DRN-5301024

The complaint

Mr P has complained, with the help of a professional third party, about a transfer of his Legal and General Assurance (Pensions Management) Limited ('L&G') pension to a Qualifying Recognised Overseas Pension Scheme ('QROPS') in April 2015. He has said that he's unable to access the investments made through the QROPS and believes they have no value.

Mr P says L&G 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 P says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if L&G had acted as it should have done.

What happened

Mr P held pension benefit with L&G in a buy-out plan. On 23 July 2014, Mr P signed a letter of authority allowing AWM Financial Services ('AWM') to obtain details, and transfer documents, in relation to his pension. This noted a business called the High Street Group ('HSG') as the introducer, and gave the name of a specific person, who I'll refer to as 'JM'.

On 1 August 2014, AWM wrote to L&G, providing the letter of authority. It asked for details of the pension and relevant forms to transfer the policy, including an overseas discharge form. It also asked that servicing rights for the pension be transferred to AWM. This letter

correctly stated that AWM was authorised and regulated by the Financial Conduct Authority ('FCA'). AWM requested that the information be sent to an email address belonging to HSG. HSG was not authorised or regulated by the FCA.

L&G provided the requested information on 21 August 2014, noting the documentation it provided was for transferring overseas. The covering letter was addressed to AWM but was sent to HSG by email as requested.

On 18 February 2015, STM Fidecs Pension Trustees Limited ('STM') sent transfer documents to L&G. These included some forms signed by Mr P and confirmed that the receiving scheme, the STM G.I.B Pension Transfer Plan, was a QROPS recognised by HMRC.

I can see that STM was asked to send further documents to L&G. On 13 March 2015, it provided a member declaration, signed by Mr P on 3 March 2015. Amongst other things this acknowledged that Mr P understood that the receiving scheme was a QROPS and he'd read and understood the Pension Regulator's ('TPR') leaflet, which L&G had provided him. STM then provided a completed receiving scheme declaration on 10 April 2015.

L&G transferred Mr P's pension to the QROPS on 15 April 2015. The amount transferred was £71,298.34.

Statements for the new pension indicate that approximately £53,500 was invested with 'STM Life' in May 2015. And in September 2015, approximately £14,400 was invested with 'Caledonia Investments S.L.'

In March 2022, Mr P complained to L&G. He said L&G hadn't done sufficient due diligence and he was under the impression if there was anything untoward it would have told him. Mr P said L&G should have ensured he understood the advice, how his pension would be invested and that the investments were potentially not suitable for him based on his circumstances at the time.

L&G didn't uphold the complaint. It said Mr P had a valid, statutory right to transfer, which he had exercised. It said it had provided him with relevant warnings, specifically those TPR asked it to provide, which Mr P had signed to confirm he'd read and understood. In addition, it had seen evidence that the receiving scheme was recognised by HMRC and it said a regulated adviser, AWM, was involved, so, it didn't think it had done anything wrong by processing the transfer in line with Mr P's instructions.

Mr P made a claim to the Financial Services Compensation Scheme ('FSCS') about AWM in July 2022. In this he said AWM had originally contacted him by cold call, had conducted a pension review and went on to provide him with financial advice. Mr P said AWM advised him to transfer his pension to the QROPS and induced him to go ahead with promises of the new arrangement growing faster than his existing pension. I understand the FSCS said there wasn't enough information that Mr P had a valid claim, noting that the STM had told it, and the application for the QROPS also recorded, that 'Caledonia Investments S.L' – a firm based in Spain and where some of the pensions funds were sent for investment – was Mr P's financial adviser.

Mr P also referred his complaint about L&G to the Financial Ombudsman Service, in July 2022. Mr P's representative has said that he was contacted unsolicited by JM, who was working for HSG. They said Mr P only dealt with JM, whom he knew from a previous financial matter that JM had assisted him with, and that it was JM / HSG which had advised him to transfer. He said he hadn't had any contact with AWM and also that he'd asked if his money was going to be invested overseas but was told it wasn't, with him only finding out to the contrary later in the process.

I issued a provisional decision in January 2025 explaining that I didn't intend to uphold Mr P's complaint. Below are extracts from my provisional findings, explaining why, which form part of my final 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

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 L&G 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 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 as it provided, for the first time, guidance for 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 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.

There was a further update to the Scorpion guidance in March 2015, after the transfer of Mr P's pension was requested but before it was completed. 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. Amongst other things it also asked transferring schemes to use a three-part

checklist to find out more about a receiving scheme and why their member was looking to transfer for every request to transfer.

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 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, 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, 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 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?

During our investigation we asked Mr P's representatives to question him about the circumstances of the transfer. They said Mr P told them that JM visited him at his home unsolicited. Mr P says JM said he was regulated to give advice and as JM had assisted him with a financial matter previously Mr P says he trusted him. He says JM told him by transferring, the return on his investment would be significant, mentioning two lots of 10% and a minimum 7-10%. And Mr P was told the investment was for five years and that he could withdraw after that point. Mr P doesn't recall having contact with anyone, or any business, other than JM and that it was JM, working for HSG, that advised him to transfer. Mr P says he asked if his funds would be transferred abroad and was told they wouldn't be, but they later were. He has also said however that he understood a portion of the investment was going to Caledonia Investments S.L. Mr P was presented some paperwork, but says this didn't mean much to him as he didn't understand it. Mr P wasn't offered an incentive payment to transfer. And he says he received no contact from L&G during the transfer process.

In response to the Investigator's opinion, Mr P's representatives stated that AWM's involvement was purely superficial and AWM did not speak to Mr P or provide him any advice regarding the transfer.

This however is significantly at odds with the claim that was submitted to the FSCS against AWM, by Mr P's representatives. In the claim form sent to the FSCS there was a question if any other firm or individual was involved in setting up the pension that the claim related to. This question was answered no, with no mention of JM or HSG made. The summary of the claim said that Mr P had received negligent advice from AWM. It went on to say Mr P was cold call by AWM, it conducted a pension review and went on to provide financial advice to transfer his pension to the QROPS. It also said that Mr P was told by AWM he'd make more money by transferring than his current pension would provide. And the representative said AWM had breached its duty of care to Mr P by recommending the transfer to the QROPS. Mr P signed a declaration when submitting the FSCS claim saying the information contained was true and correct.

There are some consistencies in the versions of events – Mr P being contacted unsolicited and being advised to transfer for better returns. But otherwise, I think it is difficult to take what we've been told at face value, given the conflicting version of events presented to the FSCS.

There are also some things in what Mr P has told us that seem to contradict. For example, he says he was told his money wasn't being transferred overseas but then also said that he was aware a portion was to be invested with Caledonia Investments S.L. – a business based in Spain – not to mention that several of the documents he signed referred to a transfer overseas.

Mr P's representatives have also said he wasn't working at the time of the transfer. But the Letter of Authority ('LOA') that he completed listed his occupation as a factory manager and that he was in regular employment. Which I think it would have been reasonable for L&G to rely on.

So, it is difficult to form an accurate picture of everything that happened. What I can see though is Mr P doesn't appear to have had any prior connection with the QROPS. And he hasn't indicated he intended to move overseas. And I think it is unlikely he'd have sought to transfer his benefits to the QROPS on his own. So, I think it was the discussions that he had with the party he spoke to that lead him to considering the transfer. And based on what he's said in both the claim to the FSCS and our service – that he was told he'd receive better returns by transferring – I think it is likely he was advised to transfer.

In terms of the current status of Mr P's pension savings, while Mr P's representatives have said they believe he has incurred losses and is unable to access his pension, I would note that the STM G.I.B Pension Transfer Plan is still on HMRC's recognised list. There is little information still available about Caledonia Investments S.L. which suggests that business may have ceased trading. But it isn't clear what impact that has had on Mr P's individual pension savings or their liquidity.

<u>What did L&G do and was it enough?</u>

The Scorpion insert:

For the reasons given above, my view is that pension providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information.

L&G said in response to the initial complaint that it provided Mr P a copy of TPR's Scorpion leaflet. Given the timing of the request for information to assist with a transfer, I think this was likely to be the version from July 2014. L&G hasn't though been able to evidence that it sent this directly to Mr P, or that it was included with the transfer pack addressed to AWM, that was also sent to HSG via email.

L&G has said that its transfer packs at the time were printed centrally and that a copy isn't available. But I do note the transfer pack addressed to AWM doesn't refer to a copy being provided to Mr P, which I might've expected to see.

L&G has correctly highlighted though that the declaration Mr P signed acknowledged that L&G had provided him TPR's leaflet and that he'd read and understood this. I think it is unlikely that this would've been included in the declaration if L&G hadn't sent the Scorpion leaflet to Mr P. So, on balance of probabilities I think L&G did send Mr P the July 2014 version of the Scorpion insert.

The Scorpion information was updated in March 2015, while the application to transfer was ongoing. But I don't think L&G, as a matter of course, needed to send the updated booklet to all customers with ongoing transfer requests.

Due diligence:

Both the initial LOA from AWM asking for a transfer pack and the application to transfer from STM were received by L&G before the PSIG Code was introduced in March 2015. But the transfer was not completed until April 2015, with L&G evidently requiring additional documents before it made the transfer. So, given that the transfer application was ongoing when the PSIG Code was published, I think L&G should have considered the application in reference to this guidance. But I don't think it would make a difference to the outcome of the complaint if I had considered L&G's actions using the Scorpion guidance as a benchmark instead.

L&G has indicated that its due diligence consisted of checking that the receiving scheme was recognised by HMRC, checking that AWM was FCA regulated, providing Mr P with TPR's Scorpion leaflet and requiring the completion of certain forms and declarations. It hasn't suggested that it contacted Mr P for any further information about the transfer.

Although the receiving scheme was on HMRC's QROPS list, I don't think, under the "Initial analysis" section of the PSIG Code, L&G could have considered the receiving scheme/administrator as being free of scam risk. So, given the limited information it had about the transfer and Mr P's motivations, the initial triage process should have led to L&G asking Mr P 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. But I think at least two of them would have been answered "yes":

- *Did receiving scheme/adviser or sales agents/representatives for the receiving scheme make the first contact (e.g. a cold call)?*

- *Have you been promised a specific/guaranteed rate of return?*

Another of the questions was whether Mr P had been informed of an overseas investment opportunity. And while he has since said that he was unaware the pension was going to be transferred overseas, as I've explained this is somewhat undermined by him also saying he was aware some funds were to be invested with Caledonia. And L&G was aware that the receiving scheme was a QROPS. So, it could also have taken the answer to this question to be yes.

Regardless though, 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. 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.

What should L&G have found out – and would it have made a difference?

L&G did establish the legitimacy of the QROPS. But it didn't address Mr P's rationale for transferring. If it had asked Mr P about this – which it should have done, using the framework outlined above – it would have found out he was transferring his pension following an unsolicited approach and that he was transferring to a type of arrangement more commonly used by people living overseas even though he wasn't intending to do that.

That being said, L&G had received an LOA from a FCA regulated business – AWM – signed by Mr P saying that AWM was acting on his behalf in the transaction (the potential transfer).

Mr P and his representatives have told us that JM / HSG was the only party he dealt with and AWM's involvement was purely superficial. However, the statement of truth he signed in respect of his claim to the FSCS disputes that version of events and said that AWM was the only party he dealt with and that it provided him advice.

It is clear from the information available at the time that there was some involvement from HSG. The request for information to L&G from AWM, along with the LOA, asked for the transfer pack to be emailed to HSG and it was named as the 'introducer'. But I also think, given the LOA Mr P signed that, at the time, he would've been aware of AWM's involvement. And, if asked by L&G if he was taking advice, would have identified AWM, potentially in addition to HSG. So, I think L&G would always have believed, quite reasonably, that a regulated adviser was involved. L&G wasn't required to advise Mr P or assess the suitability of the transfer. And I think it would reasonably have thought that AWM would have considered this, when advising Mr P.

The PSIG Code explains that, once information was gathered, it would be down to the ceding scheme to determine the level of scam risk and how to proceed.

Here I think L&G could fairly have taken reassurance from AWM's involvement that the scam risk was low. And, as I've said, I'm satisfied on balance that L&G did send Mr P TPR's Scorpion leaflet, which provided information about the risks of pension scams. And he'd signed a declaration confirming he'd read this information. So, in the circumstances, even if it had asked further questions, I don't think this would have prompted L&G not to go ahead with the transfer. And I'm satisfied it wouldn't have considered there to be reason to provide any further warnings to Mr P.

I'd also note that the Code explains business can still decide that a transfer can proceed, even if it still has some concerns – with the Code suggesting in those circumstances the business obtain a signed robust discharge from the scheme member. L&G required Mr P to sign a member declaration before proceeding. This included acknowledgment that Mr P was aware the transfer was to a QROPS, there was a serious risk of significant tax charges if the receiving arrangement was used to access benefits before he was legally allowed to and that he'd read the Scorpion leaflet as well as the 'Important information about pension transfers' he'd been provided. It was also acknowledged that L&G did not know if the purpose of the QROPS was to allow early access to benefits but would check it was registered with HMRC and that L&G would not be liable in respect of Mr P's pension benefits after the transfer. I think L&G was entitled to believe that, by signing that declaration, Mr P had read it. And so, even if it had asked further questions which left it with some concerns, I think it's unlikely it would have required Mr P to do more than complete that declaration.

Responses to my provisional decision

I gave both parties an opportunity to make further comments or send further information before I reached my final decision.

L&G said it accepted my provisional findings.

Mr P, nor his representative, provided any further comments for me to consider by the deadline for responses I gave in my provisional findings.

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.

Having done so, given that neither party have provided any additional information or arguments for me to consider, I'm not inclined to depart from my provisional findings.

So, for the reason I've explained, in the particular circumstances of Mr P's complaint, I think L&G acted reasonably by agreeing to the transfer here. And even if it had asked further questions of Mr P, I don't think that would have ultimately led to Mr P being in a different position.

As a result, I don't require L&G to take any action here.

My final decision

For the reasons given above, I don't uphold Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 6 March 2025.

Ben Stoker
Ombudsman