

## The complaint

Mrs C has complained about a transfer of her St James's Place UK plc ('St James's Place') personal pensions to a small self-administered scheme ('SSAS') in January 2016. Mrs C's SSAS was subsequently used to invest in Dolphin Capital ('Dolphin'), a loan note investment in property in Germany. The investment now appears to have little value. Mrs C says she has lost out financially as a result.

Mrs C says St James's Place 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. Mrs C says she wouldn't have transferred, and therefore wouldn't have put her pension savings at risk, if St James's Place had acted as it should have done.

## What happened

On 9 July 2015, Mrs C signed a letter of authority allowing Black Star Wealth Management Ltd ('Black Star') to obtain details, and transfer documents, in relation to her pensions. On 15 July 2015, Black Star wrote to St James's Place, enclosing Mrs C's letter of authority. It requested information on Mrs C's pensions and discharge forms to allow a transfer. St James's Place sent Black Star the requested information on 11 August 2015. Black Star was authorised by the Financial Conduct Authority ('FCA').

Mrs C said this followed a meeting her husband had arranged with Return On Capital Group Limited ('ROCGL'). Mrs C's husband has referred a similar complaint to the Financial Ombudsman Service against St James's Place.

Mrs C says she was attracted to transferring by the prospect of a better return on her pensions than what she was receiving.

In November 2015, a company was incorporated with Mrs C and her husband as directors. I'll refer to this company as 'Business P'. On 25 November 2015, Mrs C signed documents to open a SSAS with Rowanmoor Group plc ('Rowanmoor'). Business P was recorded as the SSAS's principal employer and ROCGL was recorded as the trustee adviser. The SSAS documents also recorded that the SSAS was to be used to invest in "*Dolphin Trust*."

On 20 January 2016, Rowanmoor sent a transfer request to St James's Place via the Origo Options platform. Origo is an electronic transfer system that allows paperless execution of transfers amongst firms that have signed up to the service. The details St James's Place recorded from the request included that the transfer was to a Rowanmoor SSAS and the SSAS's HMRC registration number.

Mrs C's pensions were transferred on 25 January 2016. Her total transfer value was around £53,400. She was 46 years old at the time of the transfer.

Mrs C also transferred a pension she had with Standard Life into the SSAS. Back on 3 June 2015, Standard Life sent Black Star information about her pension. Then on 30 December 2015, Rowanmoor sent a transfer request to Standard Life via Origo, and Standard Life completed the transfer on 22 January 2016. Mrs C's transfer value was £2,729.78.

Mrs C went on to invest a total of £50,500 in two Dolphin secured loan notes in February 2016. As I understand it, both loan notes had five-year terms and a 10% per annum fixed interest rate. The interest on one of the notes was paid every six months, and on the other note it was paid at maturity.

As I understand it, Mrs C received interest payments until August 2019 before Dolphin entered into preliminary bankruptcy proceedings in Germany in October 2020. Investors are very unlikely to receive any of their investment back, and as such, Mrs C's Dolphin investment has no realisable value.

In June 2022, Mrs C's representatives set out her complaint to St James's Place. Briefly, her argument is that St James's Place failed to carry out adequate due diligence on the transfer and to ensure she had received regulated transfer advice. She said St James's Place ought to have found out the purpose of the transfer was to invest in a high risk, illiquid investment that promised unrealistic returns which was unsuitable for her as a retail client. She added that St James's Place failed to provide her with the Scorpion warning or otherwise warn her about pension scams.

St James's Place didn't respond to Mrs C's complaint. Although it told us its position would have been that it completed due diligence checks on the scheme Mrs C wanted to transfer to and that the scheme passed all of its checks.

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

### **What I've decided – and why**

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

When considering what is fair and reasonable, I am required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

Where the evidence is incomplete, inconclusive, or contradictory, I've reached 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.

## The relevant rules and guidance

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 St James's Place 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, The Pensions Regulator ('TPR') issued its Scorpion guidance to help tackle the increasing problem of pension liberation. 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 to 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, the Pensions Advisory Service, TPR, the Serious Fraud Office, 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 2000 ('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 SIPP’s 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.

#### The March 2015 Scorpion guidance

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.

#### The PSIG Code of Good Practice

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, SIPP, 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.

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

Our Investigator asked Mrs C, via her representative, questions about how the transfer came about. Her representative said they had been unable to speak to her, but that her husband was able to respond on her behalf. I have also considered here what Mrs C's husband has told us about the events his own complaint concerns because those events appear to have taken place concurrently with Mrs C's transfer.

Mrs C's husband told our Investigator that he came across ROCGL while carrying out some work for them on their computer systems. He said he asked them about what they do and was told they "*get [people] better returns on [their] pensions.*" At the time the returns on their pensions were "*not great and [they were] looking for something better.*" He said a face-to-face appointment was subsequently arranged for him and Mrs C. At the appointment, a representative completed forms to establish the SSAS's for him and Mrs C which they signed. He recalled that they had to open a company as part of the arrangement, and he said they were told the Dolphin investment would give them a certain percentage return, part of which would be paid out every six months, with the remainder deferred. He said they were told the returns would be better than what they were currently getting. He said ROCGL were the only "*adviser*" they saw, and it was the ROCGL adviser that convinced them transferring would be a good idea.

The evidence of Mrs C's interactions with ROCGL are limited to what her husband has told us about them. While I think that's understandable to a degree considering several years has passed since then, I have kept that in mind.

The documents I've seen show Mrs C signed a letter of authority for Black Star and they requested information from St James's Place about her pensions. But ROCGL's details were recorded on Mrs C's SSAS application form in section for the trustee adviser's details. Mrs C's husband could not recall them having any dealings with Black Star, and he didn't know why Black Star were involved.

I accept the submission on Mrs C's behalf that she encountered ROCGL via her husband. Her husband has been consistent about how he came across them and I think it's likely he would accurately recall this given he undertook some work on ROCGL's computer systems. Despite the information request to St James's Place coming from Black Star, I've seen no other evidence of Black Star's involvement in the transfer beyond that. From experience it wasn't unusual for unregulated parties to use regulated firms to make information requests so as not to arouse suspicions from ceding schemes. At the time PSIG had already raised contact from unregulated parties as a signal to look out for. So, I've found Mrs C's transfer came about following a meeting with ROCGL that her husband arranged.

The arrangement Mrs C transferred her pensions to was complex and unusual. Consequently, I think it's unlikely that she decided to transfer without some form of advice or recommendation to do so.

I consider Mrs C's reason for transferring was to get a better return on her pensions than what she thought she was getting with St James's Place. Her husband's recollection of what they were told by ROCGL is, in effect, a recommendation to transfer to achieve that. In the absence of any other evidence, I've found it's more likely than not that Mrs C was advised to transfer and invest in Dolphin by ROCGL.

## What did St James's Place do and was it enough?

### *The Scorpion insert:*

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

St James's Place says it cannot be certain it issued the Scorpion leaflet. It says it could have sent the leaflet in response Black Star's information request, but it has no evidence of doing that. Even if St James's Place had done that, it would still be the case that it did not send the Scorpion leaflet to Mrs C. I don't think it would have been reasonable for St James's Place to have solely relied on Black Star forwarding the leaflet to Mrs C. Therefore, I've found St James's Place failed to send the Scorpion leaflet to Mrs C.

I have seen evidence that Standard Life enclosed the Scorpion leaflet with the information it sent to Black Star. Standard Life's letter listed the documents enclosed with it that included the "*Pension liberation fraud leaflet – from [TPAS]*." The shorter version of the March 2015 Scorpion leaflet was included with the copy of Standard Life's letter provided to me. But like I've explained above, that doesn't necessarily mean Mrs C would have received the leaflet. I haven't received any evidence to suggest Black Star forwarded the leaflet to Mrs C, and indeed Mrs C has confirmed she didn't receive the Scorpion leaflet. So I consider Mrs C didn't see the Scorpion leaflet before transferring.

I also note here that I haven't seen evidence of Standard Life providing any other warnings to Mrs C or any of the parties involved in the transfer.

### *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 Mrs C'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 St James's Place's actions using the Scorpion guidance as a benchmark instead.

I've firstly looked at what due diligence St James's Place carried out in this case to consider whether it was sufficient.

St James's Place says it carried out appropriate due diligence checks that included a "*trust busting*" check. It has provided a file note documenting a checklist it followed before making the transfer. Only one of the checks appears to concern due diligence on the receiving scheme in the transfer: checking the receiving scheme against a list it called 'Trust Busting Pension Liberation list of companies'. No details of the outcome of that check were recorded in the note.

It seems to me this list was a list of schemes and/or scheme administrators that St James's Place had concerns about the risks of pension liberation and/or scams associated with them. This is the inverse of a "*white list*" that the PSIG Code provided guidance on under section 6.11 of the code. Given the limited information it had about the transfer, I think it's most likely that St James's Place only checked if Rowanmoor was on this list and found it wasn't. So, in effect St James's Place proceeded with Mrs C's transfer on the basis it considered Rowanmoor as not presenting a risk of pension scam activity.

I note that at the time of the transfer Rowanmoor was a long established SSAS provider and had some repute in the industry. Rowanmoor Trustees Limited also had legal and fiduciary duties as a professional trustee. There's an argument, therefore, that St James's Place could have taken comfort from this. I disagree. The Scorpion guidance gave ceding schemes an important role to play in protecting customers wanting to transfer a pension. It would defeat the purpose of the Scorpion guidance for a ceding scheme to have delegated that role to a different business – especially one that had a vested interest in the transfer proceeding.

An important aspect in this is the fact that there is little regulatory oversight of SSASs like this; they don't have to be registered with TPR. And TPR had specifically highlighted that scams were now focusing on single-member schemes in its 2015 update to the Scorpion action pack. In the absence of that oversight, St James's Place would have been assuming, in effect, that Rowanmoor would want to maintain its standing in the industry and the trustee subsidiary would comply with its legal and fiduciary duties. In the context of guarding against pension scams – and an environment where providers and trustees clearly didn't always act as they should have done – I don't consider this to have been a prudent assumption.

The fact that a different part of Rowanmoor's business was regulated by the FCA doesn't change my thinking on this. The key point is that Rowanmoor Group Plc and Rowanmoor Trustees Limited (both of which were involved in the operation of the SSAS) *weren't* FCA-regulated, so I see no reason why they would have operated with FCA regulations and Principles in mind – or why their actions would have come under FCA scrutiny. As such, I'm not persuaded St James's Place could, reasonably, have derived sufficient comfort about the Rowanmoor SSAS as a destination for Mrs C's transfer.

For the reasons given above, St James's Place could not have considered the receiving scheme/administrator as being free of scam risk. So, the initial triage process should have instead led to St James's Place asking Mrs C 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 two of them would have been answered "yes:"

- 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 St James’s Place should have addressed all four sections of the SSAS due diligence process and contacted Mrs C to help with that.

#### What should St James’s Place have found out?

If St James’s Place had asked Mrs C about the employer sponsoring the SSAS and her links to it under parts (a) and (b) of the Code, I think it would have discovered she had established a company as part of the transfer arrangements, and that she wasn’t employed by this company. A simple search of the Companies House register using Mrs C’s details would have revealed to St James’s Place that she was a Director of Business P. It would have then discovered Business P was dormant and had been incorporated less than two months prior to the transfer request at an address that was distant from Mrs C’s address. Those discoveries should have caused St James’s Place concern about the lack of employment and geographical link between Mrs C and Business P.

Investigations under part (c) of the Code should have been particularly concerning to St James’s Place. If it had asked Mrs C how she’d become aware of the proposed scheme, I think St James’s Place would have found she had been advised by ROCGL to transfer her pensions to a Rowanmoor SSAS and invest in Dolphin on the basis she would get a better return on her pension funds. St James’s Place could have quickly established via a search of the FCA register that ROCGL were not a regulated adviser. St James’s Place might have been reassured that there was a regulated adviser involved in the transfer by the fact the information request that preceded the transfer request had come from Black Star. But it would have found no evidence of Black Star’s involvement in the transfer beyond that. Consequently, St James’s Place ought to have concluded that Mrs C had likely been advised to transfer by a non-regulated adviser.

Being *advised* by an unauthorised firm to transfer benefits from a personal pension plan would have been a breach of the general prohibition imposed by FSMA, which states no one can carry out regulated activities unless they’re authorised or exempt. Anyone working in this field should have been aware that financial advisers need to be authorised to give regulated advice in the UK. The PSIG Code (and the Scorpion guidance) make much the same point. Indeed, the PSIG Code says firms should report individuals appearing to give regulated advice that aren’t authorised to do so.

My view is that St James’s Place should therefore have been concerned by ROCGL’s involvement because it pointed to a criminal breach of FSMA. On the balance of probabilities, I’m satisfied such a breach occurred here.

### What should St James's Place have told Mrs C – and would it have made a difference?

Had it done more thorough due diligence, there would have been a number of warnings St James's Place could have given to Mrs C in relation to a possible scam threat as identified by the PSIG Code (and the Scorpion action pack). St James's Place should also have been aware of the close parallels between Mrs C's transfer and the warnings the FCA gave to consumers in 2014 (and subsequently passed on to firms) about transferring to SSASs in order to invest in unusual investments. But the most egregious oversight was St James's Place's failure to uncover the threat posed by a non-regulated adviser. Its failure to do so, and failure to warn Mrs C accordingly, meant it didn't meet its obligations under PRIN and COBS 2.1.1R.

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

I don't think this would have been a disproportionate response given the scale of the potential harm Mrs C was facing and St James's Place's responsibilities under PRIN and COBS 2.1.1R. And I don't think any such warnings would reasonably have caused St James's Place to think it was running the risk of advising Mrs C, that it was replicating the responsibilities of the receiving scheme or that it was putting in place unnecessary barriers to exit.

I'm satisfied any messages along these lines would have changed Mrs C's mind about the transfer. The messages would have followed conversations with Mrs C so would have seemed to her (and indeed would have been) specific to her individual circumstances and would have been given in the context of St James's Place raising concerns about the risk of losing pension monies as a result of untrustworthy advice. This would have made Mrs C aware that there were serious risks in using an unregulated adviser. I think the gravity of any messages along these lines would prompt most reasonable people to rethink their actions. I've seen no persuasive reason why Mrs C would have been any different. So, I consider that if St James's Place had acted as it should, Mrs C wouldn't have proceeded with the transfer out of her personal pensions or suffered the investment losses that followed. I therefore uphold Mrs C's complaint.

### **Putting things right – fair compensation**

My aim is that Mrs C should be put as closely as possible into the position she would probably now be in if St James's Place had treated her fairly.

The SSAS only seems to have been used in order for Mrs C to make an investment that I don't think she would have made from the proceeds of these pension transfers, but for St James's Place's actions. So I think that Mrs C would have remained in her pension plans with St James's Place and wouldn't have transferred to the SSAS.

To compensate Mrs C fairly, St James's Place must subtract the proportion of the actual value of the SSAS which originates from the transfers of the St James's Place pensions, from the notional value if the funds had remained with St James's Place. If the total notional value is greater than the actual value, there is a loss.

### ***Actual value***

This means the proportion of the SSAS value originating from Mrs C's St James's Place transfer (the "**relevant proportion**"), at the date of my Final Decision. To arrive at this value, any amount in the SSAS bank account is to be included, but any overdue administration charges yet to be applied to the SSAS should be deducted. Mrs C may be asked to give St James's Place her authority to enable it to obtain this information to assist in assessing her loss, in which case I expect her to provide it promptly.

My aim is to return Mrs C to the position she would have been in but for the actions of St James's Place. This is complicated where an investment is illiquid (meaning it cannot be readily sold on the open market), as its value can't be determined. On the basis of the evidence I have, that is likely to be the case with the following investment(s): Dolphin. This is because there is no secondary market for the investment. And I don't think it's realistically possible for St James's Place to only acquire a part of the investment from the SSAS as I'm only holding it responsible for the loss originating from a transfer in of the St James's Place funds. Therefore as part of calculating compensation:

- St James's Place must give the illiquid investment(s) a nil value as part of determining the actual value. In return St James's Place may ask Mrs C to provide an undertaking, to account to it for the relevant proportion of the net proceeds she may receive from those investments in future on withdrawing them from the SSAS. St James's Place will need to meet any costs in drawing up the undertaking. If St James's Place asks Mrs C to provide this undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.
- It's also fair that Mrs C should not be disadvantaged while she is unable to close down the SSAS. So to provide certainty to all parties, if these illiquid investment(s) remain in the scheme, I think it's fair that St James's Place must pay an upfront sum to Mrs C equivalent to the relevant proportion of five years' worth of future administration fees at the current tariff for the SSAS, to allow a reasonable period of time for the SSAS to be closed.

### ***Notional value***

This is the value of Mrs C's funds had she remained invested with St James's Place up to the date of my Final Decision.

St James's Place should ensure that the relevant proportion of any pension commencement lump sum or gross income payments Mrs C received from the SSAS are treated as notional withdrawals from St James's Place on the date(s) they were paid, so that they cease to take part in the calculation of notional value from those point(s) onwards.

### ***Payment of compensation***

I don't think it's appropriate for further compensation to be paid into the SSAS given Mrs C's dissatisfaction with the outcome of the investment it facilitated.

St James's Place should reinstate Mrs C's original pension plans as if their value on the date of my Final Decision was equal to the amount of any loss established from the steps above (and it performs thereafter in line with the funds Mrs C was invested in).

St James's Place shouldn't reinstate Mrs C's original plans if it would cause a breach of any HMRC pension protections or allowances – but my understanding is that it might be possible for it to reinstate a pension it formerly administered in order to rectify an administrative error that led to the transfer taking place. It is for St James's Place to determine whether this is possible.

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

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

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

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

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

If payment of compensation is not made within 28 days of St James's Place receiving Mrs C's acceptance of the Final Decision, interest must be added to the compensation at the rate of 8% per year simple from the date of the Final Decision to the date of payment.

Income tax may be payable on any interest paid. If St James's Place deducts income tax from the interest, it should tell Mrs C how much has been taken off. St James's Place should give Mrs C a tax deduction certificate in respect of interest if Mrs C asks for one, so she can reclaim the tax on interest from HMRC if appropriate.

This interest is not required if St James's Place is reinstating Mrs C's plans for the amount of the loss – as the reinstated sum should, by definition, mirror the performance after the date of my Final Decision of the funds in which Mrs C was invested. However, I expect any such reinstatement to be achieved promptly.

Details of the calculation must be provided to Mrs C in a clear, simple format.

**My final decision**

My final decision is that I uphold Mrs C's complaint. I direct St James's Place UK plc to pay Mrs C the redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 4 April 2025.

Asa Burnett  
**Ombudsman**