

The complaint

Mr L has complained, with the help of a professional third party, about the transfer of a personal pension he held with Scottish Equitable Plc, trading as Aegon ('Aegon') to a small self-administered scheme ("SSAS") in November 2015. Mr L's SSAS was subsequently used to invest in an overseas property development with The Resort Group ('TRG'). The investment now appears to have little value and Mr L says he has lost out financially as a result.

Mr L says Aegon failed in its responsibilities when dealing with the transfer request. He says that it should have done more to warn him of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance he says was required of transferring schemes at the time. Mr L says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Aegon had acted as it should have done.

What happened

On 23 July 2013, Mr L signed a letter of authority ('LOA') allowing Consumer Money Matters Limited ('CMML') to obtain details and information in relation to his pension. CMML was authorised by the regulator, the Financial Conduct Authority ('FCA') as an Introducer Appointed Representative ('IAR'). The LOA said CMML was an appointed introducer for Intrinsic Mortgage Planning Ltd in respect of mortgage and life assurance business. And it was also an IAR of Cavere Limited in respect of home insurance business. Both Intrinsic and Cavere were FCA authorised. The FCA register confirms these arrangements.

Aegon wrote to CMML on 15 August 2013 providing information and transfer forms in respect of Mr L's pension.

On 23 April 2015, Mr L signed an LOA authorising Aegon to provide information about his pension to Servatus Ltd. Servatus appeared on the FCA register as a firm that was passported from Ireland (where it was registered) to the United Kingdom. This LOA was also sent to Aegon and it replied, providing information about Mr L's pension on 7 May 2015.

Mr L signed another LOA on 19 May 2015, giving Aegon permission to provide information to First Review Pension Services ('FRPS'). FRPS was not authorised or regulated by the FCA. And I note the last line of the LOA which Mr L signed said *"I wish to proceed with this request and I am fully aware of the consequences of dealing with a company that is not regulated by the FCA."*

This LOA was sent to Aegon on 27 May 2015. It replied on 3 June 2015, enclosing pension information and transfer forms.

Aegon wrote directly to Mr L on 27 June 2015. The letter thanked him for his call a few days earlier, which Aegon has said was about whether a partial transfer was possible. The letter confirmed how much money would need to be left in his pension in order for him to continue making contributions. And said, to make a partial transfer, he'd need a quote, which Aegon could provide if needed but Mr L would need to get in touch again to request this.

Meanwhile, in June 2015, a company was incorporated with Mr L as director. I'll refer to this company as M Ltd. Documents, including a trust deed, were completed in August 2015 to open a SSAS. Mr L signed these documents. His signature was witnessed by an individual I'll refer to as BE, who's occupation was given as consultant. M Ltd was recorded as the SSAS's principal employer and Bespoke Pension Services Limited ('BPSL') was recorded as the administrator. BPSL was not subject to regulation by the FCA. HMRC sent a letter to BPSL confirming that the SSAS had been registered with it on 21 August 2015.

A business called Broadwood Assets Limited ('Broadwood') wrote to Mr L. The letter said it understood he was considering appropriate investments for his newly established SSAS for which he'd be sole trustee and member. And it understood he was considering an investment into an overseas commercial property in Cape Verde through TRG. The letter said Mr L, as trustee, was required to take advice under section 36 of the Pensions Act 1995 and had appointed Broadwood to provide that advice. It went on to say the advice was only given to Mr L in his capacity as the trustee of the SSAS. And Broadwood said the advice was only on the potential suitability of the TRG investment *"both as a specific example of an overseas commercial property investment, and more generally as an investment to be held within a SSAS"*. Broadwood said it had not advised on the establishment of the SSAS, was not providing advice that would be deemed regulated – as Broadwood was not regulated or authorised by the FCA – and wasn't advising on whether the TRG investment was *"suitable for the particular needs and objectives of the members of beneficiaries of the SSAS"*. The letter concluded that the TRG investment was suitable for Mr L's SSAS *"albeit when considered in the light of sensible diversification"* while also saying it was suitable for more adventurous investors. Mr L signed a copy of this letter on 25 August 2015, confirming he'd read and understood it.

BPSL wrote to Aegon on 9 September 2015 enclosing transfer documents to move Mr L's pension benefits (in full) from his personal pension to the SSAS. The documents included an LOA in respect of BPSL, completed Aegon application forms and copies of the trust deed for the SSAS and the notification from HMRC that it had been successfully registered.

Also enclosed was a letter signed by Mr L that said he was aware there had been a rise in cases of pension liberation fraud and he was aware of the issues relating to this. The letter said Mr L wanted to confirm he was requesting a transfer to take advantage of investment opportunities, none of which were connected with pension liberation. And it stated he was not seeking to access his pension early.

And a copy of the Pension Regulator's ('TPR') booklet about pension scams (the July 2014 long form version) was also included, signed by Mr L confirming he'd read this document. The TPR information is commonly referred to as the Scorpion guidance, because of the imagery it contains.

Aegon wrote directly to Mr L on 30 September 2015. It said it had received the instruction to transfer. The letter explained that in 2014, the FCA had issued a warning about consumers being contacted unsolicited, offered a 'free pension review' and then being persuaded to transfer to Self-Invested Personal Pensions ('SIPP') or SASS's. The letter said this warning, titled "Protect Your Pension Pot", was included and Aegon said if Mr L had been contacted in this way, he should read the article.

Aegon said, before it could proceed it needed Mr L to complete a discharge which was enclosed. But before he did so, it said Mr L should note that Aegon *"strongly recommends that you take independent advice from an adviser regulated by the Financial Conduct Authority before proceeding..."* and gave details of how Mr L could find an adviser local to him.

The discharge form confirmed Mr L wanted to transfer and said he agreed that the transfer value might fluctuate, full payment would discharge Aegon's liability and if the transfer was deemed not to be a recognised transfer by HMRC, Mr L would indemnify the scheme administrator in respect of any payment charges.

BPSL wrote to Aegon on 21 October 2015, enclosing the discharge form which had been signed by Mr L.

Aegon confirmed to BPSL that it had transferred the value of Mr L's pension benefits as requested on 10 November 2015. The amount transferred was £25,506.69. Mr L was 58 at the time.

Aegon has provided evidence that after the application to transfer was made, it received two further LOA's which Mr L had signed, again giving different businesses permission to obtain information about his Aegon pension. The business these were for were Consumer Wealth Limited, which was authorised by the FCA, and Life Cover Review Services Ltd which was registered with the FCA as an appointed representative of an authorised business. I can see that Aegon replied to both of these businesses, explaining the pension they had enquired about had already been transferred.

I can see that following the transfer, £17,000 was invested with TRG. Mr L withdraw £5,985 of tax-free cash in February 2016. And he made a further withdrawal of £1,600 in October 2016. The statements for the SSAS bank account indicate the TRG investment was initially providing some returns to the pension account until at least 2018. I haven't seen more recent statements but from other complaints we've seen, I understand these payments are likely to have ceased around 2019 and the TRG investment is now likely illiquid with little market for re-sale.

In August 2022, Mr L complained to Aegon, with the help of his representative. Briefly, his argument is that Aegon didn't carry out sufficient due diligence when the transfer request was received. And if it had, it would've recognised Mr L was at risk of falling victim to a scam so should've blocked the transfer and provided Mr L additional warnings. Mr L's representative said, when making the complaint on his behalf, that Mr L was potentially a vulnerable customer, which Aegon should've been aware of.

Aegon didn't uphold the complaint. It said it had no information or records at the time to suggest Mr L was vulnerable. And it said it believed it had carried out appropriate due diligence at the time. It had written to Mr L with warnings in September 2015, but he'd indicated he wanted to proceed with the transfer, so it proceeded as he had requested.

Aegon also noted that it believed the complaint might have been brought too late to be considered. This was because it was raised more than six years after the transfer had happened and more than three years after Mr L should potentially have had reason to complain – noting he'd signed an LOA for a different claims management company in November 2018.

The complaint was referred to the Financial Ombudsman Service. One of our Investigators looked into it. They said they thought Mr L's complaint was one we could consider and had been brought in time. This was because the LOA that he'd signed in 2018 for a different claims manager allowed it to collect general information about his pensions. And didn't indicate he was aware of a potential problem with the transfer that Aegon was responsible for. So, the Investigator didn't think he could reasonably say Mr L ought to have known he had reason to complain more than three years before he did.

The Investigator went on to consider the merits of the complaint but didn't think it should be

upheld.

Mr L's representative disagreed. Aegon did not respond to the Investigator's opinion. As our investigator was unable to resolve the dispute informally, the matter has been passed to me to decide.

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.

As I've said our Investigator found that the complaint was made in time for us to consider. Aegon didn't respond or provide any further comments on this point. I take from that it accepts what the Investigator said. So, I don't intend to comment on this issue in my decision, beyond saying that I agree with what our Investigator said about this being a complaint we can consider, for broadly the same reasons they explained.

So, I've considered the merits of Mr L's complaint. When doing so 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.

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 Aegon was subject to the FSA/FCA Handbook, and under that to the Principles for Businesses ('PRIN') and to the Conduct of Business Sourcebook ('COBS'). There have never been any specific FSA/FCA rules governing 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, 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.

In a similar vein, in April 2014 the FCA had also started to voice concerns about the different types of pension arrangements that were being used to facilitate pensions scams. In the "Protect Your Pension Pot" announcement to consumers (which Aegon shared with Mr L in its letter of 30 September 2015) the FCA highlighted the increase in the use of SIPP's and SSAS's in pensions scams, as well as an increase in the use of unregulated and/or illiquid investments. The FCA further published its own factsheet for consumers in late August 2014. It highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.

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 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 Scorpion guidance

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 (which had been refreshed in March 2015) to be sent when someone requested a transfer pack and the longer version (which had also been refreshed) 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. (I noted the contents of some of those alerts earlier in my decision.)
- 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, SSAs 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?

Mr L's representative says he was advised by BPSL to transfer his pension benefits to the SSAS and invest in TRG. They said he signed letters that were typed for him but wasn't asked in his own words what the reasons were for wanting to transfer.

Our Investigator spoke to Mr L about what he remembered. Because of how long ago the transfer had happened Mr L acknowledged that he couldn't remember everything. He said the only person he dealt with was BE, the person that had witnessed the trust deed for the SSAS. He met with BE at his home and said there was only one meeting with no other contact with them. Mr L said he signed documents during the meeting with BE. Mr L initially said he'd rung a financial adviser who had put him in touch with BE, but he didn't know the name of the business he'd spoken to. He later said BE may have come to his door unsolicited. Mr L couldn't recall who BE worked for.

Mr L said BE told him that the investment with TRG would make good returns and could make him a lot of money for his retirement. And this is what persuaded him to transfer. He wasn't told he'd receive any incentive to transfer. Mr L was receiving statements, but this had stopped. He said he was now unable to get any information about what had happened to the investment but was still being charged fees to the SSAS bank account.

As I set out above, Aegon has provided copies of five separate LOA's that Mr L signed between July 2013 and December 2015, giving various different businesses permission to obtain information and transfer packs in relation to his pension. I think this indicates that he was considering options for his pension and potentially doing something with it. But at the same time, I haven't seen anything to indicate Mr L was an experienced investor. Nor have I seen anything about his circumstances or what he's said that leads me to think he'd likely have embarked on such a complicated arrangement on his own – setting up a new company, opening a SSAS, transferring his existing pension and investing overseas. So, I think he was likely introduced to this idea by someone that he spoke to. And I also think he

was likely advised to transfer. He's said it was the promise of good returns and making money for his retirement that persuaded him to move his pension. I don't have reason to doubt this. And I think it is likely he was told that transferring would be better for him.

Mr L says BE was the person he dealt with about the transfer and that he only met with him once, at his home. But he can't recall who BE worked for and is unsure if BE came to his home after Mr L was introduced to him by a financial adviser or if BE called on him unsolicited.

I'm satisfied that BE was involved in the transfer. They witnessed the trust deed for the establishment of the SSAS. But given the multiple LOA's and the other documents that were signed at different times by Mr L, it appears unlikely that BE was the only party involved and that the only contact about a potential transfer was a single meeting.

Mr L's representative says BPSL advised Mr L to transfer. And I can see that the bank account statement for the SSAS shows, after the funds were transferred in from Mr L's Aegon pension, the only business that seems to have been paid any form of fee was BPSL. But I don't think this necessarily means it was the only party involved or that it provided advice. BPSL was the administrator of the SSAS. Our service has seen a number of other complaints where BPSL acted as a SSAS administrator. But I haven't seen an example where its role went beyond administration and strayed into advice. In addition, as I mentioned, Broadwood provided written advice to Mr L in his capacity as trustee of the SSAS (about proposed investments not the transfer). I don't think it would've done this free of charge. And on balance I think it is likely that BPSL settled Broadwood's fee from the payment it received after the transfer. And so, I think its likely a similar arrangement (BPSL settling any fee) would've been in place for the party that advised Mr L.

Two of the LOA's Mr L signed were from after the application to transfer had gone ahead. So, I don't think the businesses referred to in these documents, Consumer Wealth Limited and Life Cover Review Services Ltd, were involved in recommending the transfer to Mr L. The LOA that Mr L signed in 2013 for CMML, was over 18 months before the application to transfer was made. So, likewise I think it is unlikely that CMML was involved.

Mr L signed an LOA for Servatus in April 2015 and for FRPS in May 2015. Our Service has seen a number of other complaints about pension transfers involving both of those businesses. Transfer's involving Servatus though have tended to involve moving funds to qualifying recognised overseas pension schemes – which isn't what Mr L did. Whereas FRPS has typically been involved in, and seems to have been established with the purpose of, securing investments in TRG. In addition, the transfer forms that were used when BPSL submitted the application were those that were sent to FRPS by Aegon, in response to its LOA (they are dated and give a transfer value specific to that date). Taking all of this into account, on balance I'm satisfied that FRPS was involved in this application to transfer.

Mr L said he thought he might've been put in touch with BE by someone. And again, in a large number of other complaints we've seen, FRPS or an introducer for it has spoken to consumers which subsequently led to a meeting with FRPS. And it is usually the case that an LOA was completed for FRPS following the phone call, so that it had relevant information when meeting with the consumer. The timeline of events in Mr L's case seems to follow that pattern. And on balance therefore I think it is likely that the BE, whom Mr L met with, worked for FRPS and that FRPS is the business that recommended the transfer to Mr L. But FRPS was not authorised or regulated by the FCA.

I think Mr L's representative is correct that the investment likely now has little value. As I've noted, the account statements indicate the TRG investment was providing some returns to the SSAS bank account until 2018. But we don't have statements from after that point.

However, in other complaints we've seen, there has been a consistent pattern of returns tending to cease in 2019 / 2020. And I think similar is likely to have happened in Mr L's case. We've also seen several complaints where consumers have been told it is their responsibility to attempt to sell the investment – but they have been unable to do so, and there is no recognised secondary market for re-sale of the investment. So, I believe the investment is now likely to be largely illiquid.

What did Aegon 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.

Aegon hasn't provided any evidence that it either sent Mr L the Scorpion leaflet directly or included this in transfer packs that it sent, following the receipt of LOA's.

The Scorpion insert had been updated in March 2015 and I think this version should have been sent to Mr L when Aegon received either the LOA from Servatus, from FRPS or both.

When the application to transfer was submitted by BPSL it enclosed a version of the Scorpion information signed by Mr L. This was the longer booklet version of the Scorpion guidance. And this indicated he had been provided a version of the Scorpion warnings. But his was the version published in July 2014, so was not the most up to date information and didn't contain all of the same warnings as the March 2015 information.

Aegon has said that its letter of 30 September 2015 gave Mr L warnings about the transfer. It has provided a copy of this letter and the enclosures. I can see that it did send a copy of the FCA's "Protect Your Pension Pot" information. I note that this was the 2014 version of the FCA release and not the updated fact sheet from June 2015. Nevertheless, this did present warnings about the type of transaction Mr L was about to enter into. I'll go on to cover what I think this means for Mr L's complaint shortly. But, while this does show that Aegon sent Mr L some warnings, the PSIG Code asked businesses to send the Scorpion information when transfer packs were requested. And the Scorpion guidance said it wanted the sending of the Scorpion materials to be best practice. And I think, even though it sent Mr L some other information, Aegon should still have sent him the Scorpion leaflet here, which I can't see it did.

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 L'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 Aegon's actions using the 2015 Scorpion guidance as a benchmark instead.

Aegon says it checked whether the receiving scheme was on its list of high-risk schemes, checked it had been registered with HMRC, whether it had been established in the last 12 months and whether Mr L's financial adviser, receiving scheme or scheme administrator were FCA authorised.

It said it found that the scheme was newly registered but had been registered with HMRC. It also said being a SSAS it was not a requirement for the scheme to be FCA regulated. The SSAS and BPSL were not on Aegon's internal high-risk list, but there were some internal notes in relation to BPSL following a decision by the Pensions Ombudsman around that

time. And that was what prompted it to write to Mr L on 30 September 2015, with the warning it did.

While Aegon has said that it checked whether Mr L's adviser or scheme / scheme administrator were FCA regulated, its response has only referred to the scheme and why this didn't need to be regulated. I can't see that the status of the adviser was checked or that it was even actually established who had advised Mr L or if in fact he had received advice. That notwithstanding, based on what it has said about having internal notes relating to BPSL, Aegon couldn't reasonably have considered the receiving scheme/administrator as being free of scam risk. So, the initial triage process under the PSIG Code should have led to Aegon asking Mr L 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 one of them would have been answered "yes" - 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 SSAS section of the Code (Section 6.4.3) points to the following as being potential areas of concern:

- a) Employment link: a lack of an employment link to any member of the SSAS.
- b) Geographical link: a sponsoring employer that is geographically distant from the member.
- c) Marketing methods: a SSAS being marketed through a cold call or an unsolicited approach.
- d) Provenance of receiving scheme: a SSAS registered within the previous six months or a recently registered sponsoring employer or administrator operating from 'virtual' offices, or using PO Boxes for correspondence purposes.

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 and given the relatively limited information it had about the transfer, I think in this case Aegon should have addressed all four sections of the SSAS due diligence process and contacted Mr L to help with that.

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

With a straightforward check of the information on Companies House, Aegon would've learned that, in addition to the SSAS being newly established, M Ltd had only recently been set up. And that its nature of business was categorised as a dormant company. And I think with some simple questions directed to Mr L it would also have learned that, although a director of M Ltd, Mr L doesn't appear to have been employed by it. I think it would've established that he was thinking of transferring to achieve better returns, that the intended investment was in overseas property development (as he had been sent the Broadwood advice letter in addition to what he'd been told) and that he'd be advised to transfer.

I also think Mr L would've told Aegon that he'd been advised by BE. As I've said Mr L is

unable now to recall who BE worked for. For the reasons I've already explained, I think was likely FRPS, which wasn't regulated by the FCA. Which is supported by the documents Aegon sent to FRPS being those used in the application. But even if Mr L hadn't named FRPS as the business BE worked for, there is no indication they worked for a regulated business or that BE was authorised by the FCA to provide advice.

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, which states no one can carry out regulated activities unless they're authorised or exempt. But the information that Aegon provided to Mr L in this specific case warned about this.

The "Protect Your Pension pot" leaflet, which Aegon sent directly to Mr L, said most companies contacting consumers and offering free pension reviews were not authorised by the FCA. While it is unclear how Mr L first was in contact with FRPS and BE, the leaflet went on to say that professional advice was not free – and I haven't seen anything to suggest Mr L was directly charged a fee for the recommendation. The FCA warning said offers of reviews were designed to persuade people to move funds from their existing pension into SIPP or SSASs – which is what Mr L was advised to do. And that money was then usually *"invested in unregulated investments like overseas property developments..."* which for individual investors was said to be unlikely to be in their best interests. Again, this was what had been suggested in Mr L's case. And I'm satisfied he was aware of this as the letter he received from Broadwood said this was the investment being considered and he said, when speaking to our Investigator, he was aware the investment was overseas.

The leaflet went on to summarise risks – that investors could lose everything they invested and may have limited protection if something went wrong. And said this was particularly the case if dealing with an unauthorised adviser. It said to always check if an adviser was FCA regulated and provided links to the FCA register to do so.

The covering letter from Aegon also said that it strongly recommended that Mr L take advice from an FCA regulated adviser. And it provided information on how Mr L could find details of regulated advisers local to him. But it doesn't appear this prompted Mr L to act.

So, Aegon provided information which set out that advisers should be regulated by the FCA, some of the risks if they were not and how to check this. It's worth noting that the letter Mr L received from Broadwood confirmed it was not FCA regulated. And even though its advice was to him as a trustee, I think he would've been aware from this he was dealing with unregulated parties. In addition, the LOA that Mr L had signed in respect of FRPS, which was sent to Aegon, declared that Mr L was *"fully aware of the consequences of dealing with a company that is not regulated by the FCA."* Mr L signed this LOA and signed the declaration sent by Aegon alongside its letter of 30 September 2015.

I think it was reasonable for Aegon to assume, by signing these documents, that Mr L had understood their contents, as I can't see that it had any reason to think otherwise. So, I think it would've been reasonable, based on this, for Aegon to have taken the view that providing any additional warnings about potentially unregulated advisers wasn't necessary, given the information it had already shared. Nor do I think it would've had reason to provide Mr L with any further explicit warnings.

As I've said, I think the March 2015 Scorpion leaflet should've been sent to Mr L. But I don't think this would've resulted in him not transferring.

Mr L had signed a copy of the longer consumer version of the July 2014 Scorpion guidance. This talked about scams to watch out for and listed common features which it said were:

- Phrases like ‘one-off investment opportunities’, ‘free pension reviews’, ‘legal loopholes’, ‘cash bonus’, ‘government endorsement’
- Victims are approached out of the blue over the phone, via text messages or in person door-to-door
- Transfers of your money or investments overseas, meaning the money is harder to recover
- Access to your pension pot before age 55
- No member copy of any documentation
- Victims are encouraged to speed up transfer of their money to the new scheme.

It also included examples of real-life scams, the second of which was about someone being tricked to transfer their money and invest in an overseas property development on the promise of higher returns, while also becoming director of a company in order to set up the receiving pension. And the leaflet repeated the warning to make sure any adviser used is regulated by the FCA.

There were several parallels between the information in this leaflet and Mr L’s circumstances. But this, and the further warnings that Aegon provided which also highlighted several features of a potential scam which were present in Mr L’s transaction, didn’t dissuade him from going ahead.

The 2015 Scorpion leaflet changed how these warnings were presented. And it highlighted convincing marketing materials and the proposal involving investing in a single investment as warning signs. But the other warning signs it referred to were those that the leaflet Mr L had signed warned against.

And again, Mr L signed five separate LOA’s giving different businesses permission to obtain information and transfer packs. And I think it is reasonable to assume, and for Aegon to have thought, that this meant Mr L was keen to consider other options for his pension and was open to transferring it.

So, taking everything into account, even if Aegon had sent Mr L the updated Scorpion insert when I think it should have and had carried out additional due diligence, I don’t think this would have resulted in Mr L being in a different position. So, I don’t require Aegon to do anything here.

My final decision

For the reasons given above, I don’t uphold Mr L’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr L to accept or reject my decision before 17 March 2025.

Ben Stoker
Ombudsman