

The complaint

Ms H has complained about a 2014 transfer of a personal pension plan she held at the time with Standard Life, to a small self-administered scheme ("SSAS"). A SSAS is a type of occupational pension, in which the members are also trustees and therefore take responsibility for operating the scheme.

The company now responsible for answering this complaint is Phoenix Life Limited. I can see we've been mainly referring to "Standard Life" throughout our dealings with her complaint, so to keep things consistent, I'll do the same in this decision

The transfer went ahead on or around 12 June 2014. After transferring, Ms H's SSAS was subsequently used to invest in The Resort Group ("TRG"), an overseas commercial property scheme which has since run into trouble. Ms H says she has lost out financially as a result.

Ms H says that Standard Life 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 personal pension 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. Ms H says she wouldn't have transferred, and therefore wouldn't have put her pension savings at risk, if Standard Life had acted as it should have done.

I should also explain, for context, that some other parts of Ms H's overall pension savings as of 2014 were held by a different pension provider. These represented the majority of her pension savings and were held with a firm I'll refer to as "Firm A". I'll periodically refer to her "Firm A" pension policy as I think it has some relevance to her overall financial situation of that time.

However, in this particular Decision I'm only addressing a complaint which relates to Standard Life. This is because I'm aware Ms H hasn't complained in respect of this other pension policy with "Firm A" even though it was transferred in a similar fashion to her Standard Life pension policy. I have, though, looked carefully into this other pension transfer and all the processes surrounding it to understand whether the issues within that transfer affect my Standard Life findings in any material way. I'm satisfied the "Firm A" transfer doesn't prevent me from issuing a Decision in this case, having considered all the evidence and information we have.

What happened

Ms H says that in early 2014 she received an unsolicited mailing approach from an unregulated firm called Wise Review Limited ("Wise"). This firm is now dissolved, but at the time it was an 'introducer' firm which was not authorised to provide regulated financial advice. Wise said it was offering Ms H a free pension review which she agreed to and she gave it her permission to gather information on her pensions. Standard Life received Wise's 'letter of authority' and replied with Ms H's Standard Life pension details, on 3 March 2014.

Ms H was then met personally by someone from a firm called First Review Pension Services ("FRPS"). This firm is now dissolved, but in 2014 it was involved in recommending clients to transfer away from their personal pensions and invest overseas in the likes of TRG. It wasn't authorised to provide regulated financial advice either, but a representative from FRPS met with Ms H at her home address. During the meeting, she says she was told by the FRPS representative that she could increase her pension growth returns by transferring away from her existing personal pensions schemes, such as the one she held with Standard Life. The FRPS representative said she could then set up a SSAS and invest in the TRG overseas property development and achieve much higher returns.

As an occupational pension, a SSAS must be sponsored by an employer company. So, on 25 March 2014, a new limited company was incorporated with Ms H shown as the sole director. I'll refer to this company as "Ms H Ltd". Ms H then signed documents to open a SSAS with Cantwell Grove Limited ("Cantwell Grove") as the SSAS's administrator. "Ms H Ltd" was recorded as the SSAS's principal employer. An FRPS 'consultant' also witnessed Ms H's signature on the SSAS trust deeds (3 April). "Ms H Ltd", the sponsoring company for the SSAS, didn't employ her or provide her any income and it was a dormant company.

On 15 May 2014, the new SSAS in Ms H's name was registered with HMRC.

On 25 May 2014, Standard Life received a request from Cantwell Grove for Ms H's Standard Life pension policy to be transferred to her new SSAS. On the relevant documentation, the provider of the SSAS was shown as being Cantwell Grove and various details about Ms H were included (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).

Cantwell Grove also provided Standard Life with:

- Confirmation that it had warned Ms H about pension liberation and given her a copy of a leaflet (referred to as the "Scorpion leaflet" because of the imagery it contains) produced by The Pensions Regulator (TPR) which warned about pension liberation.
- A signed letter by Ms H, dated 27 May 2014, that Cantwell Grove had explained pension liberation activity to her along with the risks of transferring her Standard Life pension. She said she hadn't been offered any cash incentive to transfer and wasn't intending to access her pension before the age of 55. I've noted Ms H also signed a very similar second letter, again dated 27 May – this related to her "Firm A" transfer application.
- A letter from HMRC confirming the SSAS was a registered scheme.
- The scheme trust deed.
- A Q&A document which said, amongst other things, that as required under s.36 of the Pensions Act 1995, the trustee (i.e. Ms H) was taking appropriate advice about whether the proposed investments were satisfactory for the scheme's aims, from an FCA authorised firm called from Central Markets Investment Management Limited (CMIM)¹.
- The Q&A document said Ms H was considering investing in a discretionary fund management service provided by CMIM as well as commercial property offered by TRG.

¹ I've seen no other evidence of CMIM providing Ms H with any advice at all.

A firm called Broadwood Assets Limited (“Broadwood Assets”) then wrote to Ms H in her capacity as sole trustee and member of her newly established SSAS. The letter is undated, but from other information I’ve seen in the file it would appear to have been sent to Ms H in June 2014 (she signed to accept its contents on 24 June). The Broadwood Assets letter said it was providing appropriate advice under s.36 of the Pensions Act 1995. It said the scope of its advice was limited to this and it hadn’t advised her on the establishment of her SSAS. It added that the nature of its advice wasn’t regulated under the terms of the Financial Services and Markets Act 2000 (FSMA). It also outlined that Broadwood Assets wasn’t regulated or authorised by the FCA to give financial advice.

The letter said the TRG investment was a “credible and substantive” arrangement that didn’t facilitate pension liberation and was suitable to be held in a SSAS. But it also warned Ms H that the investment was risky, “highly illiquid” and not suitable for a cautious investor. It added that if Ms H preferred advice on the suitability of the investment for her personally, she should seek regulated financial advice from an independent financial adviser. It also recommended she should take independent financial advice regarding the SSAS’s cash holdings.

Ms H’s SSAS received her Standard Life pension transfer of £2,251 on 12 June 2014. (For context, her “Firm A” larger portion of £22,843 was transferred a few weeks later, arriving in the SSAS account on 27 June 2014).

Investments from the SSAS of around £15,400 were made into TRG on 27 June 2014 and a smaller amount of the overall transferred funds was initially held back in cash within the new SSAS. An amount of £7,399 was placed in a discretionary fund management service, operated by a firm called Parmenion Capital Partners on 19 August 2014. Ms H said she was persuaded by FRPS that this all sounded like a realistic opportunity to significantly grow her pension savings.

At this point Ms H was 54 years old. The TRG investments she made in the SSAS were unregulated and high risk and have attracted high charges. They have proven to be illiquid and are now incapable of sale on the open market.

In June 2021, Ms H complained to Standard Life. 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; Ms H was an inexperienced investor and was advised to invest in overseas 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.

Standard Life didn’t uphold the complaint. It said Ms H had signed authorisation for the transfer to go ahead and the information provided appeared to comply with her statutory right to transfer. It added that Cantwell Grove had confirmed it had explained pension liberation to Ms H and given her the Scorpion campaign leaflet.

Ms H wasn’t satisfied with this, 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 Ms H still disagreed. As the dispute couldn’t be resolved informally the matter has been passed to me to make a decision.

What I’ve decided – and why

I’ve considered all the available evidence and arguments to decide what’s fair and

reasonable in the circumstances of this complaint.

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

With all this in mind, I'm not upholding Ms H'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 Sun Life 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 guidance to follow that was aimed at tackling pension liberation – the Scorpion guidance.

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

- An insert to be included in transfer packs (the Scorpion insert). The insert warns readers about the dangers of agreeing to cash in a pension early and identifies a number of warning signs to look out for.
- A longer leaflet issued by TPAS which gives more information, including example scenarios, about pension liberation. Guidance provided by TPR on its website at the time said this longer leaflet was intended to be sent to members who had queries about pension liberation fraud.
- An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "look out for" various warning signs of liberation. If any of the warning signs applied, the action pack provided a checklist that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where transferring schemes still had concerns, they were encouraged to write to members to warn them of the potential tax consequences of their actions; to consider delaying the transfer; to seek legal advice; and to direct the member to TPAS, TPR or Action Fraud.

TPR issued the guidance under the powers at s.12 of the Pension Act 2004. So, 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. Therefore, 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 as 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 its specific purpose was to inform and help ceding firms, like Sun Life, when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

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

What did personal pension providers need to do?

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

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

3. I also think it would be fair and reasonable for personal pension providers – operating with the regulator’s Principles and COBS 2.1.1R in mind – to ensure the warnings contained in the Scorpion insert were provided in some form to a member before a transfer even if the transfer process didn’t involve the sending of transfer packs.
4. The Scorpion guidance asked firms to look out for the tell-tale signs of pension liberation scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The action pack points to the warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. So, whilst using the action pack wasn’t an inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.
5. The considerations of regulated firms didn’t start and end with the Scorpion guidance. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn’t involve anything specifically referred to in the Scorpion guidance – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm’s attention, or should have done so, would almost certainly breach the regulator’s principles and COBS 2.1.1R.

The circumstances surrounding the transfer – what does the evidence suggest happened?

Ms H says that FRPS visited her at home after the initial approach from Wise, which had offered a free pension review via an unsolicited mailing exercise. Ms H is clear that it was FRPS which recommended the TRG investment and that the FRPS ‘adviser’ didn’t tell her that he wasn’t FCA authorised. Ms H didn’t identify the significance of this and said the adviser didn’t warn her of the risks of the proposed investments.

On balance I accept Ms H’s recollections. We know that FRPS witnessed her signature on the SSAS trust deed, for example. I think it’s also obvious here that Ms H certainly wasn’t experienced in these matters. Setting up a limited company in this way, establishing a SSAS and then transferring her existing pension(s) to invest in an overseas property development were complex and unusual arrangements. So, I can’t see she’d have done all that, or even known that sort of arrangement was available to her, unless she’d been told it would be a good idea and she’d end up better off. I’m therefore satisfied that these actions were all recommended to her in the way she describes. Advice to transfer out of her personal pension with Standard Life would be regulated advice which should only have been provided by an FCA authorised adviser. But I’m satisfied that, on balance, it was FRPS’s unregulated adviser who made that recommendation.

What did Standard Life do and was it enough?

For the reasons given above, my view is that personal pension providers should, as a matter of course, have sent transferring members the Scorpion campaign leaflet or at least given them substantially the same information it contained. I’ve seen no evidence that Standard Life gave the Scorpion leaflet to Ms H or provided it in any other form. However, Standard Life referred to a Cantwell Grove statement explicitly saying that it had given her the Scorpion leaflet.

Generally, I don’t think it would be reasonable for Standard Life to unilaterally rely on a third party’s comment that it had passed on information which might prevent its customer from being scammed out of their pension. Nevertheless, I think it’s more likely than not that

Cantwell Grove *did* give Ms H a copy of the Scorpion leaflet in this case. That's because she signed two letters – one for Standard Life and one for "Firm A" - to say she was aware of the issues around pension liberation. These letters showed Ms H had received "*guidance and information*" concerning these matters. I accept Ms H's letters don't elaborate on what the guidance was. However, her letters explaining why she wanted to go ahead with the transferring process said she understood the risks of liberation and was not seeking to release pension funds before the age of 55.

The letters Ms H signed and dated, on 27 May 2014, as part of her Standard Life transfer application, said:

- She was aware of the rise in pension liberation activities.
- She had decided she wanted to transfer in order to take advantage of the investment opportunities this provided, which were not in any way connected with pension liberation.
- She had received detailed information about the scheme, how it operated, who administered it and the risks associated with transferring out of her existing Standard Life scheme
- She was also aware of the risks of pension liberation, but she wasn't planning to access her pension before age 55 and was aware of the tax liabilities if she tried to do so.
- She had not been offered cash or any other incentive to complete the transfer.
- She asked Standard Life to proceed with it as soon as possible.

These letters would appear to have been templated rather than wholly drafted by Ms H herself. But Ms H ultimately signed, dated and sent them. Notably, one was sent to Standard Life and *another* very similar one to "Firm A", again asking for that transfer to go ahead too. I think the message of both letters were clear that she was aware of the risks of pension liberation. Of course, she wasn't likely contemplating any form of pension liberation, but she additionally made it clear she hadn't been offered any incentives, she had detailed information about the proposed scheme, and wanted to transfer because of the advantageous opportunities she thought doing so offered.

So, even though Standard Life could and should have sent Ms H the Scorpion leaflet itself, I don't think it would have made a material difference to her choices here. That's because the evidence strongly suggests that Ms H was already well aware of the risks that the Scorpion leaflet was intended to warn her about and she wasn't intending to liberate her pension.

Due diligence:

In light of the Scorpion guidance, I think firms ought to have been on the look-out for the tell-tale signs of pension liberation and needed to undertake further due diligence and other appropriate action if it was apparent their customer might be at risk. But I think it's worth pointing out that the published version of the TPR's action pack at the time said pension providers should be "*looking out for pension liberation fraud*". And under that heading it produced a list of warning signs. So the guidance concentrated on pension liberation - that is the unauthorised release of pension funds. And the transfer here took place some weeks before TPR broadened the scope of its guidance to cover scams more generally.

With that in mind, I think the information Standard Life had available to it when considering the transfer would have reasonably reassured it that Ms H was likely not at risk of a pension liberation scam.

While Standard Life could have made further enquiries using the action pack's checklist, I don't think it was under an obligation to do so in this particular case. That's because Ms H had explicitly confirmed in her letter to it that the SSAS did not allow unauthorised payments which would incur significant tax charges. We also know Cantwell Grove had sent Standard Life a copy of the SSAS trust deed which confirmed that was the case. So, Ms H shouldn't have been able to access her pension before age 55 or in some other unauthorised manner not complicit with the legislation or associated with pension liberation.

I've also noted Ms H was already 54 years old and I've seen evidence from the years 2010 and 2013 where "Firm A" and Standard Life had respectively informed her that, in her case, 55 was the age at which she would likely be able to access any of her pension savings. In my view, all these specific circumstances support the other information I know about this case and that Standard Life, overall, could fairly draw a conclusion that Ms H probably wasn't contemplating accessing her pension savings before age 55.

I therefore don't think that Standard Life should compensate Ms H. I'm sorry to disappoint her.

My final decision

I do not uphold this complaint.

I do not direct Phoenix Life Limited (trading at the time as Standard Life) to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 25 September 2024.

Michael Campbell
Ombudsman