DRN-4833225

Financial Ombudsman Service

The complaint

Mr S has complained about a transfer of his Liverpool Victoria Financial Services Limited's (LV) personal pension to an occupational pension scheme, called the Merseyside Care Retirement Benefits Scheme ('the Scheme') in April 2013. The Scheme's funds were subsequently principally used to invest in a group of companies associated with Arterial Distribution Limited and now appear to have little value. Mr S says he's lost out financially as a result.

Mr S says LV failed in its responsibilities when dealing with the transfer request. He says 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 S says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if LV had acted as it should have done.

What happened

On 4 April 2013 Mr S phoned LV and asked it for a quote for a transfer value of his pension, which LV gave. The next day Mr S phoned again and asked LV to send him the relevant documents he needed to transfer his pension. LV's records show that it sent him a transfer pack that day. The transfer pack said that Mr S would need to complete part of a form himself and ask the receiving scheme to complete it. On 9 April 2013 Mr S rang again as he still hadn't received the documents. LV sent those again. On 11 April 2013, LV spoke with Mr S to advise him that if he transferred he would lose entitlement to the guaranteed annuity rates (GARs)[1] and bonuses his personal pension enjoyed.

Mr S said that a friend, who had transferred their own pension fund to the Scheme, told him about it sometime around March 2013. Mr S was then put in touch with a firm he believes was called PARMS Ltd but I understand the company was registered under the name CJ PARMS Limited. CJ PARMS wasn't authorised to give advice on pension transfers. CJ PARMS' representative told Mr S he could remain invested within the Scheme for 3-4 years after which he could take his money out or reinvest. Mr S says he was told he would benefit from a greater return than remaining in the LV personal pension. Mr S was persuaded by the advice and thought a transfer would be in his best interests.

On 26 April 2013, LV wrote to the Scheme's administrators, IMAC pension Services Ltd, to confirm it had transferred Mr S' pension fund of £9,040 to the scheme. Mr S was 37 years old at the time.

In September 2013, following an application from The Pensions Regulator, Dalriada Trustees Limited (Dalriada) was appointed by Court Order as independent trustee with exclusive powers to the Scheme. The Court appointed Dalriada because of concerns that

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[1] GARs are contractual rights offered with some personal pensions to convert a pension pot into a lifetime income from a specific age. These rates are normally higher than the rates currently available on the open market.

the scheme was being used as a vehicle for pension liberation[2] or was simply a scam. The value of Mr S' pension is now uncertain.

In September 2023 Mr S complained to LV. Briefly, his argument is that LV didn't complete adequate checks or tell him about warning signs in relation to the transfer, including that an unregulated business had advised him to do so.

LV didn't uphold the complaint. Amongst other things it said: Mr S had authorised the transfer; it didn't provide financial advice and was under no obligation to check if the Scheme was suitable for him; and it would have sent Mr S the Scorpion leaflet (which I've explain below). It added that at that time scam awareness was in its infancy and it would have made enquiries of the Scheme before the transfer went ahead.

Mr S brought his complaint to the Financial Ombudsman Service. One of our Investigators looked into it. She didn't think LV had treated Mr S fairly, and recommended LV provide appropriate redress. LV didn't agree with our Investigator's complaint assessment.

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

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.

When doing so I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

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

Personal pension providers are regulated by the Financial Conduct Authority (FCA). Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority (FSA). As such LV 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 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.

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[2]At the time pension liberation referred to schemes offering methods of accessing pension funds in an unauthorised way (before the minimum retirement age of 55, for instance). Doing so could have serious consequences, including punitive tax charges and exposing pension savings to scams.

The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme if certain conditions are satisfied (and they may also have a right to transfer under the terms of the contract). This right came to be exploited, with people encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren't entitled to – for instance, because they were below minimum retirement age. At various points, regulators issued bulletins warning of the dangers of taking such action. But it was only from 14 February 2013 that transferring schemes had guidance to follow that was aimed at tackling pension liberation – the "Scorpion" guidance (so called because of the imagery it used).

The Scorpion guidance was launched by The Pensions Regulator (TPR). It 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 guidance comprised the following:

- An insert to be included in transfer packs (the 'Scorpion insert'). The insert warns readers about the dangers of agreeing to cash in a pension early and identifies a number of warning signs to look out for.

- A longer leaflet issued by TPAS which gives more information, including example scenarios, about pension liberation. Guidance provided by TPR on its website at the time said this longer leaflet was intended to be sent to members who had queries about pension liberation fraud.

- An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "look out for" various warning signs of liberation. If any of the warning signs applied, the action pack provided a checklist that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where transferring schemes still had concerns, they were encouraged to write to members to warn them of the potential tax consequences of their actions; to consider delaying the transfer; to seek legal advice; and to direct the member to TPAS, TPR or Action Fraud.

TPR issued the guidance under the powers at s.12 of the Pension Act 2004. Thus, for the bodies regulated by TPR, the status of the guidance was that it provided them with information, education and/or assistance, as opposed to creating any new binding rule or legal duty. Correspondingly, the communications about the launch of the guidance were predominantly expressed in terms that made its non-obligatory status clear. So, the tenor of the guidance is essentially a set of prompts and suggestions, not requirements.

The FSA's endorsement of the Scorpion guidance was relatively informal: it didn't take the form of Handbook Guidance, because it was not issued under s.139A of the Financial Services and Markets Act (FSMA), which enabled the FSA to issue guidance provided it underwent a consultation process first. Nor did it constitute "confirmed industry guidance", as can be seen by consulting the list of all such FSA/FCA guidance on its website.

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

That said, the launch of the Scorpion guidance was an important moment in so far 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. It was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And its specific purpose was to inform and help ceding firms – like LV – when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

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

<u>What did personal pension providers need to do?</u>

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. And where the recommendations in the guidance applied, without a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations. With that in mind, I take the view that personal pension providers dealing with transfer requests needed to heed the following:

1. As a first step, a ceding scheme needed to check whether the receiving scheme was validly registered.

2. When TPR launched the Scorpion guidance in February 2013, its press release said the Scorpion insert should be provided in the information sent to members requesting a transfer. It said on its website that it wanted the inclusion of the Scorpion insert in transfer packs to "become best practice". The Scorpion insert provided an important safeguard for transferring members, allowing them to consider *for themselves* the liberation threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. So, all things considered, I think the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party.

3. I also think it would be fair and reasonable for personal pension providers – operating with the regulator's Principles and COBS 2.1.1R in mind – to ensure the warnings contained in the Scorpion insert were provided in some form to a member before a transfer even if the transfer process *didn't* involve the sending of transfer packs.

4. The Scorpion guidance asked firms to look out for the tell-tale signs of pension liberation scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The action pack points to the warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. So, whilst using the action pack wasn't an inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.

5. The considerations of regulated firms didn't start and end with the Scorpion guidance. If a personal pension provider had good reason to think the transferring

member was being scammed – even if the suspected scam didn't involve anything specifically referred to in the Scorpion guidance – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's Principles and COBS 2.1.1R.

The circumstances surrounding the transfer and later developments

As I've said above Mr S told us that a friend had invested in the Scheme. Mr S then spoke with a representative of CJ PARMS. The representative didn't offer cash upfront or any other form of inducement, nor was Mr S trying to access his pension funds early. But the representative persuaded Mr S that his pension would perform better if he transferred his pension funds to the Scheme. Mr S says he didn't see the Scorpion guidance and wasn't aware of the risks. He thought the transfer was in his best interests.

It transpires that the Scheme used the pension funds, largely[3], to invest in Arterial Distribution Limited and its sister companies. Those were offshore companies involved in the development of medical patents. It's since become clear that the investments had no real prospect of making a positive return. And in a successful action Dalriada brought against the Scheme's former trustees the Court found[4] that Arterial would have had to make returns of around 1,300% for the invested funds simply to be recouped.

What did LV 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.

There is conflicting evidence over whether or not LV sent the Scorpion insert. In response to Mr S' complaint it said this "would have been" sent. And in response to our enquiries asking for evidence that it had in fact sent the insert, LV said it had included the insert with all transfer request since February 2013. But it didn't provide any evidence, beyond its comments, to verify this. And I note the letter it sent with the transfer pack in April 2013 didn't refer to inclusion of the Scorpion insert or include any warnings about pension liberation.

In contrast Mr S' evidence is that he didn't receive the insert or any other warning. So it's not entirely clear or persuasive that LV did send the insert to Mr S. However, my decision doesn't turn on whether or not LV sent Mr S the insert. Instead I need to decide whether or not, in light of the recently published Scorpion guidance, LV did enough to consider if Mr S could be putting his pension fund at risk unnecessarily. And, if such warning signs existed, if it did enough to bring this to his attention.

Due diligence:

In light of the Scorpion guidance, I think firms ought to have been on the look-out for the tell-tale signs of pension liberation and needed to undertake further due diligence and appropriate action if it was apparent their customer might be at risk. But, as far as I can tell, other than satisfying itself that the Scheme was appropriately registered with HMRC and

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[3] A smaller percentage of the total funds were 'loaned' to other companies run by the Scheme's former trustees and also to CJ PARMS Limited. I understand the majority of those loans have since been repaid.
[4] Dalriada Trustees Limited v McAuley and Another [2017] EWHC 202 (Ch)

telling Mr S he would be giving up his right to GARs, LV didn't undertake any further due diligence at all.

Given the information LV had at the time, two features of Mr S' transfer would have been potential warning signs of liberation activity as identified by the Scorpion action pack. The most obvious of those was that the Scheme was recently registered. Also Mr S was looking to transfer his pension earlier than age 55, and while that didn't necessarily mean that he was looking to access his pension funds early, there's no evidence LV considered that this might have been a reason for the transfer request.

LV should therefore have followed up on the above to find out if other signs of liberation were present. Given these warning signs, I think it would have been fair and reasonable – and good practice – for LV to look into the proposed transfer and the most reasonable way of going about that would have been to turn to the checklist in the action pack to structure its due diligence into the transfer.

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

1. The nature/status of the receiving scheme

   Sample questions: Is the receiving scheme newly registered with HMRC, is it sponsored by a newly registered or dormant employer, an employer that doesn't employ the transferring member or is geographically distant from them, or is the receiving scheme connected to an unregulated investment company?

2. Description/promotion of the scheme

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

3. The scheme member

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

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

I don't think it would always have been necessary to follow the checklist in its entirety. And I don't think an answer to any one single question on the checklist would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the checklist to establish whether liberation was a realistic threat. Given the warning signs that should have been apparent when dealing with Mr S' transfer request, and the relatively limited information it had about the transfer, I think in this case LV should have addressed all three parts of the checklist and asked Mr S about

his transfer journey, and how that had come about, when it contacted him to advise about him losing GARs.

<u>What should LV have found out?</u>

As I've indicated above, LV contacted Mr S apparently to ensure he was aware of the benefits of the GARs he was giving up. So, with a few simple enquiries at the same time, LV should have established that Mr S didn't have any legitimate connection with the employer which sponsored the occupational scheme he was transferring to. That is, he wasn't employed by it and lived geographically distant from it. In fact he lived over 200 miles away. He was employed elsewhere in a different occupation and there's no evidence he had any intention of working for the Scheme's sponsoring employer.

Also while Mr S wasn't trying to access his funds early, nor been offered an incentive to join the Scheme, CJ PARMS was advising him to invest in offshore companies, using creative and unusual investment techniques. I acknowledge that it wasn't LV's role to advise Mr S on the suitability of investments. But the investments involved include features that might be implicated in pension liberation (offshore, unregulated and/or unusual or creative techniques). And, if LV had done further due diligence it's likely this would have become apparent.

Most importantly LV would likely have learned that Mr S had decided to make the above investments after receiving advice from a company, CJ PARMS, which was not authorised to give pension transfer advice. LV wasn't under any obligation to ensure that Mr S had received regulated advice prior to making a transfer. But the checklist recommends that in order to establish whether its member has been advised by a non-regulated adviser, the ceding firm should "*check whether advisers are registered with the FSA at www.fsa.gov.uk/fsaregister*". In other words, they should consult the FSA's online register of authorised firms. LV should have taken that step, which is not difficult, and it would quickly have discovered that Mr S' adviser was indeed unauthorised.

I appreciate that Mr S had himself instigated the transfer process after his friend told him about the Scheme. But being *advised* by an unauthorised firm 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, including LV, should have been aware that financial advisers need to be authorised to give regulated investment advice in the United Kingdom – indeed, the Scorpion insert itself makes this point.

My view is that LV should have been concerned by CJ PARM's involvement 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 LV have told Mr S – and would it have made a difference?</u>

I think LV's failure to uncover this risk of illegal advice and then warn Mr S about it meant it didn't meet its obligations under Principles 2, 6 and 7 and COBS 2.1.1R. With those obligations in mind, it would have been appropriate for LV to have informed Mr S that the firm which had advised him was unregulated and could put his pension at risk. LV should have said only authorised financial advisers are allowed to give advice on personal pension transfers, so he risked falling victim to illegal activity and losing regulatory protections.

As I've said above whether or not LV sent Mr S the Scorpion insert is disputed. But even if it did send it to Mr S I don't think this alone would have gone far enough. That's because the insert, at that time, was weighted towards the dangers of pension liberation and in particular

to accessing funds early. But Mr S has said that wasn't his intention, so it's likely that, without some other prompting, he might not have realised that some of its messages could apply to his transfer.

LV told us that, given Mr S was acting on the recommendation of a friend it believes he would have transferred his pension regardless of its actions. But, as far as I'm aware, it has no other evidence to support that position. I'm aware that LV did speak with Mr S and said it "would have" recommended he took regulated advice when it spoke to him to warn him of the loss of GARs. There's no contemporaneous evidence that it did recommend he take regulated advice. But, assuming that it did and didn't document it, the recommendation appears to have been given in the context of Mr S giving up his GARs. LV hasn't kept a record of the information imparted or Mr S' reaction to that information. And, while GARs are a valuable pension benefit we don't know how clear LV made this.

However LV described the loss of GARs, it would seem Mr S didn't find LV's recommendation to seek regulated advice at that time persuasive, as there's no evidence he acted on it and sought such advice. So he was clearly prepared to give up the GARs and that most likely happened because CJ PARMS had told him that the benefits he would receive from the Scheme would outperform those. But, that doesn't mean he was determined to transfer his pension. Given that there were warning signs I think LV should have run through the checklist and raised its concerns when it spoke with him. That discussion would have alerted him to the fact he was dealing with people who, as legitimate as they might seem, were almost certainly engaging in criminal activity in the very act of advising him, and he was putting his entire pension fund at risk in doing so.

I'm satisfied any messages along these lines would have changed Mr S' mind about the transfer. The messages would have seemed to him (and indeed would have been) specific to his individual circumstances and would have been given in the context of LV raising concerns about the risk of losing pension monies as a result of untrustworthy advice. This would have made Mr S aware that there were serious risks in using an unregulated adviser even if he was not liberating his pension. I think the gravity of any messages along these lines would prompt most reasonable people to change their mind. I've seen no persuasive reason why Mr S would have been any different. So, I consider that if LV had acted as it should, Mr S wouldn't have proceeded with the transfer out of his personal pension or suffered the investment losses that followed.

<u>The cause of Mr S' loss</u>

I bear in mind that this complaint is similar to the type of claim that in legal proceedings would be treated as a claim for damages for negligent failure to give someone the information or advice to which they were entitled. In that kind of case, the court asks itself whether there is a sufficient connection between the harm for which the claimant seeks damages as compensation and the subject matter of the defendant's duty of care. The court looks to see what risk the defendant's duty was supposed to guard against and whether the claimant's loss represents that particular risk coming to fruition.

So, it's important I bear in mind that the Scorpion guidance was directed towards protecting people from the risk of pension liberation and that doesn't appear to have happened here. The loss was suffered because Mr S accepted unsuitable advice from an introducer who wasn't authorised to act as a financial adviser at all, and it wasn't (as far as can be established taking into account what Mr S has said) a case of seeking to cash in a pension in an unauthorised way.

Nonetheless, the circumstances that gave rise to this complaint were very similar to those of a pension liberation scam: the transfer followed advise from a firm not authorised to give that

advice; it involved Mr S joining an occupational pension scheme where he had no relationship with the sponsoring employer, which was geographically distant from him; and the investments themselves were offshore and used an unusual technique. The Scorpion action pack and insert both recommend checking that financial advice comes only from an authorised person by looking at the FSA/FCA register. And LV's obligations under the Principles and COBS were of general application and went well beyond just protecting its customers from pension liberation. In the circumstances, even though this doesn't appear to be a case of pension liberation, I'm satisfied there is sufficient connection between the harm Mr S wants to be compensated for and the risk that LV had a duty to guard against. So I do consider it fair and reasonable for LV to compensate Mr S for his losses.

Other arguments

LV has argued that the 2013 guidance was somewhat ambiguous in its nature and open to interpretation. I've indicated above that the presentation of Scorpion guidance was advisory rather than regulatory. But the Principles and COBS 2.1.1R are regulatory. So LV needed to act in its customers' best interests. And the Scorpion guidance set out some warning signs for ceding schemes to look for. It cautioned that if any of those existed then it may be about to transfer its members pension funds to a liberation scheme.

In Mr S' case the first of those warnings was apparent. That is the Scheme had been registered relatively recently, in July 2012. So the guidance warned that LV might be about to transfer Mr S' pension funds to a liberation type scheme. And it advised that ceding scheme's could use its checklist to carry out appropriate due diligence. So I think that in order to act in Mr S' best interests it needed to take further action. As I've said above, had LV done so it's likely it would have identified the other, more stark, warning signs and been able to bring these to Mr S' attention. And given that it intended to speak with Mr S anyway, to point out he was giving up valuable benefits in terms of his GARs, then this would have been easy for it to do. So, I don't find that any perceived lack of clear instruction in the February 2013 Scorpion guidance was sufficient reason for LV not to act in Mr S' best interests.

LV's added that it would have been "impossible" to implement the additional due diligence requirements the Scorpion guidance recommended "overnight". I agree that's the case. But Mr S' transfer took place over two months after the guidance was launched. And LV told us – without supporting evidence – it had made the decision in February 2013 to issue the Scorpion insert with all transfer packs from February 2013. So it clearly recognised the importance of the guidance. And I think that a period of around one month would generally be enough for a provider to put in place the procedures necessary to implement the guidance.

Further, I'm aware that LV had a statutory duty to act on its member's instruction. But, it has a six month timeframe in which to do so. So, if LV was struggling to implement the appropriate procedures the Scorpion guidance advocated then I would have thought it fair and reasonable for LV to consider temporarily suspending transfers while it put in place the necessary arrangements. But it didn't do so. Subsequently Mr S transferred his pension and those funds appear to be lost.

Putting things right

Fair compensation

My aim is that Mr S should be put as closely as possible into the position he would probably now be in if LV had treated him fairly.

The Merseyside Care Retirement Benefits Scheme only seems to have been used in order for Mr S to make an investment that I don't think he would have made from the proceeds of this pension transfer but for LV's actions. So I think Mr S would have remained in his pension plan with LV and wouldn't have transferred to the Merseyside Care Retirement Benefits Scheme.

To compensate Mr S fairly, LV must subtract the actual value of his entitlement under the Merseyside Care Retirement Benefits Scheme from the notional value if the funds had remained with LV. If the notional value is greater than the actual value, there is a loss.

Actual value

LV should ask the new trustees of the Merseyside Care Retirement Benefits Scheme (Dalriada) whether Mr S' entitlement can be valued at the date of my Final Decision. If it can't, that's likely to be because the position of the investments made by the former trustees is uncertain. Until any value can be realised from all the scheme's investments, Mr S' entitlement can't be determined, and further costs are likely to be incurred from any liquid funds the scheme holds. So, if the new trustees cannot provide a value, I consider it appropriate to treat the actual value of Mr S' entitlement from the Merseyside Care Retirement Benefits Scheme as nil at the date of my Final Decision.

In return LV may ask Mr S to provide an undertaking. LV may ask Mr S to do either of the following, when the value of his entitlement under the Merseyside Care Retirement Benefits Scheme has been finalised:

- Make a full transfer of his entitlement back out of the Merseyside Care Retirement Benefits Scheme to LV's pension plan. LV may then recover that value from its pension plan so that Mr S isn't overcompensated. **Or,** if this isn't possible:

- Withdraw his entitlement from the Merseyside Care Retirement Benefits Scheme as tax-free cash and income payments over a period of time agreed between LV and Mr S, so that the net amount Mr S receives can be returned to LV and he is not overcompensated.

LV will need to meet any costs in drawing up the undertaking. If LV asks Mr S to provide this undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

Notional value

This is the value of Mr S' funds had he remained invested with LV up to the date of my Final Decision.

LV should ensure that any pension commencement lump sum or gross income payments Mr S received from the Merseyside Care Retirement Benefits Scheme are treated as notional withdrawals from LV on the date(s) they were paid, so that they cease to take part in the calculation of notional value from those point(s) onwards.

Payment of compensation

I don't think it's appropriate for further compensation to be paid into the Merseyside Care Retirement Benefits Scheme given its uncertain position. There also doesn't appear to be any reason why Mr S needed a pension arrangement that wasn't privately held, administered by an established provider and under FCA regulation.

So, LV should reinstate Mr S' original pension plan as if its value on the date of my Final Decision was equal to the amount of any loss established from the steps above (and it performs thereafter in line with the funds Mr S was invested in).

LV shouldn't reinstate Mr S' plan if it would cause a breach of any HMRC pension protections or allowances – but my understanding is that it might be possible for it to reinstate a pension it formerly administered in order to rectify an administrative error that led to the transfer taking place. It is for LV to determine whether this is possible, but if LV doesn't consider this is possible, it should explain why.

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

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

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

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

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

If payment of compensation is not made within 28 days of LV receiving Mr S' acceptance of my Final Decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my Final Decision to the date of payment.

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

This interest is not required if LV is reinstating Mr S' plan for the amount of the loss – as the reinstated sum should, by definition, mirror the performance after the date of my Final Decision of the funds in which Mr S was invested.

Details of the calculation must be provided to Mr S in a clear, simple format.

My final decision

For the reasons given above, I uphold this complaint. Liverpool Victoria Financial Services Limited must now put things right in line with the approach set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 6 August 2024.

Joe Scott
Ombudsman