DRN-4939831

The complaint

Mr O has complained about a transfer of his personal pension with Skandia to a small self-administered scheme (SSAS) in March 2014. Mr O's SSAS was subsequently used to invest in two overseas investments and storage units in Manchester. None of the investments now appear to have any value. Mr O says he's lost out financially as a result.

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

As I've said, Mr O's personal pension – a Collective Retirement Account (CRA) – was originally with Skandia which later became part of Old Mutual Wealth Life & Pensions Limited (Old Mutual) who has dealt with the complaint. Old Mutual then became Quilter Life & Pensions Limited (Quilter). For ease, I've just referred below, in the main, to Old Mutual which should be taken to include Skandia and Quilter where appropriate.

What happened

I issued a provisional decision on 15 July 2024. I set out what had happened and my provisional findings – why I wasn't upholding the complaint – which I've repeated here.

'*Mr O's CRA was set up in March 2012. He transferred the value of benefits he held with another provider to the CRA. A transfer payment of £96,858.51 was made. Mr O received advice in connection with the transfer from an adviser I'll call Mr D, who was authorised and regulated by what was then the Financial Services Authority (FSA), now the Financial Conduct Authority (FCA). Mr D was shown on Old Mutual's records as the adviser on the CRA.*

In early 2013 Mr O requested a transfer value quotation from Old Mutual which was sent to him on 5 February 2013.

On 19 March 2013 Old Mutual received a letter from Dorrixo Alliance (UK) Limited (Dorrixo) saying that Mr O wanted to transfer to the Feldspar Associates Retirement Benefit Scheme, administered by Dorrixo. That scheme had been registered with HMRC on 6 December 2012 and the Pension Scheme Tax Reference (PSTR) was given. Old Mutual emailed Dorrixo requesting further information about the scheme, a multi member SSAS, including copies of the trust deed and rules.

Old Mutual got in contact with Mr D as the receiving scheme wasn't known to Old Mutual. There's a file note dated 20 March 2013 recording that Old Mutual had received information from Mr D saying he had evidence to suggest Dorrixo were likely involved in pension liberation. Mr D later supplied an email from the FCA. He'd been in touch with the FCA's Enforcement and Financial Crime Division who'd explained that neither Mr W (who was a director of Dorrixo) or Dorrixo were authorised or approved to give advice on any regulated *product or service.*

Old Mutual wrote to Mr O on 30 April 2013. Old Mutual said it needed additional information about the proposed transfer and enclosed a questionnaire for Mr O to complete and return. The letter explained The Pensions Regulator (TPR) had asked pension scheme trustees and administrators to take care in protecting members from the possibility of being involved in pension liberation schemes, by carrying out additional checks on requests to transfer out. These additional checks meant there would be a delay in actioning Mr O's transfer request.

The letter further explained, amongst other things, that usually, there were no tax consequences when a pension was transferred from one registered pension scheme to another. However, if, after the transfer, access was gained to the transferred funds prior to normal retirement age, or in a way other than those normally available, that would likely be considered an 'unauthorised payment' for tax purposes, as would a payment received from a third party after the transfer. So that Old Mutual could carry out additional checks, a questionnaire was enclosed for Mr O to complete and return with any material he'd received from the receiving scheme. Old Mutual said it was including some information from TPR and, if Mr O had any concerns, he could contact the Pensions Advisory Service (TPAS), whose website address was given. A link to a section of HMRC's website was also set out. The letter listed, as an enclosure, TPAS's Members Leaflet. Old Mutual received a letter from Dorrixo on 25 June 2013 cancelling the transfer.

On 10 October 2013 Old Mutual received a letter dated 7 October 2013 from Rowanmoor Personal Pensions Limited saying Mr O wanted to transfer to a Rowanmoor self invested personal pension (SIPP). A ceding scheme information form, for completion and return by Old Mutual, and letters of authority were enclosed. On 14 October 2013 Old Mutual replied with details of Mr O's CRA together with transfer discharge forms for Rowanmoor Personal Pension Limited to complete. Old Mutual didn't received the completed forms back.

On 30 January 2014 a limited company was incorporated with Mr O as the sole director. I'll refer to this company as O Limited. On 10 February 2014 Mr O signed an application form to open a SSAS with Rowanmoor Group plc (Rowanmoor).

Old Mutual received a transfer request from Rowanmoor on 25 February 2014 to transfer to a SSAS. Old Mutual wrote to Rowanmoor on the same day with details of Mr O's CRA and enclosing transfer discharge forms for completion by Rowanmoor.

On 19 March 2014 Old Mutual received Rowanmoor's letter of 18 March 2014 enclosing the completed transfer forms and a copy of HMRC's Notification of registration showing the SSAS had been registered on 24 February 2014 and giving the PSTR.

Mr O's pension was transferred to Rowanmoor on 27 March 2014. A transfer value of £113,475.40 was paid.

Mr D got in contact with Old Mutual again on 28 March 2014. He wanted to find out where Mr O's pension had been transferred to. He remained concerned that Mr O was trying to liberate his pension even though the transfer had been to Rowanmoor.

At the time of the transfer to the SSAS Mr O was approaching 45. His SSAS was subsequently used to invest in two overseas property investments: Dolphin Capital (a German based property development company) and a chateau in France (Chateau de la Cazine). Mr O also invested in Store First (storage pods in Manchester).

In December 2019 Mr O, via his representative, complained to Old Mutual. In summary Mr O said Old Mutual had failed to conduct adequate checks, enquiries and assessment of the *new receiving scheme and hadn't provided Mr O with warning information, including the 'Scorpion' documentation (to which I refer further below). Mr O said Old Mutual should've raised queries about how the transfer had come about and, in particular, the involvement of non authorised/non regulated parties. Return on Capital Group Limited, a non regulated entity, was named as having been involved.*

Old Mutual didn't uphold the complaint. Amongst other things, it said Mr O had made three requests to transfer in a one year period and he'd been given the Scorpion pack. About the final transfer request, Old Mutual said it was given evidence to show the SSAS had been registered with HMRC; it wasn't aware of any third party involvement; and it was familiar with Rowanmoor and didn't have any concerns about them as an administrator or trustee. Old Mutual was satisfied Mr O wanted to transfer as it was his third request. There was no requirement for him to take advice and, as a provider, Old Mutual doesn't check the suitability of any advice that may have been given by a third party. Nor is Old Mutual responsible for the actions of the scheme administrators or trustees after the pension had been transferred.

Old Mutual had contacted Rowanmoor who'd confirmed the SSAS still existed and was registered with HMRC. And advised that all proceeds from the transfer had been invested in legitimate investments. Old Mutual added that Skandia used to offer SSASs and when it exited that market it sold its SSAS book to Rowanmoor. Old Mutual referred to the large amount of due diligence between providers when selling a large book of business.

I understand that the Dolphin investment has failed. Preliminary bankruptcy proceedings were commenced in Germany in 2020. Investors are very unlikely to get any of their money back.

And there were problems with Store First. Issues arose about its marketing materials. In May 2014 the Self Storage Association of the UK (SSA UK) issued a press release (amended in January 2015) detailing the outcome of a review it had commissioned of the marketing material made available to potential investors by Store First and referring to a serious question that had arisen as to how Store First was funding the guaranteed returns to existing investors and if that was from the sale of new units, and not the operation of the self storage business.

Store First and three associated companies were also the subject of a winding up order in April 2019. The Official Receiver was appointed as liquidator and the freehold, associated assets and goodwill of 15 storage centres were sold by the Official Receiver to a company called Store First Freeholds Limited. As I understand it, the storage units continue to be rented to end users and Pay Store Limited now manages the storage sites trading as Store First. The Official Receiver and Store First Freeholds Limited agreed that the latter would accept any requests from investors to surrender their pods. Store First Freeholds Limited would cover its own costs of the surrender but investors wouldn't receive any payment.

Mr O's third investment was in Chateau de la Cazine – a hotel/resort development in France. My understanding is that investors haven't received the promised returns and although it seems that guarantees were given – including that if the development wasn't completed by a certain date (which has passed) then all monies paid would be refunded within 30 days. My understanding is that the investment is illiquid – there's no market for Mr O's fractional holding and I understand that he's unlikely to get any of his money back.

As the complaint couldn't be resolved, 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.

Where the evidence is incomplete or inconclusive I've reached my conclusions on the balance of probabilities – in other words what I consider is likely to have happened, given all the available evidence and the wider circumstances.

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

Personal pension providers are regulated by the FCA. Prior to that they were regulated by the FCA's predecessor, the FSA. As such Old Mutual was subject to the FSA/FCA Handbook, and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA/FCA rules governing pension transfer requests, but the following have particular relevance here:

- *Principle 2 – A firm must conduct its business with due skill, care and diligence;*
- *Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;*
- *Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and*
- *COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.*

The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme if certain conditions are satisfied (and they may also have a right to transfer under the terms of the contract). This right came to be exploited, with people encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren't entitled to – for instance, because they were below minimum retirement age. At various points, regulators issued bulletins warning of the dangers of taking such action. But it was only from 14 February 2013 that transferring schemes had formal guidance to follow that was aimed at tackling pension liberation – the "Scorpion" guidance.

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

- *An insert to be included 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 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 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 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. 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 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 those 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.

What did personal pension providers need to do?

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. And where the recommendations in the guidance applied, absent a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations. With that in mind, I take the view that personal pension providers dealing with transfer requests needed to heed the following:

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

2. *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.

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 Mr O's recollections</u>

I bear in mind that the transfer was in 2014 and so, due to the time that's passed, Mr O's recollections may have faded somewhat. I also take into account that, to some extent at least, what he says is after the event and in the knowledge that, as a result of the transfer and investing as he did, his pension fund appears to have been lost.

That said, Mr O was able to remember in some detail what had happened, even if he didn't recall the names of all of those involved. Mr O told our investigator that he'd spoken to someone at a networking event who'd said they could introduce Mr O to a company in Birmingham (in what's known as the Jewellery Quarter) who could release funds from a pension or invest it in different schemes. It wasn't something Mr O had ever considered. But, at the time, he wasn't paying into a pension. He'd not made contributions for a few years due to a change in his financial circumstances. He was self employed at the time and he thinks he may have been in debt. He didn't think his pension was doing much so, if it was a good investment and safe, he'd be happy to listen.

Things went from there and a meeting with the company in Birmingham was set up. There was a pension presentation by that company, called PLS Money Limited, showing the *various schemes available. They introduced Mr O and others to a Mr H who Mr O thought worked for Rowanmoor. Mr O said all the investments were suggested by PLS Money Limited. They included a car parking scheme in Dubai which Mr O wasn't interested in as it was risky. There were other investments available but PLS Money Limited said the best ones were Dolphin, Store First in Manchester and Chateau de la Cazine. There was an offer to take investors out to France, with flights and accommodation paid for, to go and look at some of the properties. Mr O hadn't taken up that offer.*

But he'd been taken, with other investors, to Manchester to see the storage units. He remembered someone famous being there in his Bentley. Mr O didn't recall his name but he'd been something to do with motor racing and he'd done an advertisement for the investment. It was explained how much each pod cost and what the return was. Mr O said it had been a very good sales job. He and the others were told there was no way the investment could fail because there was a safety net in place. Mr O came away feeling confident it was a good investment.

Similarly, with the German investment, details of the properties built and the returns were given. Prospective investors including Mr O were told there'd been lots of properties built and no failures – so, in effect, a guaranteed success.

Mr O invested in all three of the investments that had been recommended. He invested the most in Store First, then Dolphin and then Chateau de la Cazine. It was a long time before he'd draw his pension and he'd thought they were good investments. He accepted he'd been naïve and that he didn't do his due diligence which he should've done. He said he hadn't felt pressurized but he'd been 'sweet talked' into it. He could've walked away at any stage but he said it was all very well sold. He was told he could possibly access cash before age 55 which was of interest to him although, in the end, he hadn't taken any cash from his pension fund and he hadn't received any incentive payment.

Mr O recalled some correspondence from Old Mutual but he didn't recall getting anything from alerting him to things which might've been going on in the industry at the time. The Scorpion leaflet didn't ring any bells with him. He said he didn't get Old Mutual's letter of 30 April 2013 with enclosed leaflet and questionnaire.

We asked about there having been three attempts to transfer his pension away from Old Mutual. He said he hadn't known the requests had been refused. Rowanmoor had just asked him to sign more documents and he was unaware of any pushback. The name 'Dorrixo' didn't mean anything to him.

We asked Mr O if he recalled any contact or involvement by Mr D. Mr O's representative told us that Mr O had said Mr D was a business acquaintance he'd met through networking. Mr O didn't recall any involvement on Mr D's part. More recently we told Mr O's representative that we'd be getting in contact with Mr D who was the financial adviser who'd dealt with Mr O's transfer to the CRA and who it seems had been in contact with Old Mutual as he'd had concerns about the transfer. We said that, even if Mr O didn't now recall, Mr D may have been in contact with Mr O at about the same time.

Mr D responded to our enquiries. He told us he'd acted for Mr O for a number of years. And that Mr O had expressed a wish to release his pension at age 43. On several occasions Mr D had strongly advised Mr O against doing that, because he could suffer a 55% tax charge and he might never see any of his money again. Mr D said, despite warning Mr O of the dangers, Mr O still went ahead. Mr D said Mr O had transferred to a provider called Dorrixo. Mr D was concerned that firm and its director weren't authorised – previously the director had worked in roles for various firms that required regulatory approval but that wasn't the case for Dorrixo. Mr D said Mr O had assured him that the new scheme didn't involve *pension liberation although Mr D said he had his doubts.*

Mr D supplied a copy of the email he'd sent Mr O on 19 March 2013. Mr D said he'd had a call from Old Mutual who'd received a transfer request from Dorrixo, who they didn't know and they'd asked Mr D to do some research as any transfer had to be to an authorised pension scheme. Mr D said he'd not been able to find out anything of substance, other than the fact Dorrixo's director wasn't authorised to give financial advice. Mr D went on to say to Mr O:

'If this is a pension busting/release type of arrangement, my advice is to be very careful indeed. There are substantial penalties and HMRC along with other Government organisations are already tracing cases that have already been transacted. There would be an unauthorised payment tax charge of 55% plus penalties and interest. If the money has been spent, you will still have to pay any tax charge and penalties.'

Mr O replied by email the following day. He thanked Mr D for his concern but said 'this is in no way a Pension Busting Scheme, and I do not stand to get any cash payments before they are due. This is purely a Pension Investment Scheme, that offers a better return than you historically get from trading 'stocks and bonds.' Mr O said he knew more risk was involved. But he didn't think he'd be able to contribute to a pension in the short term (three to five years) and saw it as a calculated risk during that period. He said he intended to split his pension – maybe invest 25% in four different areas. He said Mr D had 'done a great job' and had increased the pension but at this stage he just wanted it to grow a bit faster.

<u>*What did Old Mutual 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.

As I've set out above, Old Mutual's letter to Mr O dated 30 April 2013 said it was enclosing some information for Mr O to consider and listed as an enclosure a TPAS' leaflet.

Mr O says he didn't get the letter and the enclosures. We asked Old Mutual if the completed questionnaire was returned and which would indicate that Mr O did receive the letter and enclosures. But Old Mutual said it didn't get it back and, as the proposed transfer was cancelled, Old Mutual hadn't insisted on it being returned. But, notwithstanding, I accept that Old Mutual sent the letter and enclosures to Mr O. The letter appears to have been correctly addressed and I don't see any real reason to assume Mr O didn't get it – it was a long time ago and Mr O may simply have forgotten that he received it. From what I've seen, the insert wasn't resent to Mr O when the later transfer requests from Rowanmoor were received – any information was sent to Rowanmoor and nothing was sent direct to Mr O which it should have been. Overall, I think it's likely Mr O did receive the Scorpion insert in 2013, but not when the request to the Rowanmoor SSAS was requested.

But, all that said, and as I've explained below and in the light of the due diligence which I think Old Mutual should've undertaken, I don't think anything really turns on the Scorpion insert having been provided to Mr O.

Due diligence:

In light of the Scorpion guidance, I think firms ought to have been on the look-out for the tell-tale signs of pension liberation and needed to undertake further due diligence and take *appropriate action if it was apparent their customer might be at risk. Although Old Mutual clearly saw the need to undertake further due diligence in connection with the transfer originally proposed to Dorrixo, as evidenced by Old Mutual's letter of 30 April 2013 to Mr O, Old Mutual didn't take the same approach in respect of the transfer request it received from Rowanmoor in February 2014. I accept that, given the issues raised by Mr D in connection with a transfer to Dorrixo, Old Mutual had specific concerns. The position regarding a transfer to Rowanmoor may not have been of such obvious concern. But Old Mutual still had a duty to protect its member, Mr O, by carrying out any further due diligence that the circumstances of the transfer request to Rowanmoor required.*

Old Mutual has said that, at the time, its practice was, if it received a transfer request from a provider it wasn't familiar with, to complete enhanced due diligence on the scheme. It the request was from a scheme it was familiar with it would proceed with the transfer and not request further information so as not to unnecessarily delay the transfer. So Old Mutual's due diligence focused on the SSAS's HMRC registration and the fact that Rowanmoor was the administrator of the receiving scheme and Rowanmoor's standing at the time in the industry. Rowanmoor also had a trustee arm – Rowanmoor Trustees Limited – who may have acted as the professional trustee of Mr O's SSAS.

I note that at the time of the transfer Rowanmoor was a long established SSAS provider and had some repute in the industry. Rowanmoor Trustees Limited also had legal and fiduciary duties as a professional trustee. There's an argument, therefore, that Old Mutual could've taken comfort from this. I disagree. The Scorpion guidance gave ceding schemes an important role to play in protecting customers wanting to transfer a pension. It would defeat the purpose of the Scorpion guidance for a ceding scheme to have delegated that role to a different business – especially one that had a vested interest in the transfer proceeding. An important aspect in this is the fact that there is little regulatory oversight of single-member SSASs; they don't have to be registered with TPR. In the absence of that oversight, Old Mutual was assuming, in effect, that Rowanmoor would want to maintain its standing in the industry and the trustee subsidiary would comply with its legal and fiduciary duties. In the context of guarding against pension scams – and an environment where providers and trustees clearly didn't always act as they should have done – I don't consider this to have been a prudent assumption.

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

Given the information Old Mutual had at the time one feature of Mr O's transfer would have been a potential warning sign of liberation activity as identified by the Scorpion action pack: Mr O's SSAS was recently registered – it had been registered on 24 February 2014 which was just the day before Old Mutual received the transfer request from Rowanmoor. Old Mutual should therefore have followed up on this to find out if other signs of liberation were present. Given this warning sign, I think it would've been fair and reasonable – and good practice – for Old Mutual to look into the proposed transfer and the most reasonable way of going about that would have been to turn to the check list in the action pack to structure its due diligence into the transfer.

The check list provided a series of questions to help transferring schemes assess the potential threat by finding out more about the receiving scheme and how the consumer came to make the transfer request. Some items on the check list could have been addressed by *checking online resources such as Companies House and HMRC. Others would have required contacting the consumer. The check list is divided into three parts (which I've numbered for ease of reading and not because I think the check list was designed to be followed in a particular order):*

1. *The nature/status of the receiving scheme*

   Sample questions: Is the receiving scheme newly registered with HMRC, is it sponsored by a newly registered or dormant employer, an employer that doesn't employ the transferring member or is geographically distant from them, or is the receiving scheme connected to an unregulated investment company?

2. *Description/promotion of the scheme*

   Sample questions: Do descriptions, promotional materials or adverts of the receiving scheme include the words 'loan', 'savings advance', 'cash incentive', 'bonus', 'loophole' or 'preference shares' or allude to overseas investments or unusual, creative or new investment techniques?

3. *The scheme member*

   Sample questions: Has the transferring member been advised by an 'introducer', been advised by a non-regulated adviser or taken no advice? Has the member decided to transfer after receiving cold calls, unsolicited emails or text messages about their pension? Have they applied pressure to transfer as quickly as possible or been told they can access their pension before age 55?

Opposite each question, or group of questions, the check list identified actions that should help the transferring scheme establish the facts.

I don't think it would always have been necessary to follow the check list in its entirety. And I don't think an answer to any one single question on the check list would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the check list to establish whether liberation was a realistic threat. Given the warning sign that should have been apparent when dealing with Mr O's request to transfer, and the relatively limited information it had about the transfer, I think in this case Old Mutual should've addressed all three parts of the check list and contacted Mr O as part of its due diligence.

<u>What would Old Mutual likely have found out?</u>

Under part 1 of the checklist, I think it would've been fairly apparent to Old Mutual that the name of the SSAS incorporated the name of the sponsoring company employer – O Limited. Accessing Companies House would've shown O Limited had only been incorporated at the end of January 2014 with Mr O as the sole director. And the nature of the business was shown as a dormant company. It was only just over a month later that Old Mutual received Rowanmoor's request. I think it would've appeared fairly obvious to Old Mutual that the purpose of the company was a means to establish the SSAS rather than a company that would actually trade and employ Mr O. I note he's said he was self employed at the time. A SSAS might be set up as a pension vehicle for someone who has their own company and through which they work. But I don't see that was Mr O's position. Had Old Mutual made enquiries I think Mr O would've told Old Mutual that he wasn't employed by the sponsoring employer and the company had only been set up to facilitate the SSAS.

Enquiries under part 2 of the checklist would've revealed that two of the investments were *overseas and the third was what would be considered an unusual investment.*

As to what enquiries under part 3 of the checklist would've revealed, the letter of complaint submitted by his representative said Mr O had been dealing with Return on Capital Group Limited. But that company didn't feature when Mr O spoke to our investigator. Mr O said he'd been put in contact with PLS Money Limited who were based in Birmingham. That company has since been dissolved (on 15 September 2015) but its registered office was, until June 2014, in Birmingham's Jewellery Quarter. That supports what Mr O recalls about visiting PLS Money Limited's offices and seeing a presentation. And it seems that Mr O was dealing with PLS Money Limited and not Return on Capital Group Limited.

Although Mr O's impression was that PLS Money Limited was working with Rowanmoor, PLS Money Limited was a separate entity. I don't see any reason why, if Old Mutual had asked Mr C, he wouldn't have said he'd been dealing with PLS Money Limited, even if that was in conjunction with Rowanmoor.

PLS Money Limited wasn't regulated. Old Mutual could've found that out very easily by consulting the FSA's online register of authorised firms. So Old Mutual would've known that Mr O had been involved with a business that wasn't authorised and so couldn't (and shouldn't) give regulated 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 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.

PLS Money Limited's involvement should've been of concern to Old Mutual because it could've pointed to a criminal breach of FSMA. Old Mutual should've made some further enquiries of Mr O to establish exactly what PLS Money Limited had done. I've considered very carefully, and based on what Mr O has told us about what happened and how the transfer and investments came about, what Old Mutual would've found out from Mr O.

I've considered Mr O's testimony to this service. He hadn't been cold called – he'd been put in touch with PLS Money Limited at his own request and because he was interested in seeing if he could find investments for his pension that would produce higher returns. He then attended a presentation with others at PLS Money Limited's offices at which details of various investments were given. There was some follow up – he and others were taken to Manchester to see the storage units. And, although Mr O didn't take it up, a largely expenses paid trip to France was also offered.

From what Mr O has said, PLS Money Limited presented details of various investments that were available and which Mr O might want to consider investing in. But it seems he decided on the investments himself – he rejected a car parking scheme in Dubai because he felt it was too risky and he says he wasn't rushed or pressurised into making a decision. I don't doubt what he's said about the sales process being slick. I think, as Mr O now and with the benefit of hindsight realises, he was won over by a very convincing sales pitch which would've made the investments he selected look very attractive and largely risk free, especially as guarantees were mentioned.

But what Mr O has said doesn't suggest he was given a personal recommendation to transfer his CRA to a SSAS so that he could invest in Dolphin Capital, Chateau de la Cazine and Store First. Rather it seems he was given details of several investments from which he selected those three investments because they appeared to offer the highest returns and he understood them to be fairly safe. So I don't think Mr O would've told Old Mutual that PLS Money Limited had advised him to transfer his existing CRA with Old Mutual in order to *invest.*

Mr O wasn't an experienced investor. But it was open to him to decide himself and without taking regulated advice what he wanted to do with his pension and how he wanted to invest it. I accept he didn't have any real pensions experience or expertise and I don't think he'd have known that, to invest in the three investments he'd selected, he'd need to transfer to a SSAS. Nor would he have known how to go about establishing a SSAS, which included setting up his own company. So he'd have needed help in doing that. That might have come from PLS Money Limited and/or Rowanmoor. I suspect that what might have happened was that, once Mr O had decided he wanted to invest, PLS Money Limited put him in touch with Rowanmoor to set up the SSAS.

A SSAS is a type of occupational pension scheme and although establishing, operating or winding up a personal pension scheme is a regulated activity, the same isn't true for an occupational pension scheme. So any assistance Mr O was given in connection with setting up the SSAS wouldn't amount to carrying on a regulated activity and which requires authorisation.

Against that background, if Old Mutual had made further enquiries, the following information about Mr O's transfer would've been built up and all of which were signs of potential pension liberation under the Scorpion guidance:

- *Mr O was transferring to a recently established scheme with a newly incorporated sponsoring employer.*
- *Although he was the director of the sponsoring employer, it was unlikely to have been genuinely trading and providing Mr O with an income. It was, essentially, a means to establish a pension arrangement.*
- *Two of Mr O's intended investments were overseas and the third would be considered an unusual investment.*

On the other hand and against that Old Mutual would've also established:

- *Mr O's reason for transferring was to access particular investments for improved returns.*
- *There'd been some involvement on the part of an unregulated adviser (PLS Money Limited). But it didn't seem that regulated advice had been given – Mr O had made his own decisions about what he wanted to do with his pension and what he wanted to invest in.*

So, Old Mutual would've found (had it conducted thorough due diligence) that there were some liberation warning signs. In my view, the most potentially troubling would've been the involvement of an unauthorised business and the possibility that Mr O had been given unregulated advice. But, had Old Mutual probed that further, I think Old Mutual could've been reasonably reassured that, despite the involvement of an unauthorised firm, Mr O hadn't been given unregulated advice. In my view, in the circumstances and on balance, it would've been reasonable for Old Mutual to have concluded that the liberation threat was minimal.

Even if Old Mutual had done all it should've done, Old Mutual wouldn't have concluded there was any reason to provide any further warnings to Mr O. Particularly taking into account that Old Mutual had provided warnings in its letter of 30 April 2013. Those warnings were aimed at consumers who were seeking to liberate their pension and reflected Old Mutual's concern (and given what Mr D had told Old Mutual) that was what Mr O was possibly seeking to do. I know Mr O has said he didn't get that letter and enclosures. But Old Mutual didn't know that *and so would've assumed Mr O had received it. And, as I've indicated, I think Mr O probably did receive the letter anyway even though he doesn't now recall it.*

And it's clear that Mr O had been warned anyway about pension liberation by Mr D. He told us that he'd strongly advised Mr O against trying to access his pension early on several occasions. And Mr D's email of 19 March 2013 specifically warned Mr O about proceeding with the transfer to Dorrixo. And, given what later transpired with the Feldspar Associates Retirement Benefit Scheme, it seems Mr D's concerns were well placed. Mr O doesn't recall seeing Old Mutual's letter of 30 April 2013 or the Scorpion insert. Nor does he remember any input from Mr D. So it's unclear if Mr O was put off transferring to Dorrixo and/or trying to liberate his pension because of what Mr D said and/or Old Mutual's letter of 30 April 2013 and/or the Scorpion booklet. But, for whatever reason, that transfer didn't proceed.

Mr O has told us that when he did transfer in March 2014 (when he was coming up to his 45th birthday) he was unemployed and he may have been in debt. So he may have retained an interest in trying to raise money from his pension. But, from what I've seen, I think he'd moved on from that idea. I note what he'd said in his email of 20 April 2013 to Mr D – that it wasn't a pension busting scheme, he wouldn't be getting any cash payments before they were due and his interest was from an investment perspective – generating better returns (which he accepted would involve greater risk). Although that was in connection with the proposed transfer to Dorrixo, I think it indicates that Mr O's motivation for transferring was the potential for higher returns. In so far as the transfer to the Rowanmoor SSAS was concerned, Mr O hasn't suggested he was promised any cash incentive or other payments or loans if he went ahead. And from what he's said, the driver for transferring was improved performance.

So, had further enquiries been made, Mr O wouldn't have given Old Mutual any indication that he was seeking to liberate his pension. I don't think warnings about pension liberation would've dissuaded Mr O from transferring, given that he'd already been warned about that by Mr D (if not by Old Mutual too) and he was transferring for different reasons.

Mr O has suggested that the circumstances behind the transfer were unusual enough in themselves that Old Mutual should've done more to warn him about what he was intending to do, even if the liberation threat would've appeared minimal. Specifically that Old Mutual should've warned about the unusual nature of the receiving scheme (established not long before the transfer), the lack of a real employment link to the sponsoring employer and the nature of Mr O's intended investments (non-standard and high risk).

But I think those arguments misread what should, reasonably, have been expected of transferring schemes at that time. Investigations into the receiving scheme, sponsoring employer and intended investments were a means to an end: to establish the risk of liberation. Once that threat was discounted then I think it reasonable for ceding schemes to consider the scam threat as being minimal and process the transfer as normal.

I also see no persuasive reason why a ceding scheme needed to share with its members the liberation warnings signs it found – but discounted – during its due diligence process or its reasons why it might have thought at some point liberation was a possibility. As I've said previously, a firm needed 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. Expecting a firm to share its due diligence "workings" in this way would cut across this (and could potentially be viewed as a self-serving tactic to hold on to a customer).

Also, and although I've noted that Mr O now accepts he was the victim of persuasive sales techniques, I don't think, at the time, he'd have given Old Mutual the impression that he was *being led through a process by another party acting in a potentially unlawful way – which would be the usual pattern for someone falling victim to a scam. It's an important point that goes to the heart of this case: Mr O's actions would have appeared (and indeed were) self-directed and a business could, reasonably, have taken comfort from that – especially if one considers the threat of pension liberation would also have appeared minimal. In the circumstances, I'm satisfied that Old Mutual wouldn't, reasonably, have thought a scam was in progress.*

I'm also satisfied that Mr O wouldn't have stopped the transfer even if Old Mutual had done more thorough due diligence in line with the Scorpion action pack. For the reasons given above, the end result of any such due diligence wouldn't have resulted in any warnings being given to Mr O. And I don't think the mere act of contacting Mr O and asking questions about the transfer would have prompted a change of heart. Any due diligence questions would've been asked with the intention of establishing the liberation risk Mr O was facing – a risk that doesn't appear to apply here and one he'd already been warned about. And, if liberation wasn't involved, there was no need for Old Mutual to warn Mr O about that threat anyway.

I note here too Mr O's email of 20 March 2013. Although, as I've said above, Mr O wasn't an experienced investor, his email does indicate he was relatively confident in making his own decisions. He was also keen to find investments which would deliver higher returns, even if more risk was involved. This was also his third attempt to transfer his pension (although he says he was unaware that previous requests had been withdrawn or not proceeded with). He wasn't entirely happy with this existing pension and transferring was something he was clearly interested in – not because he wanted to access his pension early but because he wanted to improve performance. So all in all I'm satisfied he'd have proceeded anyway.

To sum up, I have every sympathy for Mr O. He acted with the aim of improving his pension fund's performance and so generating higher benefits when he came to retire. I'm unsure of the exact amounts he invested in Dolphin Capital, Chateau de la Cazine and Store First but the investments represented the bulk of the transfer value (£113,475.40). From what I've seen, none of the investments have any realisable value and Mr O's money has been lost. As at April 2022 £7,611.53 remained in the SSAS bank account. So Mr O's losses are substantial.

But what I'm considering is Old Mutual's part in the matter and if it was responsible for those losses. I've said that Old Mutual's due diligence was lacking and it should've made further enquiries in connection with the transfer. But, for the reasons I've explained, and even if Old Mutual had acted as it should've done, I don't think it would've made any difference to the outcome. I think Old Mutual could reasonably be satisfied that Mr O wasn't seeking to liberate. I don't think any further enquiries would've uncovered that Mr O was acting on unregulated advice. So Old Mutual wouldn't have given Mr O any further warnings. He'd have proceeded with the transfer anyway and so the investment losses that followed aren't down to Old Mutual.'

In response to my provisional decision, Mr O's representative noted that I'd identified failings on Old Mutual's part – I'd said Old Mutual's due diligence was lacking and it should've made further enquiries in connection with the transfer. But I'd gone on to say, even if Old Mutual had acted as it should've done, I didn't think it would've made any difference to the outcome. That was an assumption which wasn't substantive enough to find in favour of Old Mutual. Had the failings by Old Mutual not happened and the expectations and protocols around the Project Bloom[1]/Scorpion campaign been met, Mr O had confirmed he'd have taken further advice and not continued with the transfer.

[1] What is now the Pension Scams Action Group was formerly known as Project Bloom

Saying that the letter dated 30th April 2013, which contained warnings, must've arrived, is also nothing more than an assumption. And is saying Mr O would've carried on regardless. Both assumptions were refuted. Had Old Mutual done what was expected of it, Mr O wouldn't have proceeded and he wouldn't now be faced with huge losses – which were as a result of Old Mutual's protocols and procedure failings.

We didn't hear from Old Mutual in response to my provisional decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've considered carefully the points made on Mr O's behalf. Mr O's representative has challenged the 'assumptions' I've made. But, in a case such as this, which involves considering what would've likely happened had things been dealt with differently, it's impossible to say, with certainty, what the outcome would've been. Considering that sort of issue, after the event, will always involve an element of supposition.

That means I can't now say definitely, if Old Mutual had dealt with the transfer request differently and undertaken the checks I've said it should've, what Mr O would've done. I have to decide what, in my view, he's likely to have done. My conclusions about that could be described as assumptions. But (and even if I used terms such as 'I think') what I said are my findings, made on the balance of probabilities – that is what I consider is likely to have happened – based on such evidence as there is, some of which is conflicting and/or incomplete, and the wider circumstances.

I've found there were failings on Old Mutual's part. And that Old Mutual should've made further enquiries of Mr O. Of particular concern would've been the involvement of an unauthorised business and the possibility that Mr O had been given unregulated advice. But I went on to find that, if Old Mutual had probed that further, Old Mutual could've been reasonably reassured that Mr O wasn't liberating and hadn't been given unregulated advice. I said that based on Mr O's own evidence about the part PLS Money Limited had played in the matter.

From what he'd said, I'd concluded that PLS Money Limited hadn't given him a personal recommendation or advice. He'd asked to be put in touch with that business – they hadn't cold called him – because he wanted to see if he could find investments for his pension fund which would deliver higher returns. He'd then attended a presentation with others at which details of several investments were given and from which he'd chosen three. So, if Old Mutual had asked Mr O about what had led to his transfer request, he'd have told Old Mutual similar and, importantly, he wouldn't have indicated that advice had been given by PLS Money Limited.

I found, in my provisional decision, that Mr O likely did receive Old Mutual's letter of 30 April 2013, even if he can't now recall. That's still my view. But, even if I'm wrong about that, I don't think much turns on that letter. It warned against liberation. It's clear from the emails I've seen that Mr O had been warned about that by Mr D and Mr O says he wasn't intending to liberate anyway. So, even if Mr O didn't get Old Mutual's letter of 30 April 2013, I don't see that would've changed anything.

All in all my views remain as set out in my provisional decision. I've recapped above what I said and it forms part of this decision.

Despite my sympathy for Mr O, I’m unable to say that Old Mutual is responsible for the losses he’s incurred as a result of transferring away from Old Mutual and investing as he did.

My final decision

I don’t uphold the complaint and I’m not making any award.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr O to accept or reject my decision before 2 September 2024.

Lesley Stead
Ombudsman