DRN-5384637

The complaint

Mrs K has complained about a transfer of her Scottish Friendly Assurance Society Limited ('Scottish Friendly') personal pension to a Qualifying Recognised Overseas Pension Scheme ('QROPS') in January 2016. Mrs K's QROPS was subsequently used to invest in Commercial Property in Cape Verde via The Resort Group ('TRG'). The investment now appears to have little value. Mrs K says she has lost out financially as a result.

Mrs K says Scottish Friendly 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 she says was required of transferring schemes at the time. Mrs K says she wouldn't have transferred, and therefore wouldn't have put her pension savings at risk, if Scottish Friendly had acted as it should have done.

What happened

Mrs K explains that, around March 2015, she received an unsolicited approach from Capital Facts Limited ('CFL') offering her a free review of her pensions. On 20 March 2015 Mrs K signed a letter of authority for CFL to obtain information about three of her pensions. One of these was her Caparo Stakeholder pension held with Mobius Life Limited. Mobius Life Limited became part of Scottish Friendly in 2018 and it is Scottish Friendly who are the respondent business for this complaint. For ease of reading I will refer to Scottish Friendly when considering acts or omissions relating to the transfer.

CFL emailed its letter of authority to Scottish Friendly on 30 March 2015 and requested information about Mrs K's pension. Pension information was then sent directly to CFL on 8 April 2015. CFL were not regulated by the FCA to provide financial advice.

Mrs K says that CFL recommended that she transfer her pensions to a QROPS and to invest her funds in hotels. She was attracted by the idea of the improved investment returns she was led to believe could be achieved.

On 20 November 2015 Scottish Friendly sent CFL the overseas transfer discharge paperwork which Mrs K signed on 26 November 2015.

Mrs K became a member of the Optimus Retirement Benefit Scheme No.1. The scheme was registered with the Malta Financial Services Authority. Scottish Friendly received a transfer request from Optimus Pension Administrators that was dated 15 December 2015. The request included: completed transfer discharge forms (signed by Mrs K on 26 November 2015), the required HMRC forms, evidence from HMRC that the scheme was recognised as a QROPS from August 2014 and that the scheme was registered by the Malta Financial Services Authority from July 2014.

On 29 December 2015 Scottish Friendly contacted CFL to explain that part of the transfer discharge form was missing from the transfer request. Scottish Friendly were also contacted by Optimus and responded on 13 January 2016 explaining what was missing and why the transfer had not yet completed. The required form was returned by Optimus on 18 January 2016.

Mrs K's pension was transferred on 27 January 2016. Her transfer value was around £17,000. She was 53 years old at the time of the transfer.

No other pensions were transferred to Mrs K's QROPS. Although there is evidence that information was requested from her occupational pension scheme and that a transfer request was made.

£10,000 of the transferred fund was invested in fractional ownership of a hotel room at a resort in Cape Verde with TRG. This investment has not delivered the indicated returns and there is no secondary market for it. It is illiquid and unclear whether investors will be able to recover any of their investments. The remainder of the transferred fund remained in cash and has been eroded by the ongoing fees.

In July 2020, Mrs K complained to Scottish Friendly, via a claims management company ('CMC'). Briefly, her argument is that Scottish Friendly 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 catalyst for the transfer was an unsolicited call and she had been advised by an unregulated business; the transfer involved overseas investment; a QROPS was a complex structure and Mrs K had no intention of living abroad.

Scottish Friendly didn't uphold the complaint. It said it couldn't identify any negligence in relation to Mrs K's transfer.

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

<u>What I said in my provisional decision</u>:

I issued a provisional decision to explain why I thought Mrs K's complaint should not be upheld and offered both parties the opportunity to provide further argument or evidence. In summary, the reasons I gave for my provisional outcome were:

- I summarised what I thought the relevant rules, legislation and industry good practice meant for the way that Standard Life should have dealt with Mrs K's transfer request.

- I was persuaded that Mrs K had, more likely than not, been approached out of the blue by CFL. But that advice to transfer was most likely provided by Strategic Wealth Ltd. Who were an advice firm regulated in an EEA member state.

- I explained that, whilst I didn't think Royal London had sent Mrs K The Pension Regulator's Scorpion insert (which warned of pension scams), I thought Mrs K had been sent it by another of her pension providers at a similar time. And that the warnings it contained ought to have been relevant to Mrs K.

- I considered whether Royal London had carried out due diligence that reflected the industry best practice at the time. And I didn't think that it had.

- I considered what Royal London would likely have found if it had carried out reasonable due diligence and was persuaded that it would have identified a number of the warning signs of a scam that were listed in the relevant guidance. But I thought it would also have established that Mrs K was receiving advice from a firm that had passporting rights to provide financial advice in the UK.

- I explained why I didn't think the overall circumstances would have led to specific warnings being given to Mrs K that would have been any different to the ones she'd already been given by the Scorpion insert. So I didn't think that Royal London's failure to perform better due diligence would have made a difference to Mrs K's decision to transfer her pension.

Responses to my provisional decision:

Royal London offered no further comment or evidence.

Mrs K disagreed with my provisional outcome and responded, via her CMC. I have read the submissions in full and summarise the arguments as follows:

- It disagrees with my provisional decision that Mrs K was advised by Strategic Wealth Ltd. It says that the transfer discharge form was signed on 26 November 2015 and that, according to the Optimus QROPS, Strategic Wealth Ltd was only appointed on 1 December 2015. And reiterates Mrs K's testimony that she was primarily advised by CFL. It suggests that the decision to transfer had already been taken prior to the involvement of Strategic Wealth Ltd.

- It argued that the warning signs that Scottish Friendly should have found would therefore have caused it concern and it should have contacted Mrs K to share those concerns. It disagreed with my finding that it should have been reassured by the involvement of an EEA regulated firm.

- It queried the accuracy of my consideration of causation as it maintains that I have incorrectly determined the facts regarding the advising party in the transfer.

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.

Where evidence is incomplete, as I think it is in this case, I need to determine the facts on a balance of probability. In reaching my decision I must decide what's fair and reasonable taking into account the relevant rules and guidance in place at the time (which I set out in my provisional decision and repeat below). Whilst I am bearing in mind the types of answers that our service gives, I am deciding this case based on its circumstances. I am not comparing it to other decisions, by other ombudsman, relating to different cases with different circumstances.

I am not persuaded that the arguments that have been made in response to my PD are new and I had already considered these things in coming to my provisional decision. I will explain why my final decision is still that Scottish Friendly are not responsible for the loss Mrs K suffered.

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 Scottish Friendly 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 to decide for themselves the risks they were running when considering a transfer.

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

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

That said, the launch of the Scorpion guidance in 2013 was an important moment in so far as it provided, for the first time, guidance for 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, SIPPs, SSASs and QROPS. The 2015 Scorpion guidance doesn't distinguish between receiving schemes 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.

<u>The circumstances surrounding the transfer: what does the evidence suggest happened?</u>

Our service has been unable to have direct contact with Mrs K so what I understand of her testimony comes from what has been relayed to us by her CMC. In her original complaint Mrs K said that she:

- was cold called by CFL who then advised her to transfer her pension to a QROPS and to invest her funds in The Resort Group.

- received no regulated advice.

- was told the transfer offered a likelihood of better investment performance.

- was never sent the Scorpion warning information by Scottish Friendly prior to the transfer.

I have considered this testimony and the supporting evidence to determine what I think most likely happened.

Scottish Friendly have shown that it received a request for pension information from CFL on 30 March 2015. The letter of authority that was provided listed the Scottish Friendly stakeholder pension along with two others. And I have seen additional evidence that Mrs K's CMC has provided that indicates that at least one of the other occupational pension schemes also received an approach from CFL. That occupational pension scheme also received a transfer request and in the application it asked how Mrs K's transfer request came about. And she provided the response that she had been cold called. So, I am satisfied that CFL were involved at an early stage in the transfer process and that she had been cold called. I think it's reasonable to conclude that she was therefore cold called by CFL. Which is a pattern our service has seen in other transfers like Mrs K's.

I think it's clear that CFL requested the pension information that went on to lead to this transfer. And, as I have already said, CFL were not regulated to provide financial advice. But requesting information is not a regulated activity. Nor is it evidence that CFL were the firm that gave Mrs K advice to transfer to a QROPS. I say this because Mrs K has provided no evidence of any actual advice or recommendation that she received from any party in the run up to this transfer. Leaving me to have to make a decision, on a balance of probability about where the actual recommendation came from.

I also think that Mrs K's testimony is silent on the involvement of a key party. I say that because it is our service's experience that QROPS providers, such as Optimus in this case, either preferred or required there to be an adviser associated or linked with the QROPS who was regulated somewhere in the EEA to give financial advice.

In this case, Mrs K has not provided any of the documentation from the time used to set up the QROPS which I have seen in other cases. This includes for example an application form and a transaction history, which might help to shed more light on what happened. But Mrs K has provided a statement from her QROPS from December 2016. This would have been the first annual statement. It had a section entitled '*Appointed Adviser*' where it named Strategic Wealth Limited. And Mrs K's CMC has provided that QROPS response to a data subject access request that is dated 22 May 2019. That provided details of Mrs K's Independent Financial Adviser and date of appointment on the QROPS. That said that Mrs K's adviser was Strategic Wealth Limited as of 1 December 2015.

This evidence makes it clear that Optimus considered Mrs K's adviser to be a firm called Strategic Wealth Limited. And its data subject access request response indicated that it had a copy on file of a risk profile that Strategic Wealth Limited (Gibraltar) had provided for Mrs K. This is the type of document that would ordinarily be produced as part of an advice process. And I don't think it's likely that would have been produced without Mrs K's knowledge.

These documents point to a clear involvement of a firm called Strategic Wealth Limited as being the adviser. I am mindful that Mrs K hasn't named this firm in her complaint. But that complaint was made a number of years after the events. And she has not provided any documentary evidence that she appears to have retained personally. I think that the majority of the documents that have been shared have been obtained by her CMC through enquiries of the ceding and receiving schemes. I don't think that Mrs K's failure to recall the involvement of another firm other than CFL means that no other firm was involved.

In other cases our service has seen for transfers to this Scheme, we have seen the involvement of Strategic Wealth. There was more evidence in those cases and it was clearer that Strategic Wealth related to: 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. This firm therefore appeared on the FCA register. In the other cases we have seen, where there was also involvement of CFL, acting as an introducer for another party that provided (or at least ratified) the recommendation to transfer to the QROPS. Based on the evidence I have seen in this case, think it is most likely that CFL cold called Mrs K and acted as introducer for Strategic Wealth Limited (Gibraltar) who then gave advice.

I find it very unlikely that Strategic Wealth Limited would have undertaken this role, and obtained a risk profile, had it not also provided a written recommendation to Mrs K about the transfer. That has also been the case in other transfers our service has seen. In light of the only evidence available here, I don't think it is fair or reasonable to conclude that Strategic Wealth Limited had not provided financial advice, simply because Mrs K failed to recall them in her testimony, or to have retained any documentary evidence from the time. I think it is more likely that Strategic Wealth Ltd would have given her financial advice, albeit corroborating what she'd likely already been told by CFL, before the transfer of funds from her Scottish Friendly pension.

I note, as I did in my provisional decision, that Mrs K had signed the transfer discharge forms that CFL were sent on 26 November 2015. I accept that, up until that point there is no documentary evidence of the involvement of Strategic Wealth. That's because the only information that I have seen is the reference to it on the Optimus disclosure that gave a date of appointment of 1 December 2015. I think that date is likely to be the date that Strategic Wealth were appointed to the QROPS as the IFA for that QROPS.

Although I have considered Mrs K's CMC's arguments about the significance of this date I don't agree with those arguments. I don't think it is fair to interpret 1 December 2015 as the date that Mrs K signed any client agreement with Strategic Wealth Ltd, or that Mrs K had no involvement with them prior to that. It is difficult to determine when Strategic Wealth Ltd would first have become involved with Mrs K because she has not provided any account of its involvement. Nonetheless, I think that the available evidence is clear that it would have been involved in an advisory capacity. And that would have been prior to the transfer request being made, and therefore, prior to any due diligence that Scottish Friendly ought to have done.

The 2016 statement for Mrs K's QROPS gave a summary of assets as follows:

- Scheme cash account – around £5,000.
- TRG commercial property - £10,000.

By the 2018 statement the Scheme cash account had fallen in value to around £3,000 with the TRG investment having the same value.

The Scottish Friendly stakeholder pension transferred on 27 January 2016 for around

£17,000. Given the underlying value of the assets in these statements I think it most likely indicates that this pension was the only transfer that the QROPS received.

Mrs K has explained to us that she transferred for improved investment performance. So, I don’t think that she was promised, or received, any cash incentives.

What did Scottish Friendly 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.

Mrs K’s testimony in her complaint, as referred to earlier, was that Scottish Friendly had not sent her any Scorpion warning information. She did not, however, say whether she had been sent this information by any other party. I have therefore considered the wider circumstances in determining whether Mrs K had seen the relevant warning information prior to making this transfer.

Scottish Friendly provide no evidence that it directly communicated with Mrs K prior to the transfer of her stakeholder pension. But there is evidence that, in May 2015, Mrs K received a transfer value statement from an occupational pension scheme that she held. It outlined her benefits and gave a transfer value around £9,000 on 14 May 2015 that was guaranteed for three months. This correspondence said, “*Important Note. This statement should be read in conjunction with the enclosed Transfer Value Statement Notes and the ‘Pensions scams’ booklet.*”

This is separately corroborated by a further document that Mrs K’s occupational pension scheme administrators sent to CFL on 15 May 2015. It said,

> “*We have advised the member that the transfer value documentation has been sent to yourselves. The member has also been issued a 'Pension scams' booklet, produced by the Pensions Regulator, to advise them of the potential risk of transfers which are being used to cash in pensions early*”.

These documents were shared with us by Mrs K’s CMC and they persuade me that Mrs K was more likely than not sent the Scorpion booklet that was in use by May 2015. Which would most likely have been the version published in March 2015. I say this because I don’t think it’s reasonable to conclude that a pension administrator that was following the spirit of the Scorpion guidance like this would then send an out of date version of the warning material.

The 2015 Scorpion insert listed the following warning signs of common tactics scammers used:

- **A cold call, text message, website pop-up or someone coming to your door offering a ‘free pension review’.**
- Convincing marketing materials promising returns over 8% on your investment.
- Paperwork delivered to your door by courier.
- Pension access before age 55.

- **Overseas transfer of the funds.**

- **A proposal to put your money in a single investment.**

At least three warning signs (that I have highlighted in bold) were likely to have appeared, to Mrs K, to be present in her circumstances: Mrs K was cold called, her transfer of funds was overseas, and the proposal was to put her money in the single investment with TRG. Whilst Mrs K hasn't indicated what level of return she was led to expect from the proposed transfer, I've seen the type of literature that was being used to promote investments in TRG. Some of which gave indications of estimated returns over 8%. So, I think it's also possible that Mrs K had seen convincing marketing materials that promised returns over 8% which was yet another scam warning sign.

This warning material was intended to provide consumers with information to help them avoid becoming victims of a scam. For the above reason I think that Mrs K received this information and that the warning signs it highlighted ought to have appeared to Mrs K as being relevant to how her transfer came about. So should have served as a prompt to consider the transfer further.

Due diligence:

As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mrs K's transfer in that light. But I don't think it would make a difference to the outcome of the complaint if I had considered Scottish Friendly's actions using the 2015 Scorpion guidance as a benchmark instead.

The "accepted club" part of the "Initial analysis" section of the PSIG Code isn't applicable here. Neither could Scottish Friendly have considered the receiving scheme/administrator as being free of scam risk. So, the initial triage process should have instead led to Scottish Friendly asking Mrs K 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 Scottish Friendly should have addressed all four areas of concern and contacted Mrs K in order to help with this.

What should Scottish Friendly have found out?

Scottish Friendly established the legitimacy of the QROPS. But that was the extent of its due diligence. It didn't address Mrs K's rationale for transferring. If it had asked Mrs K about this – which it should have done, using the framework outlined above – it would have found out she was transferring her pension following an unsolicited approach and that she was transferring to a type of arrangement more commonly used by people living overseas even though she wasn't intending to do that. Scottish Friendly 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.

Based on what I decided above, I think that Scottish Friendly would most likely have also established that Mrs K was cold called by CFL. But, as I explained above, I think that Mrs K had most likely had any initial recommendation, that CFL may have provided, ratified by Strategic Wealth Ltd. This would have occurred prior to the transfer and Mrs K would most likely have had up to date written confirmation of that advice prior to any enquiry from Scottish Friendly. On balance, I think that it is more likely that Mrs K would have told Scottish Friendly that Strategic Wealth Ltd had given her financial advice on the transfer.

In order to check whether Mrs K had been advised by a regulated adviser, the Scorpion guidance recommended that Scottish Friendly should check the FCA register of authorised firms. This was a simple check of an online database and is a step that I think Scottish Friendly should have taken.

Had it done so it would have established that Strategic Wealth Limited (Gibraltar) appeared on the FCA register as a firm that had passported permission to provide services in the UK. This meant that for UK purposes Strategic Wealth was an authorised person under s.31(1)(b) of FSMA and Schedule 3 to that Act. The right to passport financial services from one EU country to another is a feature of the EU's internal market, which applied to the UK at the time.

I also think that Scottish Friendly would have satisfied itself that Mrs K hadn't been offered any cash incentives or early pension access to transfer.

Would additional due diligence have made a difference in this case?

Scottish Friendly needed to consider the overall circumstances to determine whether Mrs K's transfer presented a scam risk. So, whilst Scottish Friendly would likely have (had it conducted thorough due diligence) found there to be some of the pension scam warning signs, I think it would have ultimately concluded that the risk was minimal and there was no need to give any warnings to Mrs K. I say this because Mrs K would have explained that she wanted to transfer to take advantage of the potential for improved investment performance. And, key in this case, was that Mrs K had received financial advice.

Overall, Mrs K wouldn't have given the impression to Scottish Friendly that she was being led through a process by another party acting in a potentially unlawful way – which would be the usual pattern for someone falling victim to a scam. Instead, it would have established that Mrs K was acting on advice from a regulated party – Strategic Wealth Ltd. I haven't seen anything that Scottish Friendly would, reasonably, have been aware of that should have alerted it to the potential of Mrs K being misled in this way. It's an important point that goes to the heart of this case: Mrs K's actions would have appeared to be following financial advice and a business could, reasonably, have taken comfort from that.

I have considered the fact that Strategic Wealth Limited was an overseas adviser. But as Mrs K was transferring to a QROPS, it wouldn't be unusual that overseas parties would be involved. The rules in place at the time allowed firms, which were properly regulated in an EEA state to have passporting rights to legitimately provide services in the UK. I see no reason why Scottish Friendly ought to have concluded that advice from a properly regulated firm with passporting rights was inferior to that of a FCA regulated firm. Or that Strategic Wealth Limited was not acting in Mrs K's best interests. I don't think it would be reasonable to expect Scottish Friendly to scrutinise the advice that Mrs K had been given. It would have been enough for it to satisfy itself that Strategic Wealth Limited was regulated and possessed passporting rights.

I've also considered whether Scottish Friendly should have warned Mrs K that it was unusual for her to be transferring a pension overseas – and checked whether the reason for doing that was because she was moving or planned to move overseas. At the time (unlike today) there wasn't a prospect of a tax charge that had to be levied by the ceding scheme in certain circumstances where someone transferred their pension overseas whilst remaining resident in the UK. I think whether it was appropriate for Mrs K to be transferring her pension to Malta was a financial planning matter that it wasn't Scottish Friendly's role to intervene in. And, as I have said, it would have established that Mrs K had separately taken advice on that. It is worth highlighting that it wasn't Scottish Friendly's role to act in an advisory capacity.

<u>Would further enquiries from Scottish Friendly have prevented Mrs K's transfer?</u>

As I have explained, I don't think that Scottish Friendly handled Mrs K's transfer appropriately. It should have sent her Scorpion warning material. But, as I explained previously, I think Mrs K received this from one of her other schemes at the same time that Scottish Friendly should have sent it. The warnings it contained made no difference to Mrs K's decision to go ahead with the transfer and I don't think being sent the same warnings again would have made a difference.

I don't think the mere act of contacting Mrs K and asking questions about the transfer would have prompted a change of heart. Most of the responses she would likely have provided would not have given rise to concerns that she had not already been warned of in the Scorpion booklet which had made no difference to her decision to proceed with her transfer. And, like Scottish Friendly, I think she would have been reassured by the advice she was receiving which would have appeared legitimate.

It therefore follows that I'm satisfied Mrs K wouldn't have stopped the transfer even if Scottish Friendly had done more thorough due diligence in line with the PSIG Code. The result of any such due diligence wouldn't have resulted in any warnings being given to Mrs K.

My final decision

For the above reasons I am not upholding Mrs K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 8 April 2025.

Gary Lane
Ombudsman