DRN-4904077

The complaint

Mr N has complained about a transfer of his Scottish Friendly Assurance Society Limited (Scottish Friendly) personal pensions to a small self-administered scheme (SSAS) in January 2015. Mr N's SSAS was subsequently used to invest in a fractional ownership of overseas hotel property with The Resort Group (TRG), prior to being disinvested in 2016. Mr N says he has lost out financially as a result.

Mr N says Scottish Friendly 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 N says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Scottish Friendly had acted as it should have done.

What happened

Mr N had two pensions with Marine and General Mutual Life Assurance Society Limited. Scottish Friendly has taken over that business and is the respondent business for Mr N's complaint. For simplicity of reading I will refer to Scottish Friendly in the remainder of this decision.

Following an unsolicited approach from First Review Pension Services (FRPS) Mr N gave authority for it to approach his pension providers. FRPS wrote to Scottish Friendly to obtain details, and transfer documents, in relation to his pensions. Scottish Friendly sent FRPS the requested information on 25 July 2014. FRPS wasn't authorised to give financial advice.

Mr N says he was attracted by the prospect of better investment performance. He explains that he was told he would have a bigger pension in retirement by transferring his personal pensions and investing in the recommended way.

In September 2014, a company was incorporated with Mr N as director. I'll refer to this company as Firm A. Around January 2015 Mr N signed documents to open a SSAS with Cantwell Grove Limited. Firm A was recorded as the SSAS's principal employer.

On 9 January 2015 Mr N's transfer papers were sent to Scottish Friendly. These were sent in by Cantwell Grove. Included in the transfer papers were:

- completed and signed transfer forms,
- a copy of the Firm A SSAS Trust Deeds and Rules (dated 16 October 2014),
- HMRC registration confirmation for the Firm A SSAS (dated December 2014),
- key information about the scheme (including information that the intention was to invest in TRG and a discretionary fund management service, taking advice from Sequence Financial Management Limited on the appropriateness of the investment for the SSAS),
- a letter signed by Mr N on 9 January 2015 declaring, amongst other things, that he was aware of the dangers of pensions liberation fraud and that he didn't want to access benefits prior to age 55.

On 13 January 2015 – two working days after the transfer request – Scottish Friendly wrote to Cantwell Grove to confirm the transfer was completed and that the funds would transfer via BACS transfer within 3-5 working days. There is no evidence Scottish Friendly contacted Mr N directly at any point of the transfer.

Mr N's pension fund was received by Cantwell Grove on 16 January 2015. His transfer value was around £4,600. He was 55 years old at the time of the transfer.

An investment of £1,304.54 was made in TRG on 19 January 2015, with a further investment of £880 to TRG on 27 April 2015.

Mr N had other pensions with two other pension providers (ReAssure and Abbey Life). And Cantwell Grove sent similar transfer requests to those pension providers at the same time as the Scottish Friendly transfer that is subject of this complaint. Following those transfer requests, one of the ceding schemes – Abbey Life – wrote to Mr N on 15 January 2015 to warn him about pension scams and recommended that he contact Action Fraud about this transfer. Abbey Life followed that up on 6 February 2015 with a further letter reminding him of its recommendation to contact Action Fraud to discuss his transfer requests. Mr N didn't proceed with the Abbey Life transfer and on 16 February 2015 contacted ReAssure and cancelled that transfer request. As a result only Scottish Friendly's transfer completed.

On 15 November 2015 Mr N contacted TRG to request the return of his investment. And on 24 May 2016 TRG returned £2,184.52 to the Firm A SSAS account.

In May 2020, Mr N complained to Scottish Friendly. Briefly, his argument is that Scottish Friendly 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, the transfer followed high pressure sales techniques, the catalyst for the transfer was an unsolicited call and he had been advised by an unregulated business.

Scottish Friendly responded to explain that it didn't think Mr N's complaint should be upheld. It explained that the evidence it had from the time indicated the involvement of more than one financial adviser, having received requests for transfer information from more than one firm. It cited three such firms including the FCA reference numbers for those firms. Scottish Friendly explained that it was reassured by the fact that Cantwell Grove was a member of the Association of Member-Directed Pensions Schemes (AMPS) and was a firm it had regular dealings with. It also referred to the Key Scheme information it had been sent by Cantwell Grove which indicated that financial advice was being taken by Sequence Financial Management Limited who were also a regulated firm.

Our investigator was unable to resolve the dispute informally, so the matter was passed to me to decide. I issued both parties my provisional decision which explained why I was minded to uphold Mr N's complaint. Mr N accepted what I had provisionally decided. Scottish Friendly provided no further evidence and requested information in order to start considering the redress calculation in advance of my 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.

I've received no further evidence or arguments to consider since I reached my provisional decision. Having considered everything a final time my decision is that Mr N's complaint should be upheld for the same reasons that I set out in my provisional decision. I will explain my reasons again below.

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 Scottish Friendly 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 N'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 late 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 SIPPs 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.

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 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 rights.

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

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 – what does the evidence suggest happened?

Mr N explained that he received an unsolicited call from FRPS or Broadwood Assets Limited. He explains that he was advised to transfer his pension funds for better returns. He explains that he was told his pension could triple in value. Mr N explains that he understood the recommendation was in overseas property.

From the evidence that I have seen, FRPS contacted Scottish Friendly in July 2014. And it was this approach that Scottish Friendly responded to. I have not seen any involvement in this case from Broadwood Assets Ltd until it wrote to Mr N on 30 September 2014. So, whilst it is understandable that Mr N's recollection is confused between the roles of these two parties in his transfers, I think that it is more likely than not that FRPS was the party that made the initial unsolicited contact with Mr N

<u>What did Scottish Friendly 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.

I understand that Scottish Friendly have told us that it thinks that the Scorpion insert would most likely have been sent to Mr N as normal practice. But I've not seen any evidence that persuades me that was the case here. Scottish Friendly responded directly to FRPS in response to its request for transfer information. Its letter doesn't indicate that any Scorpion insert was included. But, even if it were, I don't think it was enough to send the information to an unregulated third party, trusting that it would be forwarded to Mr N. And, as I have said, I have seen no evidence that Scottish Friendly made any direct contact with Mr N regarding this transfer at all. So it failed to provide Mr N with information which, as I explained earlier, was best practice.

Scottish Friendly has argued that Cantwell Grove said it provided Mr N with the Scorpion insert so it isn't relevant whether it sent it as well. However, Scottish Friendly hasn't provided any evidence that it verified that Cantwell Grove actually sent this information. And I think that points to the problem, which is that Scottish Friendly relied on a third party even though it doesn't appear to have really known what that party did. This was information that was intended to protect its customer from a risk of harm from pension scams. So, given the duties of personal pension providers under PRIN and COBS 2.1.1R, I don't think Scottish Friendly's approach was good enough here.

I have also considered the other transfer requests that were made at the same time. Mr N has told us that he remembers receiving the Scorpion material for one of his other transfers. I've seen Abbey Life's letter to Mr N which included a clear reference to providing him with Scorpion warning materials. It was sent by post on 15 January 2015. This I think corroborated that Mr N did not receive it in time for it to make a difference in the case of the Scottish Friendly transfer. We have contacted ReAssure but have no evidence that it sent the Scorpion insert to Mr N. Overall, I'm not persuaded that Mr N received it until after Scottish Friendly had transferred his pension.

Due diligence:

In light of the Scorpion guidance, I think firms ought to have been on the look-out for the tell-tale signs of a pension scam and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk. Scottish Friendly didn't undertake any due diligence other than to consider the information that it had been provided.

The information it had been provided by Cantwell Grove ought reasonably to have provided some reassurance that Mr N understood and was therefore not at a high risk of pension liberation. Mr N had signed a pre-prepared letter to that effect. But, as I explained earlier, Scottish Friendly ought to have been considering the wider risk of pension scams at the time of Mr N's transfer. Given the information Scottish Friendly had at the time, two features of Mr N's transfer would have been potential warning signs of a scam: Mr N's SSAS was recently registered (on 30 December 2014) which was evident from the HMRC notification of registration document; and that the 'Key Scheme Details' indicated an intention to invest in commercial property via TRG which was overseas – enclosing a key features document for that investment. Scottish Friendly should therefore have followed up on these to find out if other signs of a scam were present.

Scottish Friendly says it thought it was likely a regulated adviser was involved as it had been contacted by several regulated firms for information on Mr N's pension. No evidence has been provided for this. However, in any event, I think rather than take comfort from this contact from multiple parties, I think they simply couldn't be sure who had advised Mr N without doing further investigations.

Scottish Friendly also pointed to the Key Scheme details naming Sequence Financial Management Limited as a regulated adviser. But that referred to providing trustee advice under section 36 of the Pensions Act 1995 about the appropriateness of investments for the SSAS. This is different to giving advice on the actual pension transfer. I don't think the potential involvement of that regulated firm should have reassured Scottish Friendly that Mr N was getting the type of advice that the Scorpion guidance recommended he should be getting. I have seen no evidence that Sequence in fact gave this advice.

Given the present warning signs, I think it would have been fair and reasonable – and good practice – for Scottish Friendly to have looked 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 Mr N's transfer request, and the relatively limited information it had about the transfer, I think in this case Scottish Friendly should have addressed all three parts of the check list and contacted Mr N as part of its due diligence.

<u>What should Scottish Friendly have found out?</u>

Under part 1 of the checklist Scottish Friendly were already aware that the Firm A SSAS was newly registered with HMRC. Direct contact with Mr N would most likely have uncovered that the firm was not trading and that Mr N had no intention to use Firm A to trade. Which ought to have made it appear that Firm A had been set up just to allow for the creation of the SSAS.

Under part 2 of the checklist Scottish Friendly would likely have confirmed that Mr N was not likely to fall victim to a pension liberation type scam as he was not transferring to access any benefits or receive any payments. But it would have reiterated the unusual and unregulated nature of the overseas investment that was likely to be made.

Part 3 of the checklist should have led to Mr N being questioned about how he became aware of the investment and the manner in which he was being advised.

Mr N's recollection was that he was advised by either FRPS or Broadwood Assets Ltd. I've explained earlier why I think that FRPS were most likely the introducer who made the unsolicited approach. And had Scottish Friendly made contact with Mr N at the time it would most likely have found this out. Mr N may also have referred to Broadwood Assets Ltd as he'd already received a separate letter from it in September 2014. So before the transfer request and the due diligence that Scottish Friendly ought to have done.

But that letter was sent to Mr N in his capacity as a potential trustee for the SSAS he intended to set up. It was to fulfil a requirement under section 36 of the Pensions Act 1995, that trustees consider appropriate advice on whether a proposed investment satisfied the aims of the SSAS. That letter did not purport to offer Mr N a personal recommendation on the suitability of transferring his personal pension. So, on balance, I'm not persuaded that Broadwood Assets provided Mr N with the advice to set up a new company in order to open a SSAS. And then to transfer his existing personal pensions into that. Broadwood Assets was in any event also unregulated.

The evidence persuades me that it was far more likely that advice was being given to Mr N by FRPS following its unsolicited approach to him. I say this because FRPS were connected to TRG and this service has seen a number of cases where it provided the recommendation to transfer. I've also taken into account the fact that Mr N was an inexperienced investor and I find it very unlikely that he would have entered such a complex arrangement which included setting up the SSAS without advice.

If Scottish Friendly contacted Mr N, as I've explained that it should have, I think it would most likely have determined that FRPS had advised Mr N on transferring his pensions.

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. Scottish Friendly should have taken that step, which is not difficult, and it would quickly have discovered that FRPS was indeed unauthorised. Scottish Friendly have stated that they considered FRPS to be a part of Money Wise. But I have seen no evidence of that fact and FRPS is not on the register as an appointed representative of that firm. So I don't think it would have been reasonable to conclude that Mr N was being advised by a regulated firm.

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 Scottish Friendly should have been concerned by FRPS'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 Scottish Friendly have told Mr N – and would it have made a difference?</u>

Had it done more thorough due diligence, there would have been a number of warnings Scottish Friendly could have given to Mr N in relation to a possible scam threat as identified by the action pack. Scottish Friendly should also have been aware of the close parallels between Mr N'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 Scottish Friendly's failure to uncover the threat posed by a non-regulated adviser. Its failure to do so, and failure to warn Mr N 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 Scottish Friendly to have informed Mr N that the firm he had been advised by was unregulated and could put his pension at risk. Scottish Friendly 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 think Mr N would have responded positively to a warning from Scottish Friendly. Its messages would have followed conversations with him 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 Scottish Friendly raising concerns about the risk of losing pension monies as a result of untrustworthy advice. This would have made Mr N 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'm satisfied any messages along these lines would have changed Mr N's mind about the transfer. In reaching this decision I've added considerable weight to the evidence regarding the way that Mr N reacted to the warning from Abbey Life, on 15 January 2015. It recommended that he should contact Action Fraud, which was one of the steps that the Action Pack suggested where a pension provider had concerns. Mr N followed that recommendation from Abbey Life and contacted Action Fraud. Which prevented his transferring the Abbey Life pension and the ReAssure pension.

So, I consider that if Scottish Friendly had acted as it should, Mr N wouldn't have proceeded with the transfer out of his personal pension or suffered the investment losses that followed. I therefore uphold Mr N's complaint.

Fair compensation

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

The Firm A SSAS only seems to have been used in order for Mr N to make an investment that I don't think he would have made from the proceeds of this pension transfer, but for Scottish Friendly's actions. So I think that Mr N would have remained in his pension plan with Scottish Friendly and wouldn't have transferred to the Firm A SSAS. However, I can see that Mr N got back most of the funds that were invested into TRG by 24 May 2016. By this stage he was sufficiently aware of the issues, having contacted Action Fraud and cancelled his other requested pension transfers. So he was in a position to move his existing funds in the SSAS to a suitable investment to mitigate his further loss. I therefore think that Scottish Friendly's liability for Mr N's loss is limited to the point at which he recovered his investment with TRG.

To compensate Mr N fairly, Scottish Friendly should subtract the ***actual value*** of the Firm A SSAS on 25 May 2016 from the ***notional value*** if the funds had remained with Scottish Friendly to that date. If the notional value is greater than the actual value, there is a loss.

Actual value

This means the Firm A SSAS value at 25 May 2016. Mr N may be asked to give Scottish Friendly his authority to enable it to obtain this information to assist in assessing his loss. Mr N may be asked to give Scottish Friendly 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.

Notional value

This is the value of Mr N's funds had he remained invested with Scottish Friendly up to the 25 May 2016.

Payment of compensation

The loss established at 25 May 2016 should be adjusted up to the date of my final decision in line with further changes in the notional value of the funds Mr N originally held with Scottish Friendly.

I don't think it's appropriate for further compensation to be paid into the Firm A SSAS given its costs and Mr N's dissatisfaction with the outcome of the investment it facilitated.

I would normally ask Scottish Friendly to reinstate Mr N's original plan or if that wasn't possible to set up a new pension. However, my decision is that the most reasonable thing to do given the relatively minor sums involved here is for Scottish Friendly to pay the amount of any loss direct to Mr N. 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 N is retired. (This is an adjustment to ensure that Mr N isn't overcompensated – it’s not an actual payment of tax to HMRC).

To make this reduction, it’s reasonable to assume that Mr N is likely to be a basic rate taxpayer in retirement. So, if the loss represents further ‘uncrystallised’ funds from which Mr N 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 N 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 Scottish Friendly receiving Mr N’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 Scottish Friendly deducts income tax from the interest, it should tell Mr N how much has been taken off. Scottish Friendly should give Mr N a tax deduction certificate in respect of interest if Mr N asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

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

My final decision

For the reasons given above, I’m upholding Mr N’s complaint and direct Scottish Friendly Assurance Society 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 N to accept or reject my decision before 14 August 2024.

Gary Lane
Ombudsman