DRN-4932953

The complaint

Ms C has complained about a transfer of her Scottish Equitable Plc trading as AEGON (Scottish Equitable) personal pension to a small self-administered scheme (SSAS) in 2014. Ms C's SSAS was subsequently used to invest in storage pods and parking spaces. The investments now appear to have little value. Ms C says she has lost out financially as a result.

Ms C says Scottish Equitable:

- Failed in its responsibilities when dealing with the transfer request.
- Should have done more to warn her of the potential dangers of transferring.
- Should have undertaken greater due diligence on the transfer, in line with the guidance she believes was required of transferring schemes at the time.

Ms C says that if Scottish Equitable had acted as it should have done, she wouldn't have transferred. So, she wouldn't have put her pension savings at risk.

Professional representatives have helped Ms C to bring this complaint. But, for ease of reading I will refer to the representatives' comments as being Ms C's.

Provisional decision

On 3 April 2024 I issued a provisional decision setting out my likely conclusions and inviting comments on those. For ease of reference I've repeated that information below.

'***What happened***

Ms C says she became interested in a pension transfer after talking with a friend about pensions. He introduced her to an advisor working for a company called CIP.

On 17 February 2014, Ms C signed a letter of authority allowing CIP to obtain details, and transfer documents, in relation to her Scottish Equitable pension. The same day, CIP wrote to Scottish Equitable, enclosing Ms C's letter of authority and information request.

Scottish Equitable sent CIP the requested information on 26 February 2014. CIP wasn't regulated by the Financial Conduct Authority.

CIP recommended Ms C invest her pension funds in a storage pod and parking spaces. The CIP adviser told her he had invested in those things himself and they were a good investment involving no risk, which was attractive to her.

In March 2014, a company was incorporated with Ms C as director and registered from her home address. The company was named after where Ms C lived and her year of birth. I'll refer to this company as H. Subsequently, Ms C signed documents to open a SSAS. Rowanmoor Group PLC ("Rowanmoor") was the SSAS provider and Rowanmoor Trustees Limited were shown as the payee to receive the funds. The SSAS was named as an executive pension for H.

In early July 2014 Rowanmoor applied to transfer the funds from Ms C's Scottish Equitable personal pension to the recently set up SSAS, using the Origo transfer system[1]. The application named the Return on Capital Group (RoC) as the financial adviser connected with the transfer. Scottish Equitable transferred Ms C's pension fund of £77,285.45 on 16 July 2014. At that time she was 51 years old.

Following the transfer £61,105 was moved to a company called Hetherington Partnership. I understand that was a law firm which represented a group of companies known as Group First. Those companies offered investments in storage pods (Store First) and parking spaces (Park First). Ms C's SSAS has received a series of investment income payments, including £6,000 in November 2017, which came from one of Store First's trading companies. However, she has not received any money since and I'm aware the FCA began legal proceedings against Park First Limited in October 2019. As far as I'm aware that matter has not been concluded, but I understand that the company is currently going through liquidation proceedings.

In the meantime, in May 2020, Ms C complained to Scottish Equitable. Briefly, she said it didn't carry out required due diligence and checks to find out how the transfer came about and gave information to an unregulated adviser. She said giving pension advice while unregulated was unlawful.

Scottish Equitable didn't uphold the complaint. It said it had received the transfer request via the Origo system. It said that due diligence was carried out on each entity using that system and those which did not meet the required standards were not allowed to use it.

Scottish Equitable added that Rowanmoor was a well-known and reputable company, which it had no concerns about. It added that it's not responsible for advising customers on their investments or liable for any losses as a result of those investments. Instead it's required to assess whether the receiving scheme will be appropriately run. And it was satisfied that Rowanmoor met that criterion and the scheme was appropriately registered with HMRC. It was also satisfied it had carried out appropriate due diligence.

Ms C didn't accept Scottish Equitable's response. She said that relying on the Origo system for due diligence was insufficient. She referred Scottish Equitable to the guidance issued by The Pensions Regulator (TPR) in 2013, known as the Scorpion guidance (owing to the imagery used on it). She added that guidance sets out the key checks that ceding schemes like Scottish Equitable had to carry out. Ms C noted in particular that the request for transfer documents came from an unregulated adviser and the transfer was to a SSAS.

Scottish Equitable replied. Amongst other things it referred to a Code of Practice issued by the Pension Scams Industry Group ('PSIG') in March 2015. Scottish Equitable said that while that Code wasn't in place at the time of Ms C's transfer it had met the standards set out in the Code. It said that as Rowanmoor used the Origo system to arrange the transfer that was akin to being part of a "recognised 'club' or group transfer (e.g. Public Sector Transfer Club, known group or recipient)". And so Scottish Equitable was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

Ms C brought her complaint to us. One of our Investigators looked into it. He didn't think Scottish Equitable had dealt with Ms C fairly. He noted that the adviser named on the transfer wasn't regulated and as such he thought Scottish Equitable should have identified that, in giving pension transfer advice, the adviser was in breach of the relevant legislation

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[1] Origo is an electronic platform which allows the transfer of pensions and investments which can make transfers more efficient and reduce transfer times.

(see below). The Investigator believed the transfer wouldn't have happened if Scottish Equitable had carried out appropriate due diligence. He recommended that it should pay redress. Scottish Equitable didn't agree with our Investigator's complaint assessment.

As the matter wasn't resolved informally, it was passed to me to decide.

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.

The relevant rules and guidance

The Financial Conduct Authority (FCA) regulate personal pension providers. Prior to that the Financial Services Authority (FSA) regulated them. As such Scottish Equitable was subject to the rules and guidance set out in 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. The scheme member may also have a right to transfer under the terms of the contract. These rights 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[2] – when TPR issued the Scorpion guidance.

The Scorpion guidance was described as a cross-government initiative by Action Fraud, The City of London Police, HMRC, the Pensions Advisory Service (TPAS), TPR, the Serious Fraud Office (SFO), and the FSA/FCA, all of which endorsed the guidance, allowing their names and logos to appear in Scorpion materials. The guidance comprised the following:

- *An insert for transferring schemes to include in transfer packs (the 'Scorpion insert'). The insert warns readers about the dangers of agreeing to cash in a pension early and identifies a number of warning signs to look out for.*
- *A longer leaflet issued by TPAS which gives more information, including example scenarios, about pension liberation. Guidance provided by TPR on its website at the*

[2] *Liberation is a type of scam where pensions are accessed in an unauthorised way (before minimum retirement age, for instance). This can leave victims paying punitive tax charges to HMRC and having to deal with the consequences of having their pension invested in an inappropriate way.*

time said this longer leaflet was intended to be sent to members who had queries about pension liberation fraud.

- *An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "look out for" various warning signs of liberation. If any of the warning signs applied, the action pack provided a checklist that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where transferring schemes still had concerns, they were encouraged to write to members to warn them of the potential tax consequences of their actions; to consider delaying the transfer; to seek legal advice; and to direct the member to TPAS, TPR or Action Fraud.*

TPR issued the guidance under the powers at s.12 of the Pension Act 2004. So, 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. Similarly, the communications about the launch of the guidance were predominantly expressed in terms that made its non-obligatory status clear. So, the tone 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, which means it wasn't mandatory to follow. That's because it wasn't 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.

So, 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 the evolution of the regulatory landscape concerning pension liberation and scams. That's because it provided, for the first time, a prompt to personal pension providers to take a more active role in assessing transfer requests. The guidance was a response to widespread abuses that were causing pension scheme members to suffer significant losses. And its specific purpose was to inform and help transferring schemes when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

In those circumstances, from February 2013 onwards I consider firms dealing with transfer requests needed to pay regard to the contents of the Scorpion guidance as a matter of good industry practice. That's because, in order to fulfil their requirements under the regulator's Principles and COBS 2.1.1R there was a greater expectation of what personal pension providers must do when responding to transfer requests.

<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. But, I do think they should have paid heed to the information it contained. And where the recommendations in the guidance applied, without 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. So, I take the view that personal pension providers dealing with transfer requests needed to have due regard to the following:

1. As a first step, a transferring scheme needed to check whether the receiving scheme was validly registered.

2. When TPR launched the Scorpion guidance in February 2013, its press release said the Scorpion insert should be provided in the information sent to members requesting a transfer. It said on its website that it wanted the inclusion of the Scorpion insert in transfer packs to "become best practice". The Scorpion insert provided an important safeguard for transferring members, allowing them to consider for themselves the liberation threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. So, all things considered, I think the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party – an unregulated introducer, say.

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

4. The Scorpion guidance asked firms to look out for the tell-tale signs of pension liberation scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The action pack 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 Ms C's recollections</u>

Ms C told us that she'd spoken with a friend about pensions. He wasn't connected with the pensions industry but had invested his pension funds in a development abroad. He introduced her to CIP's advisor who had advised on and arranged that for him. Ms C wasn't keen on investing abroad but instead the adviser persuaded her to invest in a storage pod and parking spaces. The CIP adviser didn't offer any cash incentive or loan, nor did he suggest she could access her pension early through means of some form of loophole or other method of pension liberation. Instead he told her he had invested in similar things himself; and said this was a good investment with no risk. Ms C accepted CIP's recommendation.

<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 instance Scottish Equitable received the transfer request through the Origo system. So neither Ms C, Rowanmoor nor her adviser requested a transfer pack. But, as I've indicated above, I don't think that means it was reasonable for Scottish Equitable not to give any form of warning to Ms C. And, at the least, if it didn't want to issue the Scorpion insert then I think it should have brought the warnings the insert gave to her attention. But it didn't do so. Instead it went ahead with the transfer without contacting Ms C or giving her any sort of warning. So I don't think it did enough.

Due diligence:

In light of the Scorpion guidance, I think firms like Scottish Equitable ought to have been on the look-out for the tell-tale signs of pension liberation. So they needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk.

The Scorpion guidance at that time referred to six warning signs and said if any one was present then transferring firms needed to run through the checklist later in the guidance to find out more about the transfer. In this case the first warning sign the guidance refers to was present. That is that Ms C's SSAS was recently registered. I accept that date wouldn't have been clear from the Origo request. But in checking the SSAS was correctly registered – which Scottish Equitable would have needed to have done – it would have identified the date that happened. And, in Ms C's case that had happened recently.

So it should have followed up on this to find out if other signs of liberation were present. Given this warning sign, I think it would have been fair and reasonable – and good practice – for Scottish Equitable to look into the proposed transfer in more detail. And I think the most reasonable way of going about that would have been to turn to the checklist in the action pack to structure its due diligence into the transfer.

Scottish Equitable has argued that it was common for SSASs to be set up fairly recently. So that didn't raise any concerns for it. But I've seen nothing within the Scorpion guidance which indicated that SSASs should be exempt from the due diligence process. And, as I explain in more detail below, I don't think Rowanmoor's involvement should have led Scottish Equitable to dismiss this clear warning sign.

The checklist 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. In this case, given the limited information the Origo system provides I think this would have required Scottish Equitable to contact Ms C. The checklist 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 for Scottish Equitable to follow the checklist in its entirety. And I don't think an answer to any one single question on the checklist would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the checklist to establish whether there was a realistic threat. Given the warning sign that should have been apparent when dealing with Ms C's transfer request, and the relatively limited information it had about the transfer, I think in this case Scottish Equitable should have addressed all three parts of the checklist and contacted Ms C as part of its due diligence.

What should Scottish Equitable have found out?

If Scottish Equitable had followed the questions in part 1 above it should have established that the SSAS was not only recently established but also connected to a company, which was registered to Ms C's home address, she was the sole director, it wasn't trading and Ms C wasn't actually employed by it in a meaningful sense.

Investigations into part two would at that time have, most likely, identified that Ms C wasn't offered any form of cash incentive to transfer nor told she could access her pension funds early. But she was originally advised to invest in hotels abroad, and/or later decided to invest in unregulated investment schemes concerned with parking and storage pods. All of these investments include some features that might be implicated in pension liberation (overseas, unregulated and/or unusual or creative techniques).

Following the checklist in part 3 Scottish Equitable would likely have learned that even though Ms C wasn't cold-called or receiving a cash payment from her pension, she originally took advice from an adviser/introducer working for CIP. But that firm was not regulated. And to muddy the waters further, the advising firm named on the Origo system was different as it was not CIP but RoC. That firm was also unregulated.

The checklist recommends that in order to establish whether its member has been advised by a non-regulated adviser, the transferring firm should "check whether advisers are registered". In other words, they should consult the regulator's online register of authorised firms. Scottish Equitable should have taken that step, which is not difficult, and it would quickly have discovered that neither CIP or RoC were authorised to provide advice.

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, so that includes Scottish Equitable, 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 the involvement of these firms because it pointed to a criminal breach of FSMA. On the balance of probabilities, I'm satisfied such a breach occurred here.

What should Scottish Equitable have told Ms C – and would it have made a difference?

I think if Scottish Equitable had identified the issues above, which, for completeness are: an unregulated adviser gave Ms C illegal advice; she was intending to invest in the types of scheme often used to liberate pension funds; and a SSAS, sponsored by an artificial employer was set up for the purposes of making that investment, then Scottish Equitable should have warned Ms C about the risks of transferring her pension. But it didn't provide any warnings. And I think its failures here mean it didn't meet its obligations under Principles 2, 6 and 7 and COBS 2.1.1R. With those obligations in mind, it would also have been appropriate for Scottish Equitable to have informed Ms C that the firm she had been advised by was unregulated and could put her pension at risk. Scottish Equitable should have said only authorised financial advisers are allowed to give advice on personal pension transfers, so she risked falling victim to illegal activity and losing regulatory protections.

I'm satisfied any messages along these lines would have caused Ms C to pause and to think again about the transfer. If the firm advising her wasn't regulated and was engaging in criminal activity in the act of advising her, I think that would have raised a very clear red flag - about whether she should continue to be involved with this adviser, and the investments and employer/pension scheme structure they had recommended.

I'm aware that Ms C initially sought advice after a friend gave her a recommendation to speak with CIP's adviser. And she said she trusted her friend's judgment, which gave her some comfort about the decision she was making to transfer and reinvest her pension funds elsewhere. But, Ms C's also told us that at that time she didn't seek advice from any other source. She didn't realise she was putting her pension at risk. And it's notable that, while she patently valued her friend's opinion, she didn't invest in the same overseas investment that he'd told her about. Instead she accepted CIP's advice to invest in the parking spaces and storage businesses. So it's evident that she didn't enter the process with a definite strategy or goal in mind, that is to simply follow her friend's choices. Instead it's apparent that she listened to the CIP advisor and she accepted his recommendation to take a different course of action. I think it's very unlikely she would have concluded that process if Scottish Equitable had explained to her that the CIP's advice was most likely unlawful in its nature.

Also Scottish Equitable's messages would have followed conversations with Ms C so would have seemed to her (and indeed would have been) specific to her individual circumstances. The information imparted would have been given in the context of Scottish Equitable raising concerns about the risk of her losing pension monies as a result of untrustworthy advice. This would have made Ms C aware that there were serious risks in using an unregulated adviser, particularly one to make investments of a type which were unusual and unlikely to be regulated, even if she was not liberating her pension. I think the gravity of any messages along these lines would prompt most reasonable people to either change their mind or, at the very least, to seek further guidance from TPAS (as suggested in the action pack) or advice from a properly regulated adviser before proceeding. And, I think it's more likely than

not that this guidance or advice would have told Ms C that the investments she was considering were extremely high risk, unwise and outside of her attitude to risk.

I've seen no persuasive reason why Ms C would have acted differently to the majority of people in those circumstance. So, I consider that if Scottish Equitable had acted as it should, Ms C wouldn't have proceeded with the transfer out of her personal pension or suffered the investment losses that followed.

The cause of Ms C's loss

I bear in mind that this complaint is similar to the type of claim that in legal proceedings would be treated as a claim for damages for negligent failure to give someone the information or advice to which they were entitled. In that kind of case, the court asks itself whether there is a sufficient connection between the harm for which the claimant seeks damages as compensation and the subject matter of the defendant's duty of care. The court looks to see what risk the defendant's duty was supposed to guard against and whether the claimant's loss represents that particular risk coming to fruition.

So, it's important I bear in mind that the Scorpion guidance was directed towards protecting people from the risk of pension liberation and that doesn't appear to have happened here. Ms C suffered a loss because she accepted unsuitable advice from an introducer who wasn't authorised to act as a financial adviser at all. So it wasn't (as far as can be established taking into account what Ms C has said) a case of Ms C seeking to cash in a pension in an unauthorised way.

Nonetheless, the circumstances that gave rise to this complaint were very similar to those of a pension liberation scam. That's because the transfer followed a recommendation from an unauthorised business. It then involved the setting up of a new pension scheme to house an investment and the involvement of recently established businesses. The Scorpion action pack and insert both recommend checking that financial advice comes only from an authorised person by verifying details on the regulator's register. And Scottish Equitable's obligations under the Principles and COBS were of general application and went well beyond just protecting its customers from pension liberation. In the circumstances, even though this doesn't appear to be a case of pension liberation, I'm satisfied there is sufficient connection between the harm Ms C wants to be compensated for and the risk that Scottish Equitable had a duty to guard against. So I do consider it fair and reasonable for Scottish Equitable to compensate Ms C for her losses.

Other arguments

Scottish Equitable has argued that Origo would already have completed due diligence checks on the receiving scheme's administrators. So Scottish Equitable didn't need to do its own due diligence. But, Scottish Equitable hasn't provided any details on what exactly Origo's due diligence involved or what it did in this respect. And I think that points to the problem here, which is that Scottish Equitable relied on due diligence conducted by a third party even though it doesn't appear to have really known what that due diligence involved. So I don't think Scottish Equitable's approach was good enough here.

I'm not sure why Scottish Equitable thinks that guidance which wasn't issued by the Pension Scams Industry Group (PSIG) until March 2015 is relevant to a transfer completed in July 2014. But for the avoidance of doubt I wouldn't have been persuaded that the entire Origo system was what PSIG had in mind in later referring to a "recognised 'club' or group" of schemes here. Or that this would have been a fair and reasonable way of interpreting that guidance when viewed through Scottish Equitable's wider regulatory obligations.

The purpose of the due diligence in question was aimed at preventing pension liberation. And, by doing so, that could avoid the loss of entire pension funds. Scottish Equitable had duties under the provisions of the Principles and COBS 2.1.1R to take the necessary steps to prevent that happening. And the Scorpion guidance was clear what those steps were. But Scottish Equitable didn't follow them and instead relied on the due diligence carried out by a third party. As I've said above, I don't think that went far enough.

I note that at the time of the transfer Rowanmoor was a long established SSAS provider and had some repute in the industry. Rowanmoor Trustees Limited also had legal and fiduciary duties as a professional trustee. Scottish Equitable has argued that Rowanmoor's reputation essentially absolved it from the need for further due diligence or investigation. I disagree.

The Scorpion guidance gave transferring 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 transferring 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, Scottish Equitable was assuming, in effect, that Rowanmoor would want to maintain its standing in the industry and the trustee subsidiary would comply with its legal and fiduciary duties. In the context of guarding against pension scams – and an environment where providers and trustees clearly didn't always act as they should have done – I don't consider this to have been a prudent assumption.

The fact that a different part of the Rowanmoor Group was regulated by the FCA doesn't change my thinking on this. The key point is that Rowanmoor Trustees Limited wasn't FCA-regulated. So I see no reason why it would have operated with FCA regulations and Principles in mind – or why its actions would have come under FCA scrutiny. As such, I'm not persuaded Scottish Equitable could, reasonably, have derived sufficient comfort about the Rowanmoor SSAS as a destination for Ms C's transfer.

<u>Summary</u>

For the reasons given above I think Scottish Equitable should have taken more robust action when presented with the facts.

Had Scottish Equitable reacted appropriately to the warning signs as set out in my findings above, it would have followed the Scorpion guidance and began further enquiries. I think those would have uncovered that Ms C was in danger of putting her pension funds at risk by going ahead with the transfer.

But Scottish Equitable didn't begin those investigations. Instead it relied on due diligence carried out by a third party firm. A third party that stood to gain in terms of being paid fees, from the transaction and the ongoing provision and trusteeship of the SSAS. And on an assumption that an industry electronic transfer system would have adequately 'vetted' that firm without knowing what process that would have entailed. As I've said above I don't think that was enough. And, as a result of Scottish Equitable's omissions I think that led to the losses Ms C suffered. It follows that I think it's fair and reasonable for Scottish Equitable to take the action set out below to put things right.

Putting things right

Fair compensation

My aim is that Ms C should be put as closely as possible into the position she would probably now be in if Scottish Equitable had treated her fairly.

The SSAS only seems to have been used in order for Ms C to make an investment that I don't think she would have made from the proceeds of this pension transfer, but for Scottish Equitable's actions. So I think that Ms C would have remained in her pension plan with Scottish Equitable and wouldn't have transferred to the SSAS.

To compensate Ms C fairly, Scottish Equitable should subtract the actual value of the SSAS from the notional value if the funds had remained with Scottish Equitable. If the notional value is greater than the actual value, there is a loss.

Actual value

This means the SSAS value at the date of my Final Decision. To arrive at this value, any amount in the SSAS bank account is to be included, but any overdue administration charges yet to be applied to the SSAS should be deducted. Ms C may be asked to give Scottish Equitable her authority to enable it to obtain this information to assist in assessing her loss.

My aim is to return Ms C to the position she would have been in but for Scottish Equitable's actions. 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 investments Ms C made via the Hetherington Partnership. This is because the Hetherington Partnership's partners were struck off by the Solicitors Disciplinary Tribunal in 2021 for facilitating inappropriate investments in storage pods and parking spaces. Although Store First still appears to be trading, I'm not aware there is any established market for the storage pods – they are not traded, for instance, on a recognised exchange. I would regard these as illiquid.

And four of the Park First companies, in which the Hetherington Partnership generally invested client monies in, went into administration in 2019. So in order to resolve the issues with illiquidity, as part of its compensation calculation:

- *Scottish Equitable should seek to agree an amount with the SSAS as a commercial value for the illiquid investments above, then pay the sum agreed to the SSAS plus any costs, and take ownership of those investments. The actual value used in the calculations should include anything Scottish Equitable has paid to the SSAS for illiquid investments.*

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

- *It's also fair that Ms C should not be disadvantaged while she is unable to close down the SSAS. So to provide certainty to all parties, if these illiquid investments*

remain in the scheme, I think it's fair that Scottish Equitable should pay an upfront sum to Ms C equivalent to five years' worth of future administration fees at the current tariff for the SSAS, to allow a reasonable period of time for the SSAS to be closed.

Notional value

This is the value of Ms C's funds had she remained invested with Scottish Equitable up to the date of my Final Decision.

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

Payment of compensation

There doesn't appear to be any reason why Ms C needed a pension arrangement that wasn't privately held, administered by an established provider and under FCA regulation. So I don't think it's appropriate for further compensation to be paid into the SSAS.

Scottish Equitable should reinstate Ms C's original pension plan as if its value on the date of my Final Decision was equal to the amount of any loss established from the steps above (and it performs thereafter in line with the funds Ms C was invested in).

Scottish Equitable shouldn't reinstate Ms C's original plan if it would cause a breach of any HMRC pension protections or allowances – but my understanding is that it will be possible for it to reinstate a pension it formerly administered in order to rectify an administrative error that led to the transfer taking place.

If Scottish Equitable is unable to reinstate Ms C's pension and it is open to new business, it should set up a new pension plan with a value equal to the amount of any loss on the date of my Final Decision. The new plan should have features, costs and investment choices that are as close as possible to Ms C's original pension.

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

If it's not possible to set up a new pension plan, Scottish Equitable should pay the amount of any loss direct to Ms C. But if this money had been in a pension, it would have provided a taxable income. Therefore compensation paid in this way should be notionally reduced to allow for any income tax that would otherwise have been paid. (This is an adjustment to ensure that Ms C isn't overcompensated – it's not an actual payment of tax to HMRC.)

To make this reduction, it's reasonable to assume that Ms C is likely to be a basic rate taxpayer in retirement. So, if Ms C has yet to take her 25% tax-free cash from the SSAS, only the remaining 75% portion would be taxed at 20%. This results in an overall reduction of 15%, which should be applied to the compensation amount if it's paid direct to her in cash.

Alternatively, if Ms C has already taken her 25% tax-free cash from the SSAS, the full 20% reduction should be applied to the compensation amount if it's paid direct to her in cash.

If payment of compensation is not made within 28 days of Scottish Equitable receiving Ms C's acceptance of my Final Decision, interest should be added to the compensation at the rate of 8% per year simple from the date of my Final Decision to the date of payment.

Income tax may be payable on any interest paid. If Scottish Equitable deducts income tax from the interest, it should tell Ms C how much has been taken off. Scottish Equitable should give Ms C a tax deduction certificate in respect of interest if Ms C asks for one, so she can reclaim the tax on interest from HMRC if appropriate.

This interest is not required if Scottish Equitable is reinstating Ms C's plan for the amount of the loss – as the reinstated sum should, by definition, mirror the performance after the date of my Final Decision of the funds in which Ms C was invested.

Ms C or Scottish Equitable must respond to let us know if they intend to dispute any of the following as soon as possible:

- *the assumption that Ms C will be a basic rate taxpayer in retirement*

- *the assumption of nil value for Park First and Store First investments at the date of my Final Decision*

This is so that these assumptions can be revisited and Ms C receives appropriate compensation. It won't be possible for us to amend these assumptions if a Final Decision is issued on the complaint.

Scottish Equitable should provide details of the calculation to Ms C in a clear, simple format.

Developments

Both Scottish Equitable and Ms C replied to my provisional decision.

Ms C was happy with my provisional findings and made some additional comments in support of her complaint. She also raised some queries as to how the redress would be paid to her. She added that when providing his assessment of the complaint the Investigator had recommended Scottish Equitable pay her £150 to address her distress and inconvenience and said I should award that sum in my final decision.

Scottish Equitable didn't agree with my conclusions. Amongst other things it said it accepted that it wasn't entitled to rely on Origo to perform due diligence on its behalf and it couldn't evidence due diligence of its own. But it didn't believe that, if it had done so, it would have identified the risk of a pension scam. So it would have acted in the same way.

Scottish Equitable said that at the time Rowanmoor enjoyed a good reputation as Scottish Equitable had dealt with hundreds of transfer requests from it every year for a number of years without concerns. Scottish Equitable added that Rowanmoor Trustees Limited were reputable professional trustees who had a considerable industry presence and good reputation for the provision of trustee services to SSASs. It said Rowanmoor Trustees Limited remain a company with considerable financial backing.

In addition Scottish Equitable said the focus of the Scorpion guidance was the risk of liberation and my provisional decision confirmed there was no liberation. So it said it was under no obligation to send the Scorpion guidance as no such risks were identified. It added that it didn't believe there was a causal link between the non-issue of the Scorpion leaflet and Ms C's later losses. And even if it had issued the leaflet that was unlikely to have

influenced Ms C's actions in investing as she did because the warning signs the leaflet referred to didn't match her situation and Rowanmoor would have reassured her as to its standing.

Scottish Equitable also said the fact the SSAS was recently registered was not a warning sign, in a similar manner to a recent registration of an occupational pension scheme. It referred to a decision of the Pensions Ombudsman which it believed supported its view (CAS-46114-K5R2). It quoted the following from that decision:

"*The Scheme was only registered with HMRC on 30 September 2014. However, the Scheme was only established as a SSAS for the sole purpose of a transfer and Mr Y was the only member. The date that the Scheme was registered with HMRC was unlikely to be a cause for concern given the nature of the transfer and receiving scheme*."

Scottish Equitable further argued that it had no reason to believe that CIP provided advice or any other regulated activity to Ms C. The transfer request came from Rowanmoor Trustees Limited and Rowanmoor was responsible for ensuring the security of Ms C's pension.

Also Scottish Equitable said it understands it was Rowanmoor's practice to issue scheme members, like Ms C, with an assessment of the risks of the chosen investments. It asked us if Rowanmoor had provided such an assessment and if so if we could supply it. It said that if we had not considered such information then we could not arrive at a fair and reasonable conclusion.

Scottish Equitable went on to say that it was unsure why Ms C did not pursue her complaint against Rowanmoor directly. It also commented that I had not considered the extent to which Rowanmoor and Ms C, as the sole member trustee of the SSAS, were liable for any loss. It referred to another Pensions Ombudsman decision which held Rowanmoor liable for 80% of the consumer's losses in similar circumstances, noting that it held the consumer himself, as the other trustee, responsible for the remaining 20% of the loss. It said I should consider the trustees' role alongside that of Scottish Equitable and attribute liability accordingly.

In the interests of completeness I requested a copy of Rowanmoor's evidence which it had previously given to Ms C's representatives in reply to a subject access request. Having reviewed that information I identified two factual errors in the background information in my provisional decision. The first is that I referred to the Hetherington Partnership as representing Group First. But in this case that wasn't accurate. While Group First referred its clients to the Hetherington Partnership, the partnership purportedly acted for Ms C and not Group First.

I also said that Ms C had not received any further income from her Group First investments since 2017. But she received further returns of roughly £550 in total across 2018 and 2019. I'm not aware of any other returns since then. However, neither of these facts would have caused me to vary my provisional determination.

At Scottish Equitable's request we shared some of the additional information received with it. It then made some further comments. I've summarised its key points below.

It said the business operating Ms C's storage unit was actively trading and Ms C could still receive an income from her investments. Scottish Equitable agreed that commercial property is not typically a liquid investment but said that doesn't mean it was the sort of 'scam' investment TPR's action pack targeted. So it said it wasn't appropriate to apply TPR's guidance intended to stop fraud, to investments which may have been mis-sold.

Similarly, Scottish Equitable referred to an FCA publication which said that it had secured funds, to be returned to investors from Park First. It said Ms C should be asked to confirm whether she had received any such payments.

Scottish Equitable remarked that the limitations and risks associated with the investment were clearly set out to Ms C prior to her investment. But she chose to proceed with the investment anyway. It repeated that it didn't believe that giving the Scorpion leaflet to Ms C would have made a difference. It said that the leaflet gave examples of overseas investments and guaranteed returns when these weren't features of her chosen investments.

Scottish Equitable added that Ms C's decision to continue with the proposed investments, after receiving information about the limitations and risks of those investments, broke the chain of causation and showed that Ms C would have gone ahead with her investments regardless of Scottish Equitable's actions. It said the cause of Ms C's losses was not the transfer from Scottish Equitable but her choice to go ahead with the investments.

Scottish Equitable again referred to a Pensions Ombudsman decision (PO-25984) which found that Rowanmoor Trustees Limited was responsible for a consumer's loss in similar circumstances to Ms C's. Scottish Equitable said it wouldn't be fair to find it responsible for Ms C's losses when there was a greater obligation on Rowanmoor, which knew more about the investments themselves than Scottish Equitable did, to act appropriately. It said Ms C had a statutory right to transfer out of her Scottish Equitable pension. But it was the failure of the SSAS trustees and administrator to perform their role which led to Ms C's losses.

On the question of redress Scottish Equitable said that Ms C should be asked to give it full rights to obtain information from Rowanmoor and its Trustees and any other relevant parties to pursue claims and retain any sums recovered. It said this would avoid Ms C receiving double compensation.

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.

Scottish Equitable said that I didn't have enough information to reach a fair and reasonable conclusion as I hadn't had sight of Rowanmoor's '*assessment of the risks associated with* [Ms C's] *chosen investments*'. As I've said above, in the interest of completeness, I asked to see the evidence Rowanmoor had sent to Ms C's representatives. And receipt of that evidence supported my initial thought that I didn't need to see further information from Rowanmoor in order to arrive at a fair decision.

I'll explain that, from other cases we've seen, we're aware that Rowanmoor's letters to scheme members tend to be fairly generic in nature. These letters were not an in-depth assessment of the specific investments involved or the risks they presented and they did not amount to advice about whether or not to continue with those investments.

The letters Rowanmoor sent to Ms C, which it issued to her in October 2014 – over two months after the transfer was completed – don't contain anything which I think should have persuaded Ms C to halt the investments. Rowanmoor sent two letters. The first, in relation to the car parking spaces pointed out that the Hetherington Partnership had investigated the title involved. Rowanmoor also noted that the Group First contracts included an option for a "break clause" which meant that any rental income returns were only guaranteed for two years. It also said that owning multiple units on a single title could raise issues if Ms C wanted to sell just one of those units. Rowanmoor's second letter to Ms C concerning the

storage pod ownership was similar in nature. Rowanmoor also enclosed a “report to client” from the Hetherington Partnership which gave a little more detail about the leases involved.

Having considered these carefully they do not, in my opinion, provide investment risk warnings likely to dissuade many investors. While the information contained, particularly about break clauses, did indicate that the returns from the investments were only guaranteed for two years, they still indicated a guaranteed return.

And in any event, Rowanmoor sent Ms C that information some months after she had received advice from an unregulated adviser and already executed the transfer. And Ms C’s evidence has been consistent with the recollections of other consumers who we’ve received similar complaints from. That is that they were advised that their investments would receive guaranteed returns. And it’s apparent that she followed that advice. That could have been prevented if Scottish Equitable had been clear that the adviser was acting in an unlawful manner. As I said in my provisional decision I think that message would have made Ms C sit up and think again about how trustworthy her adviser really was.

So I don't think Ms C proceeding with the investments after receiving Rowanmoor’s or the Hetherington Partnership’s letters is evidence that she was determined to go ahead with them at all costs. It follows that I also don't agree that she would have gone ahead with the transfer even if she'd received the appropriate warnings about accepting advice from an unregulated introducer. But Scottish Equitable didn't give Ms C any such warning.

I similarly don't agree that Ms C continuing with the investments broke the chain of causation. It’s possible the information she received from Rowanmoor might have led her to understand there were some risks involved but I don't think that would have shaken her faith in the advice that overall, it was still an investment worth making. And Scottish Equitable also didn't let her know that she was following the advice of a firm not authorised to give that advice and was giving it unlawfully. Nor did it make clear that she was putting her entire pension at risk by following that advice. Scottish Equitable had had the opportunity to provide such a warning but didn't do so. I think that was a key opportunity lost.

Scottish Equitable has now recognised that the involvement of Origo did not exempt it from doing its own due diligence. And it has now acknowledged that its inability to ‘*evidence’* any due diligence “*may have been a failing*”. But it’s said that even if it had carried out appropriate due diligence the outcome would have been the same.

Scottish Equitable has repeated that – at the time – Rowanmoor was a company of good repute. So, doing due diligence on Rowanmoor’s entities was unlikely to have uncovered any warnings. I accept that’s unlikely to have been the case. However, Scottish Equitable’s obligations didn’t stop at a due diligence consideration of Rowanmoor. And I don't think Rowanmoor’s reputation or volume of work gave pension providers like Scottish Equitable a free pass to evade their obligations.

The key point here is that the SSAS met a key criterion of the Scorpion warning information. That is, it was a recently set up scheme and I think that should have caused Scottish Equitable to contact Ms C, as set out in the Scorpion guidance and as I referred to in my provisional decision. The fact that Scottish Equitable might have been aware of numerous schemes involving Rowanmoor doesn't mean that it could dismiss every single one of those as not requiring any due diligence whatsoever. It may have been able to dismiss them if, after further analysis, other features of the transfer reassured it that liberation was unlikely to be a threat. But as I’ve explained, carrying out further analysis on this transfer would have revealed concerns, particularly about the advice Ms C was getting.

In support of its arguments Scottish Equitable has referred to a Pensions Ombudsman's decision. It's quoted his adjudicator (at an intermediate stage of an investigation) as saying that, in their opinion, the date of registration of the scheme was unlikely to have been a cause for concern. However, I don't think that reference helps Scottish Equitable because in his own determination on the same case, The Pensions Ombudsman's interpretation of the 2013 Scorpion guidance was that the personal pension provider concerned should have directly contacted the scheme member[3]. So I don't think The Pensions Ombudsman's decision here supports Scottish Equitable's argument. And I remain of the opinion that the recent registration of the SSAS should have prompted Scottish Equitable to contact Ms C, following the Scorpion checklist and where necessary give her the appropriate warnings. Had it done so, as I set out in my provisional decision, I believe those warnings would have ultimately caused Ms C to stop the transfer from going ahead. In those circumstances she would not have suffered the losses she did under the Rowanmoor SSAS.

I'll add that I provisionally found that Scottish Equitable should have sent Ms C the Scorpion warning leaflet. I haven't changed my opinion on that. In fact, having reviewed the file again, I can see CIP's initial request was in essence a request for a transfer pack – so Scottish Equitable also missed the opportunity to send Ms C the leaflet at that point. But I did not conclude that sending the leaflet alone would have prevented Ms C from going ahead with the transfer. And I recognised that Ms C's situation was not one where she was seeking to liberate her pension early in the manner the leaflet described. However, I think the provision of the leaflet, followed by appropriate warnings specific to Ms C and referring to unlawful advice would have together been enough to persuade her that she should either not go ahead with the transfer or should consider seeking independent guidance or regulated advice before doing so.

I appreciate that when it received the Origo transfer request Scottish Equitable did not know that Ms C had been advised by CIP. Nevertheless, a different firm mentioned as being the adviser on the Origo transfer request, RoC, was unregulated. So reference to RoC as adviser involved in the *transfer*, even if this was mentioned by Rowanmoor in error, should have caused Scottish Equitable to become concerned at the probability that Ms C was given unregulated advice to transfer a personal pension, a clear aspect that would have been in breach of FSMA.

And if, as I have already suggested, Scottish Equitable had taken the time to find out from Ms C how the transfer request had come about it would almost certainly have discovered at that point that she had taken unregulated advice and that CIP – another unregulated firm – was also involved in that advice. A clear warning sign of liberation or a scam. Whilst I accept she was not benefiting from early release pension liberation, the unregulated advice would have become a concern enough in and of itself because of Scottish Equitable's wider responsibility to act in Ms C's best interests and treat her fairly.

Further Ms C was only 51 at the time of the transfer, so below an age where she could take funds from her pension. And, while Ms C wasn't seeking to liberate her pension funds early in the way the Scorpion leaflet describes, Scottish Equitable had no way of knowing that before contacting her, as I consider it should have done. Instead it simply went ahead with the transfer without, as far as I can tell, taking any due diligence action itself at all. And if it had done so, as I've already said, I think that could have prevented Ms C from transferring her funds to an unnecessary SSAS with inappropriate investment vehicles that were at risk of being a scam.

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[3] Paragraph 30

In any event, the greater time that would have been needed for Scottish Equitable to discuss the warning it should have given to her – and in my view the likelihood that Ms C would have had cause to reflect on its warning – would most probably have taken the transfer beyond 24 July 2014. That was the point that TPR broadened its Scorpion campaign into wider concerns about scams in general – scams that weren't exclusively early release pension liberation but which were still being perpetrated by unregulated advisers.

The cause of Ms C's losses

I explained in my provisional decision why the circumstances that gave rise to this complaint were very similar to those of a pension liberation scam, given the presence of a recommendation from an unauthorised business and setting up a new pension scheme to house the investment. So, I said that I was satisfied that if Scottish Equitable had taken the action it should have done, in line with the Principles and COBS 2.1.1R then Ms C would not have lost the majority of her pension savings. I remain of that view.

Scottish Equitable has queried why Ms C chose not to complain directly to Rowanmoor. I asked her if, in fact she had taken that action. She told me that she had not complained about Rowanmoor Trustees Limited but had complained about the actions of Rowanmoor Executive Pensions Limited (the new name of Rowanmoor Group Plc which administered her SSAS).

But Ms C was under no obligation to complain about the actions of Rowanmoor Trustees Limited (a different entity) in order to pursue a complaint against Scottish Equitable. It's clear that she is unhappy about the actions of Scottish Equitable and feels that it has let her down. For the reasons given above I agree that it has. So she had every right to complain about Scottish Equitable if she chose to. As I've said above, I'm satisfied that if it had done what it should have done, then she wouldn't have suffered the losses she has done, regardless of Rowanmoor's subsequent actions.

Further as I understand it, regardless that it is part of a larger business 'group', Rowanmoor Trustees Limited is a distinct entity that carries its own liabilities. And, as far as I'm aware Rowanmoor Trustees Limited is a dormant trustee company which holds no assets[4]. So, while a different complaint to The Pensions Ombudsman about Rowanmoor Trustees Limited could potentially result in determination in Ms C's favour, there is nothing to indicate Ms C has made that different complaint. And even if she did do that, it seems unlikely that Rowanmoor Trustees Limited itself would have the funds from which to pay any settlement.

That said, Scottish Equitable is clearly concerned that after it has compensated Ms C she could receive compensation for the same loss from other sources. As I understand it The Pensions Ombudsman has yet to consider her complaint against Rowanmoor Executive Pensions. Ms C told us that she submitted that complaint when she did as she had concerns about the time limits The Pensions Ombudsman sets. She said that if her complaint against Scottish Equitable is successful she isn't expecting that complaint to proceed.

However, I think it's worth commenting that in the one decision it has published, the Pensions Ombudsman considered the involvement of both Rowanmoor entities - and concluded that Rowanmoor Executive Pensions was not to blame for the complainant's losses but rather Rowanmoor Trustees Limited was. And that's similar to The Pensions Ombudsman rejecting complaints against a number of other SSAS practitioners performing a purely administrative role.

[4] https://wbrgroup.co.uk/insights/wbr-group-statement-regarding-rowanmoor-trustees-limited

But, in the (seemingly) unlikely event that the Pensions Ombudsman did uphold a complaint against any Rowanmoor entity, or if Scottish Equitable thinks that other third parties have caused Ms C's loss, I think it would be reasonable for Scottish Equitable to take appropriate steps to address that. So it would be entitled to ask Ms C to sign an undertaking stating that if she received compensation from elsewhere for her losses flowing from the transfer of her Scottish Equitable pension which it has already compensated her for, she reimburses it accordingly. It would also be entitled to ask Ms C to grant it the right to complain against Rowanmoor, the investment provider or introducers and advisers involved, should it wish to do so. Scottish Equitable would need to bear the costs of drafting any such undertakings. If Scottish Equitable asks Ms C to provide either of these undertakings, payment of the compensation awarded may be dependent upon provision of that undertaking. But Scottish Equitable may only pursue any action to recover compensation from third parties after it has first compensated Ms C in full.

Scottish Equitable has also said the principles of 'contributory negligence' should apply. It said the SSAS trustees, which for the avoidance of doubt are Rowanmoor Trustees Limited as the independent trustee and Ms C as the sole member trustee, are jointly and severally liable for the trustees' actions. And trustees can be held liable for a scheme's losses. Scottish Equitable added that as Rowanmoor are not a party to the complaint, Ms C should be held solely liable for any losses flowing from the trustees' actions. However, I am not considering a complaint about the role of the trustees. That would be a matter for The Pensions Ombudsman.

Instead I am only considering a complaint about the actions of Scottish Equitable. Ms C's relationship with Scottish Equitable was not as a trustee but as a personal pension policyholder. And, for the reasons given above I believe that if Scottish Equitable had asked the appropriate questions and given Ms C the appropriate warnings then I don't think the matter would ever have progressed so far that Ms C's Scottish Equitable pension funds would have been transferred to the SSAS. In those circumstances the SSAS trustees would not have had to make decisions about where to invest those sums. The matter only reached that stage because of Scottish Equitable's failures to act in line with the Principles and COBS 2.1.1R and to treat her fairly and reasonably as a policyholder.

That said, I did consider if there was evidence that Ms C had ignored relevant warnings or of other negligence which meant she should be held partially responsible for her losses. But I don't think that evidence exists. That's because:

- Ms C was unaware that CIP's advice was unregulated or the implications of that.
- She had not received any warnings to be on the lookout for pension liberation or scams.
- The advice she received was that the investments were suitable for her SSAS. So Ms C most likely believed she had suitable advice about a realistic investment potential.

So I don't agree that I should hold Ms C as being contributorily negligent. It follows that I think Scottish Equitable remain responsible for compensating Ms C for her losses.

Distress and inconvenience

Ms C commented that I had not made any award for the distress and inconvenience she experienced as a result of Scottish Equitable's actions. But I don't think an award is merited in the circumstances. For the reason set out above, I agree that Scottish Equitable could have prevented the transfer, but it wasn't the only party involved and the principal cause of

her distress and inconvenience was the unregulated adviser who recommended she transfer her funds from her personal pension in the first place. And the involvement of others, including Rowanmoor and the investment companies themselves, would have all contributed to that. So, while I think it's appropriate for Scottish Equitable to take action to put Ms C, as far as possible, into the position she was in but for its actions, I don't think an award for distress and inconvenience is warranted.

Putting things right

I set out in my provisional decision the actions Scottish Equitable should take to appropriately compensate Ms C. In response Ms C said that, rather than Scottish Equitable setting up a new personal pension for her would it be possible for it to pay any redress into her existing workplace pension she holds with it. But, while I can see why that might appear as an attractive proposition for her I believe that doing so could have potential for adverse tax or money purchase annual allowance implications. So I don't think it will be possible. However, she may, if she wishes ask Scottish Equitable to pay her any redress owing as a cash lump sum. She could then, if she chose to do so and after receiving appropriate advice, pay that money into her existing pension and gain tax relief on it that way. But, as I said in my provisional decision any sum paid in cash would first be reduced by a notional tax deduction.

So, other than any agreement that Ms C might make with Scottish Equitable concerning her preferred method for redress, I don't intend to vary the instructions given in my provisional decision for compensation. However, as I've said above and if Scottish Equitable wishes to do this, I think it would be reasonable for any compensation payable to be subject to Ms C agreeing an undertaking that, if she received compensation from another source for the same losses, she repays an equivalent sum to Scottish Equitable. And again if Scottish Equitable wishes, Ms C's agreement to reassign to Scottish Equitable any rights she has to complain against Rowanmoor, the investment provider or introducers and advisers involved..

In addition Scottish Equitable has argued that I should instruct Ms C to give it rights to not only obtain information from Rowanmoor, her SSAS provider but also other parties in order to "pursue any claims". As I've said in the provisional decision, Ms C may be asked to give Scottish Equitable her authority to enable it to obtain sufficient information from Rowanmoor (such as current valuations, details of past payments etc) to assist in assessing her loss. I would expect Ms C to act promptly to give Scottish Equitable the appropriate letters of authority, or other reasonably required information, to enable it to calculate redress.

But I'm not minded to say that it is reasonable for Scottish Equitable to seek any wider authority from Ms C to obtaining information from other parties, other than the reassignment of the right to make a complaint to Rowanmoor, the investment provider or introducers and advisers involved.

Scottish Equitable said that the storage pod business is still operating. It also said the FCA has succeeded in an action to recover assets from Park First to redistribute to investors. So Ms C could receive investment returns from either of those sources. I'll briefly comment that the company Ms C took out her agreement with, Store First Limited, was wound up by the High Court following a petition from the Secretary of State. And the company now running the remaining storage business, while using similar branding, is a different legal entity.

But, in any event, as I said in my provisional decision, I think it would be reasonable for Scottish Equitable to negotiate to take possession of the SSAS assets, in which case it would be the recipient of any ongoing returns on the investments. It may otherwise ask Ms C

to sign an undertaking that the net benefit of any additional funds she receives from her investments in future, on withdrawal from her SSAS, are passed to Scottish Equitable promptly. Any past income from the investments will already be taken into account in the valuation Scottish Equitable is required to obtain from the SSAS.

For the avoidance of any doubt, as neither party has said otherwise in response to my provisional decision, I consider it's reasonable to assume that Ms C will be a basic rate taxpayer throughout retirement, and that the Park First and Store First investments have a nil value.

My final decision

For the reasons given above I uphold this complaint. Scottish Equitable Plc trading as AEGON must now put things right in line with the approach set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 23 August 2024.

Joe Scott
Ombudsman