DRN-5199250

Financial Ombudsman Service

The complaint

Mr D has complained about a transfer of his personal pension with Scottish Equitable Plc trading as Aegon to a self invested personal pension ("SIPP") in early July 2014. Mr D's SIPP was subsequently used to invest in Dolphin Capital, a loan note investment into overseas property. The investment now has no realisable value. Mr D says he has lost out financially as a result.

Mr D says Aegon failed in its responsibilities when dealing with the transfer request. He says that they should have done more to warn him of the potential dangers of transferring, and undertaken greater due diligence on the transfer. Mr D 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

Aegon received a request from an FCA regulated firm for information about Mr D's pension in October 2013 which Aegon provided.

In March 2014, they received another information request from an unregulated firm, Alternative Pension Investment Ltd (API) and provided information to them.

On 17 June 2014, Aegon received a transfer request from Guinness Mahon Trust Corporation Limited through the Origo Options system to transfer Mr D's pension to their SIPP. Origo is a service provider offering an online system that can be used by pension providers to reduce the need for paper-based correspondence during transfers.

Aegon transferred Mr D's pension worth over £131,000 to the SIPP on 2 July 2014. He subsequently invested the majority of these funds in addition to monies from a second personal pension provider into Dolphin.

Mr D complained to Aegon in 2022. They rejected the complaint and said they didn't have any concerns about the transfer. Mr D was transferring to Guinness Mahon, a regulated and well-established SIPP provider which didn't pose the risk of pension liberation.

Mr D referred his complaint to this service where an investigator upheld his complaint. He considered that:

- Aegon should have taken account of The Pension Regulator's (TPR) Scorpion guidance at the time and should have sent Mr D a Scorpion leaflet which contained warnings about pension liberation. Although he said that the leaflet in itself likely wouldn't have raised any concerns with Mr D as it mainly warned about early access to pension benefits and being offered loans or cash incentives which could lead to significant tax charges. This wasn't happening in Mr D's transfer.

- Aegon should have spotted that the actual SIPP was recently registered which was a warning sign mentioned in TPR's guidance. Mr D was also under 55 and Aegon had received a few months earlier a request from API, an unregulated firm whose name indicated they might be involved in alternative types of investments. Aegon should have reasonably found out more about the transfer by contacting Mr D and asking more questions.

- Aegon would have likely found out that Mr D had been cold called and was being advised by API, an unregulated firm and that he was planning to invest in a high risk, unregulated investment. He thought Aegon should have warned Mr D that he was receiving illegal advice and that his pension was at risk.

- Warnings from Aegon to this effect would have likely led Mr D to making further enquiries and the transfer likely wouldn't have gone ahead.

Aegon disagreed and so the complaint was passed to me for an ombudsman decision.

I issued a provisional decision not upholding Mr D's complaint. I repeat my findings below.

What I've provisionally decided – and why

The relevant rules and guidance

Personal pension providers are regulated by the Financial Conduct Authority (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 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.

The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme if certain conditions are satisfied (and indeed they may also have a right to transfer under the terms of the contract). This right came to be exploited, with people encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren't entitled to – for instance, because they were below minimum retirement age. At various points, regulators issued bulletins warning of the dangers of taking such action. But it was only from 14 February 2013 that transferring schemes had guidance to follow that was aimed at tackling pension liberation – the "Scorpion" guidance.

The Scorpion guidance was launched by The Pensions Regulator (TPR). It 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 guidance comprised the following:

- An insert to be included in transfer packs (the 'Scorpion insert'). The insert warns readers about the dangers of agreeing to cash in a pension early and identifies a number of warning signs to look out for.

- A longer booklet issued by TPAS which gives more information, including example scenarios, about pension liberation. Guidance provided by TPR on its website at the time said this longer leaflet was intended to be sent to members who had queries about pension liberation fraud.

- An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "look out for" various warning signs of liberation. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where transferring schemes still had concerns, they were encouraged to write to members to warn them of the potential tax consequences of their actions; to consider delaying the transfer; to seek legal advice; and to direct the member to TPAS, TPR or Action Fraud.

TPR issued the guidance under the powers at s.12 of the Pension Act 2004. Thus, for the bodies regulated by TPR, the status of the guidance was that it provided them with information, education and/or assistance, as opposed to creating any new binding rule or legal duty. Correspondingly, the communications about the launch of the guidance were predominantly expressed in terms that made its non-obligatory status clear. So, the tenor of the guidance is essentially a set of prompts and suggestions, not requirements.

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.

I take from the above that the contents of the Scorpion guidance was essentially informational and advisory in nature and that deviating from it doesn't necessarily mean a firm has 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 legal rights.

That said, the launch of the Scorpion guidance 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.

<u>What did personal pension providers need to do?</u>

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think 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 in my view good industry practice, for pension providers at least to follow the substance of those recommendations. With that in mind, I take the view that personal pension providers dealing with transfer requests needed to heed the following:

1. As a first step, a ceding scheme needed to check whether the receiving scheme was validly registered.

2. When TPR launched the Scorpion guidance in February 2013, its press release said the Scorpion insert should be provided in the information sent to members requesting a transfer. It said on its website that it wanted the inclusion of the Scorpion insert in transfer packs to "become best practice". The Scorpion insert provided an important safeguard for transferring members, allowing them to consider *for themselves* the liberation threat they were facing. Sending it to customers asking to transfer their pensions was also 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. So, all things considered, I think the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party.

3. I also think it would be fair and reasonable for personal pension providers – operating with the regulator's Principles and COBS 2.1.1R in mind – to ensure the warnings contained in the Scorpion insert were provided in some form to a member before a transfer even if the transfer process *didn't* involve the sending of transfer packs.

4. The Scorpion guidance asked firms to look out for the tell-tale signs of pension liberation scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The action pack points to the warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. Therefore, whilst using the action pack wasn't an inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.

5. The considerations of regulated firms didn't start and end with the Scorpion guidance. 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 the Scorpion guidance – 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.

<u>The circumstances surrounding the transfer</u>

Mr D told our investigator he had been looking online at pension options. He had two personal pensions and they weren't doing that well at the time. He then received a cold call from API. He thought it was a government-based website and so he arranged for someone from API to visit him at home. He knew that he could invest in a SIPP as this is what he had been looking at. API showed him various investments and brochures. Mr D said he decided to go for the Dolphin investment. It was a good sales pitch and investment returns of 10% per year were offered. Mr D said everything sounded convincing and API showed him how other people had made lots of money. Mr D said he googled the SIPP provider, Guinness

Mahon, and Dolphin and all seemed good. He said there even had been a positive newspaper article.

<u>What did Aegon do and was it enough?</u>

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. This was an easy step to take and didn't happen here. However, I agree with the investigator that on balance the insert wouldn't have made a difference to Mr D's decision. The warnings at the time were focussed on being offered cash incentives or loans and being offered to access pensions before the age of 55 and suffering significant tax consequences. None of this applied to Mr D.

In light of the Scorpion guidance, I think firms ought to have been on the look-out for the tell-tale signs of pension liberation and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk. However, as I said above firms were allowed to take a proportionate approach. It is correct that a recently registered scheme was a warning sign mentioned in the Scorpion action pack.

As I've said above, the Scorpion campaign was developed following concerns about consumers being victims of pension liberation scams-that is to access their pension early in an unauthorised manner. A common route to such a scam was to set up a new scheme for the funds to be transferred to. These schemes tended to be occupational schemes where the sponsoring employer had no genuine link to the scheme member. These schemes aren't FCA regulated and do not offer the same protections as FCA regulated pensions do.

Guinness Mahon had been fully authorised by the FSA and FCA and operating in the SIPP market since 2007. So the fact that the specific SIPP Mr B had chosen to transfer to was recently registered reasonably shouldn't have been a concern. Guinness Mahon carried the same responsibility for Mr D's SIPP as for the others it had been operating for a number of years.

The risk of a long standing regulated SIPP provider being involved in pension liberation was minimal. The FCA also requires authorised SIPP providers to do their own due diligence on the scheme members' advisers and intended investments. And where a SIPP provider failed in its due diligence requirements then the consumer had regulatory protections. In fact I understand Mr D did make a successful claim for compensation through the Financial Services Compensation Service (FSCS) in relation to failures by Guinness Mahon.

I recognise that Mr D was under 55 and also that an unregulated firm had asked for information on Mr D's pension. However, Mr D transferring to a regulated SIPP with a longstanding provider could have reasonably given Aegon comfort that the risk of pension liberation was unlikely. And so in line with taking a proportionate approach I wouldn't have expected them to make further enquiries with Mr D.

I accept that if Aegon had contacted Mr D they would have likely found out that he hadn't received regulated advice and that he was investing into Dolphin, an unregulated investment. However, based on the information Aegon had at the time, I don't think they needed to be concerned.

In summary I think Aegon's only failure here was that they didn't provide Mr D with the Scorpion insert. And for reasons set out above I don't think this would have deterred him from transferring. So even if Aegon had done everything they should have, Mr D would still be in the same position he finds himself now. Therefore it wouldn't be fair or reasonable to hold Aegon responsible for the losses Mr D suffered.

Responses to my provisional decision

Mr D made the following points:

- He was recommended to transfer to a SIPP by API. He knew nothing about the scheme, so he did his own research on the internet and everything looked fine. But he still had reservations about it.
- He said he only went ahead because he thought Aegon wouldn't allow him to move his pension without checking the receiving scheme.
- If Aegon had said it was high risk or if they had raised any red flags, then he would have "walked away" from the transfer.

His representatives also made some comments.

- They said they agreed with my findings that Aegon didn't comply with the PSIG code, and didn't provide the Scorpion insert.
- I had said Aegon didn't identify risks it ought to have identified, including the transfer to a SIPP, overseas investment, Mr D being cold called and no regulated adviser being involved.
- They say I took the view that sending the Scorpion insert and a follow up conversation about the transfer with Mr D wouldn't have changed his mind.
- Mr D is a reasonable person and would have listened to Aegon if they had contacted him to discuss the transfer and warned him about it.
- Even if it's accepted that interaction with an IFA (*NB: I assume the representatives means a regulated SIPP provider*) diminishes Aegon's obligations to raise reasonable concerns, they should still be liable for some of the losses.
- Aegon were the professional party and ought to have been aware that Mr D hadn't received regulated advice
- The representatives referred to an alerts released by the FCA in 2013 and 2014 which highlighted SIPPs being used for high risk investments
- Mr D was let down by Guinness Mahon as well as Aegon and his other personal pension provider. The other provider has agreed liability and settled the complaint and Mr D also received compensation in part from FSCS in relation to Guinness Mahon's failings. In holding Aegon accountable for their failings, Mr D would be required to pay back any compensation he received from FSCS and those directly involved would shoulder the burden.

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 carefully considered Mr D's additional comments and the submissions from his representatives. However, I remain satisfied that my decision not to uphold this complaint is fair and reasonable in the circumstances.

Disappointingly, Mr D's representatives seem to have misunderstood and misquoted the findings I made in my provisional decision. The PSIG Code was not mentioned in my decision as it only took effect in March 2015, long after Mr D's transfer. I also was clear that Aegon in my view didn't have to do any further due diligence or ask Mr D any further questions as they could reasonably take comfort that the risk of a well-established and regulated SIPP provider allowing pension liberation was unlikely. At the time of Mr D's transfer in early July 2014 this was the risk pension providers were meant to look out for.

The guidance later changed and asked providers to look out for wider scams. But this was after Mr D's transfer.

Not every SIPP was used for unregulated investments and customers didn't need advice to transfer their pensions. The fact that the SIPP provider requested the transfer also wasn't unusual. Aegon didn't know what Mr D would be investing in and they didn't know whether he was advised and by whom. As explained in my provisional decision, firms were allowed to take a proportionate approach to due diligence and so I wouldn't expect Aegon to ask for more information on every transfer if there weren't aware of any warning signs. And based on the information they had there weren't any warning signs they ought to have reasonably followed up on.

The alerts Mr D's representatives quote were aimed at financial advisers who were aware of intended unregulated investments and tried to circumvent their obligations by only advising on the SIPP provider and not the underlying investments. The FCA did issue a factsheet for customers about being wary of certain schemes and investments in August 2014. It highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014 (after Mr D's transfer). None of this supports an argument pension providers should have checked or be concerned about every SIPP transfer.

Aegon's only failing here was to not send the Scorpion insert and I remain satisfied that the warnings contained in the insert which related to releasing pension benefits before age 55 and accepting loans or cash incentives didn't apply to Mr D's transfer and so unlikely would have been concerning to him.

I believe Mr D when he says he would have listened to Aegon if they had called him and told him his investments or the SIPP were high risk or specifically warned him about the transfer or the unregulated party advising him. However, as I already explained I don't think based on the information Aegon had there was any reason for them to be concerned and discuss the transfer with Mr D or ask further questions.

It's only fair and reasonable to hold Aegon responsible for the financial losses Mr D suffered if it was their failures that caused them. And this isn't the case here.

My final decision

I don't uphold Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 7 January 2025..

Nina Walter
Ombudsman