

The complaint

Miss R has complained about a transfer of her Legal and General Assurance Society Limited personal pension to a Qualifying Recognised Overseas Pension Scheme (QROPS) in Gibraltar in October 2014. Miss R's QROPS was subsequently used to invest in the CFS Mutual Fund. The investment now appears to have little value. Miss R says she has lost out financially as a result.

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

What happened

Miss R held two personal pensions: one with Legal & General and the other with a firm I'll call provider S. Miss R has also complained about provider S's actions in transferring that pension. I have considered that complaint under a separate reference number.

On 25 February 2014 Miss R signed a letter of authority (LOA) allowing two firms, called Moneywise and First Review Pension Services (FRPS) to obtain details, and transfer documents, in relation to her pensions. At that time Moneywise was regulated by the Financial Conduct Authority (FCA). FRPS was not FCA regulated. On 8 April 2014 FRPS wrote to Legal & General enclosing Miss R's LOA and information request.

There's no evidence of any further involvement from FRPS or Moneywise. However, Miss R said that she later received an unsolicited call she believed from someone associated with CFS Mutual. CFS Mutual was a trading name of the Cornerstone Friendly Society, which operated an investment fund. Cornerstone was FCA regulated.

Miss R says she became interested in transferring because of the prospect of better pension returns. She said she was then introduced to a firm called Caledonia Investments S. L. based in Spain. I've seen no evidence that Caledonia investments was appropriately regulated in any country.

In August 2014 Caledonia investments recommended that Miss R open an STM Fidecs GIB Pension Transfer Plan. This scheme was a QROPS operated by STM, a company registered and regulated in Gibraltar. Caledonia Investments also recommended that Miss R invest the transferred money in the CFS Mutual fund

Miss R subsequently applied to start a QROPS with STM. The application form named Caledonia Investments as Miss R's financial adviser. It also named a firm called Pecuma Investments, with an address in England, as Miss R's preferred investment adviser. The FCA did not regulate Pecuma Investments. However, Legal & General wouldn't have seen those documents at the time.

On 18 September 2014 STM sent Miss R's transfer papers to Legal & General. STM included the relevant HMRC forms, signed by Miss R, to enable a QROPS transfer. Legal & General then engaged further with STM, which submitted more documents. Subsequently, Legal & General transferred Miss R's pension of £33,039 to the STM QROPS on 13 October 2014. She was 42 years old at the time of the transfer.

£27,773 of the transferred funds were later invested in the CFS fund. The following month, November 2014, provider S transferred Miss R's pension monies previously held with it – of £9,113 – to the STM QROPS. However, the funds transferred from provider S were not reinvested and have been left in the QROPS in cash.

It seems that the CFS fund began to attract regulatory and fraud Investigator's concerns. Eventually, the Prudential Regulation Authority applied to the Court to have the fund wound-up in 2015. I understand that the Financial Services Compensation Scheme (FSCS)¹ considered the fund to be in default and began accepting claims against it in May 2017. It would seem likely that any sums invested in the fund are now lost.

In March 2020, Miss R complained, via her representatives, to Legal & General. Briefly, her argument is that Legal & General ought to have spotted, and told her about, a number of warning signs in relation to the transfer, including (but not limited to) the following: the QROPS was based overseas, the catalyst for the transfer was an unsolicited call and an unregulated firm had provided the transfer advice.

Legal & General didn't uphold the complaint. It said the STM scheme was recognised by HMRC, Miss R had a legal right to transfer and that none of the information it had about the transfer at the time gave it cause for concern. It was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

Miss R, via her representatives, brought her complaint to the Financial Ombudsman Service. One of our Investigators looked into it. She didn't think the complaint should be upheld.

Miss R didn't agree. So, as our investigator was unable to resolve the dispute informally the matter was passed to me to decide.

Provisional decision and developments

I issued a provisional decision on 20 January 2025. I explained why I intended to uphold the complaint and what I thought Legal & General should do to put things right. I invited the parties comments with a deadline of 3 February 2025 to reply. However, owing to an issue with Legal & General's receipt of the provisional decision we extended the deadline to 21 February 2025

Miss R accepted my provisional decision. Legal & General did not provide any further comment on the matter.

As neither party has provided any comments or evidence calling my provisional findings into question I see no reason to alter those. So, I have repeated my provisional findings below as my final decision.

¹ The FSCS helps consumers when a financial business is unable – or likely to be unable – to pay compensation due from a claim against the business. This usually happens when a business is insolvent or has stopped trading and doesn't have enough assets to pay claims made against it. In either situation, the FSCS can declare a business to be "in default" and so confirm that it will accept complaints about it.

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.

While doing so 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.

In bringing this complaint Miss R – via her representatives – and Legal & General have made a number of detailed points. But in this provisional decision I don't intend to address each and every issue raised. Instead I will focus on what I believe are the key matters at the heart of this complaint and the reasons for my decision.

As I've said above I've also considered Miss R's complaint about provider S under a separate reference number. But, in this decision my findings are limited to Miss R's complaint about Legal & General. However, as the actions on the transfers and complaints from both pension providers have a bearing on my findings I have referred to the relevant events relating to the other pension transfers for context purposes. I can confirm that my findings on both complaints are similar.

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). There have never been any specific FSA/FCA rules governing pension transfer requests, but the following have particular relevance here:

- The Pensions Schemes Act 1993 and Personal Pension Schemes (Transfer Values) Regulations 1987 generally give 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, which is either registered with HMRC for tax purposes or is a QROPS.
- A QROPS must already be an overseas pension scheme, defined in short as being one which is subject to specified regulatory and taxation restrictions in the country of establishment. Then it must be recognised, meaning that it meets specified tests applied by HMRC, including on minimum retirement age and the application of tax relief.
- To be a QROPS a scheme must notify HMRC that it is a recognised overseas pension scheme, provide appropriate evidence of this to HMRC, undertake to adhere to HMRC's requirements and not be excluded by it from being a QROPS.
- Schemes that have notified HMRC of this are included in a published list on its website.
- On 10 June 2011 and 6 July 2011, the FSA issued announcements to consumers about the dangers of "pension unlocking" and "early pension release schemes".
- At around the same time the Pensions Regulator (TPR) put up a notice on its website termed 'pension liberation', referring to websites and cold callers that encouraged

people to transfer in order to receive cash or access a loan. However, it was designed to raise public awareness about pension liberation, and remind trustees of their duties to members, rather than introduce any specific new steps for transferring schemes to follow.

- TPR launched its Scorpion campaign – so called because of the imagery it contained – 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 later the FCA, endorsed the guidance. It was subsequently updated, including in July 2014. I cover the Scorpion campaign in more detail below.
- Legal & General was subject to the FCA Handbook and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). The following have particular significance to this complaint:
 - 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 released 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 agreeing to cash in a pension early and identifies the following warning signs: being approached out of the blue by phone or text; pushy advisers or 'introducers' who offer upfront cash incentives; companies offering loans, saving advances or cash back from a pension; and not being informed about the tax consequences of transferring. It concludes by recommending actions that can be taken to avoid becoming a victim of such activity. These included background searches online, pointing out that any financial advisers should be registered with the FCA. TPR said at the time it wanted to see the use of the Scorpion insert in transfer packs become best practice.
- A longer booklet issued by TPAS which gives more information, including example scenarios, about pension scams. Guidance provided by TPR said this longer leaflet was intended to be used in ongoing communications with members so they could become aware of the scam risks they were facing.

- An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "watch out for" various warning signs of a scam. If any of the warning signs applied, the action pack provided a checklist that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request.

Where a transferring scheme still had concerns, they were encouraged (amongst other things) to contact the member to establish whether they understood the type of scheme they were transferring to and – where a member insisted on transferring – directing the member to Action Fraud or TPAS.

The 2014 update to the Scorpion campaign

This update repeated much of what was stated in the 2013 version. There was again an insert which was to be sent to members requesting a transfer of their pension and an action pack which provided guidance to scheme providers on what to look out for. And there was a larger booklet which could be provided to members if they wanted more information about the matter.

However, the main change was that the 24 July 2014 update widened the focus from pension liberation specifically to pension scams. The action pack for trustees and administrators was entitled "Pensions Scams" whereas the action pack from 2013 was entitled "Pension Liberation Fraud". And, on the front page of the 2014 insert that was to be sent to members, it said "Pension scams. Don't get stung". The 2014 update also made references throughout to "scammers" and made comments in relation to a member losing their lifetime savings as a result of being scammed, as opposed to being subject to potential tax charges which could occur as a result of liberating a pension.

Other features of the 2014 guidance:

- It said pensions scams in the UK were on the increase. With one-off pension investments, "pension loans" or upfront cash being used to entice savers.
- Trustees, administrators and pension providers had to ensure that members received regular and clear information about the risk of pension scams and how to spot one.
- It asked for the Scorpion insert to be included in the member's annual pension statement or in any other member communications.
- It highlighted some common features of pension scams such as phrases like "one off investment opportunities", "free pension review", "legal loopholes", "cash bonus" and "government endorsement".
- It stated that consumers being approached out of the blue over the phone, via text messages or in person door-to door was a common feature of a scam.
- Transfers of money or investments overseas were also highlighted as something to watch out for. It explained this was because the money would be harder to recover.
- It said that if any of the warning signs applied, the action pack provided a checklist transferring schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request.

- If transferring schemes still had concerns, they were encouraged to contact the member to establish whether they understood the type of scheme they were planning on transferring to and to send them the pension scams booklet.
- It also encouraged transferring schemes to communicate with the member at risk – over the phone, via email or letter – this could help the transferring provider to establish answers to more of the questions on the checklist; or to direct the member to Action Fraud or TPAS if the provider thought it was a scam; or if the member insisted on proceeding the provider could contact Action Fraud itself.

The 2014 action pack also included two examples of real-life scams where the individuals concerned lost most or all of their pension savings. One of the examples involved an individual under the minimum pension age who wanted to access some of her pension early. And the other concerned an individual (again under the minimum pension age) who had been approached out of the blue with an offer of a free pension review and then offered a “unique investment opportunity” for his pension savings specifically in a property development overseas.

The status of the Scorpion guidance

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 contents of the Scorpion guidance was essentially informational and advisory in nature and that deviating from it doesn’t necessarily mean a firm has broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member’s statutory rights.

That said, the launch of the Scorpion guidance was an important moment in so far as it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing transfer requests. TPR launched the campaign in response to widespread abuses that were causing pension scheme members to suffer significant losses. And its specific purpose was to inform and help ceding firms like Legal & General when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

In those circumstances, I consider firms which received pension transfer requests needed to pay regard to the contents of the Scorpion guidance as a matter of good industry practice. It means February 2013 marks a turning point in terms of what was expected of personal pension providers dealing with transfer requests as a matter of fulfilling their duties under the regulator’s Principles and COBS 2.1.1R.

What did personal pension providers need to do?

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. In deciding how to apply the guidance, they needed to consider it as a whole, including the various warning signs to which it drew attention, the case studies that highlighted different types of scam, and the checklist and various suggested actions ceding schemes might take. And where the recommendations in the guidance applied, without a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations:

1. As a first step, a ceding scheme needed to check whether the receiving scheme was validly registered.
2. The Scorpion insert provided an important safeguard for transferring members, allowing them to consider for themselves the scam threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. So, all things considered, I think as a matter of good industry practice pension providers should have sent the Scorpion insert with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party.
3. I also think it would be fair and reasonable for personal pension providers – operating with the regulator's Principles and COBS 2.1.1R in mind – to ensure the warnings contained in the Scorpion insert were provided in some form to a member before a transfer even if the transfer process didn't involve the sending of transfer packs.
4. The Scorpion guidance asked firms to look out for the tell-tale signs of scams and undertake further due diligence and other appropriate action where it was apparent their client might be at risk. The guidance points to the warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. Therefore, whilst using the action pack wasn't an inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.
5. The considerations of regulated firms didn't start and end with the Scorpion guidance. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn't involve anything specifically referred to in the Scorpion guidance – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's principles and COBS 2.1.1R.

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

Miss R told us that she was initially contacted by a cold call offering a free pension review. It seems that the original contact was from FRPS but it doesn't appear that it – or Moneywise – played any part in Miss R's decision to transfer to the QROPS.

So it seems there was a second cold call, most likely from Pecuma investments, following which she was then put in touch with Caledonia Investments to give transfer and investment

advice. There is written evidence that Caledonia Investments gave Miss R advice to transfer her pensions to the STM QROPS and invest in the CFS fund. Miss R told us that she thought her adviser was “government regulated”. I can't now say with any confidence how she arrived at that belief. Caledonia Investments S. L. operated from an address in Spain but is no longer trading². And, as I've said above it doesn't appear to have been regulated in Spain the UK or anywhere else.

Miss R also told us that she thought that her pension funds would be transferred to a UK based provider. But, I think the passage of time may have caused her memory to fade. I say that as Caledonia Investments sent her a letter setting out its transfer proposals. That letter was clear that the transfer involved transferring money to the offshore QROPS in Gibraltar. And Miss R signed the foot of that letter to say that she'd read and understood it.

Also Miss R had signed the relevant documents to apply for the Gibraltar based STM QROPS. In addition she signed HMRC's forms to confirm she was aware of the potential tax implications of transferring to an overseas scheme. So I'm satisfied that, at the time of the transfer, Miss R was aware that she had applied to join an overseas scheme. However, the eventual investment in the CFS fund was UK based and this may be why Miss R believed the transfer was to a UK scheme.

Miss R also told us – in answer to some questions about the transfer from provider S's pension – that she was promised a “lump sum of money” from her pension for transferring. But I think Miss R might be confusing the 25% tax free lump sum she would be entitled to take from her pension once she reaches age 55 with an unauthorised incentive payment in order to transfer. I say that as it's notable that Miss R did not refer to this lump sum payment in her complaints to either Legal & General or provider S. Similarly, she did not refer to any lump sum when we asked her a second set of questions, concerning her Legal & General pension – about what caused her to transfer that. And, if her motivation had been to gain a lump sum, I think she would have been consistent throughout.

Also, Caledonia Investments' letter explained that the investment she was making would not allow withdrawals from it – without penalty – in the first five years. And as I've already said she signed to say she'd read and understood the content of that letter. So, if she'd been promised a payment in connection with the transfer I would have expected her to question why she could not receive that without penalty. But there's no evidence she did so.

At other times Miss R's told us that the motivation to transfer was because of the better returns she was told to expect by transferring. And, I think that's a more plausible explanation. That is, an adviser told her that she would be better off in retirement by transferring her pension. So that's what she did. That is she transferred her pension funds to be administered by STM offshore. Her Legal & General pension monies were then invested in CFS Mutual.

We now know that serious concerns were raised about the CFS fund in 2015. And it was eventually liquidated. The FSCS began dealing with compensation claims from Cornerstone's clients in 2017. So, it seems that the fund is now worthless and Miss R's investment is most likely lost.

I haven't been provided with any evidence to show that Miss R has made a claim – successful or otherwise – for compensation from the FSCS.

² There is another firm operating under the name Caledonia Investments but the two firms appear to be entirely unrelated.

What did Legal & General 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.

Legal & General did not send the Scorpion insert to Miss R at any point. I think that was a significant oversight. It had two opportunities on which to do so. First in April 2014 when it received FRPS's LOA. That would have put Miss R on notice to be on the look out for firms or individuals who contact her out of the blue, which had already happened once and would soon happen again. It also said that consumers should check that their advisers were FCA registered.

A second opportunity for Legal & General to send the insert arose in September 2014 when STM sent its transfer request. By then TPR had updated the insert. But it would have reminded Miss R of the dangers of potential scammers contacting her out of the blue and offering a free pension review. Something that had happened in her case. But Miss R was unaware of these risks as neither Legal & General nor provider S sent her the Scorpion insert.

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 pension liberation and needed to undertake further due diligence and other appropriate action if it was apparent their customer might be at risk. I've seen no evidence that, other than confirming the QROPS was an HMRC recognised scheme, Legal & General did any further due diligence.

Given the information Legal & General had at the time, one feature of Miss R's transfer would have been a potential warning sign of a scam: that is it involved a transfer of money overseas. By its very nature, a transfer to a QROPS involves pension funds moving overseas. And it's worth bearing in mind that the July 2014 update to the Scorpion guidance shifted the focus away from just pension liberation to pension scams in general. This gave more prominence to overseas investments. And given that all QROPS are based overseas, the potential for those to facilitate offshore investments – which was something the Scorpion guidance advised ceding schemes to be on the look-out for – was greater.

So in line with its obligations under PRIN and COBS, I think, in order to reasonably exercise its due diligence requirements, Legal & General should have followed up on the warning to find out if other signs of a scam were present. Given this warning sign, I think it would have been fair and reasonable – and good practice – for Legal & General to look into the proposed transfer in more detail. And the most reasonable way of going about that would have been to turn to the checklist in the action pack to structure its due diligence into the transfer.

The checklist provided a series of questions to help transferring schemes assess the potential threat by finding out more about the receiving scheme and how the consumer came to make the transfer request. Some items on the checklist could have been addressed by checking online resources such as HMRC. Others would have required contacting the consumer. The checklist is divided into three parts (which I've numbered for ease of reading and not because I think it was designed to be followed in a particular order):

1. The nature/status of the receiving scheme

Sample questions: Is the receiving scheme newly registered with HMRC?

2. Description/promotion of the scheme

Sample questions: Do descriptions, promotional materials or adverts for the receiving scheme include the words 'loan', 'savings advance', 'cash incentive', 'bonus', 'loophole' or 'preference shares' or allude to overseas investments or unusual, creative or new investment techniques?

3. The scheme member

Sample questions: Has the transferring member been advised by an 'introducer', been advised by a non-regulated adviser or taken no advice? Has the member decided to transfer after receiving cold calls, unsolicited emails or text messages about their pension? Have they applied pressure to transfer as quickly as possible or been told they can access their pension before age 55?

Opposite each question, or group of questions, the checklist identified actions that should help the transferring scheme establish the facts.

I don't think it would always have been necessary to follow the checklist in its entirety. And I don't think an answer to any one single question would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the checklist to establish whether a scam was a realistic threat. Given the warning sign that should have been apparent when dealing with Miss R's request, and the relatively limited information it had about the transfer, I think in this case Legal & General should have addressed all three parts of the checklist and contacted Miss R as part of its due diligence.

What should Legal & General have found out?

When STM submitted the transfer documents it included a letter from HMRC to confirm that its QROPS had been a legitimate and appropriately registered overseas scheme since 2011. So, Legal & General could be satisfied that the scheme was appropriately registered. But it was clear that Miss R was intending to transfer her pension to an overseas scheme, and that would seem an unusual arrangement for a UK based consumer. Also, the documents submitted did not give detail of the intended investment. So Legal & General should have, at the very least, been concerned that the transfer might have resulted in overseas investments.

With a few simple enquiries Legal & General would have established that Miss R's motivation for transferring was because of the greater returns she believed she would achieve by doing so. As I've said above I'm satisfied she hadn't been offered the opportunity to access her pension funds in any unauthorised way, nor had she been enticed by any form of cash incentive to transfer. Similarly, Legal & General would most likely have learnt that the final destination of her investments was a UK based fund. So I don't think those points would have led Legal & General to warn her that she could be putting her funds at risk.

However, I also think it's more likely than not that Legal & General would have found out that the instigator for the transfer was a cold call offering a free pension review, which should have been a clear warning sign. Miss R wasn't a sophisticated investor – there's no evidence that she had knowledge or experience of the overseas pension markets. So a transfer to a QROPS was an unusual arrangement for someone in her circumstances. And with further questions I think it's likely Legal & General would have learned that it was Caledonia Investments which had given Miss R advice to transfer.

The checklist recommends that in order to establish whether a regulated adviser has provided its member with advice, the ceding firm should “check whether advisers are approved by the FCA at www.fca.gov.uk/register”. In other words, they should consult the FCA’s online register of authorised firms. Legal & General should have taken that step, which is not difficult, and it would quickly have discovered that Miss R’s adviser was indeed unauthorised.

An unauthorised firm providing advice to transfer benefits from a personal pension plan would have been a breach of the general prohibition imposed by FSMA. That 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 investment advice in the UK – indeed, the Scorpion guidance itself makes this point.

My view is that Legal & General should have been concerned about Caledonia Investments involvement because it pointed to a criminal breach of FSMA. On the balance of probabilities, I’m satisfied such a breach occurred here.

What should Legal & General have told Miss R – and would it have made a difference?

Had it done more thorough due diligence, there would have been a number of warnings Legal & General could have given to Miss R in relation to a possible scam threat as identified by the action pack. But the most stark oversight was Legal & General’s failure to uncover the threat posed by a non-regulated adviser. Its failure to do so, and failure to warn Miss R accordingly, meant it didn’t meet its obligations under PRIN and COBS 2.1.1R.

With those obligations in mind, it would have been appropriate for Legal & General to have informed Miss R that the firm which had advised her to transfer was unregulated and could put her pension at risk. Legal & General should have said only authorised financial advisers are allowed to give advice on personal pension transfers, so she risked falling victim to illegal activity and losing regulatory protections.

I’m satisfied any messages along these lines would have changed Miss R’s mind about the transfer. The messages would have followed conversations or correspondence with her so would have seemed to her (and indeed would have been) specific to her individual circumstances. And Legal & General would have given the message in the context of raising concerns about the risk of losing pension monies as a result of untrustworthy advice. And while Miss R had previously thought that Caledonia Investments was “government regulated”, Legal & General’s message would have made her aware that there were serious risks in using an unregulated adviser. I think the gravity of any messages along these lines would prompt most reasonable people to rethink their actions. I’ve seen no persuasive reason why Miss R would have been any different.

So, I think that if Legal & General had acted as it should, Miss R wouldn’t have proceeded with the transfer out of her personal pension or suffered the investment losses that followed. I therefore uphold Miss R’s complaint.

Putting things right

Fair compensation

My aim is that Miss R should be put as closely as possible into the position she would probably now be in if Legal & General had treated her fairly.

The STM's QROPS only seems to have been used in order for Miss R to make an investment that I don't think she would have made from the proceeds of this pension transfer, but for Legal & General's actions. So I think that Miss R would have remained in her pension plan with Legal & General and wouldn't have transferred to the STM QROPS.

To compensate Miss R fairly, Legal & General must subtract the proportion of the actual value of the STM QROPS which originates from the transfer of the Legal & General pension, from the notional value if the funds had remained with Legal & General. If the notional value is greater than the actual value, there is a loss.

Actual value

This means the proportion of the STM's QROPS value originating from Miss R's Legal & General transfer (the "**relevant proportion**") at the date of my Final Decision. To arrive at this value, any amount in the STM's QROPS bank account is to be included, but any overdue administration charges yet to be applied to the STM's QROPS should be deducted. Miss R may be asked to give Legal & General her authority to enable it to obtain this information to assist in assessing her loss, in which case I expect her to provide it promptly.

My aim is to return Miss R to the position she would have been in but for Legal & General's actions. This is complicated where an investment is illiquid (meaning it cannot be readily sold on the open market), as its value can't be determined. On the basis of the evidence I have, that is likely to be the case for the CFS Mutual Fund. This is because the fund has been wound up. Therefore as part of calculating compensation:

- Legal & General must give the illiquid investment(s) a nil value as part of determining the actual value. In return Legal & General may ask Miss R to provide an undertaking, to account to it for the net proceeds she may receive from those investments in future. Legal & General will need to meet any costs in drawing up the undertaking. If Legal & General asks Miss R to provide this undertaking, payment of the compensation awarded may be dependent upon provision of it..
- It's also fair that Miss R should not be disadvantaged while she is unable to close down her QROPS. So to provide certainty to all parties, if these illiquid investment(s) remain in the scheme, I think it's fair that Legal & General must pay an upfront sum to Miss R equivalent to the relevant proportion of five years' worth of future administration fees at the current tariff for the QROPS, to allow a reasonable period of time for it to be closed.

Notional value

This is the value of Miss R's funds had she remained invested with Legal & General up to the date of my Final Decision.

Legal & General should ensure that the relevant proportion of any pension commencement lump sum or gross income payments Miss R received from her QROPS are treated as notional withdrawals from the Legal & General pension on the date(s) they were paid, so that they cease to take part in the calculation of notional value from those point(s) onwards.

Payment of compensation

I don't think it's appropriate for further compensation to be paid into the STM QROPS given Miss R's dissatisfaction with the outcome of the investment it facilitated.

Legal & General should reinstate Miss R's original pension plan as if its value on the date of my Final Decision was equal to the amount of any loss established from the steps above (and it performs thereafter in line with the funds Miss R was invested in).

Legal & General shouldn't reinstate Miss R's original plan if it would cause a breach of any HMRC pension protections or allowances – but my understanding is that it might be possible for it to reinstate a pension it formerly administered in order to rectify an administrative error that led to the transfer taking place. It is for Legal & General to determine whether this is possible.

If Legal & General is unable to reinstate Miss R's pension and it is open to new business, it should set up a **new** pension plan with a value equal to the amount of any loss on the date of my Final Decision. The new plan should have features, costs and investment choices that are as close as possible to Miss R's original pension.

If Legal & General considers that the amount it pays into a **new** plan is treated as a member contribution, its payment may be reduced to allow for any tax relief to which Miss R is entitled based on her annual allowance and income tax position. However, Legal & General's systems will need to be capable of adding any compensation which doesn't qualify for tax relief to the plan on a gross basis, so that Miss R doesn't incur an annual allowance charge. If Legal & General cannot do this, then it shouldn't set up a new plan for Miss R.

If it's not possible to set up a new pension plan, Legal & General must pay the amount of any loss direct to Miss R. But if this money had been in a pension, it would have provided a taxable income during retirement. Therefore compensation paid in this way should be notionally reduced to allow for the marginal rate of income tax that would likely have been paid in future when Miss R is retired. (This is an adjustment to ensure that Miss R isn't overcompensated – it's not an actual payment of tax to HMRC.)

To make this reduction, it's reasonable to assume that Miss R is likely to be a basic rate taxpayer in retirement. So, if the loss represents further 'uncrystallised' funds from which Miss R was yet to take her 25% tax-free cash, then only the remaining 75% portion would be taxed at 20%. This results in an overall reduction of 15%, which should be applied to the compensation amount if it's paid direct to her in cash.

Alternatively, if the loss represents further 'crystallised' funds from which Miss R had already taken her 25% tax-free cash, the full 20% reduction should be applied to the compensation amount if it's paid direct to her in cash.

Miss R's representatives have previously suggested that reinstating her Legal & General pension would not be appropriate for her circumstances. They said any redress should be paid in cash. In particular they said that unless she received compensation in cash, she would be unable to pay the representatives' fees. However, as I've said above my intention is to put Miss R back into the position she would otherwise have been in. And that position would have been that she still held a Legal & General pension. She would not have had the cash equivalent value of it.

In bringing her complaint Miss R did not have to use the services of representatives who charged a fee. And I would have expected that this was something that was discussed between the representatives and Miss R when she engaged their services. So I don't think it would be fair to insist that Legal & General pays any compensation to Miss R in cash if it feels it is able to reinstate her pension.

However, as I've said above, it is for Legal & General to determine if it is capable of reinstating Miss R's pension. If it believes it cannot do so fairly it may pay the compensation in cash as set out above.

If payment of compensation is not made within 28 days of Legal & General receiving Miss R's acceptance of the Final Decision, interest must be added to the compensation at the rate of 8% per year simple from the date of the Final Decision to the date of payment.

Income tax may be payable on any interest paid. If Legal & General deducts income tax from the interest, it should tell Miss R how much has been taken off. Legal & General should give Miss R a tax deduction certificate in respect of interest if Miss R asks for one, so she can reclaim the tax on interest from HMRC if appropriate.

This interest is not required if Legal & General is reinstating Miss R's plan for the amount of the loss – as the reinstated sum should, by definition, mirror the performance after the date of my Final Decision of the funds in which Miss R was invested. However, I expect any such reinstatement to be achieved promptly.

Details of the calculation must be provided to Miss R in a clear, simple format.

My final decision

For the reasons given above I uphold this complaint. I require Legal and General Assurance Society Limited to take the steps set out under the heading of 'putting things right' above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 24 March 2025.

Joe Scott
Ombudsman