DRN-5096369

The complaint

Mr S has complained, through his representative, that ReAssure Limited - formerly Legal & General (L&G) - undertook insufficient due diligence when transferring his personal pension policies (PPP) to a Qualifying Recognised Overseas Pension Scheme (QROPS) in January 2016. Mr S's QROPS, the Optimus Retirement Benefit Scheme No. 1, was based in Malta.

Funds were subsequently used to invest into overseas property with The Resort Group (TRG) as well as a TRG bond and the Athena Global Opportunities Fund A1 Class. A small remainder was invested in cash. Mr S says at least some of his pension provisions are illiquid and he has lost out financially.

What happened

Mr S says he was cold called by multiple firms who offered him free pension reviews. He eventually agreed in 2015 to have a pension review with a third firm who recommended him to invest through a QROPS.

L&G received an information request about Mr S's pensions directly from the QROPS administrator and responded in September 2015, providing the information about Mr S's PPPs and informing the QROPS administrator of the forms which would need to be completed to proceed with the transfer.

L&G contacted the administrator in November 2015 requesting that an "overseas scheme declaration and discharge form" be completed and returned to it – this included revised wording which Mr S would need to review following HMRC changes.

The scheme administrator sent several documents to L&G in early December 2015, including the required scheme declaration and discharge form, the HMRC registration forms, its register of directors and identification documents for Mr S.

Mr S also signed a transfer instruction form on 14 October 2015 where he ticked a box to say that he'd received advice from a regulated financial adviser – Strategic Wealth Limited.

L&G checked that the QROPS was on HMRC's list of recognised schemes (which it remains until today). It transferred £90,876 to the QROPS in January 2016.

Mr S complained in 2020. ReAssure rejected his complaint and said the QROPS was an appropriately registered scheme and Mr S had personally instructed the transfer by signing a declaration.

Mr S referred his complaint to our service and one of our investigators upheld it. The investigator thought ReAssure didn't do enough to warn Mr S about potential signs of a scam and if they had done, he likely wouldn't have proceeded with the transfer.

The complaint couldn't be resolved informally, so the complaint was passed to me for an ombudsman's decision.

I previously issued a provisional decision not upholding Mr S's complaint. Mr S's

representatives disagreed with my decision and provided further comments. Having considered these I still remain of the view that it wouldn't be fair or reasonable to hold ReAssure responsible for the losses Mr S suffered.

I've set out my provisional findings again below after which I'll address Mr S's representatives' further comments

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.

Provisional findings

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

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

In February 2013, The Pensions Regulator (TPR) issued its Scorpion guidance to help tackle the increasing problem of pension liberation, the process by which unauthorised payments are made from a pension (such as accessing a pension below minimum retirement age). In brief, the guidance provided a due diligence framework for ceding schemes dealing with pension transfer requests and some consumer-facing warning materials designed to allow members decide for themselves the risks they were running when considering a transfer.

The Scorpion guidance was described as a cross-government initiative by Action Fraud, The City of London Police, HMRC, the Pensions Advisory Service (TPAS), TPR, the SFO, and the FSA/FCA, all of which endorsed the guidance, allowing their names and logos to appear in Scorpion materials.

The FSA's endorsement of the Scorpion guidance was relatively informal: it didn't take the form of Handbook Guidance, because it was not issued under s.139A of the Financial Services and Markets Act (FSMA), which enabled the FSA to issue guidance provided it underwent a consultation process first. Nor did it constitute "confirmed industry guidance", as can be seen by consulting the list of all such FSA/FCA guidance on its website. So the content of the Scorpion guidance was essentially informational and advisory in nature. Deviating from it doesn't therefore mean a firm has necessarily broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's right to transfer.

That said, the launch of the Scorpion guidance in 2013 was an important moment in so far it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing those requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance's specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

In those circumstances, I consider firms which received pension transfer requests needed to pay regard to the contents of the Scorpion guidance as a matter of good industry practice. It means February 2013 marks an inflection point in terms of what was expected of personal pension providers dealing with transfer requests as a matter of fulfilling their duties under the regulator's Principles and COBS 2.1.1R.

The Scorpion guidance was updated in July 2014. It widened the focus from pension liberation specifically, to pension scams more generally – which included situations where someone transferred in order to benefit from "too good to be true" investment opportunities such as overseas property developments. An example of this was given in one of the action pack's case studies.

There was a further update to the Scorpion guidance in March 2015, 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

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 for members looking for 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 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 a member's interest.

The considerations of regulated firms didn't start and end with the Scorpion guidance and the PSIG Code. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn't involve anything specifically referred to in either the Scorpion guidance or the Code – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's principles and COBS 2.1.1R.

The circumstances surrounding the transfer: what does the evidence suggest happened?

Mr S says he was contacted by three companies who offered him pension reviews. He rejected the offers of the first two as they offered to double his pension which he considered unrealistic.

He accepted the third offer as the company seemed legitimate. The firm told him they were backed by the government and were regulated. They said they could get him better returns than his L&G pensions and that he was paying a lot of fees in his existing plans. Mr S says he was shown graphs which showed growth potential at different rates of return and that funds would be invested in liquid assets and hotels. He didn't have much experience and he believed what he was told. The proposition sounded secure to him at the time.

Mr S remembered the three firms that contacted him (Preferred Pensions, First Direct Pensions, First Review Pensions) but couldn't say which one was the third firm he spoke to in the end. Neither of those firms were regulated.

Mr S says he then met a couple of times at his home with a representative or agent of Strategic Wealth Ltd (SWL). SWL is a Gibraltar based firm which at the time of the transfer was regulated in Gibraltar. The documents at the time of transfer show a reference number by the Gibraltar Financial Services Commission (FSC). At the relevant time SWL also appeared on the FCA register as being authorised in the UK with passporting rights.

The marketing materials Mr S kept from the time list SWL as the Independent Financial Adviser involved. And on the transfer instruction form Mr S signed for L&G, he ticked a box to say he had received regulated financial advice from SWL.

So on the evidence I have seen I think it's likely Mr S was cold called by an unregulated firm and was then advised by SWL to move his L&G pensions to a QROPS in order to invest at least in part in TRG.

What did L&G do and was it enough?

The Scorpion insert:

For the reasons given above, my view is that personal pension providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information.

L&G say a leaflet would have been sent with each transfer pack. However, the transfer pack and any follow up information was sent to the scheme administrators and never to Mr S directly. I don't think L&G could have relied on such important information being passed on to Mr S by a third party. I think in order to ensure Mr S received important scam warnings, L&G should have sent them directly to him. So I don't think they did enough here.

L&G provided a copy of a leaflet they say would have been included with transfer packs. It's

a leaflet produced by the FCA in their 'Scamsmart' campaign.

Based on the evidence I have seen I'm not convinced this is the leaflet L&G would have provided to the scheme administrators with the transfer documentation. I say this because in the letters they said '*Please read the enclosed warnings about the potential tax consequences of pension transfers'.* The Scamsmart leaflet does not mention any tax consequences. So I think it's unlikely this was the one being sent. In a later email to the scheme administrators where they asked for further documents one of the attachments is labelled '*Scorpion Booklet.pdf'* which again I don't think would have referred to the Scamsmart leaflet.

I also considered that Mr S's transfer paperwork included a member declaration he signed which included a statement saying *'I have read and understood the Pension Regulators document Legal & General has sent me.'*

So I think on balance any document sent to the scheme administrators would have been the Scorpion leaflet issued by the Pensions Regulator. Given the reference to tax consequences I think it's likely it was the July 2014 version. This would have already been outdated as the leaflet was updated in March 2015, so several months before the transfer was requested.

Our investigator asked Mr S whether he had received the FCA leaflet, but he can't recall receiving it and he says if he had received it he would have asked L&G further questions about the transfer. As I said above, I think it's unlikely this is the leaflet that was sent in any event.

Of course it's possible Mr S did receive a leaflet of some kind with scam warnings (whether it was the FCA one or the Scorpion insert) and simply can't remember it. However, based on the information I have I'm not persuaded he did receive any such warnings. The scheme administrators, who were not based in the UK, had no obligation to pass on this information to Mr S.

I considered that Mr S signed a declaration which included a confirmation he had received the *"Pension Regulators document"*. However, the declaration contained 12 points and the statement didn't make it clear that this document was about scams. He would have been given multiple documents to sign which he said he had to return by courier and I think this could have been easily overlooked. So I don't consider this persuasive evidence that he did receive the leaflet.

Due diligence:

As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore looked at Mr S's transfer in that light. But I don't think it would make a difference to the outcome of the complaint if I had considered L&G's actions using the 2015 Scorpion guidance as a benchmark instead.

Evidence shows that L&G had concerns about the scheme. So they did ask the scheme administrators for more documents to establish that the QROPS was a legitimately registered scheme. However, I don't think this was enough.

I don't think L&G could have considered the receiving scheme/administrator as being free of scam risk. So following PSIG guidance should have led them to ask Mr S further questions about the transfer as per Section 6.2.2 ("Initial analysis – member questions"). I won't repeat the list of suggested questions in full. Suffice to say, at least two of them would have been answered "yes":

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

- Have you been informed of an overseas investment opportunity?

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

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

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

Not every question would need to be addressed under the Code. Indeed, the Code makes the point that it is for scheme administrators to choose the most relevant questions to ask (including asking questions *not* on the list if appropriate). But the Code makes the point that a transferring scheme would typically need to conduct investigations into a "wide range" of issues to establish whether a scam was a realistic threat. With that in mind, I think in this case L&G should have contacted Mr S in order to help with this.

<u>What should L&G have found out?</u>

L&G did establish the legitimacy of the QROPS. But that was the extent of its due diligence. It didn't enquire about Mr S's rationale for transferring. If it had asked him about this – which it should have done, using the framework outlined above – it would have found out he was transferring his pension following an unsolicited approach and that he was transferring to a type of arrangement more commonly used by people living overseas even though he wasn't intending to do that. L&G would also have found out that the reason for transferring overseas was to invest, in part, in TRG– an overseas property scheme of the type that was highlighted as an area of concern in the PSIG Code.

Given that Mr S said on his transfer instructions form that he was being advised by SWL and his testimony about meeting with SWL at his home, I think that is likely what he would have confirmed to L&G.

Enquiries into SWL would have shown L&G that they were passported from Gibraltar to the UK and so during the period of this transfer SWL was an authorised person under FSMA 2000. The right to passport financial services from one EU country to another is a feature of the EU's internal market, which applied to the UK at the time. The right was underpinned by the introduction of EU-wide standards of investor protection and harmonised conduct of business rules.

The UK's regulatory system permitted EU passported firms, if duly registered with the FCA on its public register, to operate here as authorised persons under the FMSA 2000, and I think that, in the present case, that could have provided sufficient comfort for L&G's purposes that despite the presence of some warning signs (cold call, overseas investment,

moving to a QROPS without moving abroad) the scam risk here was minimal as a regulated adviser had recommended the transfer.

So overall, I don't think if L&G had made further enquiries that this would have resulted in warnings to Mr S that he was at risk of a scam. And this was essentially the purpose of the PSIG and Scorpion guidance; for ceding schemes to take additional steps if they thought a customer was at the risk of a scam. They weren't expected to provide general advice to the customer about the transfer, the investment risks of certain investments or the possible differences in regulatory protections when using a EEA regulated firm with service passporting rights into the UK.

So I don't think any additional due diligence would have led to further warnings to Mr S.

Could L&G have prevented the transfer?

As I said above, L&G didn't send Mr S directly any scam warnings in the form of a Scorpion leaflet, so he wasn't given relevant information. I carefully considered whether sending him the appropriate leaflet would have likely made any difference in this case.

The relevant leaflet at the time which ought to have been sent was the Scorpion leaflet of March 2015. It would have pointed to warning signs some of which potentially could have resonated with Mr S as they applied to his transfer. The leaflet warned about cold calls and the offer of free pension reviews and the transfer of funds overseas. There were other warnings signs like the promise of guaranteed returns, lack of diversification, access to funds before 55 and paperwork being delivered by courier and requiring immediate signature or being rushed into a decision.

However, based on what Mr S told us none of these other warning signs would have been present in his circumstances. He said he wasn't offered access before age 55, he was given information about differing potential returns and he said he was told he would be invested in hotels and liquid investments. He also said he wasn't rushed and there was a cooling off period. He had already rejected pension review offers which he considered "unrealistic", so I think he considered the proposal by SWL legitimate. Any checks on the FCA register or enquiries in this regard to L&G would have also informed him that SWL were registered with the FCA . The paperwork he had received from the scheme also said:

Introduced by Independent Financial Advisors with pension transfer and opt out permissions: Strategic Wealth, FSC Number 1175B (this was the Gibraltar registration number).

I understand that in hindsight Mr S says he would have made enquiries with L&G if he had received a leaflet with warnings. However, on balance I don't think there were enough warnings present in the leaflet that would have concerned Mr S.

Summary

Overall, I think L&G should have done more here. However, I don't think sending the leaflet and/or asking Mr S further questions about the transfer would have led Mr S to abort the transfer.

I understand that Mr S is in a difficult position and it seems that at least a large part of his pension has no market value and that he is worried about his pension. I have great sympathy for him and his situation and I understand that my decision will be very disappointing. However, I need to consider that even if L&G had done everything they should have, I think the transfer would have happened anyway. So they haven't caused Mr S's losses and it wouldn't be fair or reasonable to hold them responsible for this.

Responses to my provisional decision and my findings

ReAssure had nothing further to add.

Mr S's representatives disagreed. I'll summarise their key points below.

- They disagree that the involvement of SWL was enough to 'neutralise' the presence of scam warning signs (cold call, no rationale for moving funds overseas).

- If L&G had done a search on the FCA register for the SWL adviser named on Mr S's transfer application, they would have discovered that the adviser was also connected to a directly FCA regulated firm in the UK (Strategic Wealth UK Limited). A search would have identified that the adviser was advising Mr S through the firm in Gibraltar rather than through the UK firm despite Mr S moving a UK pension and being a UK resident. This unusual advice structure should have raised further concerns rather than provided comfort that nothing was amiss.

- The Financial Services Compensation Scheme ('FSCS') confirmed in statements that there has been confusion between the similarly named Strategic Wealth firms and that those consumers who had received advice through the Gibraltar firm were not entitled to FSCS compensation.

- L&G should have been aware of the different regulatory protections available through directly authorised firms and EEA firms with passporting rights. It's accepted that they didn't need to provide a detailed explanation of this to Mr S. However, having identified the unusual advisory process, this should have been pointed out to Mr S together with the other identified warning signs.

- If the Scorpion leaflet had been sent and L&G had pointed out what specific warning signs had been identified in his transfer, Mr S would have stopped the transfer. He wasn't a high earner, he had no investment experience and was by nature not a high risk taker. This was his only retirement provision and there is no evidence that if he had been put in a reasonably well-informed position, he would have been prepared to take this risk with his pension. He had shown scepticism of previous propositions with which he had not proceeded and he would have done the same here if he had been given risk warnings.

I've considered the above arguments, however they don't alter my decision.

I don't think a search both of the adviser name and the firm on the FCA register would have necessarily been required. The registration number was for the firm and this would have been the primary check in my view. However, even if L&G had discovered that the adviser was also connected to a UK firm, this in itself was nothing untoward in my view. Both Strategic Wealth Ltd and Strategic Wealth UK Limited were regulated firms which were required to adhere to and given the transfer was to a QROPS the involvement of an international firm was not unusual.

As explained before I think the involvement of a regulated adviser here would have been sufficient for ReAssure to reasonably assess the scam risk as minimal and not provide additional warnings to the ones in the Scorpion insert.

And my view remains that if Mr S had received the Scorpion insert, the majority of the warnings in there would likely not have resonated with him. So together with the fact that he

was being advised by a regulated firm, I think he wouldn't have had any concerns with the transfer.

My final decision

I'm not upholding Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 November 2024.

Nina Walter
Ombudsman