DRN-4871008

The complaint

Mr G has complained about the transfer of two personal pension plans he held with Sun Life Assurance Company of Canada (UK) Limited, to a small self-administered scheme ("SSAS"). A SSAS is a type of occupational pension, in which the members are also trustees and therefore take responsibility for operating the scheme.

I'll mainly refer to the business throughout this decision as "Sun Life". The transfer went ahead in September 2014 (Mr G's first pension policy) and October 2014 (his second policy). After transferring, Mr G's SSAS was subsequently used to invest in The Resort Group, an overseas commercial property scheme which has since run into trouble. Mr G says he has lost out financially as a result.

Mr G says that Sun Life 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 G says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Sun Life had acted as it should have done.

What happened

Mr G says that in 2014 he received an unsolicited approach via a 'cold' telephone call from an unregulated 'introducer' firm called First Pension Review Services ("FPRS"). It was offering Mr G a free pension review which he agreed to. A representative from FPRS appears to have then visited Mr G at his home address on 10 March 2014 and told him he could increase his pension returns by transferring away from his Sun Life scheme and investing in overseas property. Mr G mentions another firm's representative meeting with him at some point too – this was from a firm called Broadwood Assets Limited ("Broadwood"). Neither FRPS *nor* Broadwood were authorised by the regulator of that time to provide financial advice. However, as I explain more about further down, I think it's likely FPRS advised Mr G to transfer from his Sun Life pension scheme, whilst Broadwood acted as the adviser to the SSAS trustee. I explain more about these different roles further down.

Sun Life says that it received a 'letter of authority' on 18 February 2014 from a firm called Wise Review Limited ("Wise"). The letter of authority had been signed by Mr G giving permission to seek full details of his pension held on the Sun Life platform. Sun Life says Wise was an authorised representative of another company and whilst Wise itself wasn't regulated and authorised to provide financial advice, the company it was an appointed representative of, was regulated.

As an occupational pension, a SSAS must be sponsored by an employer company. So, on 13 March 2014, a limited company was incorporated, with Mr G shown as the sole director. I'll refer to this company as "Mr G Ltd".

Then, in May 2014, Mr G signed various documents to open a SSAS with Cantwell Grove Limited ("Cantwell Grove"), a provider of SSAS administration and trustee services. The SSAS was registered with HMRC on 14 May 2014 and Mr G Ltd was recorded as the

SSAS's principal employer. The SSAS was later used to invest £26,500 in The Resort Group. A small portion of the transferred funds were held back in cash within the new SSAS.

On 23 May 2014, Sun Life received a transfer request for Mr G's existing pension policies to the new SSAS. On this documentation, the provider of the SSAS was Cantwell Grove. Various details about Mr G were included (such as his date of birth and national insurance number) and the receiving scheme (such as details of the bank account the transfer was to be paid into). Ultimately the transfer took a few months to complete by which time Mr G was 52 years old.

On 25 September 2014 Sun Life transferred £27,538 from the first of Mr G's pension policies to the SSAS he'd opened. And on 16 October 2014 it transferred a further £3,067 from the second pension policy. The subsequent investments I've mentioned above were as follows: £25,227 was invested in The Resort Group on 10 October 2014; and a further £1,273 which was invested on 3 November 2014. These investments were unregulated and high risk. They have proven to be illiquid and are now incapable of sale on the open market.

In March 2020, Mr G complained to Sun Life. 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 G 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.

Sun Life didn't uphold his complaint. It says Wise had sent in a form authorising it to obtain details of Mr G's pension and so it implies that it was Wise which was acting as his adviser. And as Wise was an appointed representative of a regulated firm, this provided reassurance that the transfer should go ahead. Sun Life also 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.

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

On 13 June 2024 I issued a provisional decision (PD) setting out why I was intending to uphold the complaint. Sun Life and Mr G agreed with my PD findings.

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.

I've read with great care everything that's been said by both parties and the responses to my PD. Having done all this, I'm now upholding Mr G's complaint.

Why the dates of Mr G's transfer are important

An important feature of this case is that the transfer process took several months to complete. Whilst FPRS first arranged to meet with Mr G personally on 10 March 2014, the transfer didn't fully complete until mid-October 2014.

This extended period has some relevance because although I'll set out below the general guidance which was in place throughout the *whole* transfer period, there were also some

specific and important updates to what I think was expected of pension providers as regards pension scams. Sun Life should have been aware of both the original guidance and the updates. At various points between the dates relevant to Mr G's case, regulators issued bulletins warning of the dangers of taking various actions. For example, from February 2013 transferring schemes had formal guidance to follow that was aimed at tackling pension liberation, a type of scam where 'introducers' sought to persuade pension policy holders to transfer their funds with a view to accessing them ahead of the allowable age of 55. However, what's relevant in Mr G's situation is that key areas of guidance were updated on 24 July 2014, which broadened the focus from pension liberation specifically, to wider pension scams. Also, in August 2014 the FCA started to voice more concerns about the different types of pension arrangements that were being used to facilitate pensions scams. So, given the transferring of Mr G's pension straddled some of these dates – the first transfer took place on 25 September 2014 - Sun Life needed to consider the original guidance and also the important an ongoing updates.

The relevant rules and guidance

Personal pension providers are regulated by the Financial Conduct Authority (FCA). Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority (FSA). As such Sun Life was subject to the FSA/FCA Handbook, and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA/FCA rules governing pension transfer requests, but the following have particular relevance here:

- Principle 2 – A firm must conduct its business with due skill, care and diligence;
- Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;
- Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and
- COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme if certain conditions are satisfied (and they may also have a right to transfer under the terms of the contract). This right came to be exploited, with people encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren't entitled to – for instance, because they were below minimum retirement age. At various points, regulators issued bulletins warning of the dangers of taking such action. But it was only from 14 February 2013 that transferring schemes had 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 was updated on 24 July 2014 (which was before Mr G's transfer). It widened the focus from pension liberation specifically, to pension scams – which it said were on the increase. I cover the Scorpion campaign in more detail below.

In a similar vein, in August 2014, the FCA started to voice concerns about the different types of pension arrangements that were being used to facilitate pensions scams. In an announcement to consumers entitled “Protect Your Pension Pot” the increase in the use of SIPPs and SSASs in pensions scams was highlighted, as was an increase in the use of unregulated and/or illiquid investments. The FCA highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.

The Scorpion guidance

The materials in the Scorpion campaign comprised:

- An insert to be included in transfer packs (the ‘Scorpion insert’). The insert warns readers about the dangers of pension scams and identifies a number of warning signs to look out for.

- A longer booklet issued by TPAS which gives more information, including example scenarios, about pension scams. Guidance provided by TPR said this longer leaflet was intended to be used in ongoing communications with members so that they could become aware of the scam risks they were facing.

- An ‘action pack’ for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should “watch out for” various warning signs of a scam. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where a transferring scheme still had concerns, they were encouraged (amongst other things) to contact the member to establish whether they understood the type of scheme they were transferring to and – where a member insisted on transferring – directing the member to Action Fraud or TPAS.

In deciding on the appropriate actions to take when dealing with a transfer request, a ceding scheme needed to be mindful of the material in the Scorpion guidance in its entirety rather than treating the guidance as a series of discrete steps to be worked through in isolation.

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 content 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 rights.

That said, the launch of the Scorpion guidance was an important moment in so far it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing transfer requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance's specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

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

What did personal pension providers need to do?

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. And where the recommendations in the guidance applied, 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. The Scorpion insert provided an important safeguard for transferring members, allowing them to consider *for themselves* the scam threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. So, all things considered, I think the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party – an unregulated introducer, say.

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

4. The Scorpion guidance asked firms to look out for the tell-tale signs of scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The guidance points to the warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. Therefore, whilst using the action pack wasn't an inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.

5. The considerations of regulated firms didn't start and end with the Scorpion guidance. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn't involve anything

specifically referred to in the Scorpion guidance – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's principles and COBS 2.1.1R.

The circumstances surrounding the transfer and Mr G's recollections

Mr G was first 'cold called' by FPRS after which there was a face-to-face meeting. He was told about the various steps that would be required to invest in the overseas property development; he'd need to set up a new company to be a sponsoring employer and register it with HMRC. He'd then need to create the SSAS in order to transfer his existing funds across. Those funds would then be used to invest in the overseas property project – a beach development in Cape Verde.

As I've said, FPRS didn't possess the regulatory permissions to provide financial advice. However, in my view the evidence showing that it did indeed act as the 'adviser' to Mr G throughout the whole process and provided him with advice to transfer his personal pension, is comprehensive.

I say this firstly because Mr G's own recollections, which are of dealing with the representative of FPRS. He says FPRS introduced him to the concept of an overseas investment and it recommended that he transfer away from his existing pension scheme to present this opportunity. In support of this, I've seen documentary evidence of a meeting being arranged for 10 March 2014 between a named FPRS representative and Mr G.

I've also seen that the same representative witnessed (and signed his name to witness) various identification documents which I believe Mr G would have been required to produce to eventually open a SSAS and an associated SSAS banking account. In my view, this is compelling evidence of FPRS's involvement and specifically, telling him that he'd need to set up a SSAS and transfer his existing pension into it. On 19 May 2014, the FPRS representative witnessed Mr G's application for a SSAS banking account which was 'stamped' with FPRS's address. The FPRS representative also signed Mr G's passport copy and a utility bill. The same representative also gave Mr G a *customer information pack*. This documentation was headed with FPRS branding and it contained information about setting up SSAS's and the Cape Verde investment proposal. It said, *"you have expressed an interest in transferring your existing pension funds into a small self-administered pension scheme (SSAS), through which you will have the opportunity to invest in Cape Verde and other investments".*

So, all these things support what Mr G remembers of the events. I also think the idea of opening a SSAS and using personal pension funds to invest in these areas is also highly likely to have come from external factors – and these factors were clearly 'advice' and a recommendation from FPRS. Mr G 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, setting up a new company, opening a SSAS and then investing in The Resort Group. Therefore, in my view, this was all clearly brought about by the recommendations from FPRS.

I mentioned earlier the existence of another company called Broadwood, so I should therefore explain its role. I think the evidence in this case also shows it's likely that FPRS and Broadwood were working together to seek out potential investors for The Resort group investments, with FPRS acting as introducers and advisers to consumers like Mr G. I've

seen a number of very similar cases where this is evident. On the other hand, Broadwood's 'advice' related to the SSAS: a clear demonstration of Broadwood's involvement in this case comes in a letter from it sent to Mr G, dated 28 August 2014. From this letter, it's clear that Broadwood's part was limited to a role set out in S.36 of the Pensions Act 1995. This requires the Trustees of a SSAS to appoint certain professional advisers to carry out specific tasks in relation to the scheme. This is a role independent of advising Mr G as an individual, and the above letter makes this clear. The letter also said Broadwood wasn't able to give financial advice to Mr G on a personal basis.

As for the involvement of any other companies, I've noted that Sun Life mentions now, the existence of another financial adviser, a firm called Wise. It says that Wise had sent in a form authorising it to obtain details of Mr G's pension and so the implication here is that it could have been Wise which was acting as Mr G's adviser, rather than anyone else.

However, there's no compelling evidence that Wise was the firm advising Mr G; he himself doesn't recall dealing with it and whilst I accept that Wise may have sought details of his pension, this doesn't mean it advised Mr G to transfer and Sun Life should have known this assumption could be flawed. I've noted in any event that on Sun Life's own *Additional Information & Declaration* form, which Mr G signed on 1 September 2014, it was indicated that there was *no* adviser involved. In my view, the most likely explanation here is that Mr G had by this time become confused with all the paperwork relating to these complex financial matters. However, I mention it because if Sun Life really was relying on the earlier information request from Wise as evidence of there being a regulated adviser involved here, then it follows that it should have become concerned – or at least questioned things – when that adviser apparently 'disappeared' from the said documentation in September 2014.

For good order, I've considered the involvement of the other firm I've mentioned above. However, there's no evidence Cantwell Grove's involvement extended beyond being a provider of SSAS administration only and its involvement came towards the end of this process.

In my view, all these things show that Mr G received a personal recommendation to transfer his existing Sun Life pension into a SSAS and that the recommendation came from FPRS. 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, everything I've described corresponds with both Mr G's recollections and the documentary evidence. He was attracted by the prospect of potentially increasing the future growth of his funds by investing in an overseas development. So, it's fair to say that Mr G's motives for transferring his pension appear to have been to generate higher returns rather than to receive unauthorised payments from it. However, FPRS was not authorised to give investment advice and I think basic enquiries would have uncovered its involvement, together with other significant warning signs, which Sun Life should have spotted when applying reasonable due diligence. And if ever asked who was advising him to transfer his Sun Life pension (during checks conducted ahead of the final transfer for instance), I'm satisfied Mr G would have said FPRS.

What did Sun Life 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. Here, the evidence is persuasive that Sun Life did send Mr G a Scorpion insert. But given this was likely at the end of May 2014, I think the Scorpion information would have featured the threat posed by pension liberation. However, Mr G wasn't liberating his pension and so I think these warnings would have felt by him to be of limited relevance.

As I've said, a feature of this complaint is that during the extended transfer process in Mr G's case, relevant and significant updates to the Scorpion guidance occurred. However, I've seen no evidence that these updates were passed in warnings to Mr G as everything I've seen shows any warnings given were primarily focused on liberation, as opposed to wider pension scams.

Due diligence:

Sun Life's defence of the complaint is based largely on that it did undertake due diligence. I've therefore looked at what it did and considered whether it was enough.

Sun Life argues that it had been provided with a lot of information throughout the transfer process. Its policy was always to carry out a number of checks which involved validating the receiving scheme, which here wasn't on their reference check list – and so Sun Life implies this was of reassurance. It said further checks carried out included a letter of confirmation from HMRC (which confirmed Mr G Ltd and the SSAS were correctly registered) and also that Mr G was named as trustee and director.

However, in light of the Scorpion guidance, I think firms ought to have been on the look-out for the tell-tale signs of a pension scam. I don't think Sun Life undertook enough due diligence nor did it take appropriate action to update Mr G of the scam threat, particularly as it should have been apparent via the updated guidance of July and August 2014 that its customer could be at risk by transferring.

When initially asking for the pension to be transferred, on or around 21 May 2014, Mr G sent in a signed letter which broadly sought to confirm to Sun Life that he was well aware of the liberation threat, that it didn't relate to him, and that he was still keen to proceed with transferring having considered any implications.

Looked at through a certain lens I can understand why this letter could be viewed as encouraging. But the letter was, in my view, clearly a templated document that had been prepared *for* Mr G rather than *by* him. Obviously I can't say how Mr G would most likely write or word a letter in normal circumstances, but this was a somewhat impersonally worded letter which I think was designed to cover anyone's circumstances. Key sections of the document were left blank for Mr G to then fill in. For instance, it necessitated him adding in the date of the letter, writing in his PSTR number (relating to the incorporation of Mr G Ltd), and also including his name. I think any basic and reasonable assessment of this letter would have exposed it as something Mr G was just provided with and then told to fill out the blanks. It clearly hadn't been typed by Mr G himself and he'd added handwritten insertions. In any event, the letter focussed only on the issue of pension liberation – as I would have expected given this was still in May 2014. But as time progressed through the spring and summer of 2014, Sun Life ought to have incorporated the broader pension scam warnings which were raised in July and August. These issues were prominent matters and were being highlighted by the FCA and indeed the wider pensions industry. They are particularly relevant to Mr G's case as the transfer of both his funds didn't finally go through until mid-October 2014.

I've noted a further declaration was sent to Mr G by Sun Life itself and was signed by him on 1 September 2014. Sun Life says this showed that he understood overseas investments

were unlikely to be covered by UK compensation schemes. I accept this could be viewed as a warning of sorts, but it was a generalised warning and it wouldn't have carried nearly as much weight as, for example, being told the firm advising him was acting illegally.

Having considered all these issues carefully, I think the due diligence carried out by Sun Life was limited and rudimentary. The delaying of the transfer throughout the summer weeks of 2014 consisted of no more than basic checks with HMRC and clarification of Mr G's national insurance number.

Given the information Sun Life had at the time, a feature of Mr G's transfer would have been a potential warning sign of a scam: Mr G's SSAS was recently registered in March 2014 and the transfer application commenced in May 2014 (albeit delays then occurred). In checking the Scheme was correctly registered – which it would have needed to have done – this would have become apparent. Sun Life should therefore have followed up on this to find out if other signs of a scam were present. Given this warning sign I think it would have been fair and reasonable – and good practice – for Sun Life to have looked further 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 a scam was a realistic threat. Given the warning sign that should have been apparent when dealing with this transfer request, and the relatively limited information it had about the transfer, I think that in this case Sun Life should have addressed all three parts of the check list and contacted Mr G as part of its due diligence.

What should Sun Life have found out?

Sun Life 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 had also been revealed that Mr G was attracted to the investment opportunities pitched to him, including overseas investments 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 G would have told Sun Life that he was being advised to transfer by FPRS - my previous findings in the "circumstances surrounding the transfer" section support this. Had Sun Life asked him about this – as it should have done under part 3 of the check list, it would have revealed he had been cold called and signs of a scam as identified by the Scorpion guidance. In fact, Sun Life's own Additional Information & Declaration form showed Mr G had been cold called but this doesn't appear to have generated any action or enquiry from Sun Life.

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 approved by the FCA at www.fca.gov.uk/register*". In other words, they should consult the FCA's online register of authorised firms. Sun Life should have taken that step, which is not difficult, and it would quickly have discovered that Mr G'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 Sun Life should have been concerned by FPRS'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 Sun Life have told Mr G – and would it have made a difference?

Had it done more thorough due diligence, there would have been a number of warnings Sun Life could have given to Mr G in relation to a possible scam threat as identified by the action pack. Sun Life should also have been aware of the close parallels between Mr G's transfer and the warnings the FCA gave to consumers in August 2014 about transferring to SSASs (which was brought to the attention of pension providers the following month). But the most egregious oversight was Sun Life's failure to uncover the threat posed by a non-regulated adviser. Its failure to do so, and failure to warn Mr G 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 Sun Life to have informed Mr G that the firm he had been advised by was unregulated and could put his pension at risk. Sun Life 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 G's mind about the transfer. The messages would have followed conversations with Mr G 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 Sun Life raising concerns about the risk of losing pension monies as a result of untrustworthy advice. This would have made Mr G 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 G would have been any different. So, I consider that if Sun Life had acted as it should, Mr G wouldn't have proceeded with the transfer out of his personal pension or suffered the investment losses that followed.

For these reasons, I am upholding Mr G's complaint.

Putting things right

Fair compensation

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

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

To compensate Mr G fairly, Sun Life should subtract the actual value of the SSAS from the notional value if the funds had remained with Sun Life. If the 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 G may be asked to give Sun Life his authority to enable it to obtain this information to assist in assessing his loss.

My aim is to return Mr G to the position he would have been in but for the actions of Sun Life. 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, this is likely to be the case with all the investments in Mr G's SSAS commonly referred to as The Resort Group. The investments in The Resort Group have failed to the extent that it's reasonable to say at this point that investors – Mr G included – are unable to realise value from them. Therefore as part of calculating compensation:

- Sun Life 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 Sun Life has paid to the SSAS for illiquid investment(s).

- Alternatively, if it is unable to buy them from the SSAS, Sun Life should give the illiquid investment(s) a nil value as part of determining the actual value. In return Sun Life may ask Mr G 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. Sun Life will need to meet any costs in drawing up the undertaking. If Sun Life asks Mr G to provide this undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

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

Sun Life should ensure that any pension commencement lump sum or gross income payments Mr G received from the SSAS are treated as notional withdrawals from Sun Life 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 G 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.

Sun Life should reinstate Mr G'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 G was invested in).

Sun Life shouldn't reinstate Mr G'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 Sun Life doesn't consider this is possible, it must explain why.

If Sun Life is unable to reinstate Mr G'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 G's original pension.

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

If it's not possible to set up a new pension plan, Sun Life should pay the amount of any loss direct to Mr G. 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 G isn't overcompensated – it's not an actual payment of tax to HMRC)

To make this reduction, it's reasonable to assume that Mr G is likely to be a basic rate taxpayer in retirement. So, if Mr G 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 his in cash.

Alternatively, if Mr G 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 Sun Life receiving Mr G'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 Sun Life deducts income tax from the interest, it should tell Mr G how much has been taken off. Sun Life should give Mr G a tax deduction certificate in respect of interest if Mr G asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

This interest is not required if Sun Life is reinstating Mr G'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 G was invested.

Neither Mr G nor Sun Life have disputed:

- the assumption that Mr G will be a basic rate taxpayer in retirement
- the assumption of nil value for The Resort Group at the date of my Final Decision

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

My final decision

I uphold this complaint.

I direct Sun Life Assurance Company of Canada (UK) Limited to put things right in line with the approach set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 23 July 2024.

Michael Campbell
Ombudsman