

## The complaint

Mr C has complained about a transfer of his St James's Place UK plc ('St James's Place') personal pensions to a small self-administered scheme ('SSAS') in January 2016. Mr 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. Mr C says he has lost out financially as a result.

Mr C says St James's Place failed in its responsibilities when dealing with the transfer request. He says that it should have done more to warn him of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance he says was required of transferring schemes at the time. Mr C says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if St James's Place had acted as it should have done.

## What happened

On 31 May 2015, Mr C signed a letter of authority allowing Black Star Wealth Management Ltd ('Black Star') to obtain details, and transfer documents, in relation to his pensions. On 2 June 2015, Black Star wrote to St James's Place, enclosing Mr C's letter of authority. It requested information on Mr C's pensions and discharge forms to allow a transfer. St James's Place sent Black Star the requested information on 1 July 2015. Black Star was authorised by the Financial Conduct Authority ('FCA').

Mr C said this followed a meeting he had arranged with Return On Capital Group Limited ('ROCGL') for himself and his wife. Mr C's wife has referred a similar complaint to the Financial Ombudsman Service against St James's Place.

Mr C says he was attracted to transferring by the prospect of a better return on his pensions than what he was receiving.

In November 2015, a company was incorporated with Mr C and his wife as directors. I'll refer to this company as 'Business P'. On 25 November 2015, Mr 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 21 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.

Mr C's pensions were transferred on 27 January 2016. His total transfer value was around £102,600. He was 53 years old at the time of the transfer.

Mr C went on to invest a total of £96,500 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, Mr 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, Mr C's Dolphin investment has no realisable value.

In June 2022, Mr C's representatives set out his complaint to St James's Place. Briefly, his argument is that St James's Place failed to carry out adequate due diligence on the transfer and to ensure he had received regulated transfer advice. He 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 him as a retail client. He added that St James's Place failed to provide him with the Scorpion warning or otherwise warn him about pension scams.

St James's Place didn't uphold the complaint. In summary, it said only Rowanmoor was mentioned on the transfer request, and Rowanmoor passed all of its due diligence checks.

St James's Place didn't respond to Mr C's complaint. Although it told us its position would have been that it completed due diligence checks on the scheme Mr 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 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?

Mr C 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 his pensions were “not great and [they were] looking for something better.” He said a face-to-face appointment was subsequently arranged. At the appointment, a representative completed forms to establish the SSAS for him. He recalled he had to open a company as part of the arrangement, and he said he was told the Dolphin investment would give him a certain percentage return, part of which would be paid out every six months, with the remainder deferred. He said he was told the returns would be better than what he was currently getting. He said ROCGL were the only “adviser” he saw, and it was the ROCGL adviser that convinced him transferring would be a good idea.

The evidence of Mr C’s interactions with ROCGL are limited to what he has told us about them. I think that’s understandable considering several years has passed since then.

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

I accept Mr C’s submission about how he encountered ROCGL. 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 Mr C’s transfer came about following a meeting he arranged with ROCGL.

The arrangement Mr C transferred his pensions to was complex and unusual. Consequently, I think it’s unlikely that he decided to transfer without some form of advice or recommendation to do so.

I consider Mr C’s reason for transferring was to get a better return on his pensions than what he thought he was getting with St James’s Place. His recollection of what he was 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 Mr 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 Mr C. Therefore, I've found St James's Place failed to send the Scorpion leaflet to Mr C.

#### *Due diligence:*

As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mr 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 Mr 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 reputé 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 Mr 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 Mr 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 Mr C to help with that.

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

If St James's Place had asked Mr C about the employer sponsoring the SSAS and his links to it under parts (a) and (b) of the Code, I think it would have discovered he had established a company as part of the transfer arrangements, and that he wasn't employed by this company. A simple search of the Companies House register using Mr C's details would have revealed to St James's Place that he 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 Mr C's address. Those discoveries should have caused St James's Place concern about the lack of employment and geographical link between Mr 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 Mr C how he'd become aware of the proposed scheme, I think St James's Place would have found he had been advised by ROCGL to transfer his pensions to a Rowanmoor SSAS and invest in Dolphin on the basis he would get a better return on his 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 Mr 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 Mr 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 Mr 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 Mr 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 Mr 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 Mr C that the firm he had been advised by was unregulated and could put his pension at risk. St James's Place should have said only authorised financial advisers are allowed to give advice on personal pension transfers, so he 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 Mr 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 Mr 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 Mr C's mind about the transfer. The messages would have followed conversations with Mr C so would have seemed to him (and indeed would have been) specific to his 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 Mr 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 Mr C would have been any different. So, I consider that if St James's Place had acted as it should, Mr C wouldn't have proceeded with the transfer out of his personal pensions or suffered the investment losses that followed. I therefore uphold Mr C's complaint.

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

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

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

To compensate Mr C fairly, St James's Place must subtract the actual value of the SSAS 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 SSAS value at the date of my Final Decision. To arrive at this value, any amount in the SSAS bank account is to be included, but any overdue administration charges yet to be applied to the SSAS should be deducted. Mr C may be asked to give St James's Place his authority to enable it to obtain this information to assist in assessing his loss, in which case I expect him to provide it promptly.

My aim is to return Mr C to the position he 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's no secondary market for the investment. Therefore as part of calculating compensation:

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

- Alternatively, if it is unable to buy them from the SSAS, 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 Mr C to provide an undertaking, to account to it for the net proceeds he 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 Mr C to provide this undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.
- It's also fair that Mr C should not be disadvantaged while he 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 Mr C equivalent to five years' worth of future administration fees at the current tariff for the SSAS, to allow a reasonable period of time for the SSAS to be closed.

### ***Notional value***

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

St James's Place should ensure that any pension commencement lump sum or gross income payments Mr 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 Mr C's dissatisfaction with the outcome of the investment it facilitated.

St James's Place should reinstate Mr 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 Mr C was invested in).

St James's Place shouldn't reinstate Mr 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 Mr 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 Mr 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 Mr C is entitled based on his 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 Mr 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 Mr 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 Mr 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 Mr C is retired. (This is an adjustment to ensure that Mr C isn't overcompensated – it's not an actual payment of tax to HMRC.)

To make this reduction, it's reasonable to assume that Mr C is likely to be a basic rate taxpayer in retirement. So, if the loss represents further 'uncrystallised' funds from which Mr C was yet to take his 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 him in cash.

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

If payment of compensation is not made within 28 days of St James's Place receiving Mr 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 Mr C how much has been taken off. St James's Place should give Mr C a tax deduction certificate in respect of interest if Mr C asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

This interest is not required if St James's Place is reinstating Mr 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 Mr C was invested. However, I expect any such reinstatement to be achieved promptly.

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

### **My final decision**

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

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

Asa Burnett  
**Ombudsman**