

The complaint

Ms C has complained about a transfer of her Interactive Investor Services Limited self-invested personal pension (SIPP) to the Focusplay Retirement Benefit Scheme (Focusplay) in January 2015. Ms C says she has lost out financially as a result.

Ms C says Interactive Investor failed in its responsibilities when dealing with the transfer request. She says that it should have done more to warn her 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. Ms C says she wouldn't have transferred, and therefore wouldn't have put her pension savings at risk, if Interactive Investor had acted as it should have done.

What happened

Ms C opened a SIPP with Alliance Savings Trust in July 2014. Alliance Savings Trust were subsequently acquired by Interactive Investor and it is Interactive Investor who are the respondent business for this complaint. Ms C transferred around £29,000 from her previous SIPP to her Alliance Savings Trust SIPP in August 2014.

Ms C's explains that she received an unsolicited approach from a firm called Hesketh Boyd Finance and was offered a review of her pensions. She explains that she was then visited by a representative of a firm called Gleeson Bessant Trustees Ltd (GBTL) who advised her to transfer the funds in her SIPP to the Focusplay Retirement Benefit Scheme (Focusplay). This was a type of Occupational Pension Scheme (OPS). Ms C says she was in financial difficulty at the time and she was attracted by the prospect of a £2,300 cash incentive that was promised.

On 16 December 2014 Interactive Investor emailed GBTL transfer discharge forms for Ms C's SIPP.

Ms C's SIPP funds were transferred in January 2015. Her transfer value was around £29,000. She was 52 years old at the time of the transfer.

On 11 May 2017 The Pensions Regulator appointed Dalriada Trustees Limited as independent trustee to the Focusplay scheme following concerns over the misuse and misappropriation of scheme funds. The scheme was ultimately found to have been fraudulently run and the latest update from Dalriada is that scheme members' best opportunity of significant recovery of investments is now via the Fraud Compensation Fund.

In February 2022, Ms C complained to Interactive Investor. Briefly, her argument is that Interactive Investor failed to carry out due diligence or send Ms C any scam warning information.

Interactive Investor didn't uphold the complaint. It said that it wasn't advising Ms C on the suitability of the transfer. It explains that it has no records of having done any due diligence or of sending any warning material to Ms C at the time.

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

me to decide. I issued a provisional decision explaining why I didn't think Ms C's complaint should be upheld. My reasons for coming to this view are summarised as:

- I explained that there was an established understanding of the risk of pension liberation and scams in the industry at the time. And I explained what I thought that meant to Interactive Investor in terms of its obligations to Ms C. Which was, in short, that it ought to have shared scam warning information (referred to later) to Ms C and have performed due diligence on the transfer request.
- I concluded that Interactive Investor failed to send any warnings to Ms C or to evidence that it had undertaken any due diligence.
- I explained why Ms C's testimony persuaded me that she had already received relevant scam warning material from another party however.
- In the absence of any evidence of due diligence I considered what Interactive Investor ought to have done and whether it would have made a difference. And I didn't consider that it would have found reason to identify a potential scam risk or give any warnings. So I didn't think that reasonable due diligence was likely to have had any impact on whether the transfer went ahead.

Interactive Investor accepted my provisional finding. Ms C did not. She was disappointed with the outcome and, although she offered no new evidence or argument, asked me to reconsider my view.

What I've decided – and why

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

I understand that the transfer that Ms C was persuaded to make has caused her a considerable loss. And I am sorry for that. But my role is not to simply determine whether Interactive Investor did anything wrong. I need to also determine whether anything it did wrong was responsible for her loss. Or, in a case like this, whether Ms C would have been in a position to have been able to avoid the loss but for any failing by Interactive Investor. Having considered all of the circumstances again, my final decision is that Interactive Investor's failure to consider the transfer request appropriately would not have made a difference. My reasons are the same as I set out in my provisional decision and set out again below.

The relevant rules and guidance

Before I explain my reasoning, it will be useful to set out the environment Interactive Investor as 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” the increase in the use of SIPP 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 late August 2014. It highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.
- Interactive Investor 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 that 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 check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where 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 the Financial Services and Markets Act (FSMA), which enabled the FSA to issue guidance provided it underwent a consultation process first. Nor did it constitute "confirmed industry guidance", as can be seen by consulting the list of all such FSA/FCA guidance on its website.

I take from the above that the content 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 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 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.

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 the guidance 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, absent a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations:

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 the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party.
3. I also think it would be fair and reasonable for personal pension providers – operating with the regulator's Principles and COBS 2.1.1R in mind – to ensure the warnings contained in the Scorpion insert were provided in some form to a member before a transfer even if the transfer process *didn't* involve the sending of transfer packs.
4. The Scorpion guidance asked firms to look out for the tell-tale signs of scams and undertake further due diligence and take 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?

Ms C has explained that she was approached out of the blue and introduced to the idea of transferring her SIPP to Focusplay. She provides no documentary evidence in the form of correspondence, scheme information or any recommendation. But I have considered the type of scheme that Focusplay was. It was an OPS which was a type of scheme normally set up to provide pension benefits to a group of employees. It is not a type of scheme that I would expect to see marketed openly for the general public. In this case, I don't think that Ms C had any employment links to the Focusplay OPS. Whilst that may not have meant that the scheme rules prevented her from becoming a member of the scheme, I think it would have been highly unlikely that she would have found the scheme herself. I think it is much

more likely that the only way that Ms C would have become aware of the scheme would be if it was introduced to her by a third party.

The normal pattern for transfers like Ms C's is that Interactive Investor will have been approached by a third party requesting information about her SIPP. But Interactive Investor have not retained records of any such correspondence. It would also have received a transfer request for the receiving scheme. But Interactive Investor has no record of this correspondence either. Although it must have received it. The only records it appears to have corroborates that it emailed transfer forms to GBTL.

Even though the evidence is limited, for the above reason I think that Ms C was likely introduced to the idea of the transfer by a third party. And based on her testimony and the limited evidence that Interactive Investor provides, it's likely that Ms C thought that the transfer was being recommended by GBTL.

Ms C has explained that she was promised a cash incentive of £2,300 to transfer her SIPP. And that she had a genuine need of the money at that time. So, I think that was likely a strong motivation for her decision to proceed with the transfer.

What did Interactive Investor 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.

Interactive Investor didn't send Ms C the Scorpion insert or any other warning about the risk of pension liberation. This would have been relevant to Ms C's circumstances because she was motivated to transfer by the offer of a cash incentive.

We have asked Ms C about this and, whilst she confirms that she didn't receive this warning information from Interactive Investor, Ms C has said that she was sent information about her pension from GBTL. And she explained that she remembers receiving a leaflet with a Scorpion on the front warning of Predators Stalking Pensions. Her testimony is quite clear on this although she took this as adding to GBTL's credibility. Her description is of the 2013 Scorpion insert I think, although she has not retained it to share with us. I think that she had more than likely received it already. This leaflet was not the updated version that Interactive Investor ought to have sent Ms C. Nonetheless I have considered the content of the version that Ms C describes receiving.

It explained that pension loans or cash incentives were being used to entice savers into pension scams. It described the behaviour as pension liberation fraud. It explained that funds couldn't ordinarily be accessed before age 55. And told consumers to watch out for the following:

- Being approached out of the blue
- Pushy advisers or introducers offering up front cash incentives.
- Companies offering a loan, savings advance or cash back from the pension.
- Not being informed about the potential tax consequences.

Although the Scorpion insert that was updated in July 2014 was worded differently, it conveyed more or less the same message. Ms C should have been sent that too, but the fact that Ms C remembers receiving the 2013 Scorpion warning and not acting on its warnings means that I am not persuaded that she would have been any more inclined to act on the 2014 Scorpion insert if she'd received it.

Due diligence:

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 take appropriate action *if* it was apparent their customer might be at risk. That's because, even though the Scorpion Action Pack provided a check list, it didn't expect businesses to go to the check list for all transfer requests. It provided initial warning signs, and I think that good practice for businesses would have meant turning to the check list where it was aware of the existence of certain warnings from that list.

Interactive Investor haven't persuaded me that it conducted any due diligence on the transfer request that it received. So, I've considered the available evidence in order to determine what it is likely that it knew and what it's fair and reasonable to expect it to have done in these specific circumstances.

Whilst I have not seen the transfer request that Interactive Investor received, it would have been sent between the email of 16 December 2014 and the transfer in January 2015. Focusplay was not a newly registered OPS. It had been registered for over a year at the point Ms C's transfer would have been requested having been registered since mid-2013. The scheme was a UK based OPS and the transfer request would not have explained the OPS's investment strategy. So, I am not persuaded that Interactive Investor would have been given cause to suspect that the transfer involved moving funds overseas. Accessing a pension pot before age 55 would have been a trigger, but I am not persuaded that Interactive Investor would have been aware of this from the information that it had. It would have been aware that Ms C was under the age of 55, but that alone was not a reason to scrutinise this transfer.

Given the information Interactive Investor would more likely than not have had at the time, it would not have been aware of any features of Ms C's transfer that would have been potential warning signs of a scam. It means that I am not persuaded that Interactive Investor, had it considered due diligence in line with the Scorpion Action Pack, would reasonably have identified a reason to make contact with Ms C to look into her transfer further.

Summary

I understand that Ms C suffered a loss as a result of being persuaded to make this transfer and I am sorry for that. I can see that she was financially vulnerable when approached by the persons responsible for causing the loss. Interactive Investor were not the party responsible for recommending or requesting the transfer. But it did have to act in Ms C's best interests. Which meant providing clear information and being alert to any possible warning signs and responding accordingly. In certain circumstances, I think this role could have prevented the harm that Ms C suffered. And I've explained that it failed in this regard in that it didn't provide Ms C with the Scorpion insert or similar information. But I don't think that there were any clear warning signs in this case that would have caused Interactive Investor to contact Ms C to look into the transfer further.

I have considered the potential consequences of Interactive Investor's failure to send Ms C the Scorpion Insert. And for the reasons I set out above, I am not persuaded that it would have caused Ms C to change her mind about the transfer. The information in it was more

generally about scams than the 2013 insert that she says she received. But I think that the 2013 insert was likely to have been the most impactful for her circumstances as she was actually being promised a cash incentive to transfer and had been approached out of the blue.

It means that Ms C already had the information that explained why that type of transfer was likely to be a pension liberation scam. But was sufficiently persuaded by the person recommending it to go ahead anyway. And, as she has said, her need for money at that time was significant.

I have considered the fact that information from her ceding scheme may have been viewed differently. But I don't think that a second insert from a different source, saying pretty much the same thing that Ms C had already seen, would on balance of probability have made a difference. It means that I do not think it's fair or reasonable to conclude that Ms C would not have gone ahead with this transfer if Interactive Investor had sent her a further copy of the Scorpion insert.

My final decision

For the above reasons I am not upholding Ms C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 19 March 2025.

Gary Lane
Ombudsman