DRN-5154872

The complaint

Mr A has complained about a transfer of his Group Stakeholder Pension Plan (GSPP) with Scottish Equitable plc trading as Aegon (Aegon) to a small self-administered scheme (SSAS) in March 2015. Mr A's SSAS was subsequently used to invest in overseas property developments with The Resort Group (TRG) and Dolphin Capital. The investments now appear to have little value. Mr A says he's lost out financially as a result.

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

What happened

I issued a provisional decision on 4 November 2024. I've repeated what I said about what had happened any my provisional findings.

'*Mr A had a GSPP (a type of personal pension) with Aegon. On 29 September 2014 he signed a letter of authority (LOA) allowing First Review Pension Services (FRPS), an unregulated firm, to obtain details and transfer documents in relation to his GSPP. Mr A says this followed an unsolicited approach from FRPS offering him a free pension review. On 2 October 2014 FRPS faxed Aegon enclosing Mr A's LOA and requesting information about Mr A's pension policies and transfer documents. Aegon sent policy information and transfer paperwork to FRPS on 28 October 2014.*

In December 2014 a company which I'll call A Limited was incorporated with Mr A as the sole director.

There's a letter dated 3 January 2015 from FRPS confirming that advice under section 36 of the Pensions Act 1995 had been compiled by Broadwood Assets Limited.

On 27 February 2015 Bespoke Pension Services Limited (BPS) wrote to Aegon with a transfer request from Mr A. BPS enclosed the following documentation in support:

- *A letter from HMRC showing the SSAS had been registered on 20 February 2015 and giving the Pension Scheme Tax Reference (PSTR) number.*
- *A copy of The Pensions Regulator's (TPR) 'Scorpion letter' (I mention the Scorpion campaign further below) signed by Mr A. That was the longer July 2014 booklet entitled 'A lifetime's savings lost in a moment', the first page of which had been signed by Mr A on 20 February 2015, alongside a printed statement which said: 'I can confirm I have read this document. I am not party to any such pensions liberation activity in anyway whatsoever.'*
- *Confirmation that Mr A was employed by A Limited – an agreement dated 23 December 2014 showing he'd been appointed as the managing director of A Limited, the sponsoring employer of the SSAS.*

• A letter signed by Mr A dated 20 February 2015 (to which I've referred further below).
• The SSAS trust deed and rules dated 18 February 2015 which had been drafted by a large London law firm.
• A letter from that firm confirming they'd drafted the trust deed and rules which conformed to the Finance Act 2004 as a registered pension scheme and hadn't been drafted in a way which knowingly allowed the scheme to be operated other than as a registered pension scheme.
• BPS's Policy on Pension Liberation document dated 1 April 2014.

The letter from Mr A dated 20 February 2015 included the following:

'The purpose of this letter is to provide you with additional confirmation of the basis upon which I have made this request and to seek to provide a record of the fact that I am aware of the issues relating to pensions liberation. Indeed I have carefully considered my decision to request a transfer to the scheme and have not made it lightly.

I confirm that the scheme is a registered pension for HMRC purposes [reference number given] and that the trust deed and rules governing it only allow standard benefit options such as annuities and drawdown in accordance with the applicable legal requirements.

From guidance and information I have received in connection with this decision I appreciate that there has recently been a significant rise in cases of 'pensions liberation' fraud. As a result there is increased concern and scrutiny around transfer requests being made, to ensure members fully understand the implications of making a transfer.

I therefore wish to confirm that the transfer request is being made in order that I can take advantage of investment opportunities available under the scheme, none of which are in any way connected with pension liberation. I have received detailed information about the Scheme, how it operates, who administers it and the risks associated with making a transfer out of my existing pension arrangement.

In making this transfer I am not seeking to access my pension benefits before age 55 and I am aware of the potentially significant tax liabilities that would arise were I to attempt to do so. Indeed the trust deed and rules of the Scheme do not permit benefits to be taken prior to age 55, except in circumstances of ill health which meet HMRC requirements. I also confirm that I have not been offered any cash or other incentive by any person as part of my decision to transfer my pension to the Scheme.

On this basis I would be grateful if you could please proceed to transfer my pension to the Scheme as requested as soon as possible.'

BPS's letter also included transfer forms and bank details for the transfer payment. BPS confirmed they were a co signatory to the account and the trustees were unable to move any funds without BPS's authority which protected the fund against any risk of pension liberation.

Aegon wrote to Mr A on 4 March 2015. Aegon acknowledged Mr A's transfer request. The letter continued:

'In May 2014, the Financial Conduct Authority (FCA) issued a warning about consumers being contacted by an unexpected phone call, an email, a text message or an online advert and offered a 'free pension review' and being persuaded to transfer to a self-invested personal pension (SIPP) or a small self-administered scheme (SSAS). I enclose a copy of the FCA's warning for your information; you can also find it on the FCA's website at http://www.fca.org.uk/consumers/financial-servicesproducts/pensions/protect.

If you have been contacted in this way, you should read the article and consider your position.

Before completing this type of transfer, we require you to complete and sign the enclosed Discharge form and return the original signed form to Aegon, Edinburgh Park, Edinburgh, EH12 9SE.

Before you complete and sign the Discharge form, you should note the following:

• Aegon strongly recommends that you take independent advice from an adviser regulated by the Financial Conduct Authority before proceeding to make sure that all of your options are considered. Whether a transfer is suitable or not will very much depend on your individual circumstances and objectives. If you don't have an adviser, you can find details of firms in your area by visiting www.unbiased.co.uk.'

The discharge form said the transfer value wasn't guaranteed and the actual transfer value would be calculated on the second business day Aegon concluded its checks to make sure it could send the transfer payment to the receiving scheme and was in receipt of all the necessary completed documents. And that, before making any transfers, Aegon was obliged to carry out those checks which could result in a delay or the transfer request being declined.

The declaration Mr A had to sign included an indemnity if, for any reason, the transfer was considered by HMRC not to be a recognised transfer and this resulted in an unauthorised payments charge or surcharge and/or a scheme sanction charge.

Mr A signed the discharge form on 12 March 2015 and returned it to Aegon.

The value of Mr A's GSPP was transferred on 23 March 2015. A transfer value of £86,584.57 was paid by bank transfer of which 25% was then paid to Mr A as a cash lump sum – at the time he was coming up to his 59th birthday and so he was able to take a tax free pension commencement lump sum. £46,050 was then invested in TRG and £15,600 in Dolphin Capital.

I understand that initially Mr A received some returns from the investments but eventually these dried up and he became concerned about his SSAS. In May 2020 he got information showing that the value of his SSAS had fallen dramatically.

Through his then representative Mr A complained to Aegon in May 2021. Briefly, his argument was that Aegon had failed to carry out sufficient due diligence in respect of his transfer request and failed to ensure he was given sufficient warnings about the risks of pension liberation, fraud and scams. Mr A says Aegon should've carried out checks on the new scheme, including that it was registered by HMRC, and made direct enquiries of him as to why the transfer had been requested and told him to seek independent financial advice or directed him to the Pensions Advisory Service (TPAS).

Aegon didn't uphold the complaint. It said Mr A had a legal right to transfer and it had completed initial checks and further due diligence before complying with his transfer request. BPS's transfer request enclosed the PSTR certificate and a copy of TPR's pension scam documentation with a declaration signed by Mr A that he'd read it. BPS confirmed it was able and willing to accept the transfer payment. Further due diligence was also undertaken. The SSAS was newly established and internal knowledge led Aegon to be concerned that the pension fund, if transferred, may be invested in high risk investments which may not be suitable for Mr A. Aegon referred to the letter it had sent him on 4 March 2015 with the information from the FCA. The letter set out a number of warning signs and strongly recommended Mr A take financial advice from a FCA regulated adviser. It was explained *that he'd have to sign a disclaimer before Aegon would consider the transfer. He was asked to consider all the information and the leaflet before completing the discharge form. Mr A signed the transfer instruction which Aegon received on 13 March 2015. Aegon reviewed the transfer but considered there was nothing further they could do to stop the transfer.*

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

What I've provisionally decided – and why

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

Initially Aegon said the complaint had been made too late and we couldn't consider it. But Aegon was persuaded that Mr A was unaware there were issues with the investments until 2019. He'd complained in 2021, so within three years of when he'd become aware he had cause for complaint.

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

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

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

• Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;

• Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and

• COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

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

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

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

Deviating from it doesn't therefore mean a firm has necessarily broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's right to transfer.

That said, the launch of the Scorpion guidance in 2013 was an important moment in so far it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing those requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance's specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

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

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

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

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

<u>The March 2015 Scorpion guidance</u>

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

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

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

<u>The PSIG Code of Good Practice</u>

The PSIG Code was voluntary. But, in its own words, it set a standard for dealing with transfer requests from UK registered pension schemes. It was "welcomed" by the FCA and the Association of British Insurers (amongst others). And several FCA regulated pension providers were part of the PSIG and co-authored the Code. So much of the observations I've made about the status of the Scorpion guidance would, by extension, apply to the PSIG Code. In other words, personal pension providers didn't necessarily have to follow it in its entirety in every transfer request and failure to do so wouldn't necessarily be a breach of the regulator's Principles or COBS. Nevertheless, the Code sets an additional benchmark of good industry practice in addition to the Scorpion guidance.

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

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

- *The PSIG Code includes an observation that: "A strong first signal of [a scam] would be a letter of authority requesting a company not authorised by FCA to obtain the required pension information; e.g. a transfer value, etc." This is a departure from the Scorpion guidance (including the 2015 guidance) which was silent on whether anything could be read into the entity seeking information on a person's pension.*

- *The Code makes explicit reference to the need for scheme administrators to keep up to date with the latest pension scams and to use that knowledge to inform due diligence processes. Attention is drawn to FCA alerts in this area. (I noted the contents of some of those alerts earlier in my decision.)*

- *Under the PSIG Code, an 'initial analysis' stage allows transferring schemes to fast-track a transfer request without the need for further detailed due diligence, providing certain conditions are met. No such triage process exists in the 2015 Scorpion guidance – following the three-part due diligence checklist was expected whenever a transfer was requested.*

- *The PSIG Code splits its later due diligence process by receiving scheme type: larger occupational pension schemes, SIPPs, SSASs and QROPS. The 2015 Scorpion guidance doesn't distinguish between receiving scheme in this way – there's just the one due diligence checklist which is largely (apart from a few questions) the same whatever the destination scheme.*

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

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

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

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

In his complaint to Aegon Mr A said he'd been cold called by FRPS who'd told him they were an independent company who, amongst other things, introduced customers to third parties who could provide pension scheme services and investment opportunities. FRPS offered to carry out a free review of Mr A's existing pension arrangements. At the time Mr A was and remains a doctor and an inexperienced and unsophisticated investor. His attitude to risk was low. Someone from FRPS who I'll call Mr M visited Mr A where he worked. Various literature was produced including a brochure with graphs, building plans, photographs and details of the anticipated performance of specified investments.

Mr M told Mr A about a lucrative investment opportunity in Cape Verde, the Llana Beach Resort, part of TRG. Mr M said Mr A would have to invest via fractional ownership through a SSAS (which would mean setting up a limited company) and he'd receive a guaranteed rate of return – for example, investing £50,000 would generate returns of £9,000 over three years, plus £1,5000 capital growth, giving a total return over the period of £10,500 or 21%. Mr M said he'd put Mr A in contact with BPS who'd act as the SSAS administrator.

Mr A confirmed, based on the advice he'd been given by Mr M, that he wanted to transfer his existing pension funds to the SSAS. Mr M produced a pre populated application form which only required Mr A's signature. Mr M didn't explain or go through the form with Mr A who also signed a form of authority authorising BPS to contact his existing pension providers and requesting that the value of his pension be transferred to the SSAS.

Our investigator also spoke to Mr A about what had happened. Mr A said he'd got a cold call in January 2015 and arrangements had then been made for someone to come to his house to discuss his pension. They told him his Aegon pension was underperforming and he could get returns of between 8% - 10% if he invested elsewhere – in Cape Verde and a German property group. He was told he'd need to set up a SSAS, and lots of other jargon he was unfamiliar with was also used. The person he spoke with, Mr M, was very professional and knowledgeable and told Mr A that he was a UK regulated adviser. Mr M visited him three times. Mr A said it did feel rushed and that he was pressured into following it through and he recalled wondering how much money Mr M would be making out of the deal because of how eager he was to get him to join up. Mr M also tried to get Mr A's NHS pension transferred but there was a problem with that. Mr A wasn't offered any incentive or payment to proceed with the transfer.

The investigator asked Mr A about the letter Aegon had sent on 4 March 2015 which mentioned SSAS scams and required Mr A to return a form to proceed. Mr A said he didn't recall receiving that at the time. He thought he'd got some kind of warnings leaflet but after the transfer had already gone through. He said, if Aegon had called to discuss the letter with him, he'd likely have not gone ahead as he wasn't overly committed to the transfer but just wanted to make sure his pension wasn't stagnating. And, if he'd been told FRPS wasn't a regulated firm, he wouldn't have proceeded – he'd thought they were regulated.

I think what we've been told about what happened is plausible and fits with what we know about how the parties involved were operating at the time.

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

The Scorpion insert:

For the reasons given above, my view is that personal pension providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information.

Here Aegon didn't send Mr A the Scorpion insert. But Aegon had received, in support of the transfer request, a copy of the longer Scorpion booklet which Mr A had signed to say he'd read and understood it. It was the July 2014 edition of the booklet which was the version in use at the time Mr A's transfer request was received.

As I've said above, the Scorpion campaign was refreshed in March 2015 and new inserts and booklets issued. But that wasn't until only a week or so before Mr A's transfer was processed. I don't think Aegon needed to send him the updated version given that, when Aegon was undertaking its checks – during early March 2015 – the July 2014 insert and booklet were the ones in use.

Due diligence:

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

I've firstly looked at what due diligence Aegon carried out in this case to consider whether it was sufficient. The initial triage process I've mentioned above should've led to Aegon asking Mr A further questions about the transfer as per Section 6.2.2 ("Initial analysis – member questions"). I won't repeat the list of suggested questions in full. Suffice to say, at least three of them would've been answered "yes":

• Did receiving scheme/adviser or sales agents/representatives for the receiving scheme make the first contact (e.g. a cold call)?

• Have you been promised a specific/guaranteed rate of return?

• Have you been informed of an overseas investment opportunity?

Under the Code, further investigation should follow a "yes" to any question. The nature of that investigation depends on the type of scheme being transferred to. The SSAS section of the Code (Section 6.4.3) points to the following as being potential areas of concern:

a) Employment link: a lack of an employment link to any member of the SSAS.

b) Geographical link: a sponsoring employer that is geographically distant from the member.

c) Marketing methods: a SSAS being marketed through a cold call or an unsolicited approach.

d) Provenance of receiving scheme: a SSAS registered within the previous six months or a recently registered sponsoring employer or administrator operating from 'virtual' offices, or using PO Boxes for correspondence purposes.

Underneath each area of concern, the Code set out a series of example questions to help scheme administrators assess the potential risk facing a transferring member.

Not every question would need to be addressed under the Code. Indeed, the Code makes the point that it is for scheme administrators to choose the most relevant questions to ask (including asking questions not on the list if appropriate). But the Code makes the point that a transferring scheme would typically need to conduct investigations into a "wide range" of issues to establish whether a scam was a realistic threat. With that in mind, and given the relatively limited information it had about the transfer, I think in this case Aegon should have addressed all four sections of the SSAS due diligence process and contacted Mr A to help with that.

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

Investigations under part (a) would've revealed, although an agreement dated 23 December 2015 had been supplied showing Mr A was employed by A Limited as its managing director, Mr A was a doctor and employed as such elsewhere. Further, A Limited was newly incorporated – in December 2014 – and the nature of the business was shown as a dormant company. And, in response to enquiries under part (c), Mr A would've said the idea of moving to a SSAS had come about following a cold call from FRPS whose adviser had visited Mr A several times to discuss transferring to a SSAS so he could invest in TRG and Dolphin Capital. And despite what Mr A may have been led to believe, Mr M wasn't FCA registered and neither was FRPS. Enquiries under part (d) would've raised issues about the provenance of the receiving scheme – the SSAS had only been registered on 20 February 2015, only a week before BPS had written to Aegon with Mr A's transfer request.

So, had it done more thorough due diligence, there'd have been a number of warnings Aegon could've given to Mr A in relation to a possible scam threat as identified by the PSIG Code (and the Scorpion action pack), including that the firm he'd been advised by was unregulated and could put his pension at risk.

But Aegon did give Mr A some warnings – Aegon's position is that it gave Mr A explicit warnings about the red flags associated with the transfer and gave him an opportunity to stop the transfer proceeding.

Although Mr A says he doesn't recall getting the Scorpion booklet until possibly after the transfer had gone ahead, it's clear he was shown the booklet in February 2015 – he signed a copy on 22 February 2015 which BPS submitted in support of the transfer request. So I'm satisfied he did see the booklet before the transfer went ahead. And, given he signed to confirm he'd read it, I think he would've done. It set out a number of warnings signs which were present in his case: he'd been offered a free pension review; the contact from FRPS had been unsolicited; the proposed investments were overseas; and he's said he did feel under some pressure to go through with things. Further, the case study of 'Henry' does have some similarities to what happened to Mr A. The booklet also said to make sure the adviser *was registered by the FCA by checking on its online register – Mr A could've checked out FRPS and Mr M instead of just relying on what Mr M had said.*

There's also the letter Mr A signed on 22 February 2015. Although it looks to have been pre-prepared, it was fairly short – only a page long – and so I'd have thought Mr A would've read it before signing it. That said, it was all about pension liberation – that is early access to pension savings – which he wasn't doing and so he may have felt he could sign the letter on that basis.

But Aegon also wrote to Mr A on 4 March 2015. Aegon's letter was sent direct to him at his home address and not via any other party involved in the transfer. I don't think there's any argument that Mr A didn't receive it – a discharge form was enclosed which he signed on 12 March 2015 and returned to Aegon, so he must've got the letter. And I think he'd have read a letter sent to him direct by his existing provider in connection with his transfer request and which wasn't part of any large bundle of documents presented to him by Mr M for signature.

Aegon's letter referred being contacted unexpectedly by a phone call and offered a free pension review and being persuaded to transfer to a SSAS. Which is exactly what had happened to Mr A. In which case Aegon said Mr A should read the enclosed information from the FCA ('Protect your pension pot') and consider his position. The information from the FCA had been written with consumers in mind and highlighted concerns the FCA had about pension transfers and scams at that time. Specifically:

- *It explained why consumers ought to be wary of being offered a 'free pension review' out of the blue. It warned that most companies offering this weren't authorised by the FCA, though often falsely claimed that they were.*
- *It suggested that consumers should ignore such offers and pointed out that professional advice on pensions was not free.*
- *It said that these reviews were designed to persuade consumers to move money from existing personal pensions to a SIPP or SSAS where the pension pot is typically invested in unregulated investments like overseas property.*
- *It explained the risks of following this advice. Including that the investments can be high risk, returns can be unreliable and the investments can be difficult to sell. It said, 'you could lose everything you invested, significantly reducing your retirement income'.*
- *And said that there may be no recourse to this service or the Financial Services Compensation Scheme (FSCS). And that it was unlikely this service or FSCS would be able to help if money was lost as a result of dealing with an adviser who isn't authorised by the FCA.*
- *It said, 'Always check that anyone offering you advice or other financial services is authorised by us: if they are their name should appear on our Register.' A link to that register on its website was given.*
- *And that, if 'you are considering reviewing your pension arrangements, get advice from an authorised financial adviser. You should also check our Register [again there was a link] to see that your adviser is authorised by us and permitted to give advice on pensions.'*
- *It included links to further information and other available guidance from the Money Advice Service and TPAS.*

The situation that the FCA outlined – being cold called, offered a free pension review and then being persuaded to transfer to a SSAS to invest in an overseas property development – was very much what had happened to Mr A. I know he's said Mr M said he was UK regulated, which it seems he wasn't. And, as I've said, FRPS was unregulated too. But the very clear message, repeated more than once, was that it was important to be sure that any adviser was FCA authorised. It would've been very easy for Mr A to have checked on the

FCA's register and he'd have seen that neither Mr M nor FRPS was shown. So Mr A would've known he was dealing with an unauthorised adviser who might not be acting in his best interest and could put his pension savings at risk.

I've thought very carefully about whether, if Aegon had done everything it should've, that would've changed Mr A's mind about the transfer. I realise that, had Aegon contacted Mr A as part of its due diligence process, any warnings given would've been direct and specific to Mr A and so arguably might've had more impact. But the fact is that Mr A failed to heed the clear warnings he was given – in the Scorpion booklet and in Aegon's letter of 4 March 2015 with enclosed information from the FCA. The latter was, in my view, particularly clear and directly relevant to Mr A's situation.

All in all, I think he had enough information to know that Aegon had concerns about the transfer and that, by proceeding, he might be putting his pension fund at risk. However the warnings given failed to make Mr A think again. In the circumstances I'm not persuaded that any further warnings from Aegon would've likely had an impact on Mr A. So I'm unable to say, if Aegon had acted as it should've done and engaged directly with him, Mr A wouldn't have gone ahead with the transfer. It follows that I can't say Aegon is responsible for Mr A's losses.

In saying that I bear in mind that Aegon was the professional party, operating a regulated pensions business in which dealing with transfer requests was an everyday occurrence and in respect of which Aegon had responsibilities as I've outlined above. But, for Aegon to be responsible for the losses he's suffered, I'd need to be convinced that, but for Aegon's failings, Mr A wouldn't have transferred. As I've explained above, he was given warnings which he failed to heed and I'm unable to say that further warnings from Aegon – and which would've been along the same lines as Mr A had been given anyway – would've changed the outcome.'

We didn't receive any further comments from Aegon in response to my provisional decision. Mr C said that he didn't have any further information to add to what we'd already seen.

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.

In the absence of any further evidence or information from Aegon or Mr C, my views remain as set out in my provisional decision.

I've set that out in full above and it forms part of my final decision. For the reasons I've explained, I'm unable to uphold Mr C's complaint.

My final decision

I don't uphold the complaint and I'm not making any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 18 December 2024.

Lesley Stead
Ombudsman