

The complaint

Miss T has complained, with the help of a professional third party, about the transfer of the pension benefits from her deferred annuity, which was held with Pension Insurance Corporation plc ('PIC') to a Qualifying Recognised Overseas Pension Scheme ("QROPS") in September 2016.

Miss T says PIC failed in its responsibilities when dealing with the transfer request. She says that it should have done more to warn her of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance she says was required of transferring schemes at the time. Miss T says she wouldn't have transferred to the QROPS, if PIC had acted as it should have done.

What happened

Miss T held a deferred annuity, a type of defined benefit pension, with PIC following its buyout of her previous occupational pension scheme.

In December 2015, Capital Facts Ltd ('CFL') contacted PIC, providing a letter of authority completed by Miss T, and asked for details of her pension policy. CFL was not authorised or regulated by the Financial Conduct Authority ('FCA').

PIC replied to CFL on 21 December 2015, acknowledging the request for transfer information and enclosing a transfer value quotation. The letter said if Miss T was transferring to a defined contribution pension scheme, it would need confirmation she had received appropriate financial advice before it could transfer the pension. But even if not transferring to this type of scheme, PIC said it strongly suggested that Miss T take independent advice.

There was a further section of the letter headed 'Pension Scams'. This said The Pensions Regulator ('TPR') had published materials to alert scheme members to the dangers of pensions scams. And it said TPR had asked that it enclose the relevant leaflet (the 'Scorpion' insert). PIC said in the letter that this wasn't to suggest CFL or the receiving scheme were involved in pension scams, but rather PIC said it had been asked to send this with all transfer statements. And it said it had forwarded a copy of the leaflet to Miss T.

I can see that some of the documents required to complete the transfer were signed by Miss T on 10 March 2016. These confirmed that the receiving scheme was the Optimus Retirement Benefits Scheme No.1 – a QROPS based in Malta.

On 26 April 2016, PIC wrote to Miss T confirming it had received transfer forms. But it said it hadn't received a letter from her FCA regulated adviser confirming that she'd received independent advice.

An updated transfer valuation was provided by PIC in June 2016.

PIC has provided notes of calls it received about the transfer. On 2 August 2016, Miss T called asking for the transfer to be put on hold until she informed it otherwise. But the next

day, 3 August 2016, she rang back and confirmed she wanted the transfer to go ahead.

On 10 August 2016, PIC wrote to Miss T acknowledging the telephone discussions and her confirmation she wanted to go ahead. It again said it was still waiting for confirmation that Miss T had received appropriate advice from an FCA registered adviser and needed this to proceed with the transfer.

New copies of the transfer documents were signed by Miss T on 18 August 2016. The forms included a section where Miss T said her reasons for transferring, from a pre-prepared list, were to take money from the pension as cash and to take flexible drawdown of benefits. She also ticked to confirm that she'd received appropriate independent advice and that this had been a recommendation not to transfer, but she said she would like to transfer anyway. And the member declaration Miss T agreed to said, amongst other things, she understood that in some circumstances a transfer may not be a recognised transfer and may be treated as unauthorised, meaning she'd incur a tax charge, and she had read and understood information from TPR about the dangers of pension liberation fraud as well as information supplied alerting her to the dangers of pensions scams.

On 22 August 2016, St Martin's Partners LLP ('SMP') provided a letter addressed to PIC confirming that Miss T had approached it requesting advice about the transfer of her deferred annuity. SMP was regulated by the FCA. It said it had solely given advice in relation to a transfer valuation advice report and had not given advice on the receiving scheme. SMP said, based on its analysis it did not recommend that Miss T transfer out of the deferred annuity.

On 5 September 2016, Optimus Pension Administrators limited ('OPAL') provided the updated forms to PIC along with relevant information about the QROPS. This confirmed, amongst other things, the scheme was established in June 2014 and the scheme manager and administrator was Integrated Capabilities (Malta) Ltd ('ICML'). It was registered with the Malta Financial Services Authority and recognised by HMRC as a QROPS. OPAL was registered with the Isle of Man Financial Services Authority but not with the FCA. The QROPS scheme information explains that OPAL's role was to provide administration services to ICML (the scheme administrator and manager) and was authorised to sign documents on ICML's behalf.

Miss T's pension was transferred by PIC in September 2016. The amount transferred was £84,181. Miss T was 55 years old at the time.

An annual statement from 2018 for Miss T's holdings in the QROPS show that it was invested across several different assets. 10% was held in cash (4% in the scheme account and 6% with an external custodian), 26% in an investment fund 42% across two resort developments funds and 22% with a business that invested in an aerospace company. The statement said that one of the resort development assets, accounting for 10% of Miss T's investment, had been suspended due to illiquidity of the underlying assets.

I can see that the Aerospace development company has since gone into liquidation and the external custodian was placed into special administration. And the second resort development was provided by The Resort Group ('TRG') which I understand is likely to have ceased providing returns some time around 2019 and there is no recognised secondary market for re-sale of the investment.

In March 2019, Miss T made a claim to the Financial Services Compensation Scheme ('FSCS'). The claim was against Gerard Associates Limited ('GAL'), which was by then in default. The claim was described as relating to 'advice to opt out or leave a company pension'. In the summary of claim Miss T said *"my pension was transferred overseas as I*

was told it was better for me but I do not and never have intended to retire overseas, it was not explained my monies would be invested in high risk or incur charges for transferring and maintaining my pension". The form confirmed that the pension which was transferred was the annuity which had been with PIC and that had moved to the QROPS. And it was recorded that the advice was provided in February 2016.

The FSCS said Miss T did not have a valid claim under the rules set for it by the regulator. It explained that this was because, to have a valid claim, it had to decide whether a court would decide in Miss T's favour. And it didn't think one would, as the FSCS believed that Miss T had gained by the transfer, rather than incurring a loss. So, it rejected her claim and confirmed this decision in September 2020. I note that the FSCS's initial response made reference to a business in Gibraltar, Strategic Wealth Limited ('SWL') as being the advising firm in respect of two of the investments held in the QROPS (the TRG investment and the external custodian) and Miss T taking a lump sum payment of £10,000 from the pension. But SWL doesn't appear to have been mentioned in the documents provided to PIC.

Also in September 2020, Miss T complained to PIC. She said she'd been cold called by CFL who were unregulated. She says she was then advised to transfer her pension benefits to the QROPS. Miss T said PIC had provided documents to CFL to enable the transfer, even though it wasn't regulated, and PIC hadn't done sufficient due diligence or appropriately warned her about the risks, particularly regarding advice from an unregulated party. Miss T also said she hadn't been provided the 'Scorpion' warnings by PIC. She also said that PIC should not have accepted the advice letter from SMP as it had only considered a transfer value analysis and hadn't advised on the receiving scheme. So, she considered PIC was responsible for losses she'd suffered by transferring.

PIC didn't uphold the complaint. It said it included information regarding transfer scams in all of its transfer packs. It noted that Miss T had confirmed she'd received advice from an FCA authorised business not to transfer but still wanted to proceed. And it had checked that the receiving scheme was recognised by HMRC. So, it was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

I issued a provisional decision earlier this month explaining that I didn't intend to uphold Miss T's complaint. Below are extracts from my provisional findings, explaining why, which form part of my final decision.

The relevant rules and guidance

Personal pension and annuity providers are regulated by the FCA. Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority ('FSA'). As such PIC 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 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 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 as it provided, for the first time, guidance for personal pension and annuity 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 and annuity 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 – as this was the version of the guidance in place at the time of the initial request to PIC for information and to transfer. 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 Scorpion guidance for businesses was updated again in March 2016, with the Scorpion insert being updated in June 2016. This was before the transfer of Miss T's pension took place.

The March 2015 and March 2016 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 2016 update to businesses contained similar messages to those from 2015 but emphasised some of the actions it suggested more directly. The update asked schemes to direct members to TPR's "booklet" which set out how to spot a scam. The action pack included a link to this information online which indicates that the "booklet" referenced was the shorter of the warning materials. The update also said to use its checklist and carry out due diligence on all transfer requests. It said ceding schemes should proactively engage with members they considered at risk and if, after due diligence, they suspected that a receiving scheme may be involved with a scam, this should be communicated to members and a record kept of this communication.

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 and annuity 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 and 2016 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 or 2016 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 Scorpion guidance doesn't distinguish between receiving schemes 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 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?

Miss T says she was cold called in December 2015 and offered a free pension review by CFL. She says she was not aware CFL was not FCA regulated. Miss T says she was then advised to transfer her pension benefits to the QROPS. She recalls the person that met with her was persuasive and that she felt pressured to transfer. She had no prior investment experience but was told her pension would be invested in "a diverse portfolio including an overseas hotel investment" and that this would provide guaranteed returns of 8% per year. She recalls the adviser saying this would be more beneficial than her existing policy, which was described as frozen and not making any money.

Miss T says she wasn't contacted by PIC to discuss why she was transferring, who had initially contacted her and who had advised her to transfer. And she doesn't recall the Scorpion leaflet being shared with her and says if she'd seen this, she wouldn't have gone

ahead.

Her representative says Miss T was initially referred to GAL for appropriate advice – a requirement as she was transferring DB benefits valued at over £30,000. But she was subsequently referred to SMP.

In Miss T's claim to the FSCS, she said that her benefits were transferred because she was told it would be better for her, but she never intended to retire overseas, and she says it wasn't explained that the money would be invested in high-risk assets or that she may incur UK tax liability. And she said it was GAL that told her it would be better to transfer as her existing policy "was not doing anything" where it was. In the claim she gave the name of who at GAL gave her advice – and they are named on the FCA register entry for GAL as working for the business. And Miss T said she didn't receive advice from another business about the product she was claiming for.

I haven't seen anything that leads me to question that Miss T was likely cold called. And I think it was CFL that did so. This seems to have been the first business that spoke to Miss T about transferring her pension. And this was the first business that contacted PIC about this, requesting information. And CFL was not regulated. But it wasn't required to be if acting only as an introducer. And based on what Miss T told the FSCS that appears on balance to be what happened here.

She has been consistent in saying that she met with an adviser who recommended a transfer because her existing policy was not doing anything or frozen. But she was clear in her FSCS claim that it was GAL, who were an FCA regulated business at the time, that said this. And she indicated this was around the time that the initial set of transfer documents were signed.

It is true there were other parties involved. OPAL submitted the second set of documents to enable the transfer. And seems likely to have submitted the first set, which PIC acknowledged in April 2016. As I've already explained, OPAL's role was to provide administration services to ICML (the scheme administrator and manager). And I haven't seen anything to suggest, nor do I think it is likely, that its role went beyond administration and processing – not least because here its involvement appears to have come after a course of action had been chosen.

SMP provided written confirmation to PIC that it had provided appropriate advice to Miss T and had recommended that she not transfer her benefits away from the annuity. But it also was clear that it hadn't given advice on the receiving scheme.

Miss T doesn't appear to have had any prior connection with the QROPS or ICML. And she has said that she had no intention of moving overseas – either to Malta, where the QROPS was registered, or anywhere else. I've also not seen anything to suggest Miss T had any more than a limited experience of pensions and investments. And I think it is unlikely she'd have sought to transfer her benefits to the QROPS on her own. On balance, I think it was the input of the person she met with that led to this. And I think she was likely advised. What she's said she was told about her existing scheme not doing anything but the QROPS offering guaranteed returns of 8% to me represented comparing the prospective benefits of the two schemes and suggesting the new scheme was more beneficial. I think this represented advice to transfer. And I think it was this advice that was the catalyst for the transfer. Based on all of the information that has been provided, on balance I think it was GAL that gave her that advice.

I do think what Miss T has said about the investments in her pension now being largely illiquid is likely to be correct. The announcements I've already referred to indicate that

several of the providers have run into trouble. And from what we know about investments through TRG from other complaints we've seen, I think there is unlikely to be any real market for re-sale of that investment and that it too is largely illiquid.

What did PIC do and was it enough?

The Scorpion insert:

For the reasons given above, my view is that personal pension and annuity providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information. And the PSIG Code agrees with the Scorpion guidance that this insert should be included in transfer packs and should be sent directly to customers.

Miss T says that she doesn't recall the Scorpion insert being provided to her by PIC.

PIC says that it sent the Scorpion insert along with its letter of 21 December 2015, when it shared the relevant transfer pack. And the contents of the letter do refer to it being included. But this letter was to CFL, not to Miss T directly. And I don't think I can reasonably rely on CFL, an unregulated business, having forwarded this on to Miss T.

PIC says that it also sent a copy directly to Miss T, at the same time. It has been unable to provide evidence of the correspondence it says it sent to Miss T on that date. But the letter to CFL did say that PIC had forwarded a copy of the Scorpion insert to Miss T and told her she could get more information online from TPR. There are no references in any of the other direct letters to Miss T, as the transfer process progressed, to suggest a further copy was provided.

PIC can't demonstrate that it sent the Scorpion insert to Miss T. But I think it'd be unusual for the letter to CFL to say it had done this, if this wasn't an action it had taken. Particularly so, given that the declaration it required be completed as part of the transfer process included Miss T acknowledging that she'd read and understood the information. And Miss T agreed to this declaration, which I doubt she would have done if it had been incorrect, and she had not been sent the insert.

So, on balance of probabilities therefore I think PIC did send the Scorpion insert to Miss T on 21 December 2015.

Although the Scorpion guidance and insert were updated before the transfer completed, I don't think PIC needed to send another copy to Miss T. By that point an application to transfer had been received and was progressing. But I do think PIC needed to take the updated guidance into account when considering the application.

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 Miss T'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 PIC's actions using the Scorpion guidance as a benchmark instead.

The initial request for transfer information here came from an unregulated business. So, I think this ought to have led PIC to asking Miss T 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 promised a specific/guaranteed rate of return?*

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.

What did PIC do, should it have found out more – and would it have made a difference?

PIC did establish the legitimacy of the QROPS and that it was recognised by HMRC. Information demonstrating the scheme had been registered in June 2014 and recognised by HMRC as a QROPS from August 2014 – over a year before the transfer was requested – was obtained.

In addition, the transfer documents did ask why Miss T was transferring her pension, to which she answered to take money as cash and flexible drawdown facility. Which doesn't appear to have been an option available to her by retaining her deferred annuity. But PIC didn't enquire about Miss T's rationale for transferring beyond this. It didn't establish why Miss T was applying to join a QROPS, based abroad, rather than moving to an alternative pension provider domestically in order to achieve flexibility. And if it had asked Miss T about this – which it should have done, using the framework outlined above – it would have found out she was transferring her pension following an unsolicited approach and that she wasn't intending to live overseas – which the type of arrangement she was transferring to was more commonly used for.

But even if it had done all it should have done, I'm satisfied PIC wouldn't have considered there to be reason to provide any further warnings to Miss T.

PIC correctly identified that Miss T was required to take advice from an FCA authorised adviser, given the nature of benefits she was transferring. And it said it couldn't process the transfer until it had seen proof of that. It was provided a letter from SMP confirming it had the appropriate permissions under Part 4A of FSMA to give the relevant advice. And SMP was regulated and authorised by the FCA. Which I think would reasonably have reassured PIC.

The content of the letter indicated that SMP hadn't given advice on the receiving scheme –

the QROPS. But as I've said, I think Miss T was advised to transfer and recommended the receiving scheme by GAL – which was also an FCA regulated business. So, even if PIC had questioned what the SMP letter stated, I think it would have found that another FCA registered adviser had advised on the receiving scheme.

The aim of the PSIG code and Scorpion guidance was to prevent customers falling victim to scams. I think PIC would reasonably have been entitled to take comfort from two FCA registered businesses being involved in the advice, as well as the receiving scheme being recognised by HMRC, that the risk of Miss T being the victim of a scam was low here.

And as I've said, I think it had already provided Miss T with the Scorpion insert. The insert would've been the March 2015 version. This started by explaining "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 then went on to explain how to spot warning signs by setting out some of the most common tactics used by scammers. The things listed were:

- Being cold called, receiving a text message, a website pop-up or a doorstep caller offering a 'free pension review', 'one-off investment opportunity' or 'legal loophole'.*
- Convincing marketing materials that offered returns of over 8%.*
- Pension access before age 55.*
- Documents being delivered by courier for immediate signing.*
- The overseas transfer of funds.*
- The suggestion being to put money into a single investment (noting in most circumstances advisers will suggest diversification).*

At least three of these warnings were relevant to Miss T's transfer. She had been cold called and offered a pension review. She says she'd been told she'd receive guaranteed returns of 8%. And the transaction involved the transfer of her pension fund overseas. These warnings had not dissuaded Miss T from transferring. Nor had the fact that SMP had recommended that she not transfer – which she said she'd understood but she still wanted to go ahead with the transfer.

So, in summary, while I don't think PIC did everything that it should have, in terms of due diligence, I don't think it would have found anything that would have suggested it needed to provide additional warnings. And, given the warnings and regulated advice Miss T had chosen to disregard already, I don't think further warnings would've led to her being in a different position anyway.

Responses to my provisional decision

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

PIC said it agreed with my provisional findings.

Miss T's representative said they did not accept my findings. In summary, they said my findings were not consistent with several other complaints the Financial Ombudsman

Service had considered and upheld, despite in their opinion, the circumstances being similar. The representative said that in those cases we'd found:

- The businesses had not provided the Scorpion warnings. They said PIC had not provided the Scorpion warnings here, so they felt the complaint should be upheld.
- Unregulated introducers had been involved in those complaints. The representative said Miss T had been cold called by CFL and advised to transfer, so again they thought her complaint should be upheld for that reason. And PIC's failure to intervene despite the presence of an unregulated business had caused the loss.
- The businesses had not conducted sufficient due diligence. As I'd said that I thought PIC should have done more here, they felt the complaint should therefore be upheld.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'd first like to make it clear that I've reached my decision based on the specific circumstances in Miss T's individual complaint. These are different to those in complaints and transfer requests made by other consumers to other ceding schemes. So, while Miss T's representative has referred to conclusions reached in separate complaints that they believe to be similar to Miss T's, I'm not bound by those findings. And the same way we look at each case on its individual merits, I'd expect a transferring scheme to assess each transfer request on its own facts. And that may well result in different outcomes based on what looks to be similar circumstances.

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

Miss T's representative has said that PIC did not send her the Scorpion insert, so the complaint should be upheld. However, in my provisional decision I explained that on balance I was satisfied PIC did share this information with Miss T. And having thought about this point again, I still consider this was likely sent. PIC indicated that it was sent alongside one of its letters to Miss T. And Miss T signed a declaration confirming she'd read and understood the information provided by TPR. I would also just make the point that even if a business did not provide the Scorpion insert, that does not automatically mean that a complaint must be upheld, as this would depend on the individual circumstances of the complaint.

Miss T's representative said the involvement of an unregulated introducer also meant that the complaint should be upheld, as they advised Miss T to transfer. Again, the involvement of an unregulated party does not automatically mean a complaint will be upheld. As I explained in my provisional findings, the information does show CFL, an unregulated party, was involved in this transfer. But Miss T's testimony in her claim to the FSCS indicates that it was GAL, a regulated business, that provided her advice. So, CFL's involvement does not appear to have included providing advice, rather it acted as an introducer – which does not require it to be regulated.

Lastly Miss T's representative says because I felt PIC could have done more due diligence,

the complaint should succeed. But again, I've considered the complaint on its own individual merits. And while PIC could have found out more, given the information indicated the involvement of two regulated advisers, one of whom had advised Miss T not to transfer, I don't think further due diligence would have resulted in PIC issuing additional warnings to those in the Scorpion insert, which I'm satisfied it gave to Miss T.

The information in the Scorpion insert at that time gave stark warnings about the risks of falling victim to a scam. The document was clearly headed as referring to pension scams. It reiterated the point that scammers are acting for themselves and not in a consumer's interest. It listed the warning signs to look out for and referred to these as being common tactics of scammers. And it said what consumers should do before signing anything. These are strong warnings. And as I explained in my provisional findings, several of those were relevant to Miss T's circumstances. Miss T signed to say she'd read and understood this information, and evidently, she was not dissuaded from transferring by it. So, even if PIC had done more, I don't think it would be reasonable to say a further warning from it along the same lines would have prompted Miss T to reconsider. The contemporaneous evidence doesn't, in my view, support that argument.

So, while I know this will come as a disappointment to Miss T, based on the individual circumstances of her complaint I don't think PIC has done a great deal wrong. And even if it had taken further action, I don't think Miss T would have changed course so she would have ultimately still been in the same position. In those circumstances I don't think it would be fair to require PIC to do anything here.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 26 November 2024.

Ben Stoker
Ombudsman