DRN-5219537

The complaint

Mr M has complained about a transfer of his Scottish Equitable Plc trading as AEGON personal pension to a small self-administered scheme (SSAS[1]) around the end of August 2014. Mr M's SSAS was subsequently used to invest in a hotel development overseas. The investment now appears to have little value. Mr M says he has lost out financially as a result.

Mr M says AEGON 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, in line with the guidance he says was required of transferring schemes at the time. Mr M 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

Mr M held two AEGON personal pensions.

On 7 February 2014, Mr M signed a letter of authority (LOA) allowing two firms, called Moneywise and First Review Pension Services (FRPS) to obtain details, and transfer documents, in relation to his pensions. At that time Moneywise was regulated by the Financial Conduct Authority (FCA). FRPS was not FCA regulated. Mr M says he signed the LOA following an unsolicited approach.

On 24 February 2014 FRPS wrote to AEGON, enclosing Mr M's LOA. It requested information on his pensions and discharge forms to allow a transfer. FRPS's information request quoted Moneywise's FCA registration number and said that both firms, FRPS and Moneywise, were acting for Mr M. AEGON sent both FRPS and Moneywise the information FRPS had requested on 6 March 2014.

Mr M says that FRPS's adviser introduced the idea of investing in an overseas hotel development in Cape Verde run by The Resort Group (TRG). He said the adviser gave him lots of material about the proposed resort and told him he could expect returns of 9% a year, which was attractive to him.

In April 2014 a company was incorporated with Mr M as director. I'll refer to this company as L Ltd. In July 2014 Mr M signed documents to open a SSAS with Cantwell Grove Limited as administrator. L Ltd was recorded as the SSAS's principal employer. FRPS's 'consultant' witnessed Mr M's signature on the SSAS trust deeds.

On 30 July 2014 Cantwell Grove sent papers requesting the transfer of the funds Mr M held in his AEGON personal pensions to L Ltd's SSAS. This letter included information to show

[1] A SSAS is a type of occupational pension in which the members are also trustees and therefore take responsibility for operating the scheme. It's an arrangement typically intended to meet the needs of people who run their own companies. SSASs are not regulated by the FCA. They can hold a wider range of investments and assets than many personal pensions. As an occupational pension, a SSAS must be sponsored by an employer company.

AEGON that Mr M was not trying to access his pension in an unauthorised way. In support of the transfer Cantwell Grove provided AEGON with:

- Confirmation it had warned Mr M about pension liberation and given him a copy of a leaflet (referred to as the 'Scorpion leaflet' because of the imagery it contains) produced by The Pensions Regulator (TPR).

- A declaration by Mr M that Cantwell Grove had explained pension liberation to him along with the risks of transferring his pension. He said he hadn't been offered any cash incentive to transfer nor was he trying to access his retirement benefits before the age of 55. Mr M said he'd understood the warning about pension liberation.

- A letter from HMRC confirming the SSAS was a registered scheme.

- The scheme's trust deed and rules.

- A Q&A document which said, amongst other things, that as required under s.36 of the Pensions Act 1995, an FCA authorised firm called Central Markets Investment Management Limited (CMIM[2]) was giving the trustee (i.e. Mr M) appropriate advice about whether the proposed investments were satisfactory for the scheme's aims.

- The Q&A document said Mr M was also considering investing in a discretionary fund management service provided by CMIM as well as commercial property offered by TRG.

AEGON wrote two letters to Mr M on 1 August 2014, one for each of his pensions. It said it had received the instruction to transfer but required him to complete a discharge and indemnity form before it agreed to proceed. The covering letters[3] said it had enclosed a copy of the FCA's leaflet, called Protect Your Pension Pot, with warnings about certain pension transfers including:

- Being contacted by an unexpected phone call, an email, a text message or an online advert.

- Being offered a 'free pension review' and being persuaded to transfer to a self-invested personal pension (SIPP) or a SSAS.

- AEGON "strongly recommends that you take independent advice from an adviser regulated by the Financial Conduct Authority before proceeding…". It included details about how to check an adviser was regulated.

- Any potential advantages of a transfer were often outweighed by the costs, which an independent adviser could point out.

- He shouldn't go ahead unless he fully understood the nature of the proposed investments and that they were appropriate to his attitude to risk.

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[2] There's no other evidence of CMIM providing Mr M with any advice or services on the file of papers I've seen.

[3] AEGON hasn't retained copies of the original letters on file. However, it's produced its templated cover letter which would have accompanied the forms. It's not in doubt that AEGON did send Mr M the forms as he later signed and returned those.

- He should consider how liquid the investments were. For instance how long will it take to sell and what price he would receive or if there would always be willing buyers when he came to sell the investment to take his retirement benefits.

- By transferring he may lose regulatory protection and if he wasn't sure about what the terms of the discharge and indemnity form meant for him, he should seek independent financial advice.

As well as the points made above, the FCA's leaflet enclosed also advised consumers to be concerned if they were considering transferring to a SIPP or a SSAS and they were investing in unusual investments including overseas property. And if they were and had been contacted via cold call or an advert offering a free pension review they should be wary because:

- Professional pension advice is not free.

- Consumers could lose some or all of their pension pot.

- Companies making these offers are usually not FCA regulated.

- There is little protection against unregulated investments.

- There is no right to complain to the Financial Ombudsman Service or to claim from the Financial Services Compensation Scheme.

- It went on to say that consumers considering transferring should get advice from an FCA authorised adviser and gave the website information to allow consumers to check that. And that for most consumers investing in an unregulated investment was unlikely to be in their best interests.

Mr M signed and returned the discharge and indemnity forms on 20 August 2014. Those confirmed he wanted the transfer to go ahead. They also said that if he was not sure whether making the transfer or investments under the SSAS including "any non-regulated investments such as an investment in a hotel room in Cape Verde" was right for him, he should take independent financial advice. And he understood that AEGON recommended taking such advice and if he chose not to do so that was his decision alone.

Lastly it confirmed that, if HMRC deemed the transfer not to be a recognised one, he'd indemnify the scheme administrator against those charges and be liable to pay them.

On 30 August 2014 AEGON transferred funds, of £42,772.08 from one of Mr M's personal pensions to L Ltd's SSAS. Soon afterwards, on 2 September 2014, it also transferred £12,151.93 from Mr M's other personal pension to L Ltd's SSAS.

In the meantime, on 1 September 2014 a firm called Broadwood Assets Limited wrote to Mr M in his capacity as sole trustee and member of his SSAS. It said it was providing appropriate advice under s.36 of the Pensions Act 1995. It said the scope of its advice was limited to this and it hadn't advised him on the establishment of his SSAS. It added that the nature of its advice wasn't regulated under the terms of the Financial Services and Markets Act 2000 (FSMA). Neither was Broadwood Assets regulated or authorised by the FCA to give financial advice. Mr M signed to agree to pay Broadwood's advice fee on 9 September 2014.

On the same day, 9 September 2014, Mr M signed a letter instructing Cantwell Grove to invest £37,450 of SSAS funds in the TRG development.

On 6 January 2015 Mr M invested £15,072 of SSAS funds in a discretionary fund management service operated by an FCA regulated firm now called Parmenion Capital Partners LLP.

I understand the TRG investment did initially provide some returns, but these were lower than expected and – from my understanding of events – these payments would have dried up around 2019. The investments are now considered illiquid and incapable of sale on the open market.

In January 2021 Mr M complained to AEGON. Briefly, his argument is 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 following: the SSAS was newly registered, there wasn't a genuine employment link to the sponsoring employer, the catalyst for the transfer was an unsolicited call and an unregulated business had advised him.

AEGON didn't uphold the complaint. It said that while it had concerns about the transfer, and referred the matter to its financial crime team for further investigation, Mr M had a legal right to transfer and it had no legal basis on which to stop it. It added that Mr M had completed its discharge and indemnity forms confirming he wanted to proceed with the transfer. It was satisfied it had conducted an appropriate level of due diligence given the requirements of the time. It also said it believed Mr M had brought his complaint outside of the appropriate timeframes for doing so.

Mr M brought his complaint to the Financial Ombudsman Service. One of our Investigators looked into it. He explained that he didn't think Mr M had brought his complaint too late. But the Investigator didn't recommend it be upheld.

Mr M didn't accept our Investigator's complaint assessment. AEGON still believed that Mr M had brought his complaint out of time.

One of my Ombudsman colleagues considered whether Mr M had brought his complaint in time and decided that he had. Having done so the complaint has now been passed to me to consider its merits.

My provisional decision

I issued a provisional decision setting out why I didn't think the complaint should be upheld. I invited the parties' comments. However, neither AEGON nor Mr M, via his representatives, had any substantive remarks to make.

As neither party has objected to my provisional findings I see no reasons to alter those. So, I have repeated my provisional findings below, as my final decision, and have not therefore included any further detail of them in this background summary.

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.

In bringing this complaint and in responding to it both Mr M – via his representatives – and AEGON have made a number of detailed points. But in this decision I don't intend to address

each and every issue raised. Instead I will focus on what I believe are the key matters at the heart of Mr M's complaint and the reasons for my decision.

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 relevant rules and guidance

Before I explain my reasoning, it will be useful to set out the environment AEGON was operating in at the time with regards to pension transfer requests, as well as any rules and guidance that were in place. Specifically, it's worth noting the following:

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 a member may also have a right to transfer under the terms of the contract). This 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.

On 10 June 2011, the Financial Services Authority (FSA) issued a warning about the dangers of "pension unlocking" and specifically referred to consumers transferring to access cash from their pension before age 55. (As background to this, the normal minimum pension age had increased to 55 in April 2010.) The FSA said that receiving occupational pension schemes were facilitating this. It encouraged consumers to take independent advice. The announcement acknowledges that some advisers promoting these schemes were FSA authorised.

At around the same time, TPR published information on its website about pension liberation, designed to raise public awareness and remind scheme operators to be vigilant of transfer requests. The warnings highlighted that websites and cold callers were encouraging people to transfer in order to receive cash or access a loan.

TPR launched its Scorpion campaign on 14 February 2013. The aim of the campaign was to raise awareness of pension liberation activity and to provide guidance to scheme administrators on dealing with transfer requests in order to help prevent liberation activity happening. The FSA, and the FCA which had succeeded the FSA, endorsed the guidance. The guidance was subsequently updated, including in July 2014. I cover the Scorpion campaign in more detail below.

In late April 2014 the FCA started to voice concerns about the different types of pension arrangements that were being used to facilitate pensions scams. In an announcement to consumers entitled "Protect Your Pension Pot", which AEGON forwarded to Mr M, the increase in the use of SIPPs and SSASs in pensions scams was highlighted, as was an increase in the use of unregulated and/or illiquid investments. The FCA further published its own factsheet for consumers in August 2014. It highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.

AEGON was subject to the 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:

- 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 Scorpion guidance

The Scorpion campaign was launched on 14 February 2013, and was initially focused just on pension liberation – namely, the access to pension funds in an unauthorised manner (such as before normal minimum pension age). However, it's the update to that guidance on 24 July 2014 that's most relevant to this complaint. It widened the focus from pension liberation specifically, to pension scams – which it said were on the increase.

The materials in the Scorpion campaign comprised:

- An insert to be included in transfer packs (the 'Scorpion insert'). The insert warns readers about the dangers of pension scams 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 scams. Guidance provided by TPR said this longer leaflet was intended to be used in ongoing communications with members so they could become aware of the scam risks they were facing.

- An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "watch out for" various warning signs of a scam. If any of the warning signs applied, the action pack provided a checklist that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where a transferring scheme still had concerns, they were encouraged (amongst other things) to contact the member to establish whether they understood the type of scheme they were transferring to and – where a member insisted on transferring – directing the member to Action Fraud or TPAS.

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 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 statutory rights.

That said, the launch of the Scorpion guidance was an important moment in so far as 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 transfer requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And its 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 a turning 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.

What did personal pension providers need to do?

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. In deciding how to apply the guidance, they needed to consider it as a whole, including the various warning signs to which it drew attention, the case studies that highlighted different types of scam, and the checklist and various suggested actions ceding schemes might take.

And where the recommendations in the guidance applied, without 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:

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

2. The Scorpion insert provided an important safeguard for transferring members, allowing them to consider for themselves the scam 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 ceding schemes should have sent the Scorpion insert 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 scams and undertake further due diligence and other appropriate action where it was apparent their client might be at risk. The guidance 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.

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

Mr M, via his representatives, said that FRPS cold-called him offering a free pension review. It then visited him. He said it recommended the TRG investment and Mr M believed this sounded like a realistic opportunity to significantly increase his pension savings. Mr M said the adviser didn't warn him of the risks of the proposed investment.

On balance I accept Mr M's evidence. That's because we know that FRPS requested Mr M's pension details, which AEGON sent to it. FRPS also witnessed Mr M's signature on the SSAS trust deed. So, on balance, I'm satisfied that FRPS remained involved in the process throughout and certainly to the point where Mr M invested SSAS funds in TRG.

Further, while Moneywise was named on the LOA, I haven't seen anything to suggest it was actually involved or gave any advice to Mr M.

I'm also aware that Cantwell Grove's letter referenced the involvement of CMIM, which was a regulated firm. But the appropriate section of the Q&A document talked about the investments being considered for the SSAS. And this explained that CMIM would be providing advice under s.36 of the Pensions Act 1995 to the trustees of the scheme. Mr M was a trustee of the scheme. But this advice, about the appropriateness of the investments in the SSAS is not the same as regulated advice to a consumer. The former is given in respect of the suitability of an investment for a SSAS generally, rather than regulated advice which looks specifically at the suitability for the individual involved. And I would have expected AEGON to have been aware of this distinction. So, I don't think any reference to CMIM ought to have alleviated the concerns AEGON might have had at the time.

Further, CMIM didn't actually provide s.36 advice. Instead, Broadwood was instructed to do so. This is confirmed in a letter I've seen from Mr M instructing Cantwell Grove to make the SSAS investment in TRG. In that letter Mr M confirmed that Broadwood had advised him about his obligations under s.36 of the Pensions Act 1995.

It follows that I don't think an FCA authorised firm advised Mr M at any point in the process.

Mr M said that he found the prospect of receiving returns of 9% from TRG attractive. I haven't seen anything to suggest Mr M had a lot of experience of pensions and investments. And I also haven't seen anything about his circumstances or what he's said that leads me to think he'd likely have embarked on such a complicated arrangement on his own. That is: setting up a new company, opening a SSAS, transferring his existing pension and investing overseas. So, I think it likely was the promise of better returns that persuaded him to transfer. Advice to transfer out of his personal pensions with AEGON would be regulated

advice which should only have been given by an FCA authorised adviser. But I'm satisfied that, on balance, it was FRPS's unregulated adviser who made that recommendation.

I'm also satisfied that a firm telling Mr M that he would receive better returns, and so have a better retirement income by transferring away from his personal pensions to a SSAS and investing with TRG represented advice to transfer. For the reasons already given I'm satisfied FRPS gave that advice and it was the catalyst for the transfer. And the documents indicate the SSAS was only established to facilitate the investment in TRG. So, I think it was likely FRPS that recommended this investment and that Mr M transferred his pension in order to invest in TRG.

I also accept that the TRG investment is likely to have little value now. As I've noted, I understand returns from the investment to the pension have most likely stopped or will be sporadic at best. And from what we know about investments through TRG from other complaints we've seen, I think there is no realisable market for re-sale of the investment unit and the investments are now largely illiquid.

What did AEGON 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.

AEGON did not issue the Scorpion leaflet to Mr M. However, I note Cantwell Grove said that it had given Mr M the Scorpion leaflet. But I don't think it would have been reasonable for AEGON to rely on a third party's comment that it had passed on information that could prevent its customers from being scammed out of their pensions.

That said, I think it's more likely than not that Cantwell Grove did give Mr M a copy of the Scorpion guidance. That's because Mr M signed a letter to say he was aware of the issues around pension liberation and had received "guidance and information" concerning that. Mr M's letter doesn't elaborate on what the guidance was or what date it was produced on. But I think AEGON reasonably could have taken comfort that Cantwell Grove had warned Mr M about pension liberation.

However, by the time AEGON received the transfer request, the Scorpion guidance had been updated. And in light of the update, I think firms ought to have been on the look-out for the tell-tale signs not simply of liberation but of possible pension scams in general. And, in this case, while AEGON didn't give Mr M the Scorpion insert it did give him similar information, both via its cover letter with the discharge and indemnity form, together with the FCA Protect your Pension Pot material. In fact I think it can be argued that went someway further than the Scorpion insert in terms of considerations for Mr M's situation.

Due diligence:

As I've said above, in light of the Scorpion guidance, I think firms ought to have been on the look-out for the tell-tale signs of a pension scam and needed to undertake further due diligence and other appropriate action if it was apparent their customer might be at risk. AEGON said it did undertake other due diligence – by looking at whether the receiving scheme was correctly registered with HMRC. It also looked at whether the scheme administrators were subject to FCA regulation or on its internal high risk list. But those enquiries didn't raise any further issues.

I'm also aware that Mr M had signed a letter to say that he wasn't intending on liberating his pension before age 55; that he'd carefully considered his request to transfer; and decided he wanted to proceed because of the investment opportunities this provided. The letter also said he was aware of the risks of pension liberation. The letter appears to be a template, that is someone other than Mr M has drafted it and he's added his details to it. But it's fairly brief and its message is clear. So I think it would have been reasonable for AEGON to believe Mr M understood what he was signing and that he was not at risk of liberating his pension before age 55.

However, Mr M signed that letter on 21 July 2014. This was around three days before TPR issued the updated version of the Scorpion guidance. That broadened the focus away from pension liberation and to scams more generally. And Cantwell Grove didn't submit the transfer request until 30 July 2014. That was almost a week after AEGON had received the updated Scorpion guidance. So, at the point it received the transfer request, AEGON should have been mindful of the updated guidance.

The Q&A document which Cantwell Grove sent to AEGON said that Mr M was considering an overseas investment with TRG. And such overseas investments were highlighted in the updated guidance as something for ceding schemes to watchout for.

I've noted that on the day AEGON received the transfer request it sent Mr M two discharge and indemnity forms, one for each of his policies. These forms referred specifically to transfers to Cantwell Grove and investments in hotel developments in Cape Verde. So it would appear that AEGON was aware of the updated Scorpion guidance and had concerns about the potential scam threat of such overseas investments. It's apparent that it had quickly identified these issues applied in Mr M's case. And, in the first instance, it required Mr M to sign the discharge and indemnity forms before it would proceed with the transfer. It also sent him the FCA's protect your pension pot information, which highlighted some of the risks associated with transferring to a SSAS and investing in unregulated investments.

It's also notable that AEGON has confirmed that because of its concerns it referred the matter to its financial crime team. So it seems likely that it referred the matter to that team pending receipt of Mr M's completed discharge and indemnity forms. Although there's no evidence in the file of papers I've seen what evidence or information the financial crime team considered or the outcome it reached. However, AEGON said in its complaint response that it concluded that it had no basis on which to refuse the transfer.

So, its apparent that AEGON did identify that there were certainly some risks associated with the transfer which required it to take additional action. The Scorpion materials recommended using its checklist to conduct further due diligence. That would have required making enquiries of Mr M concerning the nature of the receiving scheme, the promotion of it and who had made the recommendations to transfer. But it doesn't appear that AEGON followed the checklist.

Had AEGON done so it's likely it would have identified that FRPS, an unregulated adviser, had recommended the transfer. That should have given it additional concerns on top of those it had already identified. And Mr M has argued that it should have brought these specific concerns to his attention. But, I think that AEGON did enough to make Mr M aware of the existence of these risks. That is it gave him enough information that he should have been able to identify for himself, without AEGON spelling it out to him, the risks he was exposing himself to by going ahead with the transfer.

I say that because the materials AEGON sent to Mr M with the discharge and indemnity forms referred explicitly to Mr M's situation. As I've said above, AEGON hasn't kept on its file a copy of the actual letters it sent to Mr M. But at the time it had a template cover letter it

sent with the discharge and indemnity forms. AEGON has sent us a copy of that template. And I can confirm it is the same as the letters we've seen AEGON issued to other consumers in similar circumstances around the same time. I don't think there's any argument that Mr M didn't receive them. That's because he signed and returned the two discharge forms on 20 August 2014 so he must have received the letters. And I think he'd have read these letters, which AEGON sent to him directly.

Amongst other things the information AEGON sent to him referred to unsolicited contact by phone offering a free pension review and being persuaded to transfer to a SSAS. Which is exactly what had happened to Mr M. And the enclosed FCA 'Protect your pension pot' information, warning to be wary of scams, was also directly relevant to him. Specifically:

- It said consumers ought to be wary of being offered a 'free pension review' out of the blue.

- It warned that most companies offering this weren't authorised by the FCA, though often falsely claimed that they were.

- It suggested that consumers should ignore such offers and pointed out that professional advice on pensions was not free.

- It said that these reviews were designed to persuade consumers to move money from existing personal pensions to a SIPP or SSAS where the pension pot is typically invested in unregulated investments like overseas property.

- It explained the risks of following this advice. Including that consumers could lose everything they invested, significantly reducing their retirement income.

- It added that there may be no recourse to regulatory protection.

- It said that consumers should check that advisers were appropriately authorised and explained how to go about that. And it recommended seeking advice from an appropriately authorised financial adviser.

Further, the discharge and indemnity form itself referred to consideration of investing in a hotel room in Cape Verde. And explained that Mr M should seek regulated advice if he was considering that. This was specific to Mr M's situation. Investing in a hotel room in Cape Verde was exactly the principal investment FRPS had recommended and which Mr M was considering. And by following the guidance AEGON had given him Mr M could easily have identified for himself that FRPS was not authorised to make such a recommendation.

I appreciate that it would have been helpful if AEGON had confirmed directly with Mr M how the transfer recommendation had come about and that he was likely being advised by an individual who wasn't authorised to give that advice. And any warnings it gave would have been direct and specific to his circumstances and so arguably might have had more impact. But the fact is that Mr M did not heed the clear warnings included with AEGON's letter of 1 August 2014 and the FCA information it included. Those warned about being approached via a cold call, being offered a free pension review, that unauthorised advisers were likely to recommend unregulated investments, for example in overseas developments and of the risks of doing so, including the potential loss of his entire pension sum. All of those warnings applied to Mr M. But he chose not to act on that information even though I think it was clearly presented to him, and it must have resonated that the warnings it contained related to exactly the action he was planning on taking.

So, I think AEGON had given Mr M enough information for him to determine for himself that by proceeding he might be putting his pension funds at risk. However those warnings didn't cause Mr M to think again. He evidently chose not to act on them or to take additional steps himself to look into whether FRPS was appropriately FCA regulated. And, given he didn't heed or act on strong, easy to understand and relevant warnings about the risks he was potentially facing, I don't think it would be reasonable to say that further warnings from AEGON would have prompted Mr M to reconsider his transfer. The contemporaneous evidence doesn't, in my view, support that argument.

Did AEGON need to establish Mr M's employment status or find out if there was a link between the sponsoring employer and the SSAS?

Mr M has argued that AEGON should have checked he was employed and earning so as to ensure he had a statutory right to transfer to an occupational pension. He said the outcome of those checks would have caused AEGON concerns because of a lack of an employment link to the SSAS's sponsoring employer, L Ltd. But I think he's mistaken. As far as I'm aware there was no obligation on ceding schemes at that time to check, as a matter of course, whether the transferring member was earning. And AEGON had no reason to think he wasn't earning either. Indeed Mr M has confirmed that he was employed at the time of the transfer application.

Comparing AEGON's action with those of another pension provider

Mr M referred to another pension provider's, Royal London's, approach to a similar pension transfer which was the subject of a High Court judgment in respect of a different consumer. Mr M believes that his circumstances are similar to those of the other consumer in the court case. He said Royal London's action in that instance was in line with what was considered correct industry practice at the time and argues that AEGON should have followed a similar approach.

In the case cited Royal London refused the transfer on the grounds that the consumer did not have a statutory right to do so. The consumer complained to the Pensions Ombudsman. He upheld Royal London's decision but the High Court overturned that decision on appeal and said the consumer concerned did have a statutory right to transfer[4].

Mr M essentially said that, as the circumstances are very similar, AEGON should have identified the same warning signs which Royal London did and refused or delayed the transfer. However, the fact that one pension provider took certain action on an individual transfer request doesn't of itself establish good industry practice. So simply because AEGON took a different approach to Royal London, doesn't necessarily mean it has acted unfairly.

Does Section 27 of FSMA apply?

Mr M has also argued that s.27 of FSMA applies to this complaint. In essence he argues that is because the arrangements to transfer his pensions to the SSAS constituted an "agreement" which had been made in consequence of FRPS's actions in contravention of the general prohibition. His argument is that, unless relief is otherwise granted under s.28 of FSMA, he may be entitled to recover money transferred under the agreement and associated losses.

I'm not persuaded that any "agreement" with AEGON, in the context of s.27, was being made at the point Mr M exercised his rights to transfer. He had already entered into

[4] Hughes v The Royal London Mutual Insurance Society Ltd [2016] EWHC 319 (Ch)

agreements with AEGON some time previously – which were essentially the existing personal pension policies – and transferring away may have involved exercising clauses in those contracts. But I've seen no evidence to suggest that any party was acting in contravention of the general prohibition when those agreements were made.

Summary

While AEGON could have taken a different approach to its due diligence requirement, I don't think that would have led to Mr M being in a different position. AEGON gave him information containing warnings about the very things he intended to do, but he went ahead and did those things anyway.

So I don't think it would be reasonable to conclude that if AEGON had engaged with Mr M further or more directly he wouldn't have gone ahead with the transfer. It follows that it would not be fair to say that AEGON is the cause of any losses Mr M suffered as a result of the transfer.

My final decision

For the reasons given above I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 January 2025.

Joe Scott
Ombudsman