DRN-4919475

The complaint

Mr C has complained about a transfer of his Scottish Equitable Plc trading as Aegon personal pension to a small self-administered scheme (SSAS) in 2014. Mr C's SSAS was subsequently used to invest in a fractional ownership of overseas hotel property with The Resort Group (TRG). The investment now appears to have little value. Mr C says he has lost out financially as a result.

Mr C says Scottish Equitable failed in its responsibilities when dealing with the transfer request. He says that it should have done more to warn him of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance he says was required of transferring schemes at the time. Mr C says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Scottish Equitable had acted as it should have done.

What happened

Mr C had a personal pension with Scottish Equitable. He explains that he was referred by a friend to a mortgage adviser and that during the course of a meeting with that adviser he was offered a free pension review. His interest in the transfer was based on the prospect of improved investment returns (3% to 6% a year) by investing in an overseas property investment opportunity.

On 27 March 2014, a company was incorporated with Mr C as director. I'll refer to this company as Firm A. Mr C then opened a SSAS with Cantwell Grove Limited (CGL). Firm A was recorded as the SSAS's principal employer.

On 12 June 2014 Scottish Equitable received Mr C's transfer request from CGL. Included in the transfer papers were:

- completed and signed transfer forms,
- a copy of the Firm A SSAS Trust Deed and Rules,
- HMRC confirmation of registration for the Firm A SSAS on 27 May 2014,
- key information about the scheme (including information that the intention was to invest in TRG and a discretionary fund management service, taking s.36 of the Pensions Act 1995 advice from Central Markets Investment Management Limited),
- a letter signed by Mr C on 10 June 2014 declaring, amongst other things, that he was aware of the dangers of pension liberation fraud and that he didn't want to access benefits prior to age 55.

Mr C's pension was transferred on 6 October 2014. His transfer value was around £34,000. He was 49 years old at the time of the transfer.

In October 2014 an investment around £15,400 was made in TRG. Then in May 2015 a further investment of around £16,700 was made with a discretionary fund manager. The investment in TRG has since failed and is likely to have nil value.

In November 2019, Mr C complained to Scottish Equitable. Briefly, his argument is that Scottish Equitable ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including (but not limited to) the following: the SSAS was newly registered, there wasn't a genuine employment link to the sponsoring employer, the transfer followed high pressure sales techniques, the catalyst for the transfer was an unsolicited call and he had been advised by an unregulated business.

Scottish Equitable didn't uphold the complaint. It was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

Our investigator was unable to resolve the dispute informally, so the matter was passed to me to decide. I issued a provisional decision to let both parties know my thoughts on Mr C's complaint.

What I said in my provisional decision

"The relevant rules and guidance

Before I explain my reasoning, it will be useful to set out the environment Scottish Equitable was operating in at the time with regards to pension transfer requests, as well as any rules and guidance that were in place. Specifically, it's worth noting the following:

- *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 a member may also have a right to transfer under the terms of the contract). This 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.*

- *On 10 June 2011, the Financial Services Authority (FSA) issued a warning about the dangers of "pension unlocking" and specifically referred to consumers transferring to access cash from their pension before age 55. (As background to this, the normal minimum pension age had increased to 55 in April 2010.) The FSA said that receiving occupational pension schemes were facilitating this. It encouraged consumers to take independent advice. The announcement acknowledges that some advisers promoting these schemes were FSA authorised.*

- *At around the same time, TPR published information on its website about pension liberation, designed to raise public awareness and remind scheme operators to be vigilant of transfer requests. The warnings highlighted that websites and cold callers were encouraging people to transfer in order to receive cash or access a loan.*

- *TPR launched its Scorpion campaign on 14 February 2013. The aim of the campaign was to raise awareness of pension liberation activity and to provide guidance to scheme administrators on dealing with transfer requests in order to help prevent liberation activity happening. The FSA, and the Financial Conduct Authority (FCA) which had succeeded the FSA, endorsed the guidance. The guidance was subsequently updated, including in July 2014. I cover the Scorpion campaign in more detail below.*

- *In late April 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 further published its own factsheet for* *consumers in late August 2014. It highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.*

- *Scottish Equitable was subject to the 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:*

  - *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.*

<u>The Scorpion guidance</u>

The Scorpion campaign was launched on 14 February 2013, and was initially focused just on pension liberation – namely, the access to pension funds in an unauthorised manner (such as before normal minimum pension age). However, it's the update to that guidance on 24 July 2014 that's most relevant to this complaint. It widened the focus from pension liberation specifically, to pension scams – which it said were on the increase.

The materials in the Scorpion campaign comprised:

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

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

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

In deciding on the appropriate actions to take when dealing with a transfer request, a ceding scheme needed to be mindful of the material in the Scorpion guidance in its entirety rather than treating the guidance as a series of discrete steps to be worked through in isolation. TPR issued the guidance under the powers at s.12 of the Pension Act 2004. Thus, for the bodies regulated by TPR, the status of the guidance was that it provided them with *information, education and/or assistance, as opposed to creating any new binding rule or legal duty. Correspondingly, the communications about the launch of the guidance were predominantly expressed in terms that made its non-obligatory status clear. So, the tenor of the guidance is essentially a set of prompts and suggestions, not requirements.*

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

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

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

In those circumstances, I consider 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 explains that, following a recommendation for mortgage advice he was offered a free pension review. And that this was provided by a representative from Choices Wealth Limited. He was attracted by the investment opportunity and indicated investment returns.

I have seen a copy of an application to set up an account for the Firm A SSAS that was signed by Mr C on 2 June 2014. That signature was witnessed by a Ms W of Choices Wealth Limited. Along with a copy of Mr C's driving licence that was signed by Ms W certifying his identity. I have also seen that Mr C's signature on the SSAS Trust Deed of 27 May 2014 was witnessed by Ms W, giving her occupation as 'consultant'. I think that this evidence corroborates Mr C's testimony and persuades me that he was, more likely than not, being advised by Choices Wealth Limited to transfer his personal pension.

I am aware that one of the documents that Scottish Equitable was sent set out that the trustee of the scheme would be obtaining suitable advice from Central Markets Investment Management Limited. But that related to a requirement under s.36 of the Pensions Act 1995, that trustees consider appropriate advice on whether an investment satisfies the aims of the SSAS. I've seen no other evidence of the involvement of that business at any actual stage. Including following the transfer when Mr C was, in fact provided advice by a different firm – Broadwood Assets Ltd – that satisfied the s.36 Pensions Act 1995 requirement. So I don't think, on balance, that either Central Markets Investment Management Ltd or Broadwood Assets Ltd were involved in providing advice to Mr C to transfer his pension.

<u>What did Scottish Equitable 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.

In this case Scottish Equitable didn't send the Scorpion insert to Mr C. Scottish Equitable explain that it didn't do this because it didn't consider that Mr C was at risk of pension liberation. So it instead wrote to Mr C about the other risks that it had identified.

The transfer paperwork that Scottish Equitable had received from CGL included a letter, signed by Mr C on 10 June 2014, that said that Mr C was aware of the risk of pension liberation and was going to be releasing funds from his pension in an unauthorised way. So I don't think it was unreasonable for Scottish Equitable to form the opinion that a risk of pension liberation was low. It was, in actual fact, the main driver of the guidance in place from TPR. I don't think that necessarily means that it need not have sent the Scorpion insert as it was a simple step. But, as I will now go on to explain, Scottish Equitable did contact Mr C in order to draw his attention to risks in a different way than the Scorpion insert.

Due diligence:

In light of the Scorpion guidance in place when this transfer request was received, I think firms ought to have been on the look-out for the tell-tale signs of pension liberation and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk. In this case Scottish Equitable say it had enough information to consider the risk of pension liberation, the focus of what TPR highlighted when it first began looking into this transfer, as being low. But it has explained that it had still identified concerns about the transfer.

Scottish Equitable have explained that its due diligence in this case involved checking the following:

- *whether the receiving scheme was on its list of high risk schemes*
- *that the receiving scheme was registered with HMRC*
- *whether the customer's financial adviser, the receiving scheme or scheme administrator were authorised by the FCA.*
- *whether the scheme or employer had been established in the previous 12 months.*

Scottish Equitable says that the above checks led it to identify features which TPR had identified as "higher risk". Which, it says, is why it wrote directly to Mr C on 12 June 2014 to highlight specific risks that might be associated with this transfer.

That letter said:

> *"On 28th April, the Financial Conduct Authority (FCA) issued a warning about consumers being contacted by an unexpected phone call, an email, a text message or an online advert and offered a 'free pension review' and being persuaded to transfer to a self-invested pension (SIPP) or a small self-administered scheme (SSAS). I enclose a copy of the FCA's warning for your information, you can also find it on the FCA's website…".*

The enclosed information was the FCA's "Protect your pension pot" warning that was updated on 21 May 2014. It was written with consumers in mind and highlighted concerns that the FCA had about pension scams at that time. I think the key information it provided was as follows:

- *It explained why consumers ought to be wary of being offered a 'free pension review' out of the blue. It warned that most companies offering this were not authorised by the FCA, though often falsely claimed that they were.*

- *It suggested that consumers should ignore such offers and pointed out that professional advice on pensions was not free.*

- *It explained that these reviews were designed to persuade consumers to move money from existing personal pensions to a SIPP or SSAS where the pension pot is typically invested in unregulated investment like overseas property.*

- *It explained the risks of following this advice. Including that the investments can be high risk, returns can be unreliable and the investments can be difficult to sell. It said, "you could lose everything you invested, significantly reducing your retirement income". It explained that there may be no recourse to the Financial Ombudsman Service or the Financial Services Compensation Scheme.*

- *It said, "always check that anyone offering you advice or other financial services is authorised by us: if they are their name should appear on our Register." And included a link to that register on its website.*

- *It included links to further information and other available guidance from the Money Advice Service and The Pensions Advisory Service.*

That Scottish Equitable chose to send Mr C the FCA's warning is evidence that it was aware of the fact that the FCA was highlighting concerns other than pension liberation. I think that Scottish Equitable was considering the risks of Mr C's transfer in a way that was perhaps broader than the focus of the Action Pack published in February 2013. And it was already considering a risk of scams more generally, at a time prior to the revised TPR guidance of 24 July 2014. It had evidently done this having taken on board the warnings that the FCA had highlighted in April 2014.

Given that Scottish Equitable had identified concerns, I need to consider whether the action that it took was sufficient. In considering this I will refer to the check list in TPR's Action pack, because by the time Scottish Equitable completed the transfer TPR had updated its guidance to refer to scams more widely than just pension liberation.

The check list was there to assist Scottish Equitable to help its customers. It provided a series of questions to help transferring schemes assess the potential risk to a customer by finding out more about the receiving scheme and how the customer came to make the transfer request. Some items on the check list could have been addressed by the information CGL had already sent or 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 or promotional materials or adverts of the receiving scheme 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?

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, I think in this case Scottish Equitable should have addressed all three parts of the check list and contacted Mr C as part of its due diligence. It had, after all, decided that it should establish whether Mr C's financial adviser was authorised to provide that advice.

The transfer request had been received from CGL which provided a fact sheet that gave the name of a regulated adviser. But that was under the heading "who is the scheme's proposed investment provider". And said, "as per the requirement under section 36 of the Pensions Act 1995, the trustee of the scheme is taking and considering appropriate advice on whether the proposed investment(s) are satisfactory for the scheme". I think that Scottish Equitable ought to have understood that didn't mean that the named adviser was necessarily also providing personal pension transfer advice to Mr C. So I don't think that this information was a substitute for contacting Mr C to ask that question.

Scottish Equitable didn't ask Mr C for any more information or clarification on any of the points that it identified as necessary due diligence. And I don't think that was reasonable. It meant that Scottish Equitable failed to determine whether Mr C was being advised and whether that adviser was regulated. If it had contacted him I think that he would have responded to explain that he was being advised to transfer by Choices Wealth Limited (as I have explained above). Whilst I appreciate Scottish Equitable might already have suspected this, it would also have been able to confirm categorically that Mr C's SSAS had a recently-established employer which was not genuinely employing him – in other words, this was the type of potential scam that the FCA was highlighting.

The check list recommends that in order to establish whether its member has been advised by a non-regulated adviser, the ceding firm should "check whether advisers are registered with the FCA at www.fca.gov.uk/register". In other words, they should consult the FCA's online register of authorised firms. Scottish Equitable 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 Scottish Equitable should have been concerned by Choices Wealth 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 Scottish Equitable have told Mr C – and would it have made a difference?</u>

I think Scottish Equitable's failure to uncover this risk of illegal advice, and then warn Mr C about it, meant it didn't meet its obligations under Principles 2, 6 and 7 and COBS 2.1.1R. With those obligations in mind, it would have been appropriate for Scottish Equitable to have informed Mr C that the firm he had been advised by was unregulated and could put his pension at risk.

Having said that, I have to also consider whether Scottish Equitable's failure to identify and bring this specific detail to Mr C's attention would have made a difference. And, for the following reasons, I'm not persuaded that it would have done.

I understand that it is difficult to determine how Mr C may have responded to information that he didn't actually receive. But in this case I think that the warnings that he did get provided very similar cause for concern. They were more general, so not perhaps as specific as the warning that Scottish Equitable may have been able to give had it done more thorough due diligence.

Being referred to a warning about scams, which was provided by the FCA, ought to have had an impact. The potential scam the FCA was referencing was very similar to his transfer referring, as it did, to: free pension reviews; being persuaded to transfer to a SSAS; investing in unregulated investments like overseas property; and advisors not being authorised by the FCA. Mr C was asked to sign a disclaimer by Scottish Equitable on receipt of that information, which he did. So I am satisfied that he received the FCA warning. I don't think it was reasonable to have ignored the content of that letter given that the content of the warning so closely resembled the circumstances of Mr C's transfer and provided what I think was a clear explanation about unauthorised advice and how to check if an adviser was authorised.

As Mr C failed to react to the warning letter that Scottish Equitable sent him on 12 June 2014 (which was intended to provide consumers with the information needed to prevent their falling victim of these types of scams), then I'm not persuaded that Mr C would, more likely than not, have responded any differently to being told that Choices Wealth Limited were not in fact authorised to provide advice."

Responses to my provisional decision

Scottish Equitable offered no further evidence or arguments.

Mr C's CMC responded to explain that Mr C didn't agree with my provisional decision. I have read and considered its detailed submission in full although I've only summarised its arguments here:

- It listed circumstances that it considered relevant to the transfer but that were not referred to in my provisional decision.
- It didn't consider that the letter Scottish Equitable sent Mr C followed due diligence but was a standard leaflet.
- It disagreed with my provisional finding on causation. Instead arguing that Mr C ought to have been specifically informed of all of the warning signs present in his transfer, which it considered would, more likely than not have changed his mind.
- It drew comparisons with another decision from our service that it considered similar.

And suggested that, as in that case, upholding the complaint with a deduction to allow for contributory negligence would be more appropriate.

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 know that Mr C's CMC is aware, but for Mr C's benefit, our service exists to provide a free and impartial way for consumers and regulated firms to resolve disputes with a minimum of formality. Which is why, in my provisional decision and in this final decision, I have not commented on everything that Mr C or his CMC consider relevant. I have focussed on those things that most directly impact the reasons for reaching the decision that I have. I will also point out that, in addition to the relevant rules and guidance that I referred to in my provisional decision, I am aware of the answers that our service has given in other cases like this. However, my decision on this case will be based on its evidence and circumstances, which are sufficiently different to the case that Mr C's CMC has tried to draw parallels to.

In my provisional decision, I explained why I thought Scottish Equitable didn't do enough. I didn't comment on all of the things that could initially have alerted it to there being risks present in Mr C's transfer request because I considered that it had identified the risk by the actions that it took. So, for the reasons I gave in my provisional decision, I think that Scottish Equitable ought to have turned to the check list in the 2014 Action pack in order to fully assess the risks for Mr C's transfer. This conclusion has not been contested so I will not comment further on this finding.

For the reasons that I set out in my provisional decision, I think that it would not be fair and reasonable to conclude that Scottish Equitable didn't identify some concerns. I documented what Scottish Equitable explained was its due diligence process in my provisional decision and I will not repeat it. And I have no reason to suppose that it wasn't, through following it, what led to it writing directly to Mr C with the warning that it did.

I still think that Scottish Equitable's due diligence appeared to fall short of what I would expect were it following the check list in the Action pack more closely. But many of the warning signs in that check list would already have been apparent from the information that it had. Such as a recently established scheme and overseas investments. But I still consider that, for the same reasons that I gave in my provisional decision, Scottish Equitable ought also to have been alerted to the risk of Mr C being advised by a party not regulated to do so.

So, my decision is that Scottish Equitable ought to have done more thorough due diligence, and may then have provided additional and specific warnings to Mr C. Key in this was the potential impact of warning Mr C of the risks of following unauthorised financial advice, as I find this was the warning most likely to have concerned Mr C.

Causation

As I addressed in my provisional decision, I need to also decide whether or not Scottish Equitable's omission had a causation link to Mr C's loss. Or more specifically in a case like this, whether Mr C's loss would, more likely than not, have been prevented had Scottish Equitable done what I've decided it should have.

At this point I will also address Mr C's CMC's suggestion that an element of contributory negligence may be appropriate in this case. Which is based on a legal principle where courts are able to reduce a defendant's liability for negligence, where the claimant shares responsibility for the damage they've suffered. Similarly, in order to consider the question of contributory negligence I must first decide that, but for Scottish Equitable's actions Mr C's loss would not have occurred. For the reasons I'll explain I am still not persuaded that, it's more likely than not, that a specific warning along the lines that Mr C's adviser was not regulated would have made a difference.

The implication of my decision is that Scottish Equitable ought to have found out more information than it did and that may have enabled it to have tailored its warning to Mr C differently. But it is fair and reasonable that I take into account the fact that it still took some action to warn Mr C about the transfer he'd requested. And consider the way Mr C responded to that.

Scottish Equitable's letter of 12 June 2014 required Mr C to sign an indemnity form before it would agree to transferring his funds. And the letter strongly recommended that Mr C take independent regulated advice and how to find such advice. It told Mr C that he should only go ahead if he fully understood the nature of the investments and that the risks of those was suitable. And it said that he should consider how liquid any investment should be. And told him that transferring to a SSAS may mean his pension was no longer protected by the Financial Services Compensation Scheme or the Financial Ombudsman Service. I think this should have highlighted a number of things that Mr C should have been aware of and looking into further.

Scottish Equitable also enclosed a copy of the FCA's '*Protect your pension pot'* warning bulletin. I set out in my provisional decision above a summary of what that included. Mr C's CMC has said that wouldn't have been as impactive for Mr C as a letter specifically pointing out the warning signs of his transfer as it focussed on a pension transfer starting with a cold call, which didn't happen in this case. But I don't think that fairly recognises the content of the correspondence as a whole. The accompanying letter ought to have given Mr C reason to look at the warning in full.

The FCA warning document Mr C received was only two pages and I think, in the context of the letter that it came with, Mr C ought to have read it. It opened by saying, "*find out why you need to be wary if you are offered a "free pension review" out of the blue and encouraged to move your pension to get better returns".* I think this ought to have appeared relevant enough to Mr C even if he wasn't cold called, referring as it did to a free review like his. And the rest of the document went on to explain those things I set out in my provisional decision. And of those things: not being charged for pension advice; transferring to a SSAS; investing in overseas property developments, were of specific relevance to Mr C's circumstances. So, whilst not the same as being specifically told that the firm advising him was not legally regulated to do so, I still think that these features of this warning letter were relevant and should have had a significant impact.

The letter summarised the risks of such schemes as: unregulated investments being high risk; returns being unreliable; investments being difficult to sell; losing everything invested; limited protection if something goes wrong with the investment. I think that the awareness of these risks in relation to some of the above features that Mr C would have known were relevant to his transfer should have caused him to have looked into this further. And seeking independent financial advice, as suggested in Scottish Equitable's letter and the FCA warning, would have been a reasonable place to start. And this would likely have led Mr C to have been advised against the transfer that he was about to make.

I can't say why Mr C didn't react to the warnings that he received in a more positive way. But I think that it is fair and reasonable to take into consideration the warnings that he was sent and the way he responded to that when deciding how he may have reacted if he'd been given a different warning.

Mr C’s CMC has said that there were six warning signs that Scottish Equitable should have been alerted to and should have shared with Mr C. It lists those as:

- Advice from an unregulated firm
- A newly registered SSAS
- A newly registered sponsoring employer
- A dormant company
- An employer that didn’t employ Mr C
- An intended overseas investment

The FCA factsheet set out a warning that contained some of these features. Such as receiving unregulated advice, transferring pensions to a SSAS, and investing in overseas property. My point is that Mr C received equivalent, key warnings in this material although the fact sheet wasn’t specific about whether Mr C’s adviser was regulated. So being informed of that fact is the thing that I considered to have been most significant in my provisional decision because it was something that Mr C may not already have been aware of. The other five are all things that Mr C would already have been aware of and he could weigh up the significance of those in reference to the FCA factsheet he received.

I have carefully considered whether being told that he was following a recommendation from someone not regulated to do so would have been a risk warning that Mr C could not have ignored. But in this case, I am not persuaded that it is sufficiently different from the risks, of harm, that were highlighted to him already that he failed to act on. He was made aware, albeit more generally, of the above warning signs and the serious consequences set out clearly in the ‘*Protect your pension pot’* document. It not only stressed the importance of checking that an adviser was authorised by the FCA but explained how to check that. Given the overall content of the fact sheet I think that a reasonable person would have checked that. And ended up in the same position that they’d have been in if Scottish Equitable had given that warning. The fact that the risk warnings Mr C received (which were relevant to his circumstances) failed to have an impact means that I am not persuaded that, on a balance of probability, a more specific warning of the type I’ve highlighted would have caused Mr C to act any differently.

My final decision

For the above reasons I am not upholding Mr C’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C to accept or reject my decision before 22 August 2024.

Gary Lane
Ombudsman