DRN-4916932

The complaint

Mr C has complained about a transfer, in December 2014, of his personal pension plan from Scottish Equitable Plc to a small self-administered scheme ("SSAS"). Scottish Equitable Plc was trading as "Aegon" at the time and so it's this name I'll mainly refer to throughout this decision.

Mr C's SSAS was subsequently used to invest in Akbuk Unity Bay, an overseas commercial property scheme. Mr C says the investment has since run into trouble and he has lost out financially as a result.

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

What happened

Mr C says in 2014, he received an unsolicited approach from an unregulated 'introducer' firm which has since been dissolved, called Roseland Mill Limited ("Roseland Mill"). The representative from Roseland Mill offered Mr C the opportunity to have his pension affairs reviewed. Roseland Mill wasn't authorised by the regulator of that time to provide financial advice.

The initial approach was via a 'cold' telephone call after which Mr C says a representative came to his home, established a rapport with him and told him he could increase his returns by investing in overseas property.

On 6 November 2014, a company was incorporated with Mr C as the sole director. I'll refer to this company as "Mr C Management Ltd". And on 20 November 2014 Mr C signed documents to open a SSAS with Rowanmoor Group Plc ("Rowanmoor"), a provider of SSAS administration and trustee services. "Mr C Management Ltd" was recorded as the SSAS's principal employer and the SSAS was later used to invest in Akbuk Unity Bay. A small portion of the transferred funds were held back in cash within the new SSAS.

On 16 December 2014, Aegon received a transfer request for Mr C's pension policy via the Origo Options transfer service. This is an electronic-based system that reduces the need for paper-based correspondence during pension transfers, so it is often used by providers to accelerate the transfer process. The Origo screenshot in relation to Mr C's transfer recorded the receiving scheme as being a SSAS, the provider of the SSAS as being Rowanmoor Group Plc and various details about Mr C (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). Mr C was 48 years old at the time of the transfer.

The SSAS's bank statements show the transfer of the Aegon pension policy was received on or around 2 January 2015. The transfer value was £57,135. 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 April 2020, Mr C complained to Aegon. 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 C 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 Roseland Mill.

Aegon 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. Aegon said Mr C was not sent any warning information because it had identified that the transfer was being made to a SSAS provided and administered by what it called a reputable and established pension provider, in Rowanmoor. It said it wasn't legally obliged to carry out any due diligence on the transfer request.

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

On 28 May 2024 I issued a provisional decision (PD) outlining why I was minded to uphold the complaint. I gave the parties a few weeks to reply with any new evidence or comments they wished to make. Mr C accepted my PD in full, whereas Aegon sent in a further response explaining why it thought I shouldn't uphold Mr C's complaint.

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 re-read with great care everything that's been said by both parties and also what Aegon has said in response to my PD. And having done all this, I have decided to uphold Mr C'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 Aegon 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 C'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.

<u>The Scorpion guidance</u>

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.

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 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.

<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. 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.

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

Mr C himself says 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 C's motives for transferring his pension appear to have been to generate higher returns rather than to receive unauthorised payments from it.

Mr C was first 'cold called' by Roseland Mill after which there was an initial face-to-face meeting at his home address. Mr C 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 development project – a beach development in Turkey. Mr C then recalls being sent some follow-up documentation through the post and he and the representative from Roeland Hill then agreed some further personal meetings. Mr C recalls a courier being sent to collect documents he signed at some point relating to transferring his pension from the Aegon platform to the new SSAS.

As I've said, Roseland Mill 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 C throughout the whole process, and provide him with advice, is comprehensive. I say this firstly because Mr C's own recollections, which are of only ever dealing with the representative of that firm who he says gained his trust by alluding to a similar previous background in HM Armed Forces. Mr C recalls the first name of the adviser which matches the name of the director of the now dissolved firm. I've noted Roseland Mill invoiced Mr C for its services and payments were subsequently made from his SSAS bank account. And I've also noted the director (the same person Mr C's names as the 'adviser') signed and witnessed the Deed of Appointment, a type of legal document that authorises the distribution of trust assets, on 16 December 2014.

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 C 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 Akbuk Unity Bay.

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

In effect, in my view this means Mr C received a personal recommendation to transfer his Aegon pension into a SSAS from Roseland Mill. 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, all this corresponds with both Mr C's recollections and the wider evidence. Roseland Mill 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 Aegon should have spotted when applying reasonable due diligence.

What did Aegon 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, Aegon says it didn't send Mr C the Scorpion insert. Nor did it provide Mr C with substantially the same information contained in the leaflet. Instead Aegon processed the transfer without ensuring that Mr C had been given any warnings. For the record, Mr C said he never received a Scorpion warning leaflet or similar information from anyone.

Aegon says that whilst it was obliged to consider the risk to customers of pension liberation or pension scams, it was nevertheless entitled to exercise discretion as to how to identify and control any related risks. It says it was also entitled to determine when and how to engage with customers. Aegon also explained that as Mr C's SSAS was provided and administered by a *"reputable and established pension provider"* (Rowanmoor) it had assessed the risk of pension liberation or pension scamming in this case to be low.

But in my view, Aegon had a wider duty of care to Mr C 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 Aegon still had a duty to ensure its member was given appropriate warnings. The warnings contained in the insert should have therefore been given somehow, and regardless of the view Aegon took at the time that Mr C didn't require to have regulated advice and / or that no signs of a scam seemed relevant here. Aegon could have given the warnings in the Scorpion insert in the run up to the transfer. Alternatively, this could have been done as part of a wider due diligence process. Either way, it's my view that this would have been much more in keeping with the substance of the Scorpion guidance rather than just sending him nothing. In any event, my experience is that a request through the Origo system means an insert likely wasn't sent. But in that situation, I would still expect Aegon to have given Mr C these same messages somehow. It could even

have delayed this until it had looked at whether there were any other concerns that it might have used to amplify certain warnings.

I note that at the time of the transfer Rowanmoor was a long established SSAS provider and had some repute in the industry. Rowanmoor Trustees Limited also had legal and fiduciary duties as a professional trustee. There's an argument, therefore, that Aegon 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, Aegon 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 Aegon could, reasonably, have derived sufficient comfort about the Rowanmoor SSAS as a destination for Mr C's transfer.

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. Aegon didn't undertake any further due diligence.

Given the information Aegon had at the time, a feature of Mr C's transfer would have been a potential warning sign of a scam: Mr C's SSAS was recently registered. Aegon should therefore have followed up on it to find out if other signs of a scam were present. I accept it may not have been clear from the Origo request when the SSAS was registered, but in checking the Scheme was correctly registered – which it would have needed to have done – it would have become apparent when it was registered.

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

What should Aegon have found out?

Aegon 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 C was attracted to the investment opportunities pitched to him, including 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 C would have told Aegon that he was being advised to transfer by Roseland Mill - my previous findings in the "circumstances surrounding the transfer" section support this. Had Aegon 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 approved by*

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

Had it done more thorough due diligence, there would have been a number of warnings Aegon could have given to Mr C in relation to a possible scam threat as identified by the action pack. Aegon should also have been aware of the close parallels between Mr C'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 Aegon's failure to uncover the threat posed by a non-regulated adviser. Its failure to do so, and failure to warn Mr C accordingly, meant it didn't meet its obligations under PRIN and COBS 2.1.1R.

With those obligations in mind, it would have been appropriate for Aegon to have informed Mr C that the firm had been advised by was unregulated and could put his pension at risk. Aegon 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 C's mind about the transfer. The messages would have followed conversations with Mr C so would have seemed to him (and indeed would have been) specific to his individual circumstances and would have been given in the context of Aegon raising concerns about the risk of losing pension monies as a result of untrustworthy advice. This would have made Mr C aware that there were serious risks in using an unregulated adviser. I think the gravity of any messages along these lines would prompt most reasonable people to rethink their actions. I've seen no persuasive reason why Mr C would have been any different. So, I consider that if Aegon had acted as it should, Mr C wouldn't have proceeded with the transfer out of his personal pension or suffered the investment losses that followed.

Response to the Provisional Decision (PD)

Aegon responded to my PD. I've looked carefully at everything it said and reconsidered each point. The high-level summary of Aegon's PD response is that it denies it acted unfairly or unreasonably in Mr C's case. It also shared a general concern that I set a disproportionately high bar, with significant hindsight bias.

However, almost all of the points Aegon has made relate to areas where a comprehensive explanation was already given within the PD. So, in my view, these can be fairly summarised as 'points re-emphasised' rather than any new information or evidence submitted. I'll deal with the substantive points it makes below:

Aegon began its response to my PD by saying that in the course of its dealings with Mr C and his pension transfer process, it was never itself contacted by any unregulated adviser or similar party. Further to this, it said the transfer request was received via the Origo portal from a reputable provider and that no "adviser" was disclosed on the transfer. It also says the administrator of the SSAS to which he transferred was of good repute.

However, I'd dealt with all these matters in the PD. Whether Aegon itself had ever been directly contacted by an unregulated party certainly isn't an issue on which this case eventually turns. I explained that the 'trigger' point to look further into the circumstances of the transfer was actually the newly registered SSAS. Had Aegon seen the threat posed by this, then further due diligence measures were required, and through some very basic checks it would quickly have become obvious that Mr C had been cold called, was setting up an esoteric investment strategy and was investing overseas in high risk and unregulated products. I also explained, in some detail, why given this warning sign I think it would have been fair and reasonable – and good practice – for Aegon to have looked into the proposed transfer. 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 evidence shows this wasn't done which I think was a major failing.

I've also noted that Aegon says in its response to the PD that "no adviser" was listed on the transfer request it received. Again, I think this serves to demonstrate Aegon's poor grasp of the regulatory information which had been widely circulated to businesses at the time by the regulator and others. Aegon - a significant participant in the national pensions landscape during that period - should have been well aware of this guidance. I refer it again, for example, to the check list I set out in considerable detail in my PD and the specific heading of *"scheme member"*. Sample questions to avoid pension scamming included where the member had been advised by a non-regulated adviser ***or taken no advice.*** In this context, if Aegon is saying now that because it had seen on the Origo transfer request that Mr C was transferring to a SSAS without having any advice, I think it would have been reasonable for it to also have asked him some questions about this. That is essentially what the guidance of the time (contained in the check list) was saying.

I note Aegon disagrees that the recent establishment of the Rowanmoor SSAS in Mr C's name should have been considered a 'trigger' point for it to then look into the transfer in more detail. It asks me to consider an unrelated case (and Decision) dealt with by another ombudsman scheme which it says takes this approach. Suffice to say, the case mentioned contains many different features and circumstances to this particular case. And I'm dealing with the complaint referred to *this* service, the Financial Ombudsman Service, by Mr C. In my PD I had explained in detail the rules and guidelines in place at the time, and I remain satisfied these have been fairly and reasonably applied in arriving at my PD and setting out why a recently registered SSAS ought to have cause further investigations from the ceding scheme provider, Aegon.

Of course, to be clear here, it's my view that Aegon carried out *no due diligence* at all. It simply responded to the transfer request over the Origo system and duly transferred Mr C's pension without any investigation or inquiry. As I explained, barely underneath the surface there existed a plethora of significant warning signs that Mr C was being scammed. I therefore strongly remain of the view that the very recent registration of a SSAS in these circumstances was the trigger to ask questions about what was going on. And had Aegon done this, it would have quickly established serious concerns.

In my PD, I had also dealt with the issue of Rowanmoor, the SSAS provider, being assumed by Aegon of being of good repute, thus meaning due diligence needn't be applied to transfers involving it. As I said, *"I note that at the time of the transfer Rowanmoor was a long established SSAS provider and had some repute in the industry. Rowanmoor Trustees*

Limited also had legal and fiduciary duties as a professional trustee. There's an argument, therefore, that Aegon 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, Aegon 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 Aegon could, reasonably, have derived sufficient comfort about the Rowanmoor SSAS as a destination for Mr C's transfer".

I remain of the view that there's no evidence that Rowanmoor's involvement extended beyond being a provider of SSAS administration and trustee services only and its involvement came towards the end of this process. Essentially, the issue here is that Rowanmoor wasn't Mr C's existing (ceding) scheme provider. So its responsibilities were different to Aegon. I set out what these were and I also previously explained the limitation of Rowanmoor's involvement.

Aegon's responses effectively point to Rowanmoor's alleged failures, rather than its own, and that it should bear a responsibility for the errors and / or omissions in Mr C's transfer. I've read all the points made with care. But this Service received a complaint about Aegon, and I have looked into the complaint and explained why I think it should be upheld. For the record, I did also cover the responsibilities of other firms in my PD and I don't believe anything Aegon has added in this respect changes anything I've already addressed.

Finally, Aegon asks that, *"in the event that the Ombudsman does not change his view on the merits, we would ask that the redress provisions be expanded to require Mr C to provide Aegon with full rights to obtain information in relation to the SSAS from Rowanmoor, Rowanmoor Trustees Limited and any other parties (eg FCA) and to pursue any claims – including against the trustees of the SSAS for their failings, or claim on any redress scheme – relating to the SSAS and for Aegon to be entitled to retain any sums recovered. It is only appropriate that Mr C receive compensation once in respect of this alleged loss*.

I agree compensation should be received just once. However, I set out my redress proposals clearly in the PD I issued, and I think these cover the matters raised by Aegon with regard to the redress payable to Mr C. I also explained the failures of Aegon throughout the transfer process; Mr C was able to go on and invest in unregulated and high-risk areas and this was caused by Aegon's failings. And I consider the redress I have set out previously to be self-explanatory and based on the evidence that went before it in the preceding paragraphs in the PD. In short, I don't propose to delay or alter the redress.

For all these reasons, I am now upholding Mr C's complaint.

Putting things right

Fair compensation

My aim is that Mr C should be put as closely as possible into the position he would probably

now be in if Aegon had treated him fairly.

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

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

My aim is to return Mr C to the position he would have been in but for the actions of Aegon. 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 C's SSAS commonly referred to as Akbuk Unity Bay. The investments in Akbuk Unity Bay have failed to the extent that it's reasonable to say at this point that investors – Mr C included – are unable to realise value from them. Therefore as part of calculating compensation:

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

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

- It's also fair that Mr C should not be disadvantaged while he is unable to close down the SSAS. So to provide certainty to all parties, if these illiquid investment(s) remain in the scheme, I think it's fair that Aegon should pay an upfront sum to Mr C equivalent to five years' worth of future administration fees at the current tariff for the SSAS, to allow a reasonable period of time for the SSAS to be closed.

Notional value

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

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

Aegon should reinstate Mr C'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 C was invested in).

Aegon shouldn't reinstate Mr C'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 Aegon doesn't consider this is possible, it must explain why.

If Aegon is unable to reinstate Mr C'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 C's original pension.

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

If it's not possible to set up a new pension plan, Aegon should pay the amount of any loss direct to Mr C. But if this money had been in a pension, it would have provided a taxable income. 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 C isn't overcompensated – it's not an actual payment of tax to HMRC)

To make this reduction, it's reasonable to assume that Mr C is likely to be a basic rate taxpayer in retirement. So, if Mr C 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 C 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 Aegon receiving Mr C'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 Aegon deducts income tax from the interest, it should tell Mr C how much has been taken off. Aegon should give Mr C a tax deduction certificate in respect of interest if Mr C asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

This interest is not required if Aegon is reinstating Mr C'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 C was invested.

As I understand it, neither Mr C nor Aegon disputed any of the following:

- the assumption that Mr C will be a basic rate taxpayer in retirement
- the assumption of nil value for Akbuk Unity Bay at the date of my Final Decision

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

My final decision

For the reasons given above, I uphold Mr C's complaint.

I direct Scottish Equitable Plc 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 C to accept or reject my decision before 15 August 2024.

Michael Campbell
Ombudsman