DRN-4833603

The complaint

This complaint is about a transfer of a personal pension policy Mr M held with Scottish Widows Limited ("SWL"). In June 2014, he transferred this to a small self-administered scheme ("SSAS").

Mr M's SSAS was subsequently used to invest in a financial instrument known as loan notes, with Dolphin Capital. Dolphin Capital was a German based property development company. Part of Mr M's funds were also used to invest in Akbuk Unity Bay, an overseas commercial property scheme. Mr M says these investments have since run into trouble. He says he has lost out financially as a result.

Mr M says that SWL 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 away from his personal pension and into a SSAS, and that it should have undertaken greater due diligence on the transfer, in line with the guidance he says was required of transferring schemes at the time. Mr M says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if SWL had acted as it should have done.

What happened

I should first explain that parts of Mr M's overall pension savings were held on various different pension platforms other than just SWL; in total it seems he had four such policies. Most of their combined value was ultimately used to place funds into the Dolphin Capital and Unity Bay investments I've described above.

I've already issued a decision about the 'first' pension which was with Royal London Mutual Insurance Society Limited and the value of this was around £30,000. The pension I'm addressing in *this* decision is therefore the 'second' pension. This 'second' pension – the SWL policy - comprised of a total value of around £65,000.

A complaint about a 'third' pension policy is with a different ombudsman service – The Pensions Ombudsman ("TPO"). As this was a type of occupational pension with a previous employer, TPO has jurisdiction over this complaint and so I won't be dealing with it here or in any other decision. Mr M should therefore expect a response from TPO about this pension in due course. For perspective, the *estimated value* of this was around £27,000. Finally, we know there was a 'fourth' pension. This seems to have comprised of a lower value than the others. However, it seems this pension was never transferred at all.

I've looked carefully into the other complaint we have with our Service. I did this to check and understand whether the outcome of that complaint affects my findings in any material ways. I'm satisfied it doesn't, and so I'm able to issue a decision in this case having considered all the evidence we have.

The SWL pension

A 'letter of authority' signed by Mr M on 4 February 2014 allowing Furness Financial Management ("FFM") to obtain details in relation to his SWL pension, was sent to SWL. FFM was regulated to provide financial advice. On 5 March 2014 SWL replied to FFM with the information sought on Mr M's behalf, such as the pension's illustration of benefits, its transfer value and a discharge form.

Mr M's recollection of events now are that although he signed a letter of authority giving FFM permission to obtain his pension details, he had no other dealings with that company. He was, in fact, dealing directly only with a firm called Piramos Limited ("Piramos") which he'd been passed onto following earlier internet and telephone searches for a financial adviser. Piramos was not authorised by the regulator at the time to provide financial advice.

On 7 March 2014, a company was incorporated with Mr M as the sole director. I'll refer to this company as "Mr M Investments Ltd". On 26 April 2014, Mr M signed documents to open a SSAS with a company called Rowanmoor Group Plc ("Rowanmoor"). A SSAS is a type of occupational pension, in which the members are also trustees and therefore take responsibility for operating the scheme. SSASs are not regulated by the financial services regulator, the FCA. They can hold a wider range of investments and assets than many personal pensions. As an occupational pension, a SSAS must be sponsored by an employer company, hence the reason for "Mr M Investments Ltd" being established. "Mr M Investments Ltd" was recorded as the SSAS's principal employer. Mr M used the newly established SSAS to place almost all of his transferred pension funds into the Dolphin Capital and Unity Bay investments. A very small portion was retained in a cash fund.

On 10 June 2014 Mr M's transfer papers were sent to SWL by Rowanmoor. Included in the transfer papers were: the provider of the SSAS as being Rowanmoor and various details about Mr M and the receiving scheme the transfer was to be paid into. Mr M was 53 years old at the time of the transfer.

The SSAS's bank statements show the transfer of the SWL pension policy was received by 27 June 2014. The transfer value was £64,786. The investments I've mentioned above were unregulated and high risk and they have proven to be illiquid and incapable of sale on the open market.

In March 2021, Mr M complained to SWL. Briefly, his argument is that it ought to have spotted, and told him 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; Mr M was an inexperienced investor and was advised to invest in overseas funds which he had little understanding of and were inappropriate for his attitude to risk; and, the catalyst for the transfer was the involvement of an unregulated business in the form of Piramos.

SWL didn't uphold his complaint. It said he had a legal right to transfer and that none of the information it had about the transfer at the time gave it any cause for concern. SWL said it was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

Mr M 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 Mr M still disagreed. As the dispute couldn't be resolved informally the matter was passed to me to make a decision.

In May 2024, I issued a provisional decision comprehensively explaining why I was minded to uphold the complaint. Mr M agreed with my decision, as did SWL. I therefore set out my rationale once again, in this final 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.

Having considered everything with care, I am upholding Mr M'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 SWL 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 formal guidance to follow that was aimed at tackling pension liberation – the "Scorpion" guidance.

The Scorpion guidance was launched by The Pensions Regulator (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 check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where 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. Thus, for the bodies regulated by TPR, the status of the guidance was that it provided them with information, education and/or assistance, as opposed to creating any new binding rule or legal duty. Correspondingly, the communications about the launch of the guidance were predominantly expressed in terms that made its non-obligatory status clear. So, the tenor of the guidance is essentially a set of prompts and suggestions, not requirements.

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

I take from the above that the contents of the Scorpion guidance was essentially informational and advisory in nature and that deviating from it doesn't necessarily mean a firm has broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's statutory rights.

That said, the launch of the Scorpion guidance was an important moment in so far it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing 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.

<u>What did personal pension providers need to do?</u>

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. And where the recommendations in the guidance applied, absent a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations. 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 the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party.

3. I also think it would be fair and reasonable for personal pension providers – operating with the regulator's Principles and COBS 2.1.1R in mind – to ensure the warnings contained in the Scorpion insert were provided in some form to a member before a transfer even if the transfer process *didn't* involve the sending of transfer packs.

4. The Scorpion guidance asked firms to look out for the tell-tale signs of 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. Therefore, whilst using the action pack wasn't an inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.

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

<u>The circumstances surrounding the transfer and Mr M's recollections</u>

Mr M's motives for transferring appear to have been to generate higher returns for his pension rather than to receive unauthorised payments from it. The available documentation relating to the transfer sheds light on which firms were involved. I think it's helpful to summarise the role they played:

- <u>Piramos:</u> This firm was not authorised to provide regulated financial advice, but Mr M says it was Piramos that advised him. He remembers the name of the Piramos representative he dealt with – I'll refer to this person as "AJ". Mr M says this person introduced the idea of transferring away from his existing pension scheme(s), advising him on establishing a limited company to be a 'sponsoring employer' for a SSAS, helping him to source a SSAS provider and then make a SSAS application. The evidence, discussed below, suggests both the advice to transfer to the SSAS and placing of funds in the Dolphin Capital and Unity Bay investments came from a recommendation made by Piramos.

- FFM: This firm is now dissolved but at the time it was authorised by the FCA to provide regulated financial advice. However, Mr M says it did *not* advise him; he confirmed its involvement here was limited to that of obtaining the value and details of the existing pension funds he held on various platforms.

- Rowanmoor: This was a widely known provider of SSAS administration services at the time to retail clients. Mr M's SSAS was arranged and set up with Rowanmoor, and it was Rowanmoor which wrote to SWL on 19 June to request the transfer to the SSAS.

Having looked very carefully at all the information and evidence we've got in this case and the other pension cases I've mentioned, I think there's compelling evidence that these companies all played the above-mentioned roles.

For example, the evidence showing that Piramos acted as the 'adviser' to Mr M throughout the whole process is very comprehensive. I say this firstly because Mr M's own recollections, which are of only ever dealing with Piramos (and specifically "AJ").

I've also seen letters which were addressed to and sent out to Mr M during the transferring process, by Rowanmoor. Examples include those sent on 29 July and again on 13 August 2014. These letters are personal to Mr M and are about making overseas investments. But they were sent to Mr M care of *(c/o)* "AJ" at Piramos's business address rather than to Mr M's home. So I think this shows that Piramos was acting as Mr M's adviser and it corroborates his memories of what happened. In my view, this strongly implies that he was being 'advised' by that firm.

I've also noted that "AJ" at Piramos is shown as the *adviser to the SSAS Trustee(s)* on the SSAS application form, whom Mr M says he was personally and regularly dealing with at Piramos. I accept this adviser to the Trustee(s) role can be quite separate to providing *personal* financial advice to a prospective investor. For instance, the Pension Act requires the Trustees to appoint certain professional advisers to carry out specific tasks in relation to the scheme (in this case, a SSAS). But having considered this together with all the other evidence I've seen, I am satisfied I've seen enough evidence of the much wider role Piramos obviously played here i.e. that of advising Mr M to transfer to the SSAS in a personal capacity too.

I say this because I've also seen email traffic from the Piramos representative "AJ" to Mr M which is demonstrative of him being 'advised' to transfer to the SSAS. This included being kept abreast of developments with transferring his pension funds, and the progress towards the setting up of a SSAS. The representative from Piramos is also shown as witnessing Mr M's signature at relevant points to establishing the SSAS (and using the Piramos company name in doing so). As the SSAS was being established in order to make a transfer into it, I think this evidence of Piramos's involvement in the advice at the outset is compelling.

I've also mentioned that Piramos was not regulated to provide financial advice at the time. I also don't think "AJ" is likely to have held regulated permission to provide advice either: I can find no evidence that he was regulated via searching on the FCA register. And I note that on the SSAS application form – which "AJ" witnessed – he failed to fill in the sections relating to being regulated and / or having an FCA identification number. In my view this strongly implies there were no relevant regulatory permissions in place for the provision of financial advice, either relating to Piramos and / or "AJ".

Lastly, I also think the idea of opening a SSAS and then investing in these areas is highly likely to have come from external factors. This is because Mr M himself did not appear to have the knowledge or experience to make these types of investment decisions on his own. I haven't seen anything about his circumstances, or anything from what he has told us, that makes me think it's likely he would have decided, without advice, to embark on such a complicated and esoteric arrangement, which involved transferring out of his existing pension(s), setting up a new company, opening a SSAS and then investing in Dolphin Capital and Unity Bay.

For good order, I've considered the involvement of the other firms I've mentioned above. However, there's no evidence FFM's involvement extended beyond merely obtaining Mr M's pension details and I've seen nothing showing Mr M did anything as a result of FFM's limited connection. As for Rowanmoor, all the evidence strongly shows this was a provider of SSAS administration and trustee services only, it did not provide advice in that role and its involvement came towards the end of this process.

In effect, in my view this means Mr M was advised to transfer his SWL personal pension into a SSAS from Piramos. Advice of that nature was (and remains) regulated by the Financial Services and Markets Act 2000 (FSMA). Only someone authorised to do so by the Financial Conduct Authority (FCA) is permitted to give regulated financial advice unless they have a specific exemption under FSMA.

To be clear then, this corresponds with both Mr M's recollections and the wider evidence. Piramos was *not* authorised to give investment advice and as I'll explain later, I think basic enquiries would have uncovered its involvement, together with other significant signs of a scam which SWL should have spotted when applying reasonable due diligence.

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

The Scorpion insert:

For the reasons given above, my view is that personal pension providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information. Here, SWL didn't send Mr M the Scorpion insert – it has explained that where, as in this case, the transfer request didn't throw up any signs of pension liberation or a firm suspected to be involved in this, it wasn't SWL's practice to send out a copy of the insert to its member. Nor did it provide Mr M with substantially the same information contained in the leaflet. Instead SWL processed the transfer without ensuring that Mr E had been given any warnings. For the record, Mr M said he never received a Scorpion warning leaflet or similar information from anyone, including any firm other than SWL.

But in my view, SWL had a duty of care to Mr M to treat him fairly. It would, or should, also have been well aware of the guidance and the pension industry's attempts to combat pension liberation scams at the time. So I think SWL still had a duty to ensure their member was given appropriate warnings.

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 take appropriate action if it was apparent their customer might be at risk. SWL didn't undertake any further due diligence.

Given the information SWL had at the time, a feature of Mr M's transfer would have been a potential warning sign of liberation activity as identified by the Scorpion action pack: Mr M's SSAS was recently registered. SWL should therefore have followed up on this to find out if other signs of liberation were present. Given this warning sign, I think it would have been fair and reasonable – and good practice – for SWL to look into the proposed transfer and the most reasonable way of going about that would have been to turn to the check list in the action pack to structure its due diligence into the transfer.

The check list provided a series of questions to help transferring schemes assess the potential threat by finding out more about the receiving scheme and how the consumer came to make the transfer request. Some items on the check list could have been addressed by checking online resources such as Companies House and HMRC. Others would have required contacting the consumer. The check list is divided into three parts (which I've numbered for ease of reading and not because I think the check list was designed to be followed in a particular order):

1. The nature/status of the receiving scheme

   Sample questions: Is the receiving scheme newly registered with HMRC, is it sponsored by a newly registered or dormant employer, an employer that doesn't employ the transferring member or is geographically distant from them, or is the receiving scheme connected to an unregulated investment company?

2. Description/promotion of the scheme

   Sample questions: Do descriptions, promotional materials or adverts of the receiving scheme include the words 'loan', 'savings advance', 'cash incentive', 'bonus', 'loophole' or 'preference shares' or allude to overseas investments or unusual, creative or new investment techniques?

3. The scheme member

   Sample questions: Has the transferring member been advised by an 'introducer', been advised by a non-regulated adviser or taken no advice? Has the member decided to transfer after receiving cold calls, unsolicited emails or text messages about their pension? Have they applied pressure to transfer as quickly as possible or been told they can access their pension before age 55?

Opposite each question, or group of questions, the check list identified actions that should help the transferring scheme establish the facts.

I don't think it would always have been necessary to follow the check list in its entirety. And I don't think an answer to any one single question on the check list would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the check list to establish whether liberation was a realistic threat. Given the warning sign that should have been apparent when dealing with Mr M's transfer request, and the relatively limited information it had about the transfer, I think in this case SWL should have addressed all three parts of the check list and contacted Mr M as part of its due diligence.

<u>What should SWL have found out?</u>

SWL knew, or certainly should have known, firstly of the threat posed by the newly incorporated company and SSAS. It would have learned there was no genuine employment link to the sponsoring employer. So, investigations under part 1 of the check list would have revealed the SSAS's sponsoring employer was recently incorporated and set up to facilitate the creation of the SSAS rather than as an entity in its own right.

Investigations under part 2 of the check list would have revealed that Mr M was attracted to the investment opportunities pitched to him, including loan notes and to overseas investments or unusual, creative or new investment techniques which were potential sources of concern under the action pack.

I think investigations would have then revealed the existence of a non-regulated adviser; again this was another risk area listed in part 3. I think these warning signals should have then caused investigations into the issue of unregulated advice. For this, I'm satisfied Mr M would have told SWL that he was being advised to transfer by Piramos - my previous findings in the "circumstances surrounding the transfer" section support this. Had SWL asked him about this, as it should have done under part 3 of the check list, it would have revealed signs of a scam.

The check list recommends that in order to establish whether its member has been advised by a non-regulated adviser, the ceding firm should "*check whether advisers are registered with the FSA at www.fsa.gov.uk/fsaregister*". In other words, they should consult the FSA's online register of authorised firms. SWL should have taken that step, which is not difficult, and it would quickly have discovered that Mr M's adviser was indeed unauthorised.

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 investment advice in the United Kingdom – indeed, the Scorpion insert itself makes this point.

My view is that SWL should have been concerned by Piramos's involvement because it pointed to a criminal breach of FSMA. On the balance of probabilities, I'm satisfied such a breach occurred here.

<u>What should SWL have told Mr M – and would it have made a difference?</u>

I think SWL's failure to uncover this risk of illegal advice and then warn Mr M about it meant it didn't meet its obligations under Principles 2, 6 and 7 and COBS 2.1.1R. With those obligations in mind, it would have been appropriate for SWL to have informed Mr M that the firm he had been advised by was unregulated and could put his pension at risk. SWL 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'm satisfied any messages along these lines would have changed Mr M's mind about the transfer. The messages would have followed conversations with Mr M 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 SWL raising concerns about the risk of losing pension monies as a result of untrustworthy advice. This would have made Mr M aware that there were serious risks in using an unregulated adviser even if he was not liberating his pension.

I think the gravity of any messages along these lines would prompt most reasonable people to change their mind. I've seen no persuasive reason why Mr M would have been any different. I've considered Mr M's personal situation and that a warning about potential criminal activity is a serious warning. He's said that any warnings would have been particularly relevant to him as his brother was a police detective, so if potentially illegal activity in the transfer had been raised, to any degree, he would have sought his brother's experience and likely changed his mind. So, I consider that if SWL had acted as it should, Mr M wouldn't have proceeded with the transfer out of his personal pension or suffered the investment losses that followed.

The cause of Mr M's loss and other issues

I bear in mind that this complaint is similar to the type of claim that in legal proceedings would be treated as a claim for damages for negligent failure to give someone the information or advice to which they were entitled. In that kind of case, the court asks itself whether there is a sufficient connection between the harm for which the claimant seeks damages as compensation and the subject matter of the defendant's duty of care. The court looks to see what risk the defendant's duty was supposed to guard against and whether the claimant's loss represents that particular risk coming to fruition.

So, it's important I bear in mind that the Scorpion guidance was directed towards protecting people from the risk of pension liberation and that doesn't appear to have happened here. The loss was suffered because Mr M accepted unsuitable advice from an introducer who wasn't authorised to act as a financial adviser at all, and it wasn't (as far as can be established taking into account what Mr M has said) a case of seeking to cash in a pension in an unauthorised way.

Nonetheless, the circumstances that gave rise to this complaint were very similar to those of a pension liberation scam: the transfer followed the setting up of a new pension scheme to house an investment and the involvement of recently established businesses. The Scorpion action pack and insert both recommend checking that financial advice comes only from an authorised person by checking the FSA/FCA register. And SWL's obligations under the Principles and COBS were of general application and went well beyond just protecting its customers from pension liberation. In the circumstances, even though this doesn't appear to be a case of pension liberation, I'm satisfied there is sufficient connection between the harm Mr M wants to be compensated for and the risk that SWL had a duty to guard against. So I do consider it fair and reasonable for SWL to compensate Mr M for his losses.

I also 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 SWL 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 single-member SSASs; they don't have to be registered with TPR. In the absence of that oversight, SWL was 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 the Rowanmoor Group was regulated by the FCA doesn't change my thinking on this. The key point is that Rowanmoor Trustees Limited *wasn't* FCA-regulated so I see no reason why it would have operated with FCA regulations and Principles in mind – or why its actions would have come under FCA scrutiny. As such, I'm not persuaded SWL could, reasonably, have derived sufficient comfort about the Rowanmoor SSAS as a destination for Mr M's transfer.

Having considered everything in this case with care, I am therefore upholding this complaint.

Putting things right

My aim is that Mr M should be put as closely as possible into the position he would probably now be in if SWL had treated him fairly.

The SSAS only seems to have been used in order for Mr M to make an investment that I don't think he would have made from the proceeds of this pension transfer, but for SWL's actions. So I think that Mr M would have remained in his pension plan with SWL and wouldn't have transferred to the SSAS.

To compensate Mr M fairly, SWL should subtract the proportion of the actual value of the SSAS which originates from the transfer of the SWL pension, from the notional value if the funds had remained with SWL. If the notional value is greater than the actual value, there is a loss.

Actual value

This means the proportion of the SSAS value originating from Mr M's SWL 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. Mr M may be asked to give SWL his authority to enable it to obtain this information to assist in assessing his loss.

My aim is to return Mr M to the position he would have been in but for the actions of SWL. 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 investment(s) in Dolphin Capital and Unity Bay. And I don't think it's realistically possible for SWL 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 SWL funds. Therefore as part of calculating compensation:

- SWL should give the illiquid investment(s) a nil value as part of determining the actual value. In return SWL may ask Mr M to provide an undertaking, to account to it for the relevant proportion of the net proceeds he may receive from those investments in future on withdrawing them from the SSAS. SWL will need to meet any costs in drawing up the undertaking. If SWL asks Mr M to provide this undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

- It's also fair that Mr M 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 SWL should pay an upfront sum to Mr M 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 Mr M's funds had he remained invested with SWL up to the date of my Final Decision.

SWL should ensure that the relevant proportion of any pension commencement lump sum or gross income payments Mr M received from the SSAS are treated as notional withdrawals from SWL 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

There doesn't appear to be any reason why Mr M needed a pension arrangement that wasn't privately held, administered by an established provider and under FCA regulation. So I don't think it's appropriate for further compensation to be paid into the SSAS.

SWL should reinstate Mr M's original pension plan as if its 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 M was invested in).

SWL shouldn't reinstate Mr M's original plan if it would cause a breach of any HMRC pension protections or allowances – but my understanding is that it will 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. If SWL doesn't consider this is possible, it must explain why.

If SWL is unable to reinstate Mr M's pension 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 M's original pension.

If SWL 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 M is entitled based on his annual allowance and income tax position. However, SWL'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 M doesn't incur an annual allowance charge. If SWL cannot do this, then it shouldn't set up a new plan for Mr M.

If it's not possible to set up a new pension plan, SWL should pay the amount of any loss direct to Mr M. But if this money had been in a pension, it would have provided a taxable income. Therefore compensation paid in this way should be notionally reduced to allow for any income tax that would otherwise have been paid. (This is an adjustment to ensure that Mr M isn't overcompensated – it's not an actual payment of tax to HMRC.)

To make this reduction, it's reasonable to assume that Mr M is likely to be a basic rate taxpayer in retirement. So, if Mr M has yet to take his 25% tax-free cash from the SSAS, 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 Mr M has already taken his 25% tax-free cash from the SSAS, 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 SWL receiving Mr M's acceptance of my Final Decision, interest should be added to the compensation at the rate of 8% per year simple from the date of my Final Decision to the date of payment.

Income tax may be payable on any interest paid. If SWL deducts income tax from the interest, it should tell Mr M how much has been taken off. SWL should give Mr M a tax deduction certificate in respect of interest if Mr M asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

This interest is not required if SWL is reinstating Mr M's plan 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 M was invested.

When responding to my provisional decision, neither Mr M nor SWL disputed:

- the assumption that Mr M will be a basic rate taxpayer in retirement

- the assumption of nil value(s) for Dolphin Capital and Unity Bay at the date of my Final Decision

Details of the calculation should be provided to Mr M in a clear, simple format.

My final decision

I am upholding this complaint.

I direct Scottish Widows Limited to now pay the redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 2 July 2024.

Michael Campbell
Ombudsman