm satisfied that Firm A, Firm C and Firm K all sent Ms M the updated Scorpion insert, published in

March 2015. None of which dissuaded her from transferring.

So, while I know this will come as a disappointment to Ms M, I don't think Equiniti taking any further action would've resulted in her being in a different position.

### **My final decision**

For the reasons I've explained, I don't uphold Ms M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 20 February 2025.

Ben Stoker  
**Ombudsman**