DRN-4993993

The complaint

Miss P complained about the transfer of a Self Invested Personal Pension ("SIPP") she held with Liverpool Victoria Financial Services Limited, to a small self-administered scheme ("SSAS"). The transfer went ahead in January 2015 and I'll mainly refer to the business throughout this decision as "LV".

After transferring, Miss P's SSAS was subsequently used to invest in a financial instrument known as loan notes. Miss P says the investment has since run into trouble and she has lost out financially as a result.

Miss P says that LV 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 away from her SIPP and into a SSAS, and that it should have undertaken greater due diligence on the transfer, in line with the guidance she says was required of transferring schemes at the time. Miss P says she wouldn't have transferred, and therefore wouldn't have put her pension savings at risk, if LV had acted as it should have done.

What happened

Miss P hadn't held her pension savings on the LV SIPP platform for very long. The evidence I've seen shows she had only transferred into the SIPP from another provider, in April 2014.

As I explain in more detail further down, Miss P seems to have had contact with a number of financial firms, some of which were regulated by the FCA to provide financial advice, and some which were not. And a feature of Miss P's complaint is that she was being repeatedly targeted by cold calls about her pension.

Miss P says she received a number of unsolicited approaches from various firms in 2014 offering her a free pension review. At the time she was 56 years old and unemployed. She eventually capitulated to the calls and agreed to a meeting with a representative she describes as being from The High Street Contact Centre, in fact the full name is The High Street Grp Contact Centre ("HSGCC"), a firm which has since been dissolved. HSGCC *wasn't* authorised by the regulator of that time to provide financial advice.

The representative from HSGCC later came to Miss P's home address and advised her to transfer her existing SIPP to a SSAS and to invest the funds in a 5-year fixed rate loan note operated by a firm called "High Street Boutique Finance". A SSAS is a type of occupational pension, in which the members are also trustees and therefore take responsibility for operating the scheme.

On 30 August 2014, a limited company was incorporated with Miss P shown as the sole director. I'll refer to this company as "Miss P Management Ltd". And on 17 October 2014 Miss P signed documents to open a SSAS with Rowanmoor Group Plc ("Rowanmoor"), a provider of SSAS administration and trustee services. "Miss P Management Ltd" was recorded as the SSAS's principal employer and the SSAS was later used to invest in the loan notes I've mentioned above. A small portion of the transferred funds were held back in cash within the new SSAS.

On or around 26 November 2014, LV received a transfer request for Miss P's LV SIPP via the Origo Options transfer service. This is an electronic-based system that reduces the need for paper-based correspondence during pension transfers, so it is often used by pension platform providers to accelerate the transfer process. The Origo screenshot in relation to Miss P's transfer recorded the receiving scheme as being a SSAS, the provider of the SSAS as being Rowanmoor Group Plc and various details about Miss P (such as her date of birth and national insurance number) and the receiving scheme (such as details of the bank account the transfer was to be paid into). The adviser firm's details were recorded on the Origo screenshot as HSGCC.

The SIPP's closure statement shows the transfer of the LV policy was made on or around 12 January 2015. The total transfer value was £52,336. The subsequent investments I've mentioned above were unregulated and higher-risk and they have proven to be illiquid and incapable of sale on the open market.

In January 2020, Miss P complained to LV. Briefly, her argument is that it 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 SSAS was newly registered; there wasn't a genuine employment link to the sponsoring employer and she was unemployed; Miss P was an inexperienced investor and was advised to invest in funds which she had little understanding of and were inappropriate for her attitude to risk; and, the catalyst for the transfer was the involvement of an unregulated business in the form of HSGCC.

LV didn't uphold her complaint. It said she had a legal right to transfer and that none of the information it had about the transfer at the time gave it any cause for concern. As I'll explain below, LV also suggested some other firms were likely involved in the advice process, because two independent financial advisers (IFAs) with regulatory permission to provide financial advice, had previously been registered on Miss P's SIPP records as having her authority to act for her. LV said these two IFAs had previously sought information about her SIPP and had been sent transfer packs. LV implies this reassured it that the transfer to the SSAS probably wasn't a cause for any concern at the time.

Miss P wasn't satisfied with this response, so the complaint was referred to the Financial Ombudsman Service. One of our investigators looked into it and said they didn't think we should uphold the complaint, but Miss P still disagreed. As the dispute couldn't be resolved informally the matter was passed to me to make a decision.

I issued a provisional decision (PD) about this complaint on 26 June 2014 in which I comprehensively explained why I was intending to uphold Miss P's complaint. Miss P agreed to my PD but LV responded with a number of points.

What I've decided – and why

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

I've read with great care everything that's been said by both parties and also what our investigator said in their 'view'. I have further considered everything LV said in response to my PD. Having done all this, I'm now upholding Miss P's complaint.

The relevant rules and guidance

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.

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 formal guidance to follow that was aimed at tackling pension liberation – the "Scorpion" guidance.

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 was updated on 24 July 2014 (which was before Miss P's transfer). It widened the focus from pension liberation specifically, to pension scams – which it said were on the increase. I cover the Scorpion campaign in more detail below.

In a similar vein, in August 2014, the FCA 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 highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.

<u>The Scorpion guidance</u>

The materials in the Scorpion campaign comprised:

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

- A longer booklet issued by TPAS which gives more information, including example scenarios, about pension scams. Guidance provided by TPR said this longer leaflet was intended to be used in ongoing communications with members so that they could become aware of the scam risks they were facing.

- An ‘action pack’ for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should “watch out for” various warning signs of a scam. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where a transferring scheme still had concerns, they were encouraged (amongst other things) to contact the member to establish whether they understood the type of scheme they were transferring to and – where a member insisted on transferring – directing the member to Action Fraud or TPAS.

In deciding on the appropriate actions to take when dealing with a transfer request, a ceding scheme needed to be mindful of the material in the Scorpion guidance in its entirety rather than treating the guidance as a series of discrete steps to be worked through in isolation.

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 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 transfer 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.

<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, absent 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. The Scorpion insert provided an important safeguard for transferring members, allowing them to consider *for themselves* the scam threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. So, all things considered, I think 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 scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The guidance points to the warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. Therefore, whilst using the action pack wasn't an inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.

5. The considerations of regulated firms didn't start and end with the Scorpion guidance. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn't involve anything specifically referred to in the Scorpion guidance – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's principles and COBS 2.1.1R.

<u>The circumstances surrounding the transfer and Miss P's recollections</u>

Miss P says she met with an HSGCC representative and was enticed by a "glossy brochure" and the chance to have her pension funds grow in the loan notes investment, much more quickly than in her existing SIPP. It's therefore reasonable to say that her motives for transferring her pension appear to have been to generate higher returns rather than to receive unauthorised payments from it. She was also already over the age of 55, so liberation of her funds ahead of the then allowable pension age wasn't a concern. But this didn't mean LV had no other responsibilities.

Which firms were involved?

Miss P says that throughout 2014 she had been contacted by a number of cold callers offering her pension reviews. She names six such firms, which at various points asked for her authority to access her LV pension records to establish the value and benefits within her

SIPP. All this activity appears to have been compressed into a few short months and Miss P says now that this ought to have been obvious to LV that this was an odd sequence of events, indicative of someone being repeatedly targeted by cold calling firms. Miss P says she was inexperienced in matters related to pensions and investments.

However, I think it's quite unlikely that LV would have known of *all* the requests for information about her existing SIPP. I don't think that it would have necessarily known that six firms had been seeking information about a possible pension transfer, not least as some such requests probably pre-dated her transfer to LV, which only happened in April 2014. However, as I explain below, LV would have probably known of three such firms apparently linked to Miss P's financial affairs.

For example, in defending this complaint and ahead of me issuing my PD, LV was keen to point out that Miss P had two regulated IFAs registered on her LV SIPP records. And we know that both had submitted 'information requests' to LV and were sent 'transfer packs' in return. For the first of these firms, LV refers to AWM Financial Solutions Limited ("AWM"), which LV told us was appointed to be her IFA between 12 August and 8 October 2014; it was authorised by the regulator to provide financial advice, but this authorisation was withdrawn on 29 August 2014. Then, as of 8 October 2014 onwards, the second firm LV mentions (I'll refer to this as "Firm W") was recorded on the SIPP file as her new IFA. Again, Firm W also had authorisation to provide regulated financial advice.

The observation LV makes about these two IFAs is that Miss P was most likely being appropriately supported in any pension transfer decisions she might be considering, particularly as AWM and Firm W were both authorised by the regulator to provide financial advice. However, in my view this is supposition as there is no evidence in any of the documents I've seen from the time, that either of these firms progressed, from seeking information about her pension holdings, to then advising her to go ahead and transfer to a SSAS. The issue I'm making a finding about here is who recommended the transfer – and I don't think AWM or Firm W did this.

In my view, LV's assumptions about Miss P having a regulated financial adviser advising her on the transfer request are further weakened by the other information from the time I've seen. I say this because although ongoing "adviser charges" are listed in her SIPP account in 2014 against AWM and Firm W – there are also charges for a *third* firm too. LV hasn't mentioned this third firm in its submission to us, but it is listed as "Midas Money Ltd", and it was a firm *not* authorised to provide financial advice. It is now dissolved.

In my view, these entries about "adviser charges" probably relate only to servicing agent roles, provided to Miss P (who wasn't financially experienced) whilst she was a member of the SIPP; they also pre-date her transfer request and if they did relate to transfer advice, my experience is that they would have been levied *after* the advice. As these charges refer to before or during October 2014, I think it's very unlikely they relate to pension (in her case a SIPP) transfer advice because the transfer took place in January 2015.

In summary then, there's nothing which shows any of these other firms – AWM, Firm W or Midas Money Ltd - being involved in advising her to transfer from the SIPP to the SSAS. Although LV is effectively saying that Miss P may have had regulated advisers behind her SIPP transfer request, this argument is weak for the following reasons. Firstly, what the above shows is that even of those 'advisers' mentioned by LV, these actually comprised of both regulated *and unregulated* firms. There's also no evidence I've seen showing that any of the firms mentioned went further than submitting information requests about her SIPP.

I've also considered the sequence of events in 2014. These show that AWM's association with Miss P had probably ceased by the end of August and LV says that Firm W's

information request was in late September. But it wasn't until 26 November that LV received a transfer request for Miss P's pension policy via the Origo Options transfer service. And LV itself says in its final response letter of May 2020 that, *"the final transfer request…. came from High Street Contact Centre"* [HSGCC] rather than any other of the companies mentioned above.

In support of the view, and the evidence above, that HSGCC 'advised' her, Miss P herself is clear that it was HSGCC which cold called her and then met with her face-to-face. She is also clear that the representative from that firm told her about the various steps that would be required to participate in the loan notes investment it was recommending – telling her she'd need to set up a new company to be a 'sponsoring employer' and register it as such with HMRC. The HSGCC representative then told her she'd need to create the SSAS in order to transfer her existing funds across and that those funds should then be used to invest in the loan notes. With this information in mind, I think if Miss P had ever been asked at the time about who was advising her, she'd have said HSGCC, an unregulated firm.

I also think a highly likely scenario here is that HSGCC and High Street Boutique Finance (the company operating the loan note investment) were clearly working together to target investors for these types of higher-risk and unregulated investment opportunities, such as the one in this case. I've noted for instance, that both firms shared identical company address details, which very strongly indicates they had a connection and were working together.

For good order, I've considered the involvement of the other firm I've mentioned above - Rowanmoor. However, there's no evidence Rowanmoor's involvement extended beyond being a provider of SSAS administration and trustee services only and its involvement came towards the latter part of this process.

I'm therefore persuaded all this evidence supports Miss P's recollections of being advised to transfer by HSGCC rather than any other firm. Advice of that nature was (and remains) regulated by the Financial Services and Markets Act 2000 (FSMA). Only someone authorised to do so by the Financial Conduct Authority (FCA) is permitted to give regulated financial advice unless they have a specific exemption under FSMA. HSGCC was therefore acting illegally.

I also think it's obvious in this case that the idea of opening a SSAS and then investing in these areas is highly likely to have come from external factors. Miss P did not have the knowledge or experience to make these types of investment decisions on her own. She was unemployed and had very limited financial resources. She had held her SIPP on the LV platform for a very short time. And I haven't seen anything about her circumstances, or anything from what she has told us, that makes me think it's likely she would have decided, without advice, to embark on such a complicated and esoteric arrangement, which involved transferring out of her existing pension, setting up a new 'employer' company, opening a SSAS and then investing in loan notes.

So, to be clear, everything I've seen here corresponds with HSGCC recommending the transfer, and the investment in loan notes, as a way of apparently seeking to aggressively grow Miss P's pension; it advised her to transfer and it recommended the SSAS as a vehicle for carrying all this out. HSGCC was not authorised to give investment advice and I think basic enquiries would have uncovered its involvement here, together with other significant signs of a scam. LV should have spotted these when applying reasonable due diligence.

What did LV do and was it enough?

The Scorpion insert:

In my view, LV is relying on the fact that the transfer was through the Origo transfer service as a reason why it didn't need to send the Scorpion insert to Miss P alerting her to the concerns about wider pension scamming. And my experience is that a request through the Origo system means a Scorpion insert most likely wasn't sent.

But even in that situation, I would still expect LV to have given these same messages somehow before committing to the transfer. It could even have delayed doing this until it had comprehensively looked at whether there were any other concerns that it might have used to amplify certain warnings. LV didn't do *anything* else meaningful in relation to the duty of care it had to Miss P to treat her fairly. Even given the warning signs I've mentioned above, including that she appeared on LV's own records to be unemployed and was transferring to a SSAS, it didn't contact Miss P at all. There must also have been some concerns as her transfer application found its way to the LV crime team (although no action appears to have followed).

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. The warnings contained in the insert should have therefore been given somehow, regardless of the view LV evidently took at the time that either no signs of a scam seemed relevant here, or the Origo system was being used thus somehow meaning due diligence wasn't required. But LV could have given the warnings in the Scorpion insert in the run up to the transfer. Alternatively, this could have been done as part of a wider due diligence process. Either way, it's my view that this would have been much more in keeping with the substance of the Scorpion guidance rather than just sending her nothing.

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 a pension scam and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk. But I don' think LV undertook any meaningful due diligence.

As I say, I note that Miss P hadn't held her pension savings in the LV SIPP for very long. It had only been established in April 2014, having been transferred-in from another pension platform. This somewhat unusual fact was noted on LV's Origo transfer 'checklist' and it required LV staff to check and to 'tick' whether or not the proposed transfer application related to a SIPP (or other pension) that had been open for less than 12 months. I've assumed that information showing she'd held a SIPP for such a short time was important background information about Miss P's finances. And I think it must have been a relevant issue here for LV, because it was being asked for on the checklist. I've also assumed that ticking the box was designed to generate some further due diligence or assessment as part of an oversight exercise, perhaps to prevent or explain any issues of concern. Indeed, the completion of the checklist appears to have flagged the transfer application to the financial crime team at LV – again the assumption that can be made here is that this was important.

However, it's not clear what further checking process, if any, this referral to the crime team actually generated and my understanding is that Miss P was not directly contacted by anyone at LV and the transfer was simply allowed to go ahead, even though it was indicated on the form that she'd held the SIPP for a relatively short time and wanted to transfer again so soon.

Given all the information LV had at the time, a particular feature of Miss P's transfer would have been a potential warning sign of a scam: Miss P's SSAS was recently registered. LV should therefore have followed up on it to find out if other signs of a scam were present. I accept it may not have been clear from the Origo request when the SSAS was registered, but in checking the Scheme was correctly registered – which it would have needed to have done – it would have become apparent when it was registered.

Given this warning sign I think it would have been fair and reasonable – and good practice – for LV to have looked into the proposed transfer and the most reasonable way of going about that would have been to turn to the check list in the action pack to structure its due diligence into the transfer.

The check list provided a series of questions to help transferring schemes assess the potential threat by finding out more about the receiving scheme and how the consumer came to make the transfer request. Some items on the check list could have been addressed by checking online resources such as Companies House and HMRC. Others would have required contacting the consumer. The check list is divided into three parts (which I've numbered for ease of reading and not because I think the check list 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 check list identified actions that should help the transferring scheme establish the facts.

I don't think it would always have been necessary to follow the check list in its entirety. And I don't think an answer to any one single question on the check list would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct

investigations across several parts of the check list to establish whether a scam was a realistic threat. Given the warning sign that should have been apparent when dealing with Miss P'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 check list and contacted Miss P as part of its due diligence.

What should LV have found out?

LV knew, or certainly should have known, firstly of the threat posed by the newly incorporated company and SSAS. It would have learned there was no genuine employment link to the sponsoring employer and would have seen from its own records that Miss P was unemployed. So, investigations under part 1 of the check list would have revealed the SSAS's sponsoring employer was recently incorporated and set up to facilitate the creation of the SSAS rather than as an entity in its own right.

Investigations under part 2 of the check list would have revealed that Miss P was attracted to the investment opportunities pitched to her, including overseas investments or unusual, creative or new investment techniques such as loan notes which were potential sources of concern under the action pack.

I think investigations would have then revealed the existence of a non-regulated adviser; again this was another risk area listed in part 3. I think these warning signals should have then caused investigations into the issue of unregulated advice. For this, I'm satisfied Miss P would have told LV that she was being advised to transfer by HSGCC - my previous findings in the "circumstances surrounding the transfer" section support this. Had LV asked her about this – as it should have done under part 3 of the check list, it would have revealed signs of a scam.

The check list 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 approved by the FCA at www.fca.gov.uk/register*". In other words, they should consult the FCA's online register of authorised firms. LV should have taken that step, which is not difficult, and it would quickly have discovered that Miss P's adviser was indeed unauthorised.

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 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 HSGCC's involvement because it pointed to a criminal breach of FSMA. On the balance of probabilities, I'm satisfied such a breach occurred here.

What should LV have told Miss P – and would it have made a difference?

Had it done more thorough due diligence, there would have been a number of warnings LV could have given to Miss P in relation to a possible scam threat as identified by the action pack. LV should also have been aware of the close parallels between Miss P's transfer and the warnings the FCA gave to consumers in August 2014 about transferring to SSASs (which was brought to the attention of pension providers the following month). But the most egregious oversight was LV's failure to uncover the threat posed by a non-regulated adviser. Its failure to do so, and failure to warn Miss P accordingly, meant it didn't meet its obligations under PRIN and COBS 2.1.1R.

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

I'm satisfied any messages along these lines would have changed Miss P's mind about the transfer. The messages would have followed conversations with Miss P so would have seemed to her (and indeed would have been) specific to her 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 Miss P aware that there were serious risks in using an unregulated adviser. I think the gravity of any messages along these lines would prompt most reasonable people to rethink their actions. I've seen no persuasive reason why Miss P would have been any different. So, I consider that if LV had acted as it should, Miss P wouldn't have proceeded with the transfer out of her personal pension or suffered the investment losses that followed.

Other arguments

I note that at the time of the transfer Rowanmoor was a long established SSAS provider and had some repute in the industry. Rowanmoor Trustees Limited also had legal and fiduciary duties as a professional trustee. There's an argument, therefore, that LV could have taken comfort from this. I disagree.

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 to a different business – especially one that had a vested interest in the transfer proceeding. An important aspect in this is the fact that there is little regulatory oversight of single-member SSASs; they don't have to be registered with TPR. In the absence of that oversight, LV was assuming, in effect, that Rowanmoor would want to maintain its standing in the industry and the trustee subsidiary would comply with its legal and fiduciary duties. 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.

The fact that a different part of the Rowanmoor Group was regulated by the FCA doesn't change my thinking on this. The key point is that Rowanmoor Trustees Limited *wasn't* FCA-regulated so I see no reason why it would have operated with FCA regulations and Principles in mind – or why its actions would have come under FCA scrutiny. As such, I'm not persuaded LV could, reasonably, have derived sufficient comfort about the Rowanmoor SSAS as a destination for Miss P's transfer.

Response to my PD

I'm grateful to LV for its response to my PD and I've considered with great care everything it has said. However, much of what LV has said is not new information. Rather, it consists largely of a re-emphasis of points already made and which were fully addressed and evidenced in the PD.

Who advised Miss P to transfer?

When replying to my PD, LV revisited this issue once again and said the evidence was persuasive that Miss P had an IFA at the time which was authorised by the FCA and therefore able to provide her with regulated financial advice – namely AWM. LV said in its

response that *"AWM was authorised and it is reasonable to assume that they would have provided Miss* [P] *with the Scorpion leaflet and made her aware of any risks, as was their duty as her IFA."* LV went on to say that "*we received the transfer request* [via the Origo pension transfer system] *and provided* [with] *an adviser name of 'High Street Contact Centre' with the same postcode / address* [as AWM]*. AWM also had a trading name of 'High Street Wealth Management*[1]*' so it isn't unreasonable to assume they were the same firm.* The implication being made here is that Miss P was being advised by an FCA-regulated firm and that LV at the time was entitled to take some comfort from this. The further implication is that AWM and HSGCC were effectively the same firm.

In my view, these statements make a lot of assumptions without supporting evidence. There's nothing showing, for example, that these thought processes or assumptions about which firm was involved at the time and whether they were linked to each other informed LV's thinking about the transfer request it had received and whether it ought to be progressed without any further enquiries being made. The transfer request itself was also from HSGCC, not AWM and this ought to have been an issue of concern. In my view, LV description of HSGCC "effectively" being the same as AWM would on its own seem unusual - and definitely be worthy of immediate clarification before transferring.

Of course, I had dealt comprehensively with all these issues in my PD. However, for the record, I don't agree with the points LV now makes and will further explain my rationale. As I'd explained, the link to Miss P supposedly being advised to transfer her SIPP to a SSAS *by AWM* is weak. Midas Money Ltd, Firm W and AWM had *all* been 'linked' to her LV SIPP account at various points in time, with the evidence strongly suggesting these were servicing agreements, rather than any involvement in specifically advising Miss P to leave her SIPP, then setting up a SSAS and / or investing in the areas she eventually did invest in. I see no reason to explain this in detail again, but whilst I accept AWM had some form of previous relationship with Miss P when she had her SIPP, the presence of HSGCC appearing on the Origo transfer request should in itself have raised some concerns and further investigation before the transfer went through. We also know that Midas Money Ltd and Firm W had also made information requests about her existing SIPP. The Firm W information request to LV actually post-dated the AWM request, and as of early October 2014, it was evident that any servicing relationship AWM had, had been taken over by another firm. It's also not factually correct to imply that AWM and HSGCC operated from the same address and so were effectively the same. Whilst it's possible to say now that many similar companies may have been working together to gain customers for high-risk and unregulated investments, AWM Financial Solutions Limited itself did *not* have the same registered address as HSGCC and any basic check of publicly available information would have easily revealed this.

I therefore remain of the view, as set out in my PD, which said that given all the information LV had at the time, a major risk was that Miss P's SSAS was recently registered. So, this feature of Miss P's transfer would have been a warning sign of a scam and LV should therefore have followed up on it to find out if other signs of a scam were present. LV didn't do this, but had it done more thorough due diligence, there would have been a number of warnings LV could have given to Miss P in relation to a possible scam threat as identified by the action pack.

Policy and strategy documentation mainly about the Origo transfer system

[1] LV is using a different company to the one I'd mentioned (which was The High Street Grp Contact Centre)

LV raised this issue. In its post-PD submissions LV sent me a number of documents relating to the above. I don't propose to go into all the submissions it sent in detail, but these consisted, for example, of:

- A working practice document from 2013 on pension liberation which broadly explained how pension providers / platforms were vetted before being allowed on the Origo system.

- An internal LV email from July 2014 showing it was reviewing its practices and *"pro-actively sending the Scorpion leaflet on all wake-up packs and annual statements"*.

- The Code of Good Practice document from March 2015 (however, I've noted this was released long after the transfer in question).

- The Origo *Memorandum of Understanding* (MOU) document that was applicable from the time.

I'm going to summarise my response to these matters as they don't materially affect the outcome of this case.

I understand that LV would have been approved at some point by its peers to use the Origo transfer system and that all users needed 'to play by certain rules'. However, in my view, the evidence in this case is persuasive that LV used the transfer being processed through the Origo system to such an extent that it then failed in its wider responsibilities to Miss P. There remains no evidence she was ever given the Scorpion leaflet, nor was she likely provided with the type of information it would have contained therein. Very basic checks would have established a number of areas of concern and LV itself possessed information that Miss P was unemployed at the time, a fact that would have shown obvious reasons to ask her questions about establishing a limited company as a 'sponsoring employer' and transferring to a SSAS.

Whilst I'm grateful to LV for sight of the MOU document, the extent to which this was or wasn't followed hasn't come with any commentary from LV and the use of Origo as a method of transfer did not abrogate LV of its responsibilities. Having carefully looked over the whole document sent by LV, it does not in my view alter anything I've said. I accept that Origo may have had a robust application process for members and that membership would not be automatically granted. MOU members would acknowledge that they would put systems in place in line with good industry practice to prevent any use that was fraudulent or otherwise unlawful or contrary to TPR guidance. I accept these were good intentions at the strategic level.

However, I don't think that generic assurances to a third party in an MOU or broad initial checks when agreeing membership were something LV could reasonably rely on when weighing up potential scam risks for customers in a particular transfer. I take a greater note the importance of what the due diligence in question here was actually aimed at preventing – pension liberation and scams, the end result of which can often be the loss of entire pension funds. In my view clear steps were expected of ceding schemes to prevent this from happening, not to mention the duties of ceding schemes under PRIN and COBS 2.1.1R. I don't think LV's reliance on other parties' checks, MOU processes and essentially delegating LV's own responsibilities was good enough here.

The involvement of Rowanmoor

In responding to the PD LV says *"Rowanmoor were considered a large, mainstream provider and there was no reason to believe that they may be involved with or facilitating pension scams".* I do understand the point being made, but I had previously covered this matter in the PD – again quite comprehensively. I therefore remain unpersuaded that LV could have derived sufficient comfort about the involvement of Rowanmoor, to the extent it should ignore everything else.

Summary

I have reconsidered all the evidence and submissions in this case. However, for the reasons outlined in the PD and enhanced upon here, I am now upholding Miss P's complaint.

Putting things right

Fair compensation

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

The SSAS I've referred to only seems to have been used in order for Miss P to make an investment that I don't think she would have made from the proceeds of this pension transfer, but for LV's actions. So I think that Miss P would have remained in her pension plan with LV and wouldn't have transferred to the SSAS.

To compensate Miss P fairly, LV should subtract the actual value of the SSAS 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

This means the SSAS value at the date of my Final Decision. To arrive at this value, any amount in the SSAS bank account is to be included, but any overdue administration charges yet to be applied to the SSAS should be deducted. Miss P may be asked to give LV her authority to enable it to obtain this information to assist in assessing her loss.

My aim is to return Miss P to the position she would have been in but for the actions of LV. This is complicated where an investment is illiquid (meaning it cannot be readily sold on the open market), as its value can't be determined. On the basis of the evidence I have, this is likely to be the case with all the investments in Miss P's SSAS commonly referred to as the loan notes. The investments in the loan notes have failed to the extent that it's reasonable to say at this point that investors – Miss P included – are unable to realise value from them. Therefore as part of calculating compensation:

- LV should seek to agree an amount with the SSAS as a commercial value for the illiquid investment(s) above, then pay the sum agreed to the SSAS plus any costs, and take ownership of those investment(s). The actual value used in the calculations should include anything LV has paid to the SSAS for illiquid investment(s).

- Alternatively, if it is unable to buy them from the SSAS, LV should give the illiquid investment(s) a nil value as part of determining the actual value. In return LV may ask Miss P to provide an undertaking, to account to it for the net proceeds she may

receive from those investments in future on withdrawing them from the SSAS. LV will need to meet any costs in drawing up the undertaking. If LV asks Miss P to provide this undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

- It's also fair that Miss P should not be disadvantaged while she is unable to close down the SSAS. So to provide certainty to all parties, if these illiquid investment(s) remain in the scheme, I think it's fair that LV should pay an upfront sum to Miss P equivalent to five years' worth of future administration fees at the current tariff for the SSAS, to allow a reasonable period of time for the SSAS to be closed.

Notional value

This is the value of Miss P's funds had she 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 Miss P received from the SSAS 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

There doesn't appear to be any reason why Miss P needed a pension arrangement that wasn't privately held, administered by an established provider and under FCA regulation. So I don't think it's appropriate for further compensation to be paid into the SSAS.

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

LV shouldn't reinstate Miss P's original plan if it would cause a breach of any HMRC pension protections or allowances – but my understanding is that it will 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. If LV doesn't consider this is possible, it must explain why.

If LV is unable to reinstate Miss P's pension and it is open to new business, it should set up a **new** pension plan with a value equal to the amount of any loss on the date of my Final Decision. The new plan should have features, costs and investment choices that are as close as possible to Miss P'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 Miss P is entitled based on her 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 Miss P doesn't incur an annual allowance charge. If LV cannot do this, then it shouldn't set up a new plan for Miss P.

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

To make this reduction, it's reasonable to assume that Miss P is likely to be a basic rate

taxpayer in retirement. So, if Miss P has yet to take her 25% tax-free cash from the SSAS, only the remaining 75% portion would be taxed at 20%. This results in an overall reduction of 15%, which should be applied to the compensation amount if it's paid direct to her in cash.

Alternatively, if Miss P has already taken her 25% tax-free cash from the SSAS, the full 20% reduction should be applied to the compensation amount if it's paid direct to her in cash.

If payment of compensation is not made within 28 days of LV receiving Miss P's acceptance of my Final Decision, interest should 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 Miss P how much has been taken off. LV should give Miss P a tax deduction certificate in respect of interest if Miss P asks for one, so she can reclaim the tax on interest from HMRC if appropriate.

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

Neither party has responded to let us know that they dispute any of the following:

- the assumption that Miss P will be a basic rate taxpayer in retirement

- the assumption of nil value for the loan notes at the date of my Final Decision

Details of the calculation should be provided to Miss P in a clear, simple format.

My final decision

For the reasons given above, I uphold this complaint.

I direct Liverpool Victoria Financial Services Limited to put things right in line with the approach set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 27 September 2024.

Michael Campbell
Ombudsman