DRN-3132439

The complaint

Ms C has complained, with the help of a professional third party, about the transfer of her Sun Life Assurance Company of Canada (U.K.) Limited, trading as Sun Life Financial of Canada ('SLOC'), personal pension to a small self-administered scheme ("SSAS") in October 2014. Ms C's SSAS was subsequently used to invest in an overseas property development with The Resort Group ('TRG'). The investment now appears to have little value and Ms C says she has lost out financially as a result.

Ms C says SLOC failed in its responsibilities when dealing with the transfer request. She says that it should have done more to warn her of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance she says was required of transferring schemes at the time. Ms C says she wouldn't have transferred, and therefore wouldn't have put her pension savings at risk, if SLOC had acted as it should have done.

What happened

Ms C says she was cold called by a firm called First Review Pension Services ('FRPS') and offered a free review of her pensions. FRPS was not regulated or authorised by the Financial Conduct Authority ('FCA'). On 8 April 2014, Ms C signed a letter of authority ('LOA'). This authorised her pension providers to share details and transfer documents in relation to Ms C's pensions, with FRPS and another business, Moneywise Financial Advisors Limited ('Moneywise'). Moneywise was regulated by the Financial Conduct Authority ('FCA').

On 17 April 2014, FRPS sent SLOC a copy of the LOA. It requested information on Ms C's pension and discharge forms to allow a transfer. The covering letter sent by FRPS referred to an FCA registration number, which belonged to Moneywise.

SLOC wrote to Ms C on 28 April 2014 saying it had received a LOA from Moneywise which it had now noted on its records. It said, in the event Ms C didn't want information to be shared with Moneywise she should contact SLOC immediately. This letter did not reference FRPS. On the same day SLOC sent the requested information to FRPS and Moneywise.

Ms C says she then met with a representative of FRPS at her home. She says she was a low-risk investor. But FRPS told her that transferring her pension and investing in TRG would provide better returns than her SLOC pension, which she says it described as underperforming. Ms C says she was urged to transfer as soon as possible, told she would receive returns of a guaranteed 5.8% and that she was not at risk of incurring any losses.

In August 2014, a company was incorporated with Ms C as director. I'll refer to this company as D Ltd. On 11 August 2014, Ms C signed documents to open a SSAS. D Ltd was recorded as the SSAS's principal employer and Cantwell Grove Limited ('CGL') was to be the scheme administrator. HMRC sent a letter to CGL confirming that the SSAS had been registered with it on 11 September 2014.

On 22 September 2014 CGL sent transfer paperwork to SLOC. The covering letter said CGL was aware of concerns around 'pension liberation', it supported the efforts of the pension

industry and that its business model, as a pensions administrator, had been vetted by HMRC. It also said CGL supported the 'Scorpion' campaign of The Pension Regulator ('TPR'), had spoken to Ms C and confirmed no cash incentive or other inducements had been offered and she was not accessing pension benefits before age 55.

CGL said that the 'Scorpion' information leaflet had been shared with Ms C. It also said it had enclosed a letter from Ms C confirming that she understood what pension liberation was and that this transfer was not connected to pension liberation. The information SLOC has provided indicates however that this letter was not enclosed or received by it.

CGL also enclosed completed application forms for the transfer, the HMRC registration confirmation and a scheme details Q&A document which gave answers to some general questions, including which investments were under consideration. The Q&A document said that the investments under consideration were a commercial property investment provided by TRG and a discretionary fund management service. The document said that appropriate advice was being taken by the trustees of the SSAS from Sequence Financial Management Limited (SFML'). SFML was registered and authorised by the FCA.

I note at this point though that there is no evidence that SFML in fact did provide any advice to Ms C. A different business called Broadwood Assets Limited ('BAL') wrote to Ms C, as the trustee of the SSAS, and provided this advice. Its letter explained however that this was only on the potential suitability of the TRG investment *"both as a specific example of an overseas commercial property investment, and more generally as an investment to be held within a SSAS"*. It said it had not advised on the establishment of the SSAS, was not providing advice that would be deemed regulated - as BAL was not regulated or authorised by the FCA – and wasn't advising on whether the TRG investment was *"suitable for the particular needs and objectives of the members or beneficiaries of the SSAS*".

On 25 September 2014, SLOC wrote to both CGL and Ms C. The letter to CGL said SLOC was required to carry out a certain amount of due diligence due to increasing instances of pension liberation. So, it asked CGL to complete a receiving scheme form it enclosed, provide details of the investment service providers and a copy of its statement of investment principles and conflicts policy, where CGL's regulator required it to produce one. It also explained that its policy was to check registration status with HMRC of all schemes it had not previously had dealings with.

The letter to Ms C said it could not *"proceed with the transfer at the moment, as I have not received satisfactory evidence that the receiving pension arrangement is a genuine pension arrangement".* The letter said that Ms C may be aware of an issue known as pension liberation and went on to briefly explain this was where pension members were invited to *"give up their future pension benefits in exchange for an immediate cash sum."* It went on to say that people who agree lose almost all their 'liberated cash' in tax and fees. And it explained this is usually achieved by transferring to *"what is, effectively, a pension scheme of a fictitious employer"* and people taking part are likely to lose 30% through commission charges and 40% through income tax.

The letter said SLOC enclosed a leaflet that "describes the perils of pension liberation" and that more details were available on TPR's website. It also asked Ms C for a copy of the pension scheme booklet for her new pension scheme and that she complete the enclosed 'pension transfer customer form'.

The form consisted of some tick box questions and declarations for Ms C to sign. She signed the form on 17 October 2014 and it was returned to SLOC. Ms C answered 'no' to questions about whether she'd been offered a loan, savings advance or other cash incentive to transfer or if she'd been told she could access money before age 55. She also said 'no' to whether

she'd been cold called or encouraged to speed up the transfer. At the same time she also said the transfer hadn't been recommended by a financial adviser. The declarations said she'd read and understood the 'Predators stalk your pension' leaflet and been made aware of other pension liberation information available online and she was aware that investment in overseas property was unlikely to be covered by UK financial services compensation schemes.

CGL provided SLOC with some key features information about the TRG investment, including that it was an overseas development, as well as a due diligence document relating to the discretionary fund management service.

Ms C's pension was transferred on 29 October 2014. Her transfer value was £25,147.10. She was 50 years old at the time of the transfer.

In December 2019, Ms C complained to SLOC. Briefly, she said SLOC ought to have spotted, and told her about, a number of warning signs in relation to the transfer. These included that the SSAS and sponsoring employer was newly set up and Ms C did not work for the sponsoring employer, Ms C had been cold called, CGL was not regulated by the FCA and the proposed investments were high risk and non-diversified, a regulated adviser had not been involved and Ms C had not received regulated advice, rather an unregulated business, FRPS, had told her that transferring was in her interests as she'd receive much better returns. She said SLOC ought to have done more to inform her of the specific risks present in the proposed transfer. And if it had, she wouldn't have gone ahead.

SLOC didn't uphold the complaint. It said the LOA had referred to Moneywise, which had been FCA regulated, being involved. It said it had noted that the SSAS and sponsoring employer were newly registered and that the transfer request had come from CGL - who was not registered with the FCA. But as the scheme was registered with HMRC and SLOC had seen the trust deed and scheme rules, it was satisfied it could proceed, subject to Ms C confirming she understood the risks. So, it had sent her the letter of 25 September 2014, including the 'Predators stalk you pension' leaflet. As Ms C had returned the declaration, SLOC was satisfied it had conducted an appropriate level of due diligence before transferring.

Ms C referred her complaint to our Service. I issued a provisional decision earlier this month explaining that I didn't intend to uphold Ms C's complaint. Below are extracts from my provisional findings, explaining why.

The relevant rules and guidance

Before I explain my reasoning, it will be useful to set out the environment SLOC was operating in at the time with regards to pension transfer requests, as well as any rules and guidance that were in place. Specifically, it's worth noting the following:

- *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 a member may also have a right to transfer under the terms of the contract). This 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.*

- *On 10 June 2011, the Financial Services Authority (FSA) issued a warning about the dangers of "pension unlocking" and specifically referred to consumers transferring to access cash from their pension before age 55. (As background to this, the normal*

minimum pension age had increased to 55 in April 2010.) The FSA said that receiving occupational pension schemes were facilitating this. It encouraged consumers to take independent advice. The announcement acknowledges that some advisers promoting these schemes were FSA authorised.

- *At around the same time, TPR published information on its website about pension liberation, designed to raise public awareness and remind scheme operators to be vigilant of transfer requests. The warnings highlighted that websites and cold callers were encouraging people to transfer in order to receive cash or access a loan.*

- *TPR launched its Scorpion campaign on 14 February 2013. The aim of the campaign was to raise awareness of pension liberation activity and to provide guidance to scheme administrators on dealing with transfer requests in order to help prevent liberation activity happening. The FSA, and the Financial Conduct Authority (FCA) which had succeeded the FSA, endorsed the guidance. The guidance was subsequently updated, including in July 2014, which was before Ms C's transfer completed. I cover the Scorpion campaign in more detail below.*

- *In late April 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 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.*

- *SLOC was subject to the 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:*

  - *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.*

<u>The Scorpion guidance</u>

The Scorpion campaign was launched on 14 February 2013, and was initially focused just on pension liberation – namely, the access to pension funds in an unauthorised manner (such as before normal minimum pension age). However, it's the update to that guidance on 24 July 2014 that's most relevant to this complaint because Ms C's transfer wasn't completed until after that date. It widened the focus from pension liberation specifically, to pension scams – which it said were on the increase.

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. The title of the July 2014 insert was 'A lifetime's savings lost in a moment'.*

- *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 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.*

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 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. In deciding how to apply the guidance, they needed to consider the guidance as a whole, including the various warning signs to which it drew attention, the case studies that highlighted different types of scam, and the checklist and various suggested actions ceding schemes might take. 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:

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 – what does the evidence suggest happened?</u>

SLOC says that the LOA authorised it to share information with Moneywise, which was a regulated financial adviser. And it is correct on that point. The LOA also though authorised information to be shared with FRPS. Ms C says, of those two businesses, she was only contacted by, and dealt with, FRPS. FRPS was not authorised or regulated by the FSA / FCA nor was it a registered appointed representative of Moneywise.

Other than the LOA, the only other mention of Moneywise in documentation sent to SLOC, in relation to the receiving scheme, was the reference to its FCA registration number in the

information request in April 2014. That request though came from FRPS – it was on FRPS headed paper and only contained FRPS's contact details.

When the LOA was received, I can see that SLOC sent the requested transfer documents to Moneywise. But it also sent a copy of the same information to FRPS. So, these documents could've been passed on to CGL, which subsequently returned them to SLOC, by either of those two businesses.

I've seen a copy of two forms of identity documents from the time. These were certified, with the stamp saying that the certifier had seen the original documents and confirmed that they were true copies. This indicates that the person that certified the documents was likely who met Ms C in person. The stamp on these documents confirmed that FRPS was the business that certified the documents. They were also signed by the person certifying them, with the signature referring to that person as a consultant. The same person, who worked for FRPS, later acted as a witness signatory to the SSAS trust deed.

Taking all of the information into account, I think, on balance of probabilities, that Ms C dealt with FRPS, which was unregulated, rather than Moneywise. And I haven't seen anything to suggest Moneywise had any direct involvement in the transfer or that it provided Ms C with regulated advice.

I think what Ms C and her representative have said about the investment now having little value is likely to be correct. As I've noted, returns from the investment to the pension appear to have stopped. And from what we know about investments through TRG from other complaints we've seen, I think there is unlikely to be any real market for re-sale of the investment unit.

Turning to how the transfer came about, Ms C has said she was cold called and an in-person meeting was subsequently arranged. And she has said as part of her complaint that the representative of FRPS advised her to transfer. She says they told her that she was lucky to be able to rectify the fact that her SLOC pension was not performing well. She says she was urged to proceed with the transfer quickly and was told investing via TRG was in her best interests as she'd receive guaranteed returns of 5.8% per year which were said to be better than those her existing pension was paying. And Ms C says it was the promise of these returns, which were said to be guaranteed so involved no risk, that persuaded her to transfer.

Ms C has said she had very little experience with regard to pensions and investments. And I haven't seen anything that leads me to think otherwise. What Ms C has said about what she was told is, in my view, consistent with her being advised - if she was told the transfer was in her interests and that the proposed investment would outperform her ceding scheme and be better for her. But these are Ms C's recollections at the time of the complaint, which she first raised in 2020. And these aren't consistent with the information she provided to SLOC at the point of the transfer.

SLOC sent Ms C a 'Pension Transfer – Customer: Additional Information & Declaration' form in September 2014, to gather more information about the transfer. I'll cover this document in more detail shortly but I note it included a question about whether Ms C had been advised to which Ms C ticked 'no'. And it asked if she'd received cold calls or unsolicited contact which led to the request, to which Ms C again ticked 'no'. And Ms C signed this form.

While I've taken on board what Ms C has now said about the events surrounding the transfer, I'm conscious her statement about this was a few years after the events took place. And the documentary evidence from the time, which I think it would be reasonable to place greater reliance on, is at odds with this. I think her testimony that she was being advised by

FRPS is plausible given what we know about their involvement on other cases and how FRPS operated. But I don't think SLOC ought to have had reason to think Ms C had been advised from the information it was presented at the time. Or, to go a step further, that she had been advised by an unregulated business.

That isn't to say that SLOC shouldn't have considered the industry guidance. But I think it is an important point.

What did SLOC do and was it enough?

The Scorpion insert:

For the reasons I've already explained, 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.

Ms C's representative has said, in its letter of complaint to SLOC, that SLOC did provide a copy of the Scorpion warning to her.

I've considered the available information. It appears likely that SLOC sent the Scorpion insert along with its letter of 25 September 2014. I say this because the letter referred to providing a leaflet "describing the perils of pension liberation". Which I think on balance was the Scorpion insert. But I don't think, based on the information available, that this was likely the correct version for the time.

SLOC's letter of 25 September 2014 explained what pension liberation was, rather than pension scams more widely. And it introduced the leaflet it mentioned in that context. The form that it asked Ms C to complete included a declaration saying she'd "read and understood the 'Predators stalk you pension' leaflet" and that she'd been made aware that more information was available online. 'Predators stalk your pension' was the title of the Scorpion insert and leaflet first introduced in February 2013. And this focussed on pension liberation scams. But, as I've mentioned, the Scorpion guidance was updated in July 2014 and widened to cover pension scams more generally. And the updated Scorpion leaflets from July 2014 were titled 'A lifetime's savings lost in a moment'.

Taking all of this into account, while it appears likely that SLOC shared a version of the Scorpion insert with Ms C as part of the transfer process, I haven't seen evidence to suggest that this was the updated guidance from July 2014, in relation to pension scams. And, given when the transfer here took place, I think that should've been provided.

Due diligence:

In addition to sending the Scorpion insert, 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.

The Q&A document in the transfer pack SLOC received from CGL set out what the proposed investments were. One of which was a commercial property investment provided by TRG. These developments were overseas. And investments being overseas was one of the warning signs of a potential scam that TPR said providers should watch out for. In addition, CGL provided SLOC with a letter from HMRC that showed the SSAS had only been registered with it 11 days before the application to transfer was made. A scheme being newly registered was a warning sign under the original Scorpion guidance to businesses.

Given these warning signs, I think it would have been fair and reasonable – and good practice – for SLOC to have looked into the proposed transfer further. And the most reasonable way of going about that would have been to turn to the check list in the action pack for businesses to structure its due diligence. But the letters SLOC sent on 25 September 2014, to both CGL and Ms C, asked a lot of the questions the action pack suggested.

As I've said, the Q&A document outlined information about the investments being considered but SLOC asked CGL for further information about the investment service providers. And this gave SLOC information about whether the scheme was connected to an unregulated investment company or if the investment was overseas.

The additional information and declaration SLOC sent to Ms C on 25 September 2014, asked if she'd been offered a loan, savings advance, cash incentive or bonus, to which Ms C answered 'no'. It also asked if Ms C had been told she could take more than 25% of the pension as tax free cash or access it before age 55. And Ms C again confirmed she hadn't been told these things. As I mentioned before, the form asked if Ms C had been advised and whether she'd been cold called or contacted on an unsolicited basis. And it also asked if she'd been encouraged to hurry along the process. To all of which she said 'no'. These were all questions that the July 2014 action pack for businesses suggested ceding schemes could ask when looking at whether the member might be at risk.

The declaration, which Ms C signed, also outlined a risk with overseas investments being the potential loss of coverage by UK financial compensation schemes.

So, SLOC appears to have asked relevant questions of Ms C and the receiving scheme administrator, in line with what the action pack suggested, before proceeding with the transfer.

Should SLOC have done more with the information gathered?

As I've said, SLOC was aware of the receiving scheme being newly registered and the investment being overseas, and it's likely this which prompted the further due diligence it carried out. Ms C wasn't required to take financial advice before transferring her pension. And she said she hadn't been approached out of the blue or been rushed and hadn't been offered any incentives that were typical of a pension scam. I don't think it is reasonable to expect that, had SLOC asked the same questions again in a different format, that it would've likely received a different answer.

So, knowing what it did, SLOC was aware there were some potential warning signs. But it did ask for further information from the scheme and from Ms C and her answers reasonably could have reassured it that other warnings signs weren't present. She said she hadn't been cold called or advised. And SLOC was entitled to believe Ms C's responses and had no reason to think Ms C had been contacted unsolicited or been advised by an unregulated party.

I think overall, SLOC undertook reasonable due diligence into the transfer.

As I said above SLOC should have sent Ms C the updated Scorpion insert with their letter in September 2014. However, on balance I don't think this would have made a material difference to Ms C's decision to transfer.

The updated insert repeated the warnings about cold calls, being rushed into a transfer and the offer of loans or incentives and to only rely on regulated advisers. This was information Ms C had already received in the leaflet and in SLOC's letter which obviously didn't cause

her concerns despite now saying she was cold called and was urged to transfer as quickly as possible. The new information included references to free pension reviews and being lured in by one off investment opportunities, but the overall messages given were similar to the earlier insert.

I also think Ms C trusted the advice she was given. Another transfer from a second provider was stopped in 2015 due to its concerns about the receiving scheme. By this point the SLOC transfer had already happened. Ms C says at the time she thinks she spoke to the adviser and was reassured the transfer and investment was the best option for her and reiterated how safe investing in 'brick and mortar' was and that there was nothing to be concerned about. Documents I have received from that second provider suggest that Ms C asked for that transfer to proceed in 2016. So even though that transfer had been blocked she still wanted to proceed.

Responses to my provisional decision

I gave both parties an opportunity to make further comments or send further information before I reached my final decision.

SLOC didn't provide any further comments for me to consider.

Ms C's representative said that she did not agree with my decision. In summary, they believed SLOC should have thought that the answers Ms C gave about being cold called and taking advice were likely to be wrong, given what it knew about other transfers taking place around that time and because of other information it held. And the representative also said that the answer Ms C gave about there being no participating employer ought also to have made SLOC question if the answers were correct.

The representative also said that the information CGL returned about the TRG investment should have caused further concern, as it demonstrated that the investment was unregulated.

As a result, they said they believed SLOC should have undertaken further due diligence. And if it had, they believe that further warning signs of a potential scam would have been discovered, which ought to have led to it providing additional warnings and that this would've resulted in the transfer not taking place.

The representative added that they thought SLOC should, as a matter of course, have checked Ms C's employment status to ensure she had a statutory right to transfer.

What I've decided – and why

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

On the point of whether SLOC needed to check Ms C's employment status as a matter of course, I've outlined the reasonable expectations of businesses in my provisional decision. I won't repeat them here other than to say they didn't include an obligation for ceding schemes to check, as a matter of course, whether the transferring member was earning. And SLOC had no reason to think Ms C wasn't earning either. Indeed, it would have been surprising if it had thought this – as her representative has told us she was employed at the time. So, I see no reason why SLOC would, or should, have probed this issue any further.

Ms C's representatives have said that SLOC should have assumed answers that she'd given to the questionnaire that it sent her were wrong. But I don't think this would be a reasonable

stance for SLOC to have taken. There was no justifiable reason for it to assume Ms C was not capable of answering the questions it posed or that she had not done so truthfully.

Ms C said she hadn't been cold called. Her representative said that was how the majority of people who made similar transfers were contacted. But I don't think SLOC reasonably, at the time of receiving the questionnaire, had reason to doubt the answer she'd given was truthful.

Ms C also said she hadn't been advised, but her representatives thought SLOC ought to have assumed this was wrong, given FRPS requested information (also mentioning Moneywise) and as CGL later mentioned the involvement of SFML. The mention of SFML was in the context of advice regarding the SSAS investment, rather than to transfer (and again there is no evidence SFML actually did provide any advice). FRPS did request information to start the transfer process. But Ms C wasn't required to take advice at the time in order to transfer her pension. And I think it was reasonable, given it had received a signed declaration saying the transfer had not been recommended to her, for SLOC to think FRPS may have simply been assisting Ms C.

The representative has noted that one of the questions Ms C was asked was whether there was a participating employer in the scheme. To which she said there wasn't. But it says this contradicted information SLOC had, as there was a sponsoring employer – D Ltd. And they think this meant SLOC should've believed the other answers were wrong as well and done further due diligence.

A SSAS will always have a sponsoring employer (also referred to as a principal employer), which was D Ltd, which SLOC was aware of. A SSAS also can have additional, participating employers. But from what we know there were no additional participating employers to this SSAS. So, Ms C saying no to whether there was a participating employer, isn't conflicting with the fact that there was a sponsoring employer. And even if SLOC had believed this was a mistake, given it already had details of D Ltd, I don't think this meant it ought to have doubted that the other answers Ms C gave to very simple questions, and signed to confirm, were not truthful.

The representative says that the information CGL provided to SLOC on request confirmed that the TRG investment was unregulated, based overseas and involved fractional ownership of an asset. And that this should have caused SLOC further concern and prompted it not to proceed with the transfer. But I don't agree. SLOC was already aware from the initial transfer request of the potential overseas investment with TRG. The additional information provided by CGL gave some further details about the investment provider but didn't dispute what SLOC already knew about the investment.

The Scorpion action pack did say that unregulated or overseas investments could be a warning sign of a potential pension scam. But making investments such as that Ms C made with TRG was not prohibited. And one of the declarations in the form SLOC asked Ms C to sign said that she was *"aware that and investment in overseas property development is unlikely to be covered by UK financial services compensation schemes".* Which did represent a warning about potential risks.

I've already acknowledged that there were potential warning signs present here – the investment being overseas and the receiving scheme being newly established. However, I still think SLOC undertook reasonable due diligence here. I don't think it had any reason to fairly question the responses it received from Ms C, which indicated there weren't any further warning signs. So, I don't think SLOC needed to ask further questions (and again I don't think it's reasonable to say if it had asked the same questions again in a different format, that it would've likely received a different answer).

My final decision

For the reasons I've explained, I don't uphold Ms C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 20 September 2024.

Ben Stoker
Ombudsman