The complaint

Mr F has complained about a transfer of his James Hay Administration Company Ltd self-invested personal pension ("SIPP") to another Hartley Pensions SIPP in October 2019. The new SIPP was subsequently used to invest in high risk single company shares which now appear to have little value. Mr F says he has lost out financially as a result. He is represented in his complaint by a claims management company (CMC).

Mr F says James Hay failed in its responsibilities when dealing with the transfer request. he says that it should have done more to warn him of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance he says was required of transferring schemes at the time. Mr F says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if James Hay had acted as it should have done.

What happened

The James Hay SIPP hadn't been running for a long time before Mr F transferred out of it. To explain the background, the SIPP was established in February 2018 by transferring in monies from three personal pensions. This was done on advice from a regulated financial adviser ("Firm N"). The monies were invested with a discretionary fund manager trading in listed stocks and shares which, whilst not catastrophic, suffered some losses – including after Firm N advised Mr F to switch to a "*Tatton Managed Balanced Portfolio"* in November 2018.

This service has upheld a separate complaint Mr F made about Firm N's advice, with a loss calculation designed to compare the performance of the model portfolio to a benchmark of investment performance that would represent a more suitable recommendation for Mr F. The loss calculation was capped to 30 April 2019, when Firm N seems to have been removed as adviser on the SIPP.

Mr F's CMC is in the process of serving a winding up petition on Firm N, as it hasn't received the redress it was awarded. It isn't optimistic about recovering compensation in this way and so has also brought a complaint against James Hay for accepting new business into the DFM arrangement. This service's initial view on that complaint was that it wouldn't be upheld, but it is now due to be reviewed by an ombudsman.

The complaint I'm considering here, also against James Hay, is about a separate matter. That is, James Hay's actions when processing a transfer *out* of the James Hay SIPP to a different SIPP with Hartley Pensions in October 2019.

This process began in April 2019 when Mr F sent a Letter of Authority (LoA) requesting that a new firm, "Firm K", was enlisted to provide services to his SIPP. There seems to be some confusion as to their role. James Hay recorded them as the new adviser and the next month's ongoing advice charge of £75 was redirected to them. However, Mr F's understanding was that they were appointed as a fund manager to replace Tatton.

In any event Firm K appears to have carried out no management of the SIPP funds, as these stayed in the Tatton managed portfolio until their subsequent disinvestment six months later (see below). It appears James Hay may have recognised that it was not intended for Firm K to give ongoing advice to Mr F, as no further ongoing advice charges were paid to them. However, firm K was still attached to the SIPP via the LoA so James Hay could accept instructions from that firm as if they were from Mr F himself.

At around this time, Mr F had been referred on to a Mr D who appears to have worked for OS Wealth Management, a firm that hadn't been regulated since August 2018 (when it had been an appointed representative of another regulated firm).

On 5 September 2019 Mr D seems to have used the online access Firm K had to Mr F's account to send James Hay a secure message. He quoted a Firm K email address in his message. The message was to close down all Mr F's investments. At the same time Mr F gave an instruction that he wanted to transfer away from James Hay. His instruction was dated 4 September 2019 but it appears was received after James Hay had heard directly from Mr D.

Hartley Pensions subsequently sent a transfer request to James Hay using the Origo Options online transfer system on 24 September 2019. Origo is an electronic transfer system that allows paperless execution of transfers amongst firms that have signed up to the service. James Hay kept a printout of this request, which said that no adviser was involved. The transfer completed on 15 October 2019. The amount transferred was £190,138. Mr F was age 62 at that point.

The Hartley Pensions SIPP was used to open an account with Credo, which provides custody services to financial advisers and their clients. Credo says the portfolio opened on 17 December 2019, with monies arriving in the account on 19 December 2019. However this entry on Credo's ledger is accompanied by text suggesting funds were actually transferred from a different Credo account, so it seems that a Credo account had already been set up for Mr F in the past.

By this point a new regulated financial adviser, Hamilton Rose Wealth Management Limited, had taken over operating the Credo account. The investments it traded on the account were high risk and included MBH Corp, Kaeva Plc, Audley Funding, NO Minerals Plc, Omni Egis Plc, Audacia Capital Ireland Plc and Early Equity Plc. These caused Mr F further losses, which have been the subject of another complaint to the Financial Services Compensation Scheme (FSCS). FSCS identified that Mr F had suffered losses of approximately £166,000 whilst with Hamilton Rose, and received the maximum £85,000 payout from FSCS in respect of these in February 2023.

FSCS has agreed to reassigned the right to make this complaint to James Hay about its actions in making the transfer to Hartley Pensions, back to Mr F. He has also complained to the Financial Ombudsman Service against Credo for its role in facilitating the investments Hamilton Rose made on its platform.

In November 2023, Mr F brought a complaint to James Hay which included its actions in making the transfer to Hartley Pensions (the complaint I'm considering here). Briefly, his argument is that James Hay ought to have spotted, and told him about, a number of warning signs in relation to the transfer. These included James Hay's failure to take note of warnings from the Financial Conduct Authority (FCA) in 2013 and 2014 that financial advisers were moving customers' retirement savings to SIPPs that invest wholly or primarily in high risk, often highly illiquid unregulated investments. The FCA had said this process often involved regulated advisers working with unregulated introducers who had an interest in the investments subsequently made.

Mr F also referred to the awareness campaign about pension scams introduced by the Pensions Regulator (TPR) from 2013, and said that James Hay had failed to establish – in line with the aims of this campaign – that Mr F had been promised unrealistic returns on his investments. He was thus at risk of falling victim to a scam, and James Hay should have sent him a warning leaflet and explained to him what signs of a scam it had seen. Mr F considered he wouldn't have proceeded with the transfer if James Hay had taken these expected steps.

James Hay didn't uphold the complaint. In respect of the transfer to Hartley Pensions, it said it had no link whatsoever to any losses he incurred, because they took place after James Hay ceased to have any involvement with Mr F's pension arrangements. It added that cash transfers via Origo can only be initiated by the receiving scheme, rather than any rogue actors. Hartley Pensions was appropriately registered with HMRC and James Hay had no reason whatsoever to doubt the *bona fides* of the transfer request. It also believed Mr F was in receipt of financial advice and James Hay wasn't in any way responsible for the self-investment decisions he took.

I issued a Provisional Decision on this complaint, which I didn't uphold, on 17 March 2025. James Hay said that it had no further points to make. Mr F didn't respond to the Provisional Decision after a further reminder saying that I would proceed to make a Final Decision in the absence of a response. I haven't, as a result, found any reason to depart from the conclusions I reached in my Provisional Decision, which are repeated as the Final Decision below.

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.

<u>The relevant rules and guidance</u>

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 James Hay 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, 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.

In a similar vein, in April 2014 the FCA had also started to voice concerns about the different types of pension arrangements that were being used to facilitate pensions scams. In an announcement to consumers entitled "Protect Your Pension Pot" the increase in the use of SIPPs and SSASs in pensions scams was highlighted, as was an increase in the use of unregulated and/or illiquid investments. The FCA further published its own factsheet for consumers in late August 2014. It highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.

There was a further updates to the Scorpion guidance in March 2015, which referenced the potential dangers posed by "pension freedoms" (giving 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 Scorpion guidance was refreshed in March 2016, March 2017 and July 2019, which are relevant for this complaint, however the checklist which I'll mention below remained largely the same. There were significant updates to the PSIG Code in June 2018 and June 2019. The latter update is most relevant to this complaint and I'll discuss that below.

The Scorpion guidance

This 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 a short insert (which had been refreshed in July 2019) to be sent when someone requested a transfer pack. (TPR had previously provided a longer booklet which could be sent when members sought further information about scams, but from what I can see this was no longer being published after July 2017.)

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 – July 2019 update

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 some differences. These include the Code making 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. (I noted the contents of some of those alerts earlier in my decision.)

Under the PSIG Code, an 'initial analysis' stage also 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 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.

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>

Mr F was married and employed as an administrator earning £18,000pa. He owned his home valued at around £200,000 mortgage free. He had no other debts and no investments other than the pensions he had already consolidated into his James Hay SIPP.

He's explained to our service that the catalyst for all of the steps he took, beginning with setting up the James Hay pension, was a gentleman ("Mr B") already known to someone else at his wife's workplace. Mr B used to be an FCA-authorised financial adviser but was now involved in making introductions to other regulated businesses. It was Mr B who referred him to Firm N to set up the James Hay SIPP in the first place.

Mr F says that it was also on the encouragement of Mr B that he appointed Firm K to his SIPP in April 2019. This resulted in Firm N, who Mr B didn't think were performing well enough, being removed as adviser on the SIPP. However as I've noted above, Mr F's understanding was that Firm K was only appointed as a new fund manager (to replace Tatton, who Firm N had employed to manage the funds previously).

I consider Mr F's recollection here to be plausible. Firm K is in liquidation but its permissions are still showing on the FCA register. It does not have permissions to advise on pensions. It has the 'managing investments' permission (so it can act as a fund manager in the way Mr F recalls), and it can only advise in a very limited way on some investments (not pensions) as part of carrying out that role of managing investments. I believe this is consistent with why James Hay couldn't continue to pay an ongoing advice charge to Firm K from a SIPP arrangement – because this charge, by definition, is for providing advice on the SIPP, and Firm K couldn't advise on a personal pension. James Hay may wish to comment on this.

Mr F's testimony goes on to say that he was also referred by Mr B to OS Wealth Management at around the time Firm K was appointed to his SIPP. Unlike Firm K, OS

Wealth Management wasn't regulated at all. Mr F does say that he believed Mr D of OS Wealth Management actually worked for Firm K. As the online message Mr D sent James Hay shows, Mr D seemed to be familiar with how to access details of Mr F's SIPP online, and provided a Firm K email address when doing so. So he seems to have been something of an 'interloper' between Firm K and OS Wealth Management.

James Hay suggests that due to their coincidental timing, the request from Firm K to sell all of Mr F's investments and Mr F's request to transfer out of the James Hay SIPP must be linked, and therefore Firm K was advising Mr F to make the transfer. I don't disagree that Firm K was likely aware of the transfer and it was originally the intention for it to remain involved once the funds arrived at Hartley, but the key question here is in what capacity?

Mr F's testimony says he considers that by this point he was being advised on his SIPP by OS Wealth Management and that Firm K was his appointed fund manager. But as I've noted above, there was some blurring of the two firms' roles with Mr D evidently representing both of them at times. I've kept this in mind when considering the complaint.

Once Mr F's pension monies were with Hartley Pensions, Mr D contacted Mr F – now from an OS Wealth Management email address again – on 8 November 2019, titled "[Firm K] update". He said:

> *"Last week we learned* [Firm K] *is looking to reduce involvement in the pension investment market as they have decided to focus on their FX market products i.e. currency investment.*
>
> *I appreciate this is not ideal after a short time as your investment adviser but I can advise we have reached an agreement with a Pension Investment IFA to take-over responsibility for your investment portfolio ensuring their strategy matches your attitude to risk.*
>
> *The process to appoint the IFA is not painful. Your funds will remain with your SIPP provider Hartleys and your Custodian, Credo, so no change is required here. On being appointed by you the IFA will just manage your portfolio on the same system used by* [Firm K].
>
> [Firm K] *are happy to assist the process where they can and there will be no fees for the transfer to the IFA.*
>
> *You will have the added advantage of an FCA regulated IFA, with pension advice permissions too, which will be useful when you want to withdraw benefits from your pension.*
>
> *…*
>
> *The IFA will then give you an introductory call and based on your acceptance can be appointed as your investment manager."*

It transpired the new IFA was Hamilton Rose. Mr F signed his Credo application form (mentioning Hamilton Rose) on 4 December 2019. However as I noted above I don't think this was his first Credo account, as it says "Client already with Credo – please use existing details". Hamilton Rose had signed its agreement with Credo on 26 November 2019. Credo is an adviser-driven service, so I assume the earlier account was one that was originally intended for Firm K's use. By which I mean it was expected at the time of the Hartley transfer that Firm K would continue (or begin) acting as Mr F's fund manager, but this then didn't go on to happen.

<u>What did James Hay do and was it enough?</u>

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.

I've not seen any evidence that James Hay provided a scorpion leaflet to Mr F. James Hay told this service that *"any customer or adviser wishing to transfer a pension pot can access information (which can be read on-line or downloaded) through James Hay's website… Within the Literature section of the website there is reference to 'Taking money out', which has a selection of information guides about accessing pension benefits and an information guide called 'Transferring Away from James Hay' ".*

According to James Hay, the contents of that information guide included a 'Pensions liberation supplement as supplied by The Pensions Regulator (page 4)'. However as the transfer in this complaint was requested on the Origo system, I've seen no evidence that Mr F required a paper transfer pack or needed to visit James Hay's website to review this information. There was also no actual requirement to send him a this leaflet verbatim if a transfer pack hadn't been requested, but as I set out above I think James Hay would have needed to provide at least substantially the same information (or more – depending on what it found at the due diligence stage) when it scrutinised the transfer request. So I'll consider this next.

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 Mr F'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 James Hay's actions using the 2015 Scorpion guidance as a benchmark instead.

I've firstly looked at what due diligence James Hay carried out in this case to consider whether it was sufficient. It says that the involvement of Origo and an HMRC registered (and FCA-regulated) receiving provider gave it some comfort in this case.

I appreciate James Hay may be seeking to demonstrate that Origo was a recognised 'club' or group, which was one of the initial filter questions for transfers at low scam risk under the PSIG Code. But the example PSIG gave of a recognised club or group was an association of pension schemes: the Public Sector Transfer Club. This was mostly large schemes in the public sector who would be making transfers between each other on a regular basis. It would be relatively unusual to be making a transfer to a scheme which had recently joined that club, and understandably some comfort could be drawn from that. I don't think the same would apply to Origo Options, which was a platform for processing transfers that potentially any scheme administrator could join.

James Hay hasn't provided any details on what assurances Origo had obtained about the quality of introductions being made to Hartley Pensions and what investments its SIPPs would involve, that would negate it needing to ask Mr F questions specifically about his transfer. And I think that points to the problem here, which is that James Hay would have been relying on due diligence conducted by a third party even though it doesn't appear to have really known what that due diligence involved. I've taken into account what the due diligence in question was aimed at preventing – pension scams, the end result of which can often be the loss of entire pension funds – and the clear steps that were expected of ceding schemes to prevent this happening. Given also the duties of personal pension providers under PRIN and COBS 2.1.1R, I don't think James Hay's approach was good enough here.

I note that at the time of the transfer the receiving provider, Hartley Pensions, had been authorised by FCA for about two years and was obviously an HMRC registered personal pension provider. There's an argument, therefore, that James Hay could have taken comfort from this. To an extent, I agree: a personal pension provider was subject to a stronger form of regulation than, for example, an occupational pension scheme like a small self-administered scheme. Nevertheless, it was well known at that time that the FCA had reservations about some SIPP providers who were accepting large volumes of business from unregulated introducers involving unregulated, esoteric investments that were typically unsuitable for most retail investors.

The FCA had issued alerts about regulated advisers who got involved with these introducers in 2013 and 2014 – as Mr F's representative has pointed out. But it also carried out a thematic review of SIPP operators – and this would have been well-known to James Hay already as it was itself a SIPP operator. It was apparent from that review that not all SIPP operators were taking their duties seriously.

The Scorpion guidance gave ceding schemes an important role to play in protecting customers wanting to transfer a pension. It would defeat the purpose of the Scorpion guidance for a ceding scheme to have delegated that role entirely to a different business – especially one that had a vested interest in the transfer proceeding. That especially applies here, where James Hay hasn't demonstrated how it established that Hartley Pensions had placed Mr F's best interests front and centre in its operations.

What I'm saying is that James Hay doesn't seem to have made any prior enquiries (or at least, hasn't evidenced that it has) to justify including Hartley Pensions on a list of providers that it was satisfied were at low risk of being subjected to a scam. In the absence of such evidence James Hay was assuming that Hartley would uphold the high standards the FCA expected of SIPP operators even though it was known that some SIPP operators were not doing so. In the context of guarding against pension scams – and an environment where providers and trustees clearly didn't always act as they should have done – I don't consider this to have been a prudent assumption.

For the reasons given above, the "accepted club" part of the "Initial analysis" section of the PSIG Code isn't applicable here. Neither could James Hay have considered the receiving scheme/administrator as being free of scam risk. So the initial triage process should have instead taken James Hay to stage 2 of the initial analysis at section 6.2.2. This involved (insofar as is relevant to Mr F's type of transfer) gathering details from Mr F of who had been advising him on the transfer, as well as whether any unregulated investments were proposing to be made.

I'd expect this step to have been taken even though the Origo printout said there was no adviser involved in the transfer request, because a transfer between pension arrangements that are typically advised products is an unusual step for a consumer to take without advice. This was recognised in the Scorpion action pack, which highlighted consumers apparently acting without advice as being as much of an issue as consumers acting on unregulated advice.

On being asked who was advising him, I think that Mr F would still have had the impression at the time that Firm K – an FCA regulated discretionary manager – was going to be *managing* the funds within the new Hartley SIPP. At the point James Hay should have been asking him these questions, he hadn't yet been told that Firm K no longer wished to be involved. However, for the reasons I've already given above, I'm satisfied that he would have considered that OS Wealth Management was also advising him on the SIPP, with Mr D representing both firms.

Therefore, it's unclear how Mr F would have answered this question. However I don't think either potential answer Mr F could have given about which firm was advising him (OS Wealth Management or Firm K) should have reassured James Hay. I say this because firstly, James Hay would readily have been able to check by visiting the FCA register that OS Wealth Management was no longer authorised by the FCA. And a similar check of the register for Firm K would have shown that it didn't have permissions to advise on personal pensions, which it would need to have in order to recommend a transfer out of the James Hay SIPP into the Hartley SIPP.

I realise that James Hay might question whether it should have been expected to notice such a shortcoming in Firm K's register permissions. If this transfer had happened in the earlier years of the Scorpion guidance being operative, I might have agreed. But by the time of this transfer the June 2019 version of the PSIG Code says the following:

> "*If financial advice has been received, does the adviser have the appropriate permissions? Care needs to be taken as permissions can be very specific, e.g. an adviser may have permissions to advise on pension transfers but not to advise on transfers to a SIPP/personal pension scheme."*

So, I think this is a clear indication that James Hay was reasonably expected to identify where a firm was breaching its FCA permissions in giving advice it was not permitted to give. Here, firm K's entry on the register doesn't include "personal pension scheme" as an investment type. So of the two possibilities Mr F might have given James Hay, both advisers he might have named weren't permitted by the regulator to advise him. In reaching this conclusion I'm also satisfied that Mr F would have been clear to James Hay that he was being advised to make the transfer – i.e. the advice being given was on the personal pension arrangement itself. I say this as Mr F doesn't seem to me to be a sophisticated investor who would have been confident at making such a transfer without this advice.

That meant this part of the PSIG Code's initial analysis would have resulted in further concerns. James Hay would then need to proceed to a wider range of questions about the transfer as per Section 6.2.3 (initial analysis – member questions). I won't repeat the list of suggested questions in full, but I don't agree with the investigator that Mr F's recollection that they were targeting a return of between 4 and 8% would have prompted much concern. Mr F has already told us he didn't consider he was cold-called, and wasn't gaining access to cash before age 55, so from what I can see this only really leaves the fact that there didn't appear to be a clear plan as to what investments were going to be made.

Mr F has told us in his recollections, "*Was never discussed where the investments would be made, only it would be a mixture of, shares, company bonds, not even any particular companies were discussed."* And because he was expecting to delegate investment management to Firm K, I expect Mr F would have struggled to answer at least some of the following questions:

- Do you understand the nature of the underlying investments that you are planning to transfer into, and do you know the risks they involve?
- Can you tell me how the transfer payment will be invested?
- Do you know what fees will be charged and how these will affect the value of your investments over time?
- Are you aware of how the fees you will be charged compare with fees that apply under your current pension arrangement?

Under the Code further investigation should follow a “yes” to any of these questions, but in any event such investigation would already have been prompted by the concerning answer Mr F would have given already about who was advising him. The nature of that investigation depends on the type of scheme being transferred to. The SIPP section of the Code (Section 6.4.3) points to the following as being potential areas of concern:

a) Pension scam risk: required checking that Mr F wasn’t receiving cash payments, bonuses, commission or loans; or accessing part or all of the fund before age 55

b) FCA Regulation: in addition to FCA register, checking that the receiving provider was registered with the Information Commissioner’s Office

c) Marketing methods: a SIPP being marketed through a cold call or an unsolicited approach with pressure being applied in some cases.

d) Provenance of receiving scheme: checking the establishment documentation and any known industry intelligence on the receiving provider.

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, and given the relatively limited information it had about the transfer, I think in this case James Hay should have addressed all four sections of the SIPP due diligence process and contacted Mr F to help with that.

<u>What should James Hay have found out – and would it have made a difference?</u>

It’s difficult for me to now answer some of the questions that would have depended on industry intelligence at the time: I can’t say precisely how many other transfer requests James Hay was receiving to Hartley SIPPs, or whether Hartley had already been linked to poor outcomes being reported by investors by the time Mr F transferred. Clearly, it was a bona fide SIPP and was appropriately registered with the relevant authorities. I also accept that Mr F would have likely clarified that Firm K was involved (as it was permitted to be) on the fund management side of the proposed arrangement.

When an investor delegates authority to a discretionary fund manager, it is to some degree understandable that they wouldn’t have a detailed knowledge of what investments were going to be made. However, the regulator would expect a suitable recommendation of such a service to include a basic understanding of what criteria, in terms of risk and asset types, were being used to manage the portfolio. So, by extension, I think it would have been surprising if Mr F wasn’t at least familiar with this overall outline. On the evidence I have, it’s not clear to me how much reassurance Mr F would have been able to give James Hay on this front - not least because Firm K didn’t go onto manage the portfolio and I’m not aware of any investment plan that was produced prior to its departure. Mr F’s recollections above indicate he did know of the broad range of asset types he would be invested in, but that seems to be about it.

If Mr F had been vague at the time on what the proposed investment plan was, I think this would have played further into the concerns James Hay would already have had that Firm K and/or OS Wealth Management were recommending the SIPP transfer without having the necessary permissions from the FCA to do that. But even if Mr F had given James Hay enough clarity on what the investment plan was, and it was to some degree reassured by Firm K's presence, I still don't think James Hay could have ignored the issue with the advice Mr F was getting.

Being *advised* by an unauthorised firm (or an authorised firm that was breaching its permissions, as would have been the case with Firm K) to transfer benefits from a personal pension plan would have been a breach of the general prohibition imposed by FSMA, which 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 advice on pensions in the UK. The PSIG Code (and the Scorpion guidance) make much the same point. Indeed, the PSIG Code says firms should report individuals appearing to give regulated advice that aren't authorised to do so.

My view is that James Hay should therefore have been concerned by OS Wealth Management and/or Firm K's involvement in giving the advice to transfer from James Hay to Hartley Pensions because it pointed to a criminal breach of FSMA. On the balance of probabilities, I'm satisfied such a breach occurred here.

<u>What should James Hay have told Mr F – and would it have made a difference?</u>

It may well be that at the end of the due diligence process there was only one clear warning James Hay was able to give Mr F, which was that it appeared he was being advised unlawfully to make a pension transfer. And that as a result, he ought to consider very carefully that the whole proposal may not be in his best interests – and he would not have regulatory protection for the advice he was given if something went wrong.

I've also said that by the time Mr F's transfer completed (October 2019), James Hay would have needed to at least give an overview of substantially the same information that appeared in the insert TPR produced for transfer packs at the time. In effect, James Hay could have explained what TPR's concerns were when it asked Mr F the other questions I've set out above.

The insert of that time period retained a focus on a lot of things I don't think Mr F would have considered he was doing – such as being contacted out of the blue or being put under pressure to access funds early or make unusual or exotic investments. However I think the remainder of the insert would have reinforced what James Hay should have been telling Mr F: it recommended to *"check the Financial Services Register (www.register.fca.org.uk) to make sure that anyone offering you advice or other financial services is FCA-authorised"*, and referred to other sources of free guidance such as TPAS and Pension Wise.

These messages James Hay should have given Mr F would have followed conversations with him. So they would have seemed to him (and indeed would have been) specific to his individual circumstances and given in the context of James Hay raising concerns about the risk of losing pension monies as a result of untrustworthy advice. I think this would have made Mr F aware that there were serious risks in using an unregulated adviser (or a regulated one that was breaching its permissions).

I think the gravity of any messages along these lines would prompt most reasonable people to rethink their actions. However I've considered whether it's possible that Mr F might have remained mindful that he was expecting to receive the benefit of FCA-regulated fund management within an FCA-regulated SIPP, and may have valued these features above the warnings of unauthorised advice. But on the other side, I'm aware that Mr F says that he had been talked into changing adviser because Mr B, who had introduced him to Firm N before

Mr D, told him he was disappointed with the performance both Firm N and James Hay had achieved with his SIPP.

As Firm K was still at that point associated with his James Hay SIPP, Mr F already had two regulated parties involved including James Hay (three if I count the fund providers themselves). So I'm more inclined towards the conclusion that James Hay's warning would have led Mr F to question whether it was necessary to change one regulated SIPP provider for another on the say-so of an unregulated adviser who may not be acting in his best interests. Or, whether he should get a second opinion from a regulated adviser on whether he needed to do that.

I've therefore concluded that, overall, Mr F would have become concerned by James Hay's warning about the unregulated advice he was getting, despite the intended approach being to continue using regulated firms to manage the investments within this SIPP. So, I've considered the possibility that Mr F wouldn't have transferred to the Hartley SIPP and suffered the losses that followed. If so, and had Firm K gone on to manage Mr F's SIPP in a way that caused him loss, it would have been appropriate for me to make an award for that loss (or at least, any losses he couldn't recover from Firm K itself).

I say this because Firm K was the firm in contemplation for managing Mr F's SIPP at the time it – or OS Wealth Management – recommended the transfer itself. And that would have been known to James Hay at the time it should have given its warnings to Mr F. But Firm K didn't go on to manage the SIPP. The plan changed shortly after Mr F transferred, and from what I can see another FCA regulated adviser with full advisory permissions (Hamilton Rose) went on to recommend other investments, which look to have been inappropriate for Mr F and for which FSCS has made its own award.

In my view Hamilton Rose's involvement represents a break in the chain of causation from the potential scam James Hay was originally looking to prevent (involving unauthorised advice from OS Wealth Management and/or Firm K to make a SIPP transfer). We don't know that Firm K, which was understood to be managing Mr F's funds when James Hay permitted the transfer, would have included investments that performed anything like as poorly as the portfolio Hamilton Rose recommended. I appreciate that Mr F has complained to FSCS about Hamilton Rose and already received the maximum award it can provide. But that does not in and of itself make it appropriate for me to award the losses that cannot be recovered from Hamilton Rose against James Hay, in the particular circumstances of this case.

So, even though I've reached the conclusion that James Hay's actions should have been capable of preventing Mr F from making a transfer and investing with Firm K within his SIPP, there is no award I can make for that because Mr F didn't invest with Firm K. Hamilton Rose's involvement wasn't known about at the time James Hay should have been acting to prevent a potential scam here. And I think it's also relevant that had James Hay known that Hamilton Rose (an FCA regulated adviser with full SIPP advisory permissions) was involved in the transfer, it would likely have been unnecessary for it to give any warnings to Mr F at all.

My final decision

I've found that there were steps James Hay should have taken to find out about who was advising Mr F on his pension transfer and highlight to him that he was being advised unlawfully. However even if James Hay had done that and it had resulted in Mr F changing his mind about transferring, I've concluded that the losses Mr F went on to suffer were not causally linked to these steps that James Hay should have taken.

They were caused by a new adviser coming on board, who would have been advising Mr F lawfully and would not have been known about at the time of James Hay's enquiries. I'm sorry to disappoint Mr F, but there is nothing I can do about the fact that he has already exceeded the maximum award FSCS can make in respect of the actions of the new adviser (Hamilton Rose).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 9 May 2025.

Gideon Moore
Ombudsman