DRN-4916940

The complaint

Mr V has complained about a transfer of his self invested personal pension (SIPP) to a small self-administered scheme (SSAS) in 2014. Mr V's SSAS was subsequently used to invest in an overseas property investment which appears now to have little value. Mr V says he's lost out financially as a result.

Mr V says Capita Life & Pensions Regulated Services Limited (Capita), who was the SIPP administrator at the time, failed in its responsibilities when dealing with the transfer request. Mr V says Capita should've 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 V says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Capita had acted as it should've done.

What happened

I issued a provisional decision on 13 June 2024. I've recapped here what I said had happened and my provisional findings.

'*Mr V had a SIPP with Zurich Assurance Limited (Zurich) which was administered by Capita. His fund was invested in Zurich's Managed Equity and Bond ZP Pension Fund.*

On 9 January 2014 Mr V signed a form of authority addressed to Zurich/Capita saying he wanted Walter Chase Limited and an FCA regulated adviser that they may appoint as the servicing agent for his SIPP. Mr V also authorised the provision of information about his SIPP on the same basis.

In June 2014 a company was incorporated with Mr V as the sole director. I'll refer to this company as V Limited. On the same date Mr V signed documents to open a SSAS with Rowanmoor Group plc (Rowanmoor). V Limited was recorded as the SSAS's principal employer. An adviser who I'll call Mr L from a firm who I'll call U Limited was shown as the trustee adviser. The SSAS application form also recorded that the SSAS was to be used to invest in Akbuk Unity Bay, an overseas hotel.

On 10 July 2014 Rowanmoor wrote to Zurich saying Mr V wanted to transfer his pension policy with Zurich (his SIPP) to his V Limited Executive Pension Scheme (the SSAS). Rowanmoor enclosed Mr V's authority and a ceding scheme information form for Zurich to complete and return. Zurich passed the letter to Capita who wrote to Rowanmoor on 11 July 2014 saying, to proceed with the transfer request, the enclosed forms had to be completed and returned. There was a transfer discharge to be completed by Mr V and a receiving scheme warranty for completion by the receiving scheme. Capita enclosed a copy of the 'Scorpion' leaflet, which I mention further below.

Rowanmoor completed the receiving scheme warranty on 1 September 2014. It showed the name of the receiving scheme (Mr V's SSAS), the trustee (Rowanmoor Trustees Limited), the scheme administrator (Rowanmoor) and the PSTR (Pension Scheme Tax Reference) number. Rowanmoor's covering letter to Zurich of the same date set out bank details for the

transfer payment and enclosed a copy of HMRC's notification of registration which showed the SSAS had been registered on 3 July 2014 and confirmed the PSTR shown on the receiving scheme warranty.

On 17 September 2014 Capita wrote to Mr V confirming the transfer had been completed and that a transfer payment of £47,725.53 had been made that day to Rowanmoor.

At about the same time Mr V also transferred the value of deferred benefits (£16,984) he held in a former employer's occupational pension scheme (OPS) which was also held with Zurich. I'm only dealing with Mr V's complaint about the SIPP transfer. I understand Mr V has complained to the Pensions Ombudsman (PO) about his OPS transfer.

Following the transfers £53,744 was invested in Akbuk Unity Bay.

Mr V later became concerned about his investment which hadn't delivered the returns he'd been told he'd get. In August 2020 he complained, with the assistance of his representative, to Zurich. Briefly his argument was that Zurich should've 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 as was the sponsoring employer; there wasn't a genuine employment link to the sponsoring employer; Mr V's decision was based on 'advice' from an unregulated business during a free pension review; there was no clear involvement of a regulated financial adviser; and the proposed investment was unregulated, overseas, high risk and non diversified.

Zurich referred the complaint to Capita who responded on 16 September 2020. Capita didn't uphold the complaint. Amongst other things, it said it had been asked to transfer the benefits in Mr V's Zurich SIPP to a SSAS with Rowanmoor. Capita wasn't made aware of the proposed investment. It had since become apparent that Rowanmoor permitted high risk investments in illiquid assets but, as the ceding scheme, Capita didn't have the right to halt or raise concerns about the transfer unless there was reason to believe the receiving scheme was to be used as a vehicle for pension liberation. The SSAS was registered with HMRC and Rowanmoor were a well established, fully regulated SIPP provider. And the Scorpion leaflet had been issued on 11 July 2014.

Our investigator was unable to resolve the dispute informally, so the matter was passed to me to decide.

I understand that development of the Akbuk Unity Bay resort has been beset by problems. The investment hasn't generated the expected returns and there's no market for Mr V's investment – a fractional ownership of a suite at the resort.

What I've provisionally 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.

Where the evidence is disputed, incomplete or inconclusive (as some of it is here) I've reached my conclusions on the balance of probabilities, that is what I think is more likely to have happened, taking into account all the available evidence and information and the wider circumstances.

<u>The relevant rules and guidance</u>

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 Capita 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 indeed 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 V'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 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 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.

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 V's recollections</u>

We've asked Mr V about how he came to transfer and invest in Akbuk Unity Bay. His recollections aren't entirely consistent. I think, to some extent, that's understandable, given the transfer happened some ten years ago. I don't get the impression that he's being other than honest in an attempt to recall who was involved and who did what. Although I bear in mind that what Mr V says now is to some extent with the benefit of hindsight and in the knowledge that the transfer and investment resulted in the loss of his pension fund.

When the complaint was made, Mr V's representative said Mr V had been approached by Mr L, an adviser with U Limited, who Mr V had understood to be a financial adviser. During a 30 minute telephone call, Mr L recommended that Mr V transfer his existing pension arrangements to a SSAS and invest in a holiday resort in Turkey – Akbuk Unity Bay. Mr V was told that he'd make 4% pa whilst the resort was being constructed and then much more in rental income in the following years.

Mr V had no prior investment experience or knowledge and says no explanation of the risks was given. He thought he was buying a full plot but found out later he was only buying part – fractional ownership. He says all the people he was dealing with appeared to be very professional and seemed to know what they were talking about and had all the facts. Mr V understood the person who was advising him to be a financial adviser. Mr V says he was

unaware that the adviser wasn't authorised and regulated by the FCA and the implications of that.

Mr V agreed to go ahead and was provided with paperwork to establish a SSAS with Rowanmoor. Mr V says everything was done over the telephone and email and documents were provided and signed online. He said he was given details of the investment and he reviewed online brochures, websites, illustrations and projections. He didn't think there was any risk as he was told it was all very safe. He said having to set up his own company and a SSAS felt rushed but he went along with it as he felt his money wasn't doing anything and he wanted to move it to something that would work for him. Mr V repeated that history on his complaint form.

I note that the SSAS application form (which Mr V signed on 23 June 2014) shows Mr L and U Limited. But that's as the trustee adviser – that is the adviser who'll provide advice on the scheme (the SSAS) to the member trustee (Mr V). Under section 36 of the Pensions Act 1995 a SSAS trustee is required to take and consider appropriate advice as to whether a proposed investment is satisfactory for the aims of the scheme. That sort of advice isn't regulated and so U Limited didn't need to be authorised by the FCA if its role was limited to providing that sort of advice.

We've also seen that earlier, on 9 January 2014, Mr V had signed a form of authority in favour of Walter Chase Limited. And, when he spoke to our investigator, Mr V said he'd got a cold call from Walter Chase Limited about investing in property in Turkey and wanting to know if he had any investments he could use to invest. Mr V said he thought it sounded like the right thing to do as he had two pensions which he'd been told were 'frozen' and he'd been thinking about what he might do to improve his pension provision. He didn't feel his existing pension arrangements were performing as well as he'd expected and he wanted to do something to ensure he'd have more money in retirement. But, more recently, when we asked for clarification about the businesses who'd been involved, Mr V's representative told us that Mr V didn't recall Walter Chase Limited.

However, in broad terms, what seems to have happened is that Mr V received an unsolicited telephone call, asking about his pension arrangements and offering a free pension review. He then spoke to someone over the telephone who told him he could use his pension to invest in Akbuk Unity Bay, which investment would outperform his existing pension arrangements. The end result was that Mr V set up his own limited company, V Limited, and a SSAS, into which his existing personal pension was transferred and from which the investment in Akbuk Unity Bay was then made. But it's unclear which business did what. Both companies are now dissolved and neither was authorised to provide regulated financial advice.

There's documentary evidence of Walter Chase Limited's involvement – the form of authority which Mr V signed on 9 January 2014. But it wasn't until several months later – in June 2014 – that V Limited and the SSAS were set up with Zurich approached the following month. By then it seems that Mr L and U Limited had become involved. There's documentary evidence of that too – they are named on the SSAS application form. But, as I've said, that's as the trustee adviser.

What Mr V ended up doing – setting up his own limited company, establishing a SSAS, transferring his existing pension and investing in an overseas property development – were complex and unusual arrangements for someone such as Mr V. He wasn't a sophisticated investor and he was employed elsewhere and not by his own company. I can't see he'd have done all that, or even known that sort of arrangement was available to him, unless he'd been told it would be a good idea and he'd end up better off – essentially that course of action had been recommended to him. And, as the only means he had of investing in Akbuk Unity Bay

was to use his pension savings, that would include a recommendation to transfer out of those arrangements. Advice to transfer out of Mr V's personal pension with Zurich would be regulated advice and which should only have been given by an FCA authorised adviser.

I can't now be certain which company Mr V spoke to about all that. I think it was probably Walter Chase Limited who initially made contact with Mr V in early 2014 and which led to him signing the form of authority. But that was several months before V Limited and the SSAS were set up and the transfer made. It's unclear if Walter Chase Limited was still on the scene by then and at the time when the telephone call to Mr V would've likely been made. I don't know when that was. But I'd have thought that whoever Mr V spoke to, and once he'd indicated he was happy to go ahead, would've been keen to get things moving quickly. Which would suggest the call wasn't much before June 2014, when Mr V signed the documents to set up the SSAS.

Mr V told our investigator that it was Walter Chase Limited he'd spoken to over the telephone. But he may have got that wrong and it might actually have been, and as he'd said earlier when his complaint was made (and as now appears to be his position), U Limited. Further, Mr V was able to recall the name of the adviser – Mr L – he spoke to. Mr L worked for U Limited. So it's possible Mr V was confused later on and, although he remembered the name of the person he spoke to, he got the name of the company Mr L worked for wrong.

I also note that Mr L's address as a director of U Limited and the registered address for V Limited are the same. That would suggest Mr L was involved in the setting up of V Limited (which was required so that in turn the SSAS could be established) and so Mr L was instrumental in the earlier arrangements and not just appointed later as the trustee adviser.

On balance, I think it was probably Mr L who, during the half an hour telephone conversation Mr V recalls, advised Mr V to transfer his existing pension to a SSAS. But, even if I'm wrong about that, I think it would've been Walter Chase Limited that Mr V spoke to. Neither company was authorised to give regulated financial advice.

We also shared a copy of the Scorpion insert with Mr V and asked him what he'd thought about it. He said he'd received it from Capita but that was after the transfer had gone through and he didn't really think anything much about it, as by then contracts had been signed, everything had been set up and he thought it was all legitimate. He did say, if he'd received the insert earlier, he'd have 'done his homework' – he'd have checked out the companies and their on line reviews.

<u>What did Capita 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.

Capita did send the (longer) Scorpion leaflet but to Rowanmoor (with Capita's letter of 11 July 2014) rather than direct to Mr V. Considering the above principles, Capita had a duty of care to Mr V to treat him fairly and ensure he was provided with relevant information to allow him to make informed decisions. Capita would have been well aware of the guidance and the pension industry's attempts to combat pension liberation scams at the time.

Mr V says he did receive the Scorpion insert from Capita but he says it wasn't until the transfer was completed – he says Capita notified him that the transfer had been completed and the leaflet was attached. We've checked with Capita but it has been unable to confirm if

the insert was sent then. I'm not sure much turns on this anyway. I think it would've been too late if Mr V didn't see the inset until then anyway and once the transfer had been completed. Even if he had the right to cancel the transfer, I don't think he'd have paid too much attention to information provided after the transfer had been completed. And Mr V has confirmed that was his position which I don't think was unreasonable. The leaflet should've been sent direct to Mr V at the outset of the matter – when Capita first received, via Zurich, Mr V's transfer request from Rowanmoor.

But, that said, it seems Mr V was given the Scorpion insert (probably the version in force before the July 2014 update) anyway in connection with the transfer from the OPS which, as I've said, was undertaken at about the same time. I've seen some of the documents relating to that transfer, including the member discharge form Mr V signed on 7 August 2014 and which contained the following declaration:

- *I confirm that I have considered taking independent financial advice in relation to the transfer of my pension benefits from the [OPS]. Where advice has been sought, I confirm that the advisor has advised me in writing to proceed with the transfer for the Receiving Scheme.*

- *I have received and read the insert 'Predators stalk your pension' and have read the leaflet on the Pension Advisory Service's website and understand the implications of pension liberation [link provided).*

Although Mr V has said he didn't see the insert, I think the declaration indicates he was provided with a copy, even if he doesn't now recall. And he also confirmed, by signing the form, that he'd accessed the longer leaflet.

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. Capita didn't undertake any further due diligence.

Given the information Capita had at the time, one feature of Mr V's transfer would've been a potential warning sign of a scam: Mr V's SSAS was recently registered. Capital should therefore have followed up on it to find out if other signs of a scam were present.
Given this warning sign, I think it would've been fair and reasonable – and good practice – for Capita 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 checklist 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 checklist 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've been apparent when dealing with Mr V's transfer request, and the relatively limited information it had about the transfer, I think in this case Capita should've addressed all three parts of the check list and contacted Mr V as part of its due diligence.

I also note that, at about the same time as Capita was processing Mr V's transfer, the FCA had issued a warning to consumers about SSASs being used in scams, along with investing in unregulated and unusual investments, including overseas property – the FCA's 'Protect your pension pot' publication issued in August 2014 and which was highlighted to firms in a regulatory round up in September 2014.

I know 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 Capita could've 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, Capita 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 Rowanmoor's business was regulated by the FCA doesn't change my thinking on this. The key point is that Rowanmoor Group Plc and Rowanmoor Trustees Limited (both of which were involved in the operation of the SSAS) weren't FCA-regulated so I see no reason why they would have operated with FCA regulations and Principles in mind – or why their actions would have come under FCA scrutiny. As such, I'm not persuaded Capita could, reasonably, have derived sufficient comfort about the Rowanmoor SSAS as a destination for Mr V's transfer.

What should Capita have found out?

I've thought about what would've come to light if Capita had looked into the transfer. In looking into the nature/status of the receiving scheme, Capita would've found out that not

only was the SSAS recently registered so was the sponsoring employer – the checklist suggests checking with Companies House. And, if Capita had made enquiries with Mr V, he'd have told Capita that the company wasn't trading and, although he was the sole director, he wasn't employed by the company as such – I understand that at the time Mr V was employed as a bus driver – and the company had only been set up to facilitate the establishment of the SSAS.

Enquiries under the second part of the checklist would've revealed, although Mr V hadn't been offered any cash incentive or bonus or loan, that he was interested in the possibility that the investment would produce higher returns. I don't see why Mr V wouldn't have told Capita that the proposal was that he invest in Akbuk Unity Bay, a resort development in Turkey. So Capita would've known that the proposed investment was overseas and unusual or what might be termed non mainstream. And, as I've noted above, the FCA had drawn to consumers' attention in August 2014 the use of SSASs to invest in unusual investments, including overseas property, as a reason to be very wary. That wasn't highlighted to providers until the following month but, given that the FCA was warning consumers in August 2014, I don't think it's unreasonable to expect businesses to have been alive to the issues before they were brought directly to businesses' attention the following month. So Capita should've recognised the investment as something that might signal a scam.

With reference to the third section, if Capita had asked Mr V about how the transfer had come about and how he'd become aware of the receiving scheme, again I don't see any reason why Mr V wouldn't have said things had started with a cold call and the offer of a free pension review. Capita should've recognised that as another potential warning sign.

I also think Mr V would've named the firms involved – Walter Chase Limited and U Limited. As I've said, Mr V is now uncertain which firms were involved and who did what and, in particular, who was behind the call which resulted in him going ahead with things. But there's documentary evidence to show that both companies were involved, although some months apart. Any queries raised by Capita in or about July 2014 would've been when things were relatively fresh in Mr V's mind. I think he'd have recalled both companies' involvement. And he'd likely have been able to say who it had been he'd spoken to over the telephone and who'd said it was a good idea to transfer to a SSAS.

Even if Mr V's recollection as to who that call was with has varied, he seems fairly clear about the content of the call. As I've said above, I think the call was likely with Mr L of U Limited. I'm not persuaded that company's role was confined to acting as the member trustee's adviser and advising under section 36 of the Pensions Act 1995 and which, again as I've said above, wouldn't be regulated advice. But, if that wasn't the case then, given Walter Chase Limited's involvement in January 2014, I think it would've been that company that had spoken to Mr V. Either way, Capita would've known that Mr V's decision to transfer had followed a conversation, either with Mr L of U Limited or Walter Chase Limited.

The checklist recommends that, to establish if the member has been advised by a non regulated adviser, that the ceding scheme should check whether any advisers are FCA registered and the web address for the FCA's online Register is given. It would've been very easy for Capita to have searched against whichever of the companies Mr V had said had told him to transfer so he could invest in Akbuk Unity Bay and found out they weren't regulated or authorised by the FCA. A search against Mr L as an individual would've shown

the same result.

Being advised by an unauthorised firm to transfer benefits from a personal pension plan would've 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've been aware that financial advisers need to be authorised to give regulated advice in the United Kingdom – indeed, the Scorpion insert itself makes this point.

My view is that Capita should've been concerned by Walter Chase Limited's/Mr L's/U Limited'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 Capita have told Mr V – and would it have made a difference?</u>

I've reached my findings here taking into account that, as I've noted above, it seems Mr V did see, in connection with the transfer of his OPS, the Scorpion insert and the longer version of the leaflet – probably the February 2013 version.

The main thrust of the insert was cashing in a pension early and the tax bill that could result. But being approached out of the blue over the phone was highlighted as something to watch out for. And the 'Five steps to avoid becoming a victim' section suggested finding out about the company's background through information on line and said that any financial advisers should be registered with the FCA. Similarly the main focus of the longer February 2013 leaflet was taking pension benefits early – before age 55 – and the potential tax charge. The leaflet did highlight some possible warning signs – including unsolicited calls, transfers overseas and being rushed into making a pension transfer – which Mr V might've identified as being present in his case. In saying that, Mr V's pension wasn't being transferred overseas – it wasn't a QROPS (Qualifying Recognised Overseas Pension Scheme) – but the investment was an overseas resort development. And, although he's said he was given plenty of information about the investment and so I don't think he was rushed into that, he did say that setting up the SSAS and the limited company felt rushed.

I'm open to the possibility that Mr V saw a later version of the Scorpion warning materials because the links given in the insert and leaflet provided by the OPS, had Mr V accessed them, may have taken him to an online version which had been updated. The updated (24 July 2014) leaflet widened the focus from pension liberation specifically to pension scams. It talked about losing a lifetime's pension savings as well as incurring punitive tax charges. It listed some common features of pension scams, including being approached out of the blue, the offer of a free pension review and transfers to overseas investments. It recommended making sure the adviser was authorised by the FCA and gave the website address for the FCA's online Register. Mr V has said, if he'd seen the Scorpion insert, he'd have looked into the companies involved in more detail and checked their online reviews. Although it seems he did see the insert and the longer leaflet (whether the earlier or the updated version) that didn't prompt him to research the companies involved.

But, as I've said, I think the main thrust of the earlier insert and leaflet was pension liberation, which Mr V wasn't seeking to do. So I doubt the warnings would've resonated with him. The later versions were more widely drafted in terms of pension scams. And there was a link to TPR's website which included a page directed to consumers about checking a financial adviser is authorised on the FCA's register. However, many of the other messages on that same page were about early access to pension funds, which Mr V knew he wasn't doing. Overall, I think it's unclear what, if anything, Mr V would've or should've done, even taking into account that he saw and read the inserts and leaflets. So I don't think Capita can rely on the fact that such information was provided to Mr V by another scheme.

However, if Capita had undertaken more thorough due diligence, there would've been a number of warnings Capita could've given to Mr V in relation to a possible threat to his pension savings as identified by the action pack. And, as I've said above, I think Capita should also have been aware of the close parallels between Mr V's transfer and the warnings the FCA gave to consumers in August 2014 about transferring to SSASs. But the most egregious oversight was Capita's failure to uncover the threat posed by non-regulated advisers. Its failure to do so, and failure to warn Mr V accordingly, meant it didn't meet its

With those obligations in mind, it would have been appropriate for Capita to have informed Mr V that the person or firm he'd been advised by (in connection with the transfer of his existing personal pension with Zurich) was unregulated and could put his pension at risk. Capita should've said only authorised financial advisers are allowed to give advice on personal pension transfers, so Mr V risked falling victim to illegal activity and losing regulatory protections.

I'm satisfied any messages along those lines would've changed Mr V's mind about the transfer. The gravity of any such warnings would prompt most reasonable people to rethink what they were doing. I don't see Mr V would've been any different. In my view, any concerns expressed by Capita, a major, well established and respected pension scheme administrator, would've carried weight with Mr V. Any reservations expressed by Capita would've been specific to Mr V's individual circumstances, direct and personal to him and so would've had more impact.

If Capita had expressed doubts about the transfer Mr V would've realised that, even though pension liberation wasn't involved, his pension savings could be at risk. I think he'd have been concerned that the adviser shouldn't have been giving regulated financial advice and might not be acting in his best interests and could put his pension savings at risk. Mr V had understood he was dealing with a fully qualified, authorised adviser who was subject to regulation by the FCA. I don't see Mr V would've been comfortable to proceed in the knowledge that the adviser wasn't in fact authorised to give advice about whether Mr V should transfer out of his existing personal pension and that there were serious risks in using an unregulated adviser.

I note Mr V has said that he wasn't particularly happy with how his existing pensions were performing. But I don't think that meant he'd have wanted to go ahead anyway and in the face of concerns expressed by Capita. At the very least I think any reservations expressed by Capita would've prompted Mr V to check out what he was planning to do by taking regulated financial advice. I can't see, if he'd done that, he'd have been advised to proceed.

The upshot is, if Capita had acted as it should've done, Mr V wouldn't have proceeded with the transfer out of his Zurich SIPP or suffered the investment losses he did in consequence of investing via a SSAS in Akbuk Unity Bay. So it's fair and reasonable that Capita should compensate Mr V for his losses.'

I went on to set out what Capita needed to do to put things right for Mr V.

Mr V didn't have any comments on what I'd said in my provisional decision. Capita did. It agreed there were additional measures it could've taken to alert Mr V to some of the risks he was ultimately exposed to. But it couldn't be known for certain if that would've changed the actions Mr V in the end took to transfer out. He had a statutory right to transfer and the conclusions now drawn were with the benefit of hindsight. The primary cause of his potential loss is the investment in Akbuk Unity Bay. That was made after the transfer to the SSAS. A SSAS is a legal and valid pension scheme and the SSAS was established at the time with a well known SSAS administrator and trustee. Rowanmoor Group (now known as Rowanmoor

Executive Pensions Limited) and Rowanmoor Trustees are still active businesses although they are no longer trading.

Capita said it was unclear if Mr V had complained to or sought compensation from Rowanmoor for their involvement in allowing and enabling the investment in Akbuk Unity Bay. Although SSASs didn't come under this service's jurisdiction they were occupational pension schemes and so within the PO's jurisdiction. It wasn't balanced for Capita to pay administration fees for the SSAS whilst it is being closed. Capita's view was that Mr V's primary complaint should be to Rowanmoor Group (now Rowanmoor Executive Pensions Limited) and Rowanmoor Trustees Limited and referred to the PO.

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 paid particular attention to what Capita has said in response to my provisional decision. I agree we can't now be certain as to what Mr V would've done if Capita had acted differently and, in particular, warned him about dealing with an unauthorised adviser who shouldn't have been giving regulated advice and who, in doing so, would've been acting unlawfully. But, given the seriousness of that sort of message, I don't think Mr V would've proceeded. That's a conclusion I've reached on the balance of probabilities and taking into account what Mr V would've known at the time, had Capita acted as I consider it should've done and how Mr V would've likely reacted.

I don't disagree that Mr V's losses have arisen because the investment in Akbuk Unity Bay has failed. And I accept Mr V had a right to transfer and that a SSAS is a recognised pension vehicle. I dealt in my provisional decision with the involvement of the Rowanmoor Group and Rowanmoor Trustees Limited who, I accept, had some standing in the industry at the time. But I explained why I didn't think Capita's reliance on that was justified. Capita had obligations to its member, Mr V. Capita had an important role to play in protecting customers who wanted to transfer. I explained why I considered Capita hadn't done enough – and Capita accepts it could've done more to warn Mr V. Had Capita done so I don't think Mr V would've gone ahead. In that case the losses he went on to suffer would've been avoided.

As to whether it's fair and reasonable for Capita to meet Mr V's losses when there were other parties involved that may have caused or contributed to his losses, if Capita had acted as it should've done, Mr V wouldn't have proceeded with the transfer out of his Zurich SIPP or suffered the investment losses he did in consequence of investing via a SSAS in Akbuk Unity Bay. So, on the basis that Capita could've prevented Mr V's losses, it's fair and reasonable that Capita should be responsible for those losses. And, under our scheme (or in law) there's no requirement for Mr V to have complained to all the potential parties that have caused his loss. Here I'm satisfied that, had Capita acted as it should've done, Mr V wouldn't have left the regulated environment in which his existing personal pension was held and suffered the losses he's sustained in consequence of transferring to a SSAS and making the investment in Akbuk Unity Bay. In the circumstances I'm satisfied that I can fairly make the award I have below against Capita.

Although Capita has said it isn't fair to say that it should pay administration fees for the SSAS pending closure, I explained in my provisional decision why I was making that award. Mr V wouldn't have had the SSAS if Capita had acted as it should've done. Nor would he have made the Akbuk Unity Bay investment. As that investment is now illiquid, the SSAS can't simply be wound up. Mr V will continue to incur SSAS administration fees until he's able to come to some arrangement for the SSAS to be closed. I don't know how long that

may take, hence I've allowed for five years' worth of future administration fees. I maintain it's fair and reasonable for Capita to pay that.

I don't have anything else to add to what I said in my provisional decision. I've set out my provisional findings in full above and these form part of this decision.

Putting things right – fair compensation

My aim is that Mr V should be put as closely as possible into the position he'd probably now be in if Capita had treated him fairly. As I noted in my provisional decision, at about the same time of the SIPP transfer, Mr V also transferred the value of deferred benefits in an OPS to the SSAS and he's complained to the PO about that. Capita is only responsible for the losses Mr V has sustained in connection with the SIPP transfer and the redress I've set out below reflects that.

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

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

Actual value

This means the proportion of the SSAS value originating from Mr V's Zurich transfer (the **"relevant proportion")** at the date of my Final Decision. To arrive at this value, any amount in the SSAS bank account is to be included, but any overdue administration charges yet to be applied to the SSAS should be deducted. Mr V may be asked to give Capita his authority to enable it to obtain this information to assist in assessing his loss, in which case I expect him to provide it promptly.

My aim is to return Mr V to the position he would have been in but for the actions of Capita. This is complicated where an investment is illiquid (meaning it cannot be readily sold on the open market), as its value can't be determined. On the basis of the evidence I have, that is likely to be the case with the following investment(s): Akbuk Unity Bay. This is because there's no market for the investment. And I don't think it's realistically possible for Capita to only acquire a part of the investment from the SSAS as I'm only holding it responsible for the loss originating from a transfer in of the Zurich funds. Therefore as part of calculating compensation:

- Capita must give the illiquid investment(s) a nil value as part of determining the actual value. In return Capita may ask Mr V to provide an undertaking, to account to it for the relevant proportion of the net proceeds he may receive from those investments in future on withdrawing them from the SSAS. Capita will need to meet any costs in drawing up the undertaking. If Capita asks Mr V to provide this undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.
- It's also fair that Mr V shouldn't 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 Capita should pay an upfront sum to Mr V equivalent to the relevant proportion of five years' worth of future administration fees

at the current tariff for the SSAS, to allow a reasonable period of time for the SSAS to be closed.

Notional value

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

Capita should ensure that the relevant proportion of any pension commencement lump sum or gross income payments Mr V received from the SSAS are treated as notional withdrawals from Zurich on the date(s) they were paid, so that they cease to take part in the calculation of notional value from those point(s) onwards.

Payment of compensation

I don't think it's appropriate for further compensation to be paid into the SSAS, given Mr V's dissatisfaction with the outcome of the investment it facilitated.

Capita should pay the amount of any loss direct to Mr V – Capita isn't in a position to reinstate the pension or set up a new one, so it should pay the loss direct to Mr V. 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 V isn't overcompensated – it's not an actual payment of tax to HMRC.)

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

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

My final decision

I uphold the complaint. Capita Life & Pensions Regulated Services Limited must redress Mr V as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 26 August 2024.
Lesley Stead
Ombudsman