

## **The complaint**

Mr E, with the help of a professional representative, has complained to Capita Life & Pensions Regulated Services Limited trading as Capita SIP Services (Capita) about a transfer of his personal pension policy to a Qualifying Recognised Overseas Pension Scheme (QROPS) in August 2015. The QROPS was subsequently used to invest in, amongst other things, direct property and bonds issued by The Resort Group (TRG). TRG is an overseas commercial property scheme which has since run into trouble. The investment now appears to have little or no value.

Mr E says Capita failed in its responsibilities when dealing with the transfer request. He says it should have done more to protect him and to warn him about the potential dangers of transferring his pension. Mr E says because of Capita's failings, he proceeded with the transfer and says he has lost out financially as a result.

Capita were acting as administrators for Zurich at the time, which is who Mr E's pension policy was with. As Capita has accepted responsibility for the complaint, for ease I will only refer to them.

## **What happened**

I issued a provisional decision in which I set out the background and circumstances leading up to this complaint, along with my reasons for why I intended to not uphold the complaint or make any award in Mr E's favour. Below is a copy of the key extracts of my provisional decision, which forms part of this final decision.

### Copy of provisional decision

## **What happened**

In submitting this complaint, Mr E's representative did not set out much if any detail about the background to the transfer. And when we spoke to Mr E, his recollection of the events at the time and who was involved was limited – understandably given the passage of time. So, the following is based on what is known and what Mr E can recall.

On 13 December 2014, Mr E signed a letter of authority with First Review Pension Services (FRPS) allowing them to request details of his pension. Mr E was aged 58 at the time.

On 19 March 2015, FRPS requested the information from Capita. The next day, Capita sent FRPS a transfer pack. FRPS was not authorised by the Financial Conduct Authority (FCA).

Mr E believes the contact with FRPS might have come from a cold call. He says he then met with an adviser at his home who recommended he transfer to the QROPS, but he can't recall the name of the firm. Mr E told our investigator that a consolidation of pensions he held elsewhere to his Capita personal pension took place prior to the transfer to the QROPS. He says the advice to consolidate his pensions and the recommendation to transfer to the QROPS was carried out by the same adviser. I'll come back to this later on.

On 21 July 2015, Capita received a transfer request from Optimus Pension Administrators Limited (OPAL) asking it to transfer Mr E's pension to the Optimus Retirement Benefit Scheme No.1 – a Maltese QROPS. OPAL was providing certain administrative functions on behalf of Integrated Capabilities (Malta) Limited, the administrators for the Optimus Scheme.

On 10 August 2015, Capita transferred the benefits of Mr E's pension to the QROPS – an amount of just over £83,200. From an annual statement Mr E has provided, it seems investments were then made in, amongst other things a direct investment with TRG – I understand this is a fractional share in a TRG property – and a 'TRG I' investment bond.

The TRG investments have since failed and as such have little or no value.

In April 2022, using the services of a professional complaint representative, Mr E complained to Capita. Briefly his argument is that Capita ought to have carried out due diligence, spotted and told him about a number of warning signs or risks in relation to the transfer.

Capita didn't uphold the complaint. In summary it said it carried out appropriate due diligence to confirm the status of the scheme, it checked Mr E's signature on its files, and because he had a right to transfer it carried out his request. It said it wasn't its responsibility to provide Mr E with advice.

Dissatisfied with its response, Mr E brought his complaint to us. Our investigator upheld the complaint. Briefly they said that Capita's due diligence fell short of what was expected of it at the time. They said if it had asked Mr E about how the transfer came about, which it ought to have done, it would have identified a number of warning signs including that he was being advised by an unregulated adviser from FRPS. They said if Capita had provided Mr E with appropriate warnings about the implications of going ahead, he would not have transferred his pension to the QROPS.

Because the matter could not be resolved informally, it was passed to me to decide.

### **What I've provisionally decided – and why**

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

I've taken into account relevant law and regulations, regulatory rules, guidance and standards, codes of practice, and (where appropriate) what I consider to have been good industry practice at the relevant time. Where the evidence is incomplete or inconclusive I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened, given the available evidence and wider circumstances.

### **The relevant rules and guidance**

Personal pension providers are regulated by the FCA. Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority (FSA). As such Capita was subject to the FSA/FCA Handbook, and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA/FCA rules governing how personal pension providers deal with pension transfer requests, but the following have particular relevance here:

- Principle 2 – A firm must conduct its business with due skill, care and diligence;

- Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;
- Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and
- COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

In February 2013, The Pensions Regulator (TPR) issued its Scorpion guidance to help tackle the increasing problem of pension liberation, the process by which unauthorised payments are made from a pension (such as accessing a pension below minimum retirement age). In brief, the guidance provided a due diligence framework for ceding schemes dealing with pension transfer requests and some consumer-facing warning materials designed to allow members decide for themselves the risks they were running when considering a transfer.

The Scorpion guidance was described as a cross-government initiative by Action Fraud, The City of London Police, HMRC, the Pensions Advisory Service (TPAS), TPR, the SFO, and the FSA/FCA, all of which endorsed the guidance, allowing their names and logos to appear in Scorpion materials.

The FSA's endorsement of the Scorpion guidance was relatively informal: it didn't take the form of Handbook Guidance, because it was not issued under s.139A of the Financial Services and Markets Act (FSMA), which enabled the FSA to issue guidance provided it underwent a consultation process first. Nor did it constitute "confirmed industry guidance", as can be seen by consulting the list of all such FSA/FCA guidance on its website. So, the content of the Scorpion guidance was essentially informational and advisory in nature. Deviating from it doesn't therefore mean a firm has necessarily broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's right to transfer.

That said, the launch of the Scorpion guidance in 2013 was an important moment in so far it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing those requests.

The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance's specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

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

The Scorpion guidance was updated in July 2014. It widened the focus from pension liberation specifically, to pension scams more generally – which included situations where someone transferred in order to benefit from "too good to be true" investment opportunities such as overseas property developments. An example of this was given in one of the action pack's case studies.

There was a further update to the Scorpion guidance in March 2015, which is relevant for this complaint. This guidance referenced the potential dangers posed by “pension freedoms” (which were about to give people greater flexibility in relation to taking pension benefits) and explained that pension scams were evolving. In particular, it highlighted that single member occupational schemes were being used by scammers. At the same time, a broader piece of guidance was initiated by an industry working group covering both TPR and FCA regulated firms: the Pension Scams Industry Group (PSIG) Code of Good Practice. The intention of the PSIG Code was to help firms achieve the aims of the Scorpion campaign in a streamlined way which balanced the need to process transfers promptly with the need to identify those customers at material risk of scams.

#### The March 2015 Scorpion guidance

The March 2015 update to the Scorpion guidance asked schemes to ensure they provided their members with “regular, clear” information on how to spot a scam. It recommended giving members that information in annual pension statements and whenever they requested a transfer pack. It said to include the pensions scam “leaflet” in member communications.

In the absence of more explicit direction, I take the view that the member-facing Scorpion warning materials were to be used in much the same way as previously, which is for the shorter insert (which had been refreshed in March 2015) to be sent when someone requested a transfer pack and the longer version (which had also been refreshed) made available when members sought further information on the subject.

When a transfer request was made, transferring schemes were also asked to use a three-part checklist to find out more about a receiving scheme and why their member was looking to transfer.

#### The PSIG Code of Good Practice

The PSIG Code was voluntary. But, in its own words, it set a standard for dealing with transfer requests from UK registered pension schemes. It was “welcomed” by the FCA and the Association of British Insurers (amongst others). And several FCA regulated pension providers were part of the PSIG and co-authored the Code. So much of the observations I’ve made about the status of the Scorpion guidance would, by extension, apply to the PSIG Code.

In other words, personal pension providers didn’t necessarily have to follow it in its entirety in every transfer request and failure to do so wouldn’t necessarily be a breach of the regulator’s Principles or COBS. Nevertheless, the Code sets an additional benchmark of good industry practice in addition to the Scorpion guidance.

In brief, the PSIG Code asked schemes to send the Scorpion “materials” in transfer packs and statements and make them available on websites where applicable. The PSIG Code goes on to say those materials should be sent to scheme members directly, rather than just to their advisers.

Like the Scorpion guidance, the PSIG Code also outlined a due diligence process for ceding schemes to follow. However, whilst there is considerable overlap between the Scorpion guidance and the PSIG Code, there are several differences worth highlighting here, such as:

- The PSIG Code includes an observation that: *“A strong first signal of [a scam] would be a letter of authority requesting a company not authorised by FCA to obtain the required pension information; e.g. a transfer value, etc.”* This is a departure from the Scorpion

guidance (including the 2015 guidance) which was silent on whether anything could be read into the entity seeking information on a person's pension.

- The Code makes explicit reference to the need for scheme administrators to keep up to date with the latest pension scams and to use that knowledge to inform due diligence processes. Attention is drawn to FCA alerts in this area.
- 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, SIPP, SSASs and QROPS. The 2015 Scorpion guidance doesn't distinguish between receiving scheme in this way – there's just the one due diligence checklist which is largely (apart from a few questions) the same whatever the destination scheme.

TPR began referring to the Code as soon as it was published, in the March 2015 version of the Scorpion action pack. Likewise, the PSIG Code referenced the Scorpion guidance and indicated staff dealing with scheme members needed to be aware of the Scorpion materials.

Therefore, in order to act in the consumer's best interest and to play an active part in trying to protect customers from scams, I think it's fair and reasonable to expect ceding schemes to have paid due regard to both the Scorpion guidance and the PSIG Code when processing transfer requests. Where one differed from the other, they needed to consider carefully how to assess a transfer request taking into account the interests of the transferring member. Typically, I'd consider the Code to have been a reasonable starting point for most ceding schemes because it provided more detailed guidance on how to go about further due diligence, including steps to potentially fast-track some transfers which – where appropriate – would be in the interest of both parties.

The considerations of regulated firms didn't start and end with the Scorpion guidance and the PSIG Code. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn't involve anything specifically referred to in either the Scorpion guidance or the Code –

then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's principles and COBS 2.1.1R.

#### The circumstances surrounding the transfer: what does the evidence suggest happened?

As I said at the start, Mr E's representative has not provided much, if any, information about Mr E's circumstances at the time or the background to the events leading up to the transfer of his pension.

Mr E spoke to our investigator who asked him about what happened, but his recollection of things was limited. Mr E was able to recall the following:

- A financial adviser came to his house, although he can't remember who it was, and told him that it would be beneficial for him to transfer his pension so that if anything happened to him his partner would benefit from a pension.

- He believes the contact came about following a phone call out of the blue.
- He only met with one individual.
- He was told that because the way the tax system works in the UK, it was beneficial for him to have his pension in Malta or Gibraltar.
- He was told it was better to consolidate his pensions.
- He was recommended to invest in a hotel room in Cape Verde through TRG and would receive income, which is what happened until Covid struck.
- He had no doubts about transferring at the time – he trusted the adviser.
- He doesn't know much about financial matters.

Mr E signed a letter of authority with FRPS and Capita provided them with the requested information about his pension. So, FRPS were clearly involved here. It seems likely to me that the process was initiated by a cold call. I say this because while I don't have much information about Mr E's wider circumstances, based on what he told our investigator, he doesn't strike me as someone who had the requisite pension and investment knowledge to initiate this type of pension transfer enquiry and investment arrangement unaided.

I think it's possible that it was FRPS who cold called Mr E. And given the wider evidence the Financial Ombudsman has about FRPS and that they were commonly involved in encouraging individuals to transfer to a variety of schemes that ultimately invested in TRG – there were directorial links between FRPS and TRG – I think it is also likely it was FRPS who Mr E met with and who pitched TRG as an attractive investment opportunity. Mr E's motive for transferring appears to have been the prospect of generating higher returns for his pension and what he understood to be possible tax advantages as well as better death benefits. I have no evidence to suggest Mr E was offered an incentive to transfer.

Mr E recalls only meeting with one individual. And he told our investigator that he thought the advice he received to consolidate two pensions he held elsewhere with his Capita personal pension happened just before the transfer to the QROPS and was all part of the same advice. But like our investigator concluded, I think this is unlikely. The consolidation of Mr E's pensions did happen before this transfer, but it was around three years prior. And there is no evidence to suggest the regulated firm that was involved in this was also involved in the advice to transfer to the QROPS. I think these are two distinct events and pieces of advice given by different firms.

So, on the face of it, it appears that it could have been a representative of FRPS with whom Mr E met and who recommended he transfer his pension and that no one else was involved. As I've already said, FRPS was not FCA authorised.

But it is also our experience that QROPS providers such as Optimus in this case, either preferred or they required there to be an adviser associated or linked with the QROPS who was regulated somewhere in the EEA.

In this case, Mr E's representative has not provided any of the documentation from the time used to set up the QROPS which we're used to seeing in other cases. This includes for example an application form and an initial investment statement, which might help to shed more light on this. But from the 2020 annual statement Mr E has provided, while there is no reference to an adviser here, and I'm mindful that it is a few years after the event, the investments made correspond almost identically to other cases we've seen where a transfer

was originally encouraged by FRPS to this scheme.

In those other cases, the adviser associated with the QROPS from the outset worked simultaneously for two firms called 'Strategic Wealth': Strategic Wealth UK Limited (regulated by the FCA) and Strategic Wealth Limited (a firm incorporated in Gibraltar and regulated by the Gibraltar Financial Services Commission). The latter also passported into the UK financial services regime on a 'services only' basis. This firm therefore appeared on the FCA register. Later on, clients of this adviser seem to have been switched in bulk to a firm called Templar EIS. This firm also passported into the UK on a 'services only' basis.

Mr E's representative might already be aware of this, but two features of Strategic Wealth's involvement include a suitability report it issued to clients looking to transfer to the scheme, and a fee it took from the QROPS in return for the advice it provided. I've attached with my provisional decision an anonymised copy of a report issued to another client dated 2 September 2015. And while this is slightly later than Mr E's transfer, it is only a couple of months later, so still around the time in question.

The author of the report was authorised to hold a controlled function in the UK for Strategic Wealth UK Limited and was also it seems a director of Strategic Wealth Limited in Gibraltar. In a case we've dealt with, the consumer in question remembered meeting with this individual (in the UK) before they transferred. Because Strategic Wealth UK limited was operating in the UK and so had physical presence here, this explains how this was possible. I think this is likely to have facilitated the close working arrangement between FRPS and Strategic Wealth.

Its possible Mr E might also have met with this individual prior to his transfer. But in any event, the reports say Optimus will receive a copy. So, if Mr E's representative hasn't obtained this or made enquiries already, it might want to contact the current administrator of the Optimus scheme to clarify whether (as I think is likely) Strategic Wealth was recorded as the adviser and/or provided this report to the scheme in Mr E's case.

But based on what we already know, I think on balance, it is likely Strategic Wealth was involved in Mr E's transfer and either sent the individual I referred to above to visit him at his home, or they gave advice in conjunction with that individual. In support of my conclusion, I refer to evidence that has also been accepted by the Maltese Arbiter for Financial Services of Strategic Wealth's involvement (alongside FRPS) in Optimum QROPS transfers involving UK individuals<sup>1</sup>.

Turning to the anonymised report itself – this said Strategic Wealth Limited had been engaged by the trustees of the Optimus Scheme to give the recipient 'information' on their options. But it then appears to contradict itself by suggesting that the report is based on a 'Limited Advice Factfind' and risk profiling around their pension but "No other areas of advice will be covered" – in my view suggesting advice is being given on a limited basis.

It appears it was a condition of the QROPS trustees accepting funds that this advice was given beforehand, and Mr E would have been asked to sign to acknowledge receipt of his report.

In this anonymised copy, the transfer request wasn't made for this individual until about six weeks after the date of the report.

The report compared the benefits under the existing schemes and various alternative schemes they could transfer to, including the Optimus QROPS. The comments conclude that "...in view of your personal circumstances and objectives a QROPS would be more cost

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<sup>1</sup> Arbiter's decisions ASF 130/2021 and ASF 078/2023

effective and less complex.” The report also highlighted some of the key features of a QROPS and some risks it wanted them to be aware of. The information on the proposed investments also included some of the associated risks.

As can be seen, the proposed investments in this report are remarkably similar to the investments Mr E made with funds allocated to TRG (direct), a TRG bond as well as a Prudential investment fund. And while the percentage allocations are different, this is likely to take account of an individual’s attitude to risk assessment which the report refers to.

So, to summarise my findings based on the available evidence:

- Mr E was likely cold called – possibly by FRPS – but in any event, he was put in touch with FRPS to discuss his pension.
- His motives for transferring were to seek better returns for his pension monies rather than to receive unauthorised payments. He was also likely attracted to what he was told about potential tax advantages of the QROPS and that his partner would receive a pension on his death.
- An individual representing FRPS and/or Strategic Wealth pitched TRG amongst other funds as being an attractive investment with the funds received in the QROPS.
- FRPS wasn’t itself regulated but they would have been able to assure Mr E of the regulatory backing of the advice process. This is because Strategic Wealth UK Ltd was authorised by the FCA, and/or Strategic Wealth Limited (the Gibraltar arm) was also on the FCA register with passporting rights into the UK.

As I said above, Mr E’s representative is welcome to use its authority for Mr E to contact the Optimus scheme administrators for further information.

#### What did Capita 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.

When Capita sent FRPS a transfer pack in March 2015, it included the Scorpion insert – it is referenced in the paperwork. But Capita should not have generally relied on a third party – in this case an unregulated business – passing it on to Mr E. I think Capita should have sent Mr E a copy directly so he could see and decide for himself the risks he was facing. But there is no evidence of this, so I think Capita fell short of what was expected of it here.

But on the basis that I think Strategic Wealth was involved in the advice process, it’s likely they would have sent Mr E a copy of the insert. This is because on page four of the example report I’ve attached, it said:

“The Pensions Advisory Service has issued a warning leaflet to members of UK pension schemes to inform clients of the risks of moving a pension to an overseas scheme. A copy of this guide has been provided with your information pack...”

So, based on the description above, I think it’s likely Strategic Wealth Limited provided Mr E with a copy. This means I think Mr E did see a copy of the leaflet prior to transferring his



pension, albeit not one provided by Capita.

Once again, Mr E's representative is welcome to seek and obtain further information from the administrators of the scheme including Mr E's own suitability report.

*Due diligence:*

Capita received the following information with the transfer request: transfer discharge forms; HMRC forms APSS263 and CA1890 and confirmation that HMRC recognised the QROPS. Capita's due diligence appears to have been limited to using this and carrying out certain checks to satisfy itself that the scheme was a legitimate destination to transfer funds.

Checking the status of the scheme was a necessary part of the due diligence process. But I think Capita overlooked a key part of its obligations to conduct its business with due skill, care and diligence and act in Mr E's best interests. The Scorpion guidance and PSIG Code show there was more that Capita should reasonably have done here.

As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mr E's transfer in that light.

Capita hasn't argued that it was reasonable for it to 'fast-track' Mr E's transfer request in line with the "Initial analysis" section (section 6.2.1) of the Code. So, the initial triage process should have instead led to it asking Mr E 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. Suffice to say, 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 informed of an overseas investment opportunity?

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, which outlined four areas of concern under the following headings: employment link, geographical link, marketing methods and provenance of the receiving scheme. Underneath each area of concern, 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.

With that in mind, I think in this case Capita should have addressed all four areas of concern and contacted Mr E to help with this.

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

Capita did establish the legitimacy of the QROPS. But that was the extent of its due diligence. It didn't address Mr E's rationale for transferring. If it had asked Mr E about this – which it should have done, using the framework outlined above – it would have found out he was likely 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. Capita would also have found out that the reason for transferring overseas was to invest, in part, in TRG – an overseas property scheme of the type that was highlighted as an area of concern in the PSIG Code.

So based on this, it seems Capita would not have needed to ask too many questions of Mr E to have identified a number of warning signs – albeit I accept the questioning might not have been quite as linear as I've made out. And if it had followed the Scorpion action pack, I think it would've likely identified the same things.

But Capita should also have asked Mr E about what advice he was receiving in connection with the transfer and from whom. And based on my finding earlier on, by the point Capita would have been asking Mr E about the events leading up to the transfer, it's likely he would already have received a copy of Strategic Wealth's suitability report – having either met with an individual who was working for, or gathering information for, that firm.

With this information Capita would have readily established from a check of the FCA register that Strategic Wealth Limited (or Strategic Wealth UK Limited as its sister firm) were on the register. Neither the Code nor the checklist contained any warnings about using overseas advisers that are on the FCA register. They also did not at that time ask ceding schemes to determine the precise nature of an adviser's involvement or the precise nature of an adviser's regulatory permissions – just that they were on the FCA register.

It's possible that Mr E might also have mentioned FRPS as being involved in advising him as well as Strategic Wealth. He did sign a letter of authority with them, and Capita were aware of their involvement having acted on their request for information about Mr E's pension. But I think it's unlikely Capita should have become concerned about this because, more likely than not, it would have appeared – and in my view reasonable for it to hold the view – that the extent of FRPS' involvement was to refer Mr E on to Strategic Wealth for regulated advice.

So, once Capita understood that a regulated adviser was involved (it was not Capita's role to question or scrutinise the advice Mr E received) and having confirmed the legitimacy of the receiving scheme, I don't think it needed to look any further. I think Capita could reasonably have taken comfort from this fact and deemed the risk of the transfer was minimal.

Capita needed to check for the risk of pension liberation and scams in a way that was proportionate to the warning signs.

So, while I accept it would likely have (had it conducted thorough due diligence) found there to be some of the pension scam warning signs indicated in the guidance, I think overall, the knowledge the scheme was legitimate and that Mr E was being advised by a firm that was on the FCA register, in this case would have reasonably indicated to Capita the transfer was unlikely to be a scam. So, in these circumstances there would no reason to halt the transfer

or provide Mr E with any explicit warnings. So, I don't think Mr E would have been given any reason to question what he was doing.

I accept that Capita contacting Mr E and asking him questions about how things came about and his motivation for transferring might have caused him to think a little more about if he was doing the right thing. But in my view, nothing more than that. I'm mindful Mr E had already by this stage overlooked or perhaps ignored some warnings in the Scorpion insert about the steps he was about to take. Or perhaps instead Mr E was reassured by the regulated entity he was dealing with having checked the FCA register himself as the insert recommended. And as I've explained above, there were no explicit warnings Capita should reasonably have given to him. So, in these particular circumstances I cannot see how the act of asking Mr E questions as part of its due diligence, as Capita ought to have done, would have put Mr E off transferring – I think he would still have gone ahead.

It follows that I don't intend to uphold Mr E's complaint. And I realise this will come as a disappointment to Mr E. But I think there appears to be more to this transfer than he might be able to remember. In reaching a fair and reasonable outcome, it is appropriate for me to consider the wider evidence – particularly the pattern of advice that seems to be a feature of these transfers to the Optimus scheme introduced by FRPS and also involving Strategic Wealth. And I'll repeat what I said above – it is open to Mr E's representative to obtain further details of this from the QROPS administrator.

#### End of provisional decision

#### **Responses to my provisional decision**

Capita said it accepted my provisional decision and had nothing further to add.

Mr E's representative disagreed with my provisional decision. In summary they said the following:

- A data subject access request was made to Optimus and the papers did show Strategic Wealth Limited as an adviser on their system. But there is no evidence of a report being issued or provided to any party involved and Mr E does not recall seeing one.
- They object to the introduction of an advice suitability report from another complainant unconnected to Mr E to support the position that compensation is not due in this case.
- Mr E has no recollection of receiving the Scorpion leaflet. And on the basis that it would only have come from Strategic Wealth, because he didn't receive their report, this makes logical sense. It is unfair to assume Mr E did receive the leaflet based on evidence from another complainant.
- FRPS, who were unregulated, were the primary party involved here. Strategic Wealth's involvement in any capacity does not affect Mr E's position – he received none of the regulatory protections afforded to someone using a properly FCA regulated advice firm.
- If Capita had provided Mr E with the correct paperwork and warnings prior to the transfer, there is nothing to suggest the transfer would still have gone ahead.

## **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've taken into account relevant law and regulations, regulatory rules, guidance and standards, codes of practice, and (where appropriate) what I consider to have been good industry practice at the relevant time. Where the evidence is incomplete or inconclusive I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened, given the available evidence and wider circumstances.

Having done so and considered what Mr E's representative has said in response to my provisional decision, I've not been persuaded to change my mind. I've decided to not uphold this complaint for the same reasons I gave in my provisional decision.

It is disappointing that, despite Mr E's representative having obtained relevant evidence from Optimus as part of its data request they didn't include this when they submitted Mr E's complaint to us. It is also interesting that they've chosen not to provide it in response to my provisional decision. Nevertheless, what they have confirmed is that, as I thought was likely the case, Strategic Wealth Limited was recorded as the adviser on Optimus' system. And this is what is important here because I think this supports the conclusions I reached in my provisional decision – that is, it was likely Strategic Wealth Limited who advised Mr E to transfer his pension to the QROPS.

Mr E's representative has said there is no evidence of a suitability report provided to Mr E – presumably, it wasn't contained within the papers they obtained from Optimus. They also say that Mr E doesn't recall seeing such a report and as a result didn't get the Scorpion leaflet. Firstly, Mr E's recollections of the events in question, as I said at the start of my provisional decision, are limited. Mr E couldn't remember who he met or spoke to at the time. And while this isn't surprising given the passage of time, it does mean I'm mindful how much weight I can place on what he says happened. And secondly, while there might not be a copy of the report contained within the papers provided by Optimus, given Strategic Wealth's involvement here and the wider evidence available, I still think more likely than not Strategic Wealth did provide Mr E with a suitability report to reflect the advice it gave him. As I said in my provisional decision, it seems it was a condition of the QROPS trustees accepting funds that this advice was given before they would accept a transfer of funds. And based on what we have seen, to demonstrate advice had been given, Strategic Wealth set it out in writing in a report. They also referred to the inclusion of the Scorpion leaflet in their report.

I can see Mr E's representative says it is unfair to introduce evidence from a different complainant unconnected with Mr E to support my findings. But while the example suitability report I provided is one example, it is not the only one we have seen. So, it is not the case that I am simply relying on evidence in one unconnected case to reach my conclusions on Mr E's complaint. The wider evidence suggests Strategic Wealth Limited did produce advice / suitability reports where it was involved in transfers to the Optimus QROPS – it was a feature of the advice. And the evidence in this case is that Strategic Wealth Limited was involved.

I cannot ignore the wider evidence we have seen in cases like Mr E's involving transfers to the Optimus QROPS where both FRPS and Strategic Wealth were involved as was the case here. To do so would be neither fair nor reasonable.

Mr E cannot remember much about what happened and hasn't been specific about who he spoke to or dealt with. So, in the absence of persuasive evidence that something different happened in Mr E's case, I think it was Strategic Wealth who provided advice to Mr E to

transfer his pension, in writing, and that Mr E understood this was the case. And knowing this, I think Mr E would likely have named Strategic Wealth as the advising firm had Capita asked him as part of the further due diligence I believe it should reasonably have carried out at the time.

Mr E's representative has said that any involvement by Strategic Wealth meant Mr E did not enjoy the usual protections afforded to clients of properly FCA authorised firms because they were an EEA firm passported into the UK. And Mr E's representative is correct. Mr E did not have the regulatory protections via the UK's complaints and investor protection schemes. But as I said in my provisional decision, the applicable guidance only asked Capita to check Strategic Wealth Limited was on the FCA register (which they were.) The guidance did not contain any warnings about using overseas advisers that are on the FCA register and it did not (at that time) ask ceding schemes to determine the precise nature of an adviser's regulatory permissions. A ceding scheme is not expected to act as a general pension adviser, so Capita's role was not to provide advice about the merits of different regulatory schemes. That was the role of the advising firm – in this case Strategic Wealth. It also wasn't Capita's role to question or scrutinise any advice given to its member.

The PSIG code and Scorpion guidance was designed to help ceding schemes spot and avert potential scams against its member. So, to expect a ceding scheme to have concerns and raise them with their member, there must, when viewed overall, appear to be a real risk that was about to happen. But in Mr E's case, had Capita taken the steps I think it should have, overall, the knowledge the scheme was legitimate, and that Mr E was being advised by a firm that was on the FCA register, would have reasonably indicated the transfer was unlikely to be a scam. So, in these circumstances there would no reason to halt the transfer or provide Mr E with any explicit warnings. So, it follows that Mr E would have no reason to question things or change his mind about the transfer.

Once again, I realise this will come as a disappointment to Mr E. But for the reasons above, I don't uphold this complaint.

### **My final decision**

For the reasons above, I've decided to not uphold this complaint, so I make no award in Mr E's favour.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 4 April 2025.

Paul Featherstone  
**Ombudsman**