

The complaint

Mr G has complained about the actions of Scottish Widows Limited (“SWL”) when it transferred his personal pension to a Qualifying Recognised Overseas Pension Scheme (“QROPS”) in 2016. Mr G’s pension was subsequently used to invest in various assets, including those managed by The Resort Group (“TRG”). TRG is an overseas commercial property scheme that has since run into trouble. Mr G says he has lost out financially as a result of SWL’s actions.

Mr G says SWL failed in its responsibilities when dealing with his transfer request. He says that SWL 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 required of transferring schemes at the time. Mr G says he wouldn’t have suffered the losses he did if SWL had acted as it should have done.

What happened

On 4 December 2015, Mr G called SWL requesting forms to allow a transfer to an overseas pension. SWL sent the paperwork to Mr G on 9 December, who signed the various forms and declarations on 18 December.

On 20 January 2016, the administrator of the Elmo International Retirement Plan (“the Elmo Scheme”) returned the transfer paperwork to SWL. Included in the paperwork was a letter from HMRC which said the Elmo Scheme had declared it met the requirements to be a QROPS and, as such, HMRC would allocate it a reference number and include the scheme name on its website.

On 1 February, SWL wrote to Mr G to say it had conducted “routine due diligence”, the result of which had prompted it to highlight a number of points for Mr G to consider. The letter said:

- Mr G was resident in the UK but was transferring to a QROPS which would typically only be suitable for those living outside the UK or those planning to do so.
- Payments from a QROPS can incur additional tax charges if the policy holder is resident in the UK at the time of payment.
- A QROPS isn’t covered by the Financial Services Compensation Scheme (“FSCS”) meaning there may not be the same level of financial protection should the receiving scheme get into financial difficulties.
- Mr G didn’t appear to have taken advice from a regulated UK financial adviser.
- Mr G had been in contact with a firm called First Pension Review which wasn’t authorised to provide advice. As such, Mr G should “not place any trust in any advice provided by them being suitable.”
- Mr G should consider taking advice from an independent financial adviser authorised by the Financial Conduct Authority (“FCA”) to give advice on pensions. A website was

given to help Mr G find such an adviser, along with the website for The Pension Advisory Service (“TPAS”).

Enclosed with the letter was a “guidance booklet” from The Pensions Regulator (“TPR”). SWL said this was aimed at educating members about the risks of transferring a pension. This relates to the anti-scam “Scorpion guidance”, the details of which I cover later.

The letter asked Mr G to confirm whether he wanted to proceed with the transfer, otherwise it would be cancelled after four weeks. On 12 February, SWL received a letter from Mr G confirming he had received SWL’s letter and that he still wanted to transfer.

On 22 February, SWL wrote to Mr G to confirm his pension had been transferred. The transfer value was just under £19,000. Mr G also transferred a much larger personal pension from a different provider to the Elmo Scheme. Mr G subsequently transferred from the Elmo Scheme to a different QROPS and then withdrew tax-free cash of £27,000. Mr G hasn’t been particularly clear about what investments he made. But I’ve seen a QROPS statement from 2019 showing an investment in TRG and correspondence relating to the appointment of discretionary fund managers.

In February 2020, Mr G (with the help of a claims management company) complained to SWL. Briefly, his argument is that SWL failed to do adequate due diligence on the transfer and failed to contact him ahead of the transfer in order to warn him about the risks he was taking.

SWL didn’t think it had done anything wrong. It said, in brief, that it had conducted due diligence and hadn’t found any reason to prevent Mr G exercising his right to transfer. It also pointed to the letter it had sent Mr G on 1 February 2016 which alerted him to a number of warning signs. It attached that letter with its response.

Our investigator didn’t uphold the complaint. Mr G asked for an ombudsman to decide on his case.

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.

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 SWL 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, 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, 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, which is relevant for this complaint. 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 PSIG Code of Good Practice. The intention of the 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 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 2015 Scorpion guidance asked schemes to ensure they provided their members with “regular, clear” information on how to spot a scam. It recommended giving members that information in annual pension statements and whenever they requested a transfer pack. It said to include the pensions scam “leaflet” in member communications. In the absence of more explicit direction, I take the view that the member-facing Scorpion warning materials were to be used in much the same way as previously, which is for the shorter insert (which had been refreshed in March 2015) to be sent when someone requested a transfer and the longer version (which had also been refreshed) made available 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 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, SIPP, 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 PSIG 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?

We have asked Mr G a number of questions about the transfer. Unfortunately, he doesn't remember much about it – how it came about, who he spoke to, what he was told, and so on. However, it's evident from Mr G's answers, and from what he has told us about his circumstances at the time, that he wasn't knowledgeable on pension and investment matters. As such, I think it would be fair and reasonable to conclude that he wouldn't have decided to transfer his pension to an esoteric arrangement – a QROPS – in order to invest in non-standard assets without significant help from someone else.

That "someone" appears to have worked for First Review Pensions Services Limited. In his complaint to SWL, Mr G's representatives at the time mention "First Review", albeit briefly. The letter SWL sent to Mr G said he had been in contact with "First Pension Review" whose advice he should not trust. Mr G's other personal pension provider also sent a letter to "First Review Pensions Services" confirming the transfer to the Elmo Scheme had gone through.

With that in mind, I'm satisfied First Review Pensions Services Limited ("FRPS") played a significant role in Mr G's transfer. I'm also satisfied that FRPS went as far as *advising* Mr G to transfer out of his personal pension. For the reasons given above, there isn't especially compelling evidence to show that. But, on balance, I'm satisfied Mr G wouldn't have transferred unless he had been told his pension would perform better for doing so – a recommendation to transfer his personal pension in other words. And, on balance and for the reasons given above, I consider FRPS as being the most credible candidate to have

given that recommendation. FRPS wasn't authorised to give such a recommendation.

In coming to that conclusion, I've considered a written report Mr G was provided with which gave background information on his proposed QROPS and investments (TRG included). It's not clear who wrote that report or when it was sent (or given) to Mr G because there's no letterhead and it's undated. Mr G's representatives haven't given any commentary on it either. But based on what I know of similar transfers, it's likely that the Elmo Scheme required Mr G to have had such a report ahead of joining the QROPS. As Mr G hasn't given much weight to the report, and as its aim was to provide background information, I'm satisfied it doesn't change my findings in relation to FRPS.

What did SWL do and was it enough?

The Scorpion insert:

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).

When SWL wrote to Mr G on 1 February 2016, it said it had enclosed a "guidance booklet" from TPR. It isn't clear now precisely what SWL sent. But I'm satisfied it was referring to either the Scorpion insert or the longer booklet as I'm unaware of any other standard TPR leaflets that ceding schemes ought to have sent to transferring members at that time. Our investigator concluded that SWL sent the longer Scorpion booklet – a not unreasonable assumption given the language used in SWL's letter. Mr G's representatives disagree. They say it would be unfair to decide a case on such an assumption and go on to point out why the outcome of the case depends on that assumption. In their view the shorter version of the Scorpion warning materials covered only the specific, and relatively narrow, problem of pension liberation whereas the longer version covered scams of a more general nature. As Mr G wasn't intending to liberate his pension, Mr G's representatives say only the longer version would have had relevance to Mr G. They also question whether SWL's letter was received (or even sent). In their view, it would have been best practice to have sent both a letter and an email.

When Mr G complained to his two personal providers, his representatives at the time confirmed both providers had sent Mr G a Scorpion leaflet. Furthermore, Mr G wrote to SWL to confirm he had received its 1 February letter which contained the TPR booklet:

"I Received A Letter On 11/2/16 Concerning My Intensions [sic] to transfer my Pension to the QROPS.

This Letter is to clarify that I do intend to go ahead with this transfer and hope this short letter is acceptable."

It's therefore reasonable to conclude Mr G was sent the Scorpion warning materials. Furthermore, it doesn't matter whether it was the shorter or longer version of those materials because SWL, and the other provider, would still have been fulfilling their responsibilities even if they had just sent the former. But, for completeness, it's worth noting that both the short and long versions of the Scorpion warning materials cover scams of a more general nature. It therefore isn't true to say that the shorter version was irrelevant to Mr G's situation. To illustrate the point, that version opens with the following statement, which closely describes the situation that was facing Mr G:

“Scammers don’t care whether you’re an inexperienced investor or have never put your money anywhere other than a bank. They will try to flatter, tempt and pressure you into transferring your pension fund into an investment with guaranteed returns. Once the transfer has gone through, it’s too late. Remember, the only people who benefit from scams are the scammers themselves.

It goes on to highlight a number of warning signs, including cold calls, free pension reviews, one-off investment opportunities and transfers of funds overseas. So, even if Mr G was sent the shorter version of the Scorpion warning materials, he would still have been given warnings that were applicable to his situation. That’s even before the additional warnings SWL gave in its covering letter.

With the above in mind, I’m satisfied with SWL’s actions here.

Due diligence and SWL’s warnings:

The Scorpion action pack in place at the time of Mr G’s transfer included a check list that ceding schemes could follow to assess the potential threat posed by a transfer. Whilst following that checklist wasn’t an inflexible requirement, I consider it to be a fair and reasonable benchmark – as did our investigator – against which to judge its actions.

The check list is divided into three parts (which I’ve numbered for ease of reading and not because I think the check list was designed to be followed in a particular order). Some items on the check list could have been addressed by checking online resources such as Companies House and HMRC. Others would have required contacting the consumer.

1. The nature/status of the receiving scheme

Sample questions: Is the receiving scheme newly registered with HMRC, is it sponsored by a newly registered or dormant employer, an employer that doesn’t employ the transferring member or is geographically distant from them, or is the receiving scheme connected to an unregulated investment company?

2. Description/promotion of the scheme

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

3. The scheme member

Sample questions: Has the transferring member been contacted by an ‘introducer’, been advised by a non-regulated adviser or taken no advice? Has the member decided to transfer after receiving cold calls, unsolicited emails or text messages about their pension? Have they applied pressure to transfer as quickly as possible or been told they can access their pension before age 55?

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

I’ve covered what SWL told Mr G in its letter of 1 February 2016 previously. I’m satisfied that the letter shows SWL had conducted due diligence beyond just checking the registration status of Mr G’s receiving scheme because it also either knew, or had found out, the following: Mr G was transferring his pension overseas despite being resident in the UK; Mr G

had been contacted by FRPS; FRPS wasn't authorised to give advice; and Mr G didn't appear to have taken advice from a regulated adviser.

Furthermore, SWL *acted* on that information, warning Mr G about some of the risks he was potentially facing which included taking advice from an unauthorised (and therefore untrustworthy) source, the potential loss of FSCS protections, the potential for tax charges and the likely unsuitability of a transfer to a QROPS for someone resident in the UK. It also told Mr G what he could do to protect himself which included directions on how to find an adviser authorised by the FCA, familiarising himself with the booklet produced by TPR and going to TPAS.

SWL said it wouldn't transfer Mr G's pension unless he confirmed that he still wanted to do so – which he did. So I'm satisfied SWL fulfilled its responsibilities here. It's worth noting that I would have come to the same conclusion had I considered his transfer using the PSIG Code as a benchmark. That too would have led SWL to consider the same issues, namely the likely unsuitability of a transfer to an overseas pension for someone intending to remain resident in the UK, the potential loss of FSCS protections that would result from such a transfer, the potential tax charges that could also follow, and the potentially troubling involvement of a business which wasn't authorised to give advice.

In coming to my conclusion, I've considered everything Mr G's representatives have said about Mr G's character at the time which, to summarise, was cautious and prudent. I've also considered their arguments about why that means he would have read the paperwork given to him and why he wouldn't have proceeded with the transfer had he been warned that it was risky to do so. In their view, that must mean Mr G couldn't have been given any warnings. I agree with Mr G's representatives in so far as Mr G does appear to have read what SWL sent him. The transfer wouldn't have proceeded otherwise, as I explained previously. But it's also evident SWL's warnings, which were extensive, were to no avail.

It follows that I don't uphold Mr G's complaint.

My final decision

For the reasons given above, my final decision is to not uphold Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 20 January 2025.

Christian Wood
Ombudsman