

The complaint

Miss B has complained, through her representatives, that Scottish Equitable Plc trading as Aegon undertook insufficient due diligence when transferring her personal pension to a Qualifying Recognised Overseas Pension Scheme (QROPS) in October 2014.

Miss B's QROPS - the Harbour Pensions Retirement Scheme - was based in Malta. Funds were subsequently used to invest in large parts into loan notes for property in Germany through Dolphin Capital. This investment has failed. Miss B says she effectively lost all of her pension.

What happened

In March 2014 Aegon received a request for Miss B's pension's transfer value as well as discharge paperwork from Global Partners Limited, a firm regulated in Gibraltar. Miss B says she can't recall any involvement from Global Partners.

In June 2014 Miss B applied for the QROPS with Harbour Pensions and for the investments held within it. The adviser noted on this paperwork was Servatus Limited, a firm regulated in Ireland.

In August 2014, Harbour Pensions sent completed transfer paperwork to Aegon including its HMRC registration and identity documents for Miss B.

In October 2014, Aegon transferred Miss B's pension to the QROPS.

In 2021 Miss B, through her representatives, complained to Aegon. She said Aegon should have warned her about the existence of several warning signs and the risks she was taking with her transfer.

Aegon rejected the complaint. They said they didn't identify any warning signs with the transfer. The QROPS had been registered with HMRC in April 2013, a year and four months before the transfer request and the scheme operator was regulated. There was no indication it was linked to an unregulated investment company and the scheme appeared on HMRC's list as a QROPS. Aegon said they could take comfort from the fact that Miss B was transferring to a genuine scheme and there were no signs that she was at risk of pension liberation. Miss B referred her complaint to this service. Our investigator thought this complaint shouldn't be upheld.

In summary she said:

- Aegon received a transfer request for Miss B's pension in August 2014. At this time The Pension regulator's (TPR) Scorpion guidance in its version of July 2014 would have been relevant. The guidance which was first published in 2013 prompted pension providers to take a more active role in preventing pension liberation fraud which had been on the increase. In July 2014 it widened the focus from pension liberation specifically to wider scams. Personal pension providers didn't have to follow all aspects of the Scorpion guidance in every transfer request, however they

should have paid heed to the information it contained; and, where the recommendations in the guidance applied, absent a good reason to the contrary, it would normally have been reasonable and good industry practice for pension providers at least to follow the substance of those recommendations.

- TPR said it wanted to see the use of the Scorpion insert in transfer packs to become best practice. Sending the inserts to customers asking to transfer their pensions was a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. It was reasonable for the Scorpion insert to have been sent by pension providers to transferring customers as a matter of course. Aegon should have sent Miss B the Scorpion insert whether they had concerns about the transfer or not.
- Miss B was transferring her pension overseas which was a warning sign and so Aegon should have reasonably found out more about the transfer from Miss B.
- If they had done so they would have likely found out that Miss B was contacted by a cold call. Given Miss B's testimony to us, she also likely would have told Aegon that Servatus had advised her to transfer her pension for higher returns.
- Aegon should have checked whether Servatus was approved by the FCA. If they had done so they would have discovered that Servatus was a firm regulated in Ireland with passporting rights to the UK. This means that for UK purposes throughout the period of this transfer Servatus was an authorised person under s.31(1)(b) of the Financial Services and Markets Act (FSMA) 2000 and Schedule 3 to that Act.
- The fact that Miss B was being advised by an authorised adviser in combination with the fact that she was transferring to a genuine scheme registered with HMRC reasonably would have given Aegon comfort that the transfer was unlikely to be a scam. So no further warnings would have been necessary.
- The Scorpion insert in the version of July 2014 should have been sent to Miss B. However, this likely wouldn't have changed her mind about the transfer. The insert warned about being contacted out of the blue which might have resonated with Miss B as she says she was cold called. However, the insert then referred to TPR's website which at the time warned consumers mainly about the risks of accessing pensions early and being promised more tax-free cash. Neither of these warning signs applied to Miss B.
- Aegon should have sent the Scorpion insert and made further enquiries with Miss B. However, even if they had done this, Miss B likely still would have transferred her pension, so Aegon isn't responsible for Miss B's financial losses.

Aegon agreed with the investigator's conclusions.

Miss B's representatives disagreed with the investigator's findings that Aegon was entitled to take comfort from the fact that Miss B had been advised by a firm that was regulated in Ireland rather than the UK and that Aegon didn't need to give additional specific warnings. However, they acknowledged that this issue had been addressed in previous ombudsman decisions and further submissions would unlikely alter our view on this matter. So they limited their comments to addressing whether Miss B would have gone ahead with the transfer if Aegon had sent her the Scorpion insert.

They said:

- It wasn't clear whether the investigator thought the short form Scorpion insert or the long form warnings should have been sent by Aegon. The long form warnings referenced overseas investments and unique investment opportunities and one of the case studies even referenced an overseas investment scam. Consumers were recommended to make sure their adviser was authorised by the FCA.
- They didn't accept that TPR wouldn't have updated their website when they broadened the focus from pension liberation to wider scams in July 2014.
- In order to fairly decide whether Miss B would have gone ahead with her transfer if she had received the Scorpion warnings, her individual circumstances and what kind of person she is, need to be considered. It needs to be considered whether she was a person that was prepared to take risks or whether she was a careful and prudent person who was more likely to listen to guidance.
- Miss B was on a fairly low income. Despite this her financial affairs were well managed and she had been paying a small amount into her pension since 1996. She owned her own home without a mortgage and had built up savings of £30,000 and an ISA worth £50,000. All this points to a person who is careful with financial affairs rather than a person prepared to take risks. She would have read and followed guidance in the Scorpion literature even without any follow up from Aegon.

Our investigator asked Miss B's representatives for further information on a second transfer that Miss B had requested from a different pension provider (Firm A) around the same time. This information showed that she had received a call from Firm A in March 2015 asking questions about her transfer. They also sent her a letter in May 2015 setting out the concerns they had with the transfer as well as a Scorpion booklet which had been updated in March 2015.

The investigator confirmed to Miss B's representatives that her view hadn't changed. She pointed out that the warnings Miss B received from Firm A in 2015 were a lot stronger than any warnings in the 2014 insert and Miss B still went ahead with that transfer. Even though the warnings were given after Miss B's Aegon transfer, her actions give a good indication how she likely would have responded if she had received warnings in 2014.

Miss B's representatives asked for an ombudsman to review the complaint and so it was referred to me.

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'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 investigator already set out the rules and guidance relevant to this complaint, so I'm not going to repeat this here in detail. However, in short, I did consider whether Aegon acted fairly and reasonably when processing Miss B's complaint considering their obligations under the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS), in particular COBS 2.1.1 which sets out that they had to act in their client's best interest.

I also considered the Scorpion guidance published by TPR at the time which was initially issued in 2013 to help tackle pension liberation fraud and which was updated several times over the coming years to broaden the focus on wider scams. The guidance was informational and advisory in nature and 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. However, given that the guidance was designed to inform and help ceding schemes prevent consumers falling victim to scams and suffer significant losses to their pension savings, I consider firms needed to pay regard to the Scorpion guidance as matter of good industry practice and to fulfil their duties under PRIN and COBS.

I agree with the findings of the investigator, namely that:

Aegon should have sent Miss B the Scorpion insert at the latest when a transfer was requested in August 2014. The Scorpion action pack refers to the *leaflet* to be sent (which is the short form insert). The long form warnings are referred to as the pension scams *booklet* which can be sent if concerns remain or the consumer has further questions or concerns. We have set out this difference in most of our decisions. So Miss B should have been sent the shorter Scorpion insert in the version of July 2014.

Aegon ought to have reasonably found out more about the transfer given that they knew Miss B was transferring her pension overseas which was a warning sign in the Scorpion action pack. I appreciate that based on the documents they had they could be reasonably certain that Miss B was transferring to a genuine pension scheme. However, other than that they didn't know much more about the circumstances of the transfer.

If they had made further enquiries Aegon would have likely found out that Miss B had been cold called. I think it's likely Miss B also would have told them that she was being advised by Servatus - who were noted on the QROPS application as the adviser and who she now recalls contacted her. 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 Aegon'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 been involved in advising on the transfer and providing Mr F with information about it.

If Aegon had made further enquiries that this wouldn't have needed to result in specific warnings to Miss B that she was at risk of a scam. And this was essentially the purpose of the Scorpion guidance; for ceding schemes to take additional steps if they thought customer was likely being scammed. 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 an EEA regulated firm with service passporting rights into the UK.

Miss B's comments after the investigator's view focused on how Miss B likely would have reacted if she had received the Scorpion insert. I can't be certain how Miss B would have reacted, so I need to decide what most likely would have happened based on what I know about Miss B and the circumstances and evidence in the individual case.

Like the investigator, I think the information that has been provided by Miss B's representatives for another transfer provides useful insight in this regard. Harbour Pensions requested a transfer from Firm A at the same time as they did from Aegon.

Miss B wrote to Firm A in early January 2015 and complained about delays to her transfer. She said: "This is my money and I'm getting fed up with [Firm A] holding onto it which is stopping me reinvesting. I would like you to get this sorted out once and for all". In February 2015 she raised a complaint with our service about the delays.

In early March 2015 Firm A called Miss B with due diligence questions about the transfer.

On 11 May 2015, Firm A wrote to Miss B and said they had received evidence that the receiving scheme met the definition of a QROPS and as Miss B had a statutory right to transfer they would action her request by 22 May. However, they did set out points that gave them cause for concern including:

- Miss B told them she was receiving advice from the scheme, however the scheme wasn't registered with the FCA as a financial adviser.
- Miss B had advised that she understood her investments were covered by the Financial Services Compensation Scheme (FSCS). However, as it appeared she had not been advised by a UK based financial adviser the advice would not be subject to the Financial Ombudsman's jurisdiction and the investments wouldn't be covered by the (UK) FSCS.
- She had been advised that she would receive a guaranteed growth of 10% on her investment
- Miss B couldn't recall what she would be invested in
- The scheme was calling Miss B on a weekly basis enquiring when the transfer would take place.

Firm A also enclosed TPR's "Scamproof your savings" booklet which I take to be the longer Scorpion booklet in the relevant version at the time (issued March 2015). I say this because of its title and the reference to a booklet. Firm A recommended that Miss B should read this. If she wanted to cancel her transfer instruction or if she had any queries, she should contact Firm A.

The transfer went ahead on 26 May and Firm A's file don't show any contact from Miss B in response to their letter of 11 May 2015.

Firm A spoke to Miss B and provided her with a list of specific concerns they had about her transfer and provided her with Scorpion warnings which warned about the risks of pensions scams and signs of this amongst other things being cold calls, overseas transfers and being promised guaranteed returns.

Despite all of this Miss B went ahead with this transfer. I appreciate Miss B had already transferred her Aegon pension at this point. However, how she actually reacted to detailed warnings from Firm A about a transfer to the same QROPS worth around £34,000 provides

strong insight in my view how she would have reacted if Aegon had provided her with any kind of similar warnings either in the form of the 2014 Scorpion insert or even more detailed warnings.

I don't doubt that Miss B is generally a careful person and she is prudent with her financial affairs. I also don't think she transferred her pensions in the knowledge that these would be high risk and speculative investments. It's more likely she simply trusted the advisers she was speaking to and was persuaded that this was a good idea.

Miss B says if Aegon had warned her about the risks she would have sought advice from an independent financial adviser and she would have heeded any warnings given to her. I believe Miss B that with hindsight this is what she thinks and wishes she would have done. However, the evidence from 2015 and how she reacted to specific warnings about her transfer from Firm A don't support this. Based on the evidence I've seen I think it's most likely Miss B would have proceeded with her Aegon transfer, even if they had done more to warn her about the possible risks of pension scams.

My final decision

I don't uphold Miss B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 16 December 2024.

Nina Walter
Ombudsman