

The complaint

Miss N has complained about a transfer of her self invested personal pension (SIPP) administered by EBS Pensions Limited trading as Embark Pensions (Embark) to The Focusplay Retirement Benefit Scheme, an occupational pension scheme (OPS), in May 2015. Miss N's pension fund was subsequently used to invest in what she says were high risk investments which have failed and her pension now appears to have little value. Miss N says she has lost out financially as a result.

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

What happened

I issued a provisional decision on 2 December 2024. I've repeated here what I said about what had happened and my provisional findings. I said the complaint was against Embark Services Limited trading as Embark Pensions. But the complaint should in fact have been set up against EBS Pensions Limited trading as Embark Pensions. So the references in my provisional decision to Embark should be read accordingly.

'Miss N's SIPP with Tilney Bestinvest was set up in September 2014. She was transferring the proceeds of a personal pension policy she had with Friends Life (originally held with Colonial Mutual which later became part of Wintherthur and then Friends Life) to Embark. According to Miss N, that transfer was made after she'd received a cold call from MPI Financial Services Limited (MPI) who advised her to transfer to a SIPP with Embark. MPI had previously been an appointed representative of a regulated firm. But that came to an end in October 2010 so when Miss N was dealing with MPI it was an unregulated firm.

A transfer value of £25,612.50 was paid by Friends Life in December 2014. I've seen there was some delay in the payment being received by Embark – it would appear there was a delay in Embark receiving completed discharge forms. I've seen that Miss N chased progress several times in the interim. The funds were received from Friends Life on or about 19 December 2014.

Miss N says that, once the transfer to Embark had been completed, she was referred to a different firm, LMN UK Limited (LMN), who were unregulated and who she says advised her to transfer to The Focusplay Retirement Benefit Scheme (the Scheme).

Embark received a transfer request from the Scheme in early 2015. Embark contacted the Scheme on 19 January 2015 confirming receipt of the transfer request and enclosing forms for completion by the Scheme and Miss N. Embark also asked for details of the receiving scheme – a screen shot of the Pension Scheme Summary and Current Scheme Details shown on HMRC's website.

There's an email from Embark to Bestinvest saying Embark wasn't happy to proceed with

the transfer and that further information was needed from Miss N. Embark emailed Miss N on 5 March 2015 saying, for compliance reasons, it wanted her to answer the following questions:

- Why have you chosen to transfer to this scheme? The employer connected to the scheme is in administration and is not your current employer as per our records?*
- How did you hear about the scheme? Have you received leaflets, cold calls or unsolicited emails about your pension?*
- Have you received advice from a regulated IFA regarding transferring? If yes, please provide details.*
- Has any documentation from the new scheme been sent to you?*
- You may have been told [you] can access [your] pension before age 55, been misled about tax consequences or been pressured to transfer as quickly as possible, is this the case?*
- What information, if any, have you been provided about personal and employer contributions?*

Embark emailed Miss N on 17 March 2015 as no reply had been received from her. She replied the same day, saying she thought the transfer had already taken place. Embark responded to say it still held the funds and her response to the questions was needed for the transfer to proceed. Miss N replied the same day. She said she liked the look of the Scheme, having done due diligence. She was transferring to an OPS and she wanted to proceed. She said she'd heard about the Scheme via a friend and she hadn't received any calls or emails. She hadn't received advice from a regulated IFA about transferring – she said the Scheme was HMRC registered. Documentation from the Scheme had been sent to her. She hadn't been told she could access her pension before age 55 and she hadn't been misled about the tax consequences or pressurised to transfer as quickly as possible. She didn't consider the question about contributions was applicable.

There's an email from Embark sent to Miss N on 30 March 2015 which included the following:

'A typical pension transfer takes up to 12 weeks, yours had taken longer than this due to issues flagging up by our compliance team, we believe you are being scammed and we have a duty of care to carry out necessary checks.'

The email said two documents were attached which Miss N should read and reply saying 'I have read the documents and happy to proceed' and Embark would then continue with the transfer out. I understand that TPR's Scorpion insert (the March 2015 version) was enclosed along with the longer booklet of the same date, both of which were entitled 'Scamproof your savings'. I mention the Scorpion campaign further below. Miss N replied the following day saying: 'I have read the documents and done my due diligence and I am happy to proceed.'

Embark wrote to the Scheme on 18 May 2015 confirming that a transfer value of £25,968.10 had been paid.

On 11 May 2017 the Pensions Regulator (TPR) appointed Dalriada Trustees Limited (Dalriada) as independent trustee to the Scheme due to concerns as to how the Scheme was being administered and to protect members' interests. A member announcement from Dalriada in September 2023 said, amongst other things, that a director of the previous trustee company of the Scheme had been successfully prosecuted by TPR, convicted and imprisoned and a confiscation order made for him to pay £233,000 to the Scheme. A summary of what investments had been made and their current position was set out. But Dalriada considered the chances of making any further recoveries to be low.

By then Miss N, through her representative, had complained to Embark in June 2022. Reference was made to the regulator's Principles for Business and in particular Principles 2, 3 and 6 and to several court cases. Miss N was transferring her SIPP funds to the Scheme to make a high risk, esoteric and unregulated investment that subsequently proved to be highly illiquid. Embark ought to have identified there was a possibility that Miss N was receiving unregulated advice and so was at risk of consumer detriment. Embark hadn't followed through on its initial investigation and questions. Had it done, it would have established that no IFA was providing full advice and there was a risk of consumer detriment. It wasn't in accordance with its regulatory obligations nor good industry practice for Embark to proceed with the transfer.

Embark didn't uphold the complaint. It said, following comments from its Compliance Team, additional information had been sought from Miss N. She replied saying she'd become aware of the Scheme from a friend, she hadn't been misled or pressured in relation the transfer and, after undertaking her own due diligence, she wished to move to the Scheme which she understood to be HMRC regulated. Although she declared she hadn't taken financial advice in relation to the transfer, the £30,000 threshold was introduced in April 2015 as part of the new pension freedoms. Miss N was told that Embark's Compliance Team believed the transfer to be a scam. Scorpion leaflets were issued to Miss N. She confirmed she'd read them and she was happy to proceed, reaffirming she'd undertaken her own due diligence. The transfer then went ahead as per her instruction.

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

What I've provisionally 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.

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 Embark 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, 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.

In a similar vein, in April 2014 the FCA had also 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" the increase in the use of SIPP's and SSAS's 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 late August 2014. It highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.

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

The 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. (I noted the contents of some of those alerts earlier in my decision.)*
- 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, SIPPs, SSASs and QROPS. The 2015 Scorpion guidance doesn't distinguish between receiving scheme 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?

I've considered what Embark's records show about how Miss N's transfer request was dealt with and all that's been said by or on behalf of Miss N – what she said in her complaint to Embark and on the complaint form she submitted to us, what we were told in response to our further enquiries and what Miss N told our investigator during a phone call.

As to how things started, when Embark asked Miss N what had prompted her to request a transfer to the Scheme, she said she'd heard about the Scheme via a friend and she hadn't received any calls or emails. But Miss N told us she'd received an unsolicited call from someone I'll call Ms E of MPI who asked if she'd be interested in transferring any pension plans to the Scheme and that, if she did, she'd get more out of her pension when she came to retire. Miss N said she was interested and MPI got the ball rolling before LMN then became involved. She'd dealt with someone I'll call Mr J from LMN who Ms E recommended.

Miss N said she was told to put her pension fund in Bestinvest which she did. She got confirmation that they'd received the money and login details so she could check that her money was there which it was. The money then went from Bestinvest to the Scheme and Miss N got a letter confirming that. She found out later on that someone who was involved with the Scheme was jailed for fraud. When we asked why she'd told Embark that she'd heard about the Scheme from a friend, Miss N said that a friend or someone she knew had also told her about it and how good it was. Miss N says she asked if LMN were FCA regulated and she was told they were and that everything was legitimate and she could

improve investment growth by transferring. She was told her money would grow in the Scheme and she got lots of information (which I assume would've been professionally prepared) about the Scheme and which led her to believe it was all above board. She feels stupid now but she said that hundreds of others had also fallen for it.

We also asked Miss N why she'd gone ahead with the transfer to the Scheme, despite Embark's email of 30 March 2015. Miss N recalled getting that email. She said she'd called LMN straight away and Mr J had told her that she absolutely wasn't being scammed. He said it was just a standard email and not to worry as everything was fine. Miss N believed him.

I also note here what Miss N said on her complaint form about Embark's email and why she'd replied on 31 March 2015, saying she'd read the documents and was happy to proceed. She said she'd understood that was all that was required. And that it hadn't been made clear to her that the transfer wasn't in her best financial interests. Embark had failed to ascertain how the Scheme had come to her attention, what marketing information was provided to her, what advice she'd been given and by who and not just in relation to the transfer but also in respect of the underlying investments. She said, if Embark had carried out their obligations, they'd ought reasonably to have recognised there was a significant risk of consumer detriment, including the possibility that she'd been given unregulated advice.

I don't agree with all Miss N says here. Embark did ask how the Scheme had come to her attention. In Embark's email of 5 March 2015 the second question was: 'How did you hear about the scheme? Have you received leaflets, cold calls or unsolicited emails about your pension?' And, as I've discussed further below, Embark expressly told Miss N that it believed she was being scammed. There's also some inconsistency between what Miss N told Embark at the time and what, more recently, she's said happened. In particular, if she'd been cold called and to what extent she was interested in the Scheme because someone she knew had recommended it to her.

But I accept Miss N wasn't an experienced investor. I think she'd have been dependent on advice. I don't see she'd have decided to make two transfers – to a SIPP and then to the Scheme – in quick succession unless she'd been told she'd be better off as a result – essentially that she was advised to transfer on the basis her retirement benefits would be improved.

From what Miss N says, Ms E mentioned the Scheme from the outset. So it would appear that MPI and LMN were acting together and the plan was always that Miss N would end up in the Scheme albeit via a transfer to a SIPP rather than a direct transfer from Miss N's existing Friends Provident plan. I'm not sure why that would've been, unless transferring out of a SIPP was perceived to be likely to attract less scrutiny. But, and whatever the situation, as the complaint is against Embark, the administrators of the SIPP, I'm only considering the transfer from the SIPP to the Scheme and Embark's responsibilities as the ceding scheme in connection with that transfer.

It's clear that Embark did have concerns about the transfer which it shared with Miss N. I've considered below if Embark, acting in line with its regulatory and wider obligations, did enough, including whether Embark should've refused Miss N's transfer request.

What did Embark 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.

Here I'm satisfied that Embark did send Miss N the March 2015 insert and longer booklet. I say that because Embark's email to Miss N on 30 March 2015 said two documents were attached which she needed to confirm she'd read. I've seen, from an internal email dated 25 March 2015 – so before the email to Miss N was sent – that confirmation was requested of the documents that were being sent – so Embark could be sure they'd been sent and even if they'd been sent before. In response to that email the March 2015 insert and the longer booklet were produced. So I'm satisfied those were the documents that were sent with the email on 30 March 2015. Miss N confirmed in her reply the following day that she'd read the documents. So I'm satisfied she did get the insert and the booklet and she did read them.

Due diligence:

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

I've looked first at what due diligence Embark carried out in this case to consider whether it was sufficient. Embark clearly didn't consider the receiving scheme as being free of scam risk. So the initial triage process set out in the PSIG Code should've led to Embark asking Miss N further questions about the transfer as per Section 6.2.2 ("Initial analysis – member questions"). I won't repeat here the list of suggested questions in full but Embark did ask Miss N further questions – as set out in Embark's email of 5 March 2015.

Embark's questions didn't cover all those the Code suggested should be asked. For example, Embark didn't ask about any cash payments, bonuses, commission or loans from the receiving scheme or if Miss N had been told she could draw a higher tax free cash sum as a result of transferring. Nor were there any questions about having been promised a specific or guaranteed rate of return or being informed of an overseas investment. But Embark did ask about how Miss N had heard about the Scheme, including if she'd been cold called, and if she'd had advice from a regulated IFA about transferring. Further, the receiving scheme was an OPS and Embark pointed out that the employer connected to the Scheme was in administration and not, according to Embark's records, Miss N's current employer. Embark also asked if documentation about the new scheme had been provided to Miss N.

Under the Code, further investigation should follow a "yes" to any question. I'm unsure, even if all the questions set out had been put to Miss N, if she'd have answered in the affirmative to any of them. For example, although she's since said she was cold called, at the time she told Embark that hadn't happened. But Section 6.2.2 includes additional questions specific to the receiving scheme type. Where it's an OPS, the member should be asked who the administrator is, as that will be the company responsible for providing information about the pension, such as annual statements. And, if the OPS or the trustee or administrator isn't known to the ceding scheme and it considers that it does pose a risk, the ceding scheme should take action as set out in Sections 6.3 and 6.4. So here, as Embark clearly did consider that the Scheme did pose a risk, Embark should've moved on to consider Sections 6.3 and 6.4.

Section 6.3 is about requesting information from HMRC to confirm the receiving scheme's registration status and ensuring that the scheme isn't subject to a deregistration notice and/or that information held by HMRC doesn't indicate a significant risk of the scheme being established or being used to facilitate pension scams. Embark didn't make a direct request to HMRC. Embark did ask the Scheme to provide details of the receiving scheme by way of a print off from HMRC's website. So Embark wasn't happy to accept a copy of HMRC's letter confirming the Scheme had been registered – presumably on the basis that it could be out of

date and there'd been further developments. It's possible, had Embark asked HMRC direct, that HMRC might've been unable to provide confirmation about the Scheme's registration status. But it's not possible now, so many years after the event, to say what HMRC would've told Embark.

Under Section 6.4, the further due diligence is partially dependent on the type of receiving scheme. Where that's an OPS Section 6.4.1 points a number of potential areas of concern, including regulatory (such as if the OPS is registered with the Information Commissioner for data protection purposes); employment link (or rather lack thereof); geographical link (a sponsoring employer that is geographically distant from the member); marketing methods (such as cold calling); and provenance (such as when registered with HMRC, operating from 'virtual' offices or using PO boxes for correspondence purposes and the administrator's credentials). Next to each area of concern, the Code set out a series of example questions to help ceding 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, and acting in accordance with the Code, Embark should've addressed all sections of the OPS due diligence process and contacted Miss N to help with that.

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

Had it made additional enquiries, I think Embark would've established further issues in connection with the transfer. Regardless of how Miss N had become aware of the Scheme (whether via a friend or if she'd been cold called) I think she'd have told Embark, if asked, that she'd been dealing initially with MPI and more recently with LMN whose Mr J had told her she'd be better off if she transferred to the Scheme – so essentially he'd recommended that she transfer her SIPP to the Scheme. That would amount to regulated advice which should only be given by an authorised and registered adviser/firm. Embark could've checked LMN's and Mr J's regulatory status by accessing the FCA's register, which is a quick and easy step to take. Embark would've seen that LMN wasn't registered.

Being advised by an unauthorised firm to transfer benefits from a personal pension plan (which a SIPP is) would've been a breach of the general prohibition imposed by FSMA, which states no one can carry out regulated activities unless they're authorised or exempt. Anyone working in this field should have been aware that financial advisers need to be authorised to give regulated advice in the UK. The PSIG Code (and the Scorpion guidance) make much the same point. Indeed, the PSIG Code says firms should report individuals appearing to give regulated advice that aren't authorised to do so.

So Embark should've been concerned by LMN's involvement because it pointed to a criminal breach of FSMA. On the balance of probabilities I'm satisfied such a breach occurred here. In those circumstances it would've been appropriate for Embark to have informed Miss N that the firm she'd been advised by was unregulated and could put her pension at risk. Embark should've said only authorised financial advisers are allowed to give advice on personal pension transfers, so Miss N risked falling victim to illegal activity and losing regulatory protections – essentially that she might be the target of a pension scam.

But Embark was already and in any event concerned about the transfer. And Embark had made its concerns very clear to Miss N. In its email of 30 March 2015 Embark told her it believed she was being 'scammed'. I don't think Embark could've put things much more plainly to Miss N. In saying that, I note what she's said about that warning – that she

understood all she needed to do was confirm she'd read the documents and that she was happy to proceed. So it seems she's suggesting she understood it was a formality to enable the transfer to proceed, once she'd given the requested confirmation. But I think that's at odds with the very clear language that Embark used. In my view, Embark's message was very clear – that it thought Miss N was about to fall victim to a pension scam. And that Embark wanted her to read the enclosed documents (the Scorpion insert and booklet) before deciding if she wanted to go ahead.

Miss N confirmed that she'd read the insert and the booklet. Both had the title 'Scamproof your savings'. Given that, in its email, Embark had specifically referred to Miss N being scammed, I think she'd have realised that the insert and booklet might be directly relevant to her situation. Both the insert and the booklet recommended, under the heading, 'How to scamproof yourself', making sure the adviser is registered by the FCA by checking the FCA's online register, a link to which was given. The insert and booklet said, if financial advice was taken by someone registered with the FCA, it may be possible to claim compensation if something goes wrong. But if the adviser isn't registered, the consumer risked losing everything. I think Miss N would've realised that it was important to make sure that any advice given had come from a registered firm. She's said she was given to understand that LMN was regulated. But a check of the online register, which isn't a difficult tool to use, wouldn't have shown any results for LMN and so Miss N would've known, and contrary to what she'd thought, that she was dealing with an unregulated firm.

Miss N also says she contacted LMN when she received Embark's email and Mr J reassured her that she wasn't being scammed. I don't doubt that he was convincing and persuasive. But the insert and booklet did refer to scammers trying to 'flatter, tempt and pressure' someone into transferring their pension fund into an investment with attracting sounding returns and it being too late once the transfer had gone through – leaving the consumer having lost all their savings and 'nothing but a hefty tax bill'. Miss N had been told expressly by Embark that it thought she was being scammed. I think the Scorpion insert and booklet, coupled with the very stark and direct warning that Embark gave in its email, should've made Miss N pause and think about whether what she was being told by Mr J and what he was telling her to do was really likely to have been in her best interest. But Miss N wasn't put off. It seems she remained convinced by what she was being told by LMN's adviser and she went ahead with the transfer anyway.

Miss N suggests Embark should've refused to carry out the transfer. But she would've had a contractual right to transfer and, as I've said, 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. So I think it comes down to the issues I've considered above. And what would've happened if Embark had acted completely in line with the prevailing guidance and, in particular, the PSIG Code.

Miss N now realises that she (and, as she's pointed out, many others) fell for the same line. I have sympathy for Miss N. She's suffered losses as a result of transferring to the Scheme and it seems there's been fraud on the part of some of those involved with the Scheme. But, and without the benefit of hindsight, I can't see that any further warnings from Embark would've changed things and when Miss N was prepared to ignore the very clear warning that Embark gave. So, even if there were due diligence failings on Embark's part, I don't think the outcome would've been different if Embark had done more. In the circumstances I can't say that Embark has caused Miss N's losses and so it isn't fair and reasonable to say Embark should redress Miss N.

On a more positive note, there's an announcement to members of the Scheme on Dalriada's website published in April 2024 which refers to the Fraud Compensation Fund (FCF). It seems that some of the lost Scheme assets may be replaced and Scheme members, such

as Miss N, may receive some compensation from FCF.'

We didn't receive any comments from or on behalf of Miss N in response to my provisional decision. Embark didn't make any substantive comments although, as I've noted above, Embark clarified who was the correct respondent to the complaint.

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 the absence of any further evidence, information or comments from either party, my views remain as set out in my provisional decision.

I've recapped above what I said in my provisional decision and it forms part of this decision.

For the reasons I've given, I'm not upholding the complaint.

My final decision

I don't uphold the complaint and I don't make any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 17 January 2025.

Lesley Stead
Ombudsman