

The complaint

Mr C, through a professional representative, has complained about the transfer of his Quilter Life & Pensions Limited ("Quilter") personal pension to a Qualifying Recognised Overseas Pension Scheme ("QROPS") in early 2016. Mr C's QROPS was subsequently used to invest in inappropriate assets, including The Resort Group ("TRG"), an overseas hotel venture that has since run into trouble.

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

What happened

The information provided by both parties on this complaint is sparse and vague.

Very little has been provided in the way of facts from Mr C and his representative - there is even uncertainty around the exact date the transfer took place.

And Quilter has told us that when the transfer took place they were on a different platform to the one they're on now and when all policies were migrated to Quilter's current platform between October 2020 and February 2021, only policies that were active at the time were migrated. So as the policy in question was closed due to the transfer out in 2016 no documents were migrated. It did explain that it has searched its archived system for any information on this policy and has found some documents from the time of this transfer, along with some templated letters and other documents that would have been in use at the time, but it simply can't provide us with everything from the time.

Nevertheless, from what has been provided by both parties it would seem that Mr C was cold called in 2015 and offered a free pension review. His representative has said the call was made by Strategic Wealth Limited (SWL) who was an independent adviser based in Gibraltar. As a result of this Mr C was advised to transfer his pension to the Optimus Retirement Benefits Scheme QROPS – ("the Scheme") which was based in Malta. No information has been provided about whether Mr C met with anyone from this firm or indeed any firm, nor has any information been provided about what Mr C was told about the transfer, why it would be a good idea and what the exact investments were going to be.

It's worth noting at this stage that when Mr C discussed his complaint with one of our investigators, he gave a different version of events. He told us that at the time his financial adviser was retiring and had handed his business to another financial adviser. He didn't mention being contacted by or seeing any firm nor did he give any further information about what he was told about transferring his pension.

In addition, neither Mr C nor his representative mentioned the involvement of a firm called First Review Pensions Services (FRPS). However, in the information provided to us by

Quilter there is a letter of authority (LOA) signed by Mr C in September 2015 giving FRPS authority to speak to and obtain information from Quilter about his pension, on his behalf. This was sent to Quilter along with the request for all information about Mr C's policy and discharge forms via email on 26 October 2015.

I have also seen from the information provided to me that Mr C signed the Quilter discharge form and Quilter's Overseas Pension Transfer Discharge Form on 11 December 2015. On 4 January Optimus Pension Administrators Limited (Optimus) wrote to Quilter with transfer documents requesting the transfer of the pension. This letter also stated that the administrator was Integrated-Capabilities (Malta) Ltd and the administration was subcontracted to firms based in the Isle of Man called Optimus Fiduciaries Ltd and Optimus. On 5 January the receiving scheme signed Quilter's Transfer Out Discharge Form. And on 15 February 2016 Mr C signed a Transfer Declaration form which said "I am aware of the risks involved with transferring to a pension scheme offered by an unregulated firm or investing in unregulated investments etc..."

Mr C's pension was transferred in early 2016. His transfer value was around £37,000 and the information from the representatives is that the entirety of Mr C's pension was invested in TRG. He was 50 years old at the time of the transfer.

Mr C has told us that the investments into TRG have failed and now have very little value.

In January 2023 Mr C complained to Quilter. Briefly, his argument is that Quilter didn't do enough to protect him from the unsuitable investment into TRG. And that it ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including (but not limited to) the catalyst for the transfer was an unsolicited call and he had been advised by an unregulated business.

Quilter didn't uphold the complaint. It said that on receipt of the transfer request it would have sent out a "Scam Smart leaflet" as part of its QROPS paperwork, called a "Scorpion pack". This also included a Transfer Declaration which Mr C had signed on 15 February 2016 confirming that he was aware of the risks involved and that he wouldn't be covered by UK regulatory authorities or the Financial Service Compensation Scheme (FSCS) if he dealt with an unauthorised firm. Quilter also said the Optimus QROPS was a legitimate scheme at the time and that this wasn't responsible for the underlying investments of the receiving scheme. It also stated that its Pension Technical Services Team who review all QROPS requests and due diligence checks confirmed that looking at the paperwork received at the time they would have been satisfied with the due diligence checks that were carried out in 2016.

Our investigator was unable to resolve the dispute informally, so the matter has been passed to me to decide.

What I've decided – and why

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

I've taken into account relevant: law and regulations; regulatory rules; guidance and standards; codes of practice; and (where appropriate) what I consider to have been good industry practice at the relevant time.

Where the evidence is incomplete or inconclusive, (as it is here), I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened given the available evidence and wider circumstances.

The relevant rules and guidance

Personal pension providers are regulated by the FCA. Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority (FSA). As such [RESPONDENT BUSINESS] 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 were about to give people greater flexibility in relation to taking pension benefits) and explained that pension scams were evolving. In particular, it highlighted that single member occupational schemes were being used by scammers. At the same time, a broader piece of guidance was initiated by an industry working group covering both TPR and FCA regulated firms: the Pension Scams Industry Group (PSIG) Code of Good Practice. The intention of the PSIG Code was to help firms achieve the aims of the Scorpion campaign in a streamlined way which balanced the need to process transfers promptly with the need to identify those customers at material risk of scams.

The March 2015 Scorpion guidance

The March 2015 update to the Scorpion guidance asked schemes to ensure they provided their members with “regular, clear” information on how to spot a scam. It recommended giving members that information in annual pension statements and whenever they requested a transfer pack. It said to include the pensions scam “leaflet” in member communications.

In the absence of more explicit direction, I take the view that the member-facing Scorpion warning materials were to be used in much the same way as previously, which is for the shorter insert (which had been refreshed in March 2015) to be sent when someone requested a transfer pack and the longer version (which had also been refreshed) made available when members sought further information on the subject.

When a transfer request was made, transferring schemes were also asked to use a three-part checklist to find out more about a receiving scheme and why their member was looking to transfer.

The PSIG Code of Good Practice

The PSIG Code was voluntary. But, in its own words, it set a standard for dealing with transfer requests from UK registered pension schemes. It was “welcomed” by the FCA and the Association of British Insurers (amongst others). And several FCA regulated pension providers were part of the PSIG and co-authored the Code. So much of the observations I've made about the status of the Scorpion guidance would, by extension, apply to the PSIG Code. In other words, personal pension providers didn't necessarily have to follow it in its entirety in every transfer request and failure to do so wouldn't necessarily be a breach of the regulator's Principles or COBS. Nevertheless, the Code sets an additional benchmark of good industry practice in addition to the Scorpion guidance.

In brief, the PSIG Code asked schemes to send the Scorpion “materials” in transfer packs and statements, and make them available on websites where applicable. The PSIG Code goes on to say those materials should be sent to scheme members directly, rather than just to their advisers.

Like the Scorpion guidance, the PSIG Code also outlined a due diligence process for ceding schemes to follow. However, whilst there is considerable overlap between the Scorpion guidance and the PSIG Code, there are several differences worth highlighting here, such as:

- The PSIG Code includes an observation that: *“A strong first signal of [a scam] would be a letter of authority requesting a company not authorised by FCA to obtain the required pension information; e.g. a transfer value, etc.”* This is a departure from the Scorpion guidance (including the 2015 guidance) which was silent on whether anything could be read into the entity seeking information on a person’s pension.
- The Code makes explicit reference to the need for scheme administrators to keep up to date with the latest pension scams and to use that knowledge to inform due diligence processes. Attention is drawn to FCA alerts in this area.
- 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, SIPP, SSASs and QROPS. The 2015 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 the interest of both parties.

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

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

As detailed earlier in this decision Mr C’s representative said in making the complaint that he was cold called by SWL. But this wasn’t mentioned by Mr C when he spoke with our investigator. And neither party mentioned the involvement of FRPS.

However, again as noted above I have seen that Mr C signed a letter of authority with FRPS on 28 September 2015 who then approached Quilter by email on 26 October 2015 asking for details of Mr C's pensions and discharge forms. So I am satisfied that FRPS were involved here despite neither Mr C or his representative naming the firm.

It also seems likely to me that the process was initiated by a cold call which I think most likely came from FRPS. I say this because while I don't have much information about Mr C's wider circumstances, based on the information we do have he doesn't strike me as someone who had the requisite pension and investment knowledge to initiate this type of pension transfer enquiry and investment arrangement unaided.

Also, given the wider evidence this Service has about FRPS, we know they were commonly involved in encouraging individuals to transfer to a variety of schemes that ultimately invested in TRG – there were directorial links between FRPS and TRG. And while Mr C hasn't said anything about meeting with anyone from any firm if he did meet with someone it's very likely that would have been someone from FRPS.

In terms of the involvement of SWL, Mr C's representative has sent us a copy of an FSCS determination of an investigation into Strategic Wealth UK Limited. This also references SWL so I think it's reasonable to conclude that SWL was also involved in this transfer.

This is fortified by the wider knowledge we have in this Service about Strategic Wealth UK Limited and SWL and its connections to this QROPS.

It is our experience that Optimus either preferred or they required there to be an adviser associated or linked with the QROPS who was regulated somewhere in the EEA. In this case Mr C's representative has not provided any of the documentation from the time used to set up the QROPS which we're used to seeing on other cases such as the application form and the initial investment statements. However, the investments Mr C made correspond closely to other cases we've seen where a transfer was originally encouraged by FRPS to this scheme.

In those other cases, the adviser associated with the QROPS from outset worked simultaneously for two firms called 'Strategic Wealth': Strategic Wealth UK Limited (regulated by the FCA) and SWL (a firm incorporated in Gibraltar and regulated by the Gibraltar Financial Services Commission). The latter also passported into the UK financial services regime on a 'services only' basis.

We have also seen the suitability report that SWL issued to its clients. The report compared the benefits under the existing schemes and various alternative schemes they could transfer to, including the Optimus QROPS. The comments conclude that "...in view of your personal circumstances and objectives a QROPS would be more cost effective and less complex". It also highlighted some of the key features of a QROPS and some risks it wanted clients to be aware of, including the risk that the FSCS may not offer protection in relation to the transfer. The information on the proposed investments also included some of the associated risks. So taking this into account, in my view, this constituted providing advice.

So, while Mr C's representative hasn't provided anything similar in relation to this complaint, given the similarities in the circumstances surrounding Mr C's transfer and the other complaints we have seen involving the same QROPS and the same firms, I think it's likely that Mr C would have received the same report and documents that we have seen on other complaints.

Therefore, on the basis of the evidence I have, my findings are that FRPS was involved in initiating the transfer of Mr C's pension and was the firm that more likely than not cold called

him in 2015. I also make the finding that Strategic Wealth (either SWL or Strategic wealth UK Limited) provided advice to Mr C to transfer his pension from Quilter to the QROPS.

What did Quilter 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.

As detailed at the beginning of this decision Quilter hasn't been able to locate much of the documentation from the time of this transfer. However, from what it has been able to provide I think it's very likely that the Scorpion insert from 2015 was sent to Mr C around the time the information about his pension was requested by FRPS.

I say this because I have seen a template letter from Quilter which would have been sent directly to members requesting a transfer to a QROPS. The letter said enclosed was a questionnaire and also the "Regulator information booklet and leaflet".

The letters goes on to say: "I have enclosed a "Pensions Scams booklet as issued by the Pensions Regulator together with a "Protect your Pensions Pot" leaflet provided by the Financial Conduct Authority".

I have also seen a copy of the FCA leaflet that Quilter provided to Mr C which contained questions for the reader to think about concerning whether the new scheme was a QROPS and whether potential investments included overseas property. It stated that free pension reviews were designed to persuade members to move money and also advised that members should check that advisers were registered with the FCA. And it suggested that a member should seek financial advice from an adviser unconnected to the firms that had made the initial contact. And it also pointed out that one of the risks was that most companies making the offers weren't authorised or regulated by the FCA which means the reader had no right to complain to the Financial Ombudsman Service or to claim compensation from the FSCS if things went wrong.

I appreciate Quilter can't produce the copies of the actual letters sent to Mr C. However, looking at details of its processes at the time which set out all the steps Quilter had to go through when a transfer to a QROPS was requested I am satisfied that the templated documents it has provided are accurately reflective of what it would have sent to Mr C in 2016.

I am therefore satisfied the Scorpion insert was sent directly to Mr C and he was also provided with very similar warnings about the risk of transferring via the FCA leaflet.

Due diligence:

No documents have been provided to confirm that Quilter received all the information it required to enact the transfer, such as the correctly completed transfer and discharge forms, the various HMRC forms confirming the QROPS had been correctly established and that it was correctly recognised by HMRC. However, Quilter has told us what its processes would have been at the time and I think that at this point in time in light of the focus on pension scams within the industry and the heightened knowledge about this issue its very unlikely Quilter would have proceeded without carrying out those checks.

It has also told us that it sent Mr C a questionnaire at the same time as sending him the Scorpion insert and the FCA leaflet, mentioned above, which he was asked to complete and return. The questionnaire was designed to see if Quilter could identify cold calling, pension liberation, incentives, unusual investments and why members were transferring to a QROPS if they were a UK resident.

Unfortunately, Quilter hasn't been able to provide a copy of the completed questionnaire but it has told us that this transfer would not have proceeded if it hadn't received it back from Mr C and if there had been anything of concern in the client questionnaire Quilter would have taken that up with Mr C directly.

It also explained that it had a checklist that it had to work through when processing this type of transfer. This included checking if the specific QROPS was on the ROPS list; whether the signed discharge form had been completed and returned; a copy of the receiving scheme rules; approval letter/certificate confirming receiving scheme is correctly registered in the country it is established in.

In light of this information, it appears that Quilter would have gathered a good amount of information about Mr C's transfer to the QROPS and the scheme itself. However, in keeping the Scorpion guidance and the PSIG Code in mind, and in conducting its business with due skill, care and diligence and to act in Mr C's best interests I think there was more that Quilter should reasonably have done here.

As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mr C'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 Quilter's actions using the 2015 Scorpion guidance as a benchmark instead.

Quilter hasn't argued that it was reasonable for it to 'fast-track' Mr C's transfer request in line with the "Initial analysis" section (section 6.2.1) of the Code. So, the initial triage process should have instead led to it asking Mr C 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 the 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 Quilter should have addressed all four areas of concern and contacted Mr C to help with this.

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

Based on what I found earlier, I think Quilter would have likely found out that Mr C had been cold called and first contacted by FRPS and that he had then been referred to SWL for advice.

The Scorpion checklist recommends that, in order to establish whether a member has been advised by a non-regulated adviser, the transferring scheme should consult the FCA’s online register of authorised firms. Quilter should have taken that step, which is not difficult. Had it done so it would have discovered that SWL (alongside its sister company, Strategic Wealth UK Limited) appeared on the FCA register as a firm that was passported from Gibraltar to the United Kingdom. This means that for UK purposes throughout the period of this transfer SWL 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 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.

So in light of this information and given the checks Quilter should have conducted had to be proportionate I don’t think it’s unreasonable that Quilter would have taken comfort from the presence of a regulated adviser in this transfer – all be it an EU regulated one. After all, a ceding pension scheme is not expected to act as a general pension adviser to a member who tells it they want to leave their scheme. And the Scorpion guidance is aimed at spotting and averting potential pension transfer scams against the member, rather than delivering general advice about the merits of different regulatory systems or high-risk investments. So, for it to be reasonable to expect a ceding scheme to have concerns and raise these with its member, there must, viewed overall, appear to be a real risk their member is falling victim to a scam.

I accept Quilter would likely have (had it conducted thorough due diligence) found there to be some of the pension scam warning signs indicated in the guidance, but I think overall, the knowledge the scheme was legitimate and that Mr C was being advised by a firm that was on the FCA register, in this case would have reasonably indicated to Quilter the transfer was unlikely to be a scam. So, in these circumstances there would be no reason to halt the transfer or provide Mr C with any explicit warnings. So, I don’t think Mr C would have been given any reason to question what he was doing.

It is possible Quilter contacting Mr C and asking him questions about how things came about and his motivation for transferring might have caused him to think a little more about if he was doing the right thing. But in my view, nothing more than that. I’m mindful Mr C had already by this stage overlooked or perhaps ignored some warnings in the Scorpion insert about the steps he was about to take. Or perhaps instead Mr C was reassured by the regulated entity he was dealing with having checked the FCA register himself as the insert recommended. And as I’ve explained above, there were no explicit warnings Quilter should reasonably have given to him. So, in these particular circumstances I cannot see how the act

of asking Mr C questions as part of its due diligence, as Quilter ought to have done, would have put Mr C off transferring – I think he would still have gone ahead.

It therefore follows that I don't uphold Mr C's complaint. I realise this will come as a disappointment to Mr C. But I think there appears to be more to this transfer than he might be able to remember or that he or his CMC has provided. And in reaching a fair and reasonable outcome, it is appropriate for me to consider the wider evidence – particularly the pattern of advice that seems to be a feature of these transfers to the Optimus scheme introduced by FRPS and also involving Strategic Wealth.

My final decision

My final decision is that I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 10 April 2025.

Ayshea Khan
Ombudsman