

## **The complaint**

The estate of Mr H complains about how MetLife UK Limited (MetLife) transferred Mr H's personal pension to a small self-administered scheme (SSAS) in July 2014. Those funds were subsequently used to invest in an overseas property investment with The Resort Group (TRG). The investment now appears to have little value.

Mr H considered that MetLife failed in its responsibilities when dealing with the transfer request and that it should have done more to warn him of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance he said was required of transferring schemes at the time.

## **What happened**

On 7 April 2014, MetLife received a signed letter of authority from Mr H allowing First Review Pension Services (FRPS) to obtain details, and transfer documents, in relation to his pension. MetLife sent FRPS the requested information on 7 April 2014. FRPS wasn't authorised to give financial advice.

Mr H said his interest in the transfer followed an unsolicited approach by FRPS. And that FRPS then put him into contact with Moneywise Financial Advisors Limited (Moneywise). He explained that he was attracted to the idea of transferring by the prospect of improved investment performance. Moneywise was authorised by the Financial Conduct Authority (FCA) to give financial advice at that time.

A company was incorporated with Mr H as director in April 2014. I'll refer to this company as Firm A. A SSAS was then opened for Firm A with Rowanmoor Group.

On 9 May 2014, Mr H signed documents to open a SSAS with Firm A. Firm A was recorded as the SSAS's principal employer. The SSAS documents also recorded that the SSAS was to be used to invest in TRG.

On 11 July 2014 MetLife received Mr H's transfer request from Rowanmoor via the Origo Options transfer platform. It listed the 'Adviser Firm Name' as being Moneywise Financial.

MetLife transferred Mr H's pension fund on 15 July 2014, with the SSAS account showing the credited amount by 17 July 2014. Mr H's transfer value was around £80,000. He was 54 years old at the time of the transfer.

On 18 July 2014 around £70,000 of the transferred funds were invested in TRG. That investment in TRG subsequently went on to fail causing Mr H a likely loss of the full investment value.

Mr H engaged the services of a CMC. And, as Moneywise were in default, it referred a complaint about them to the Financial Services Compensation Scheme (FSCS).

On 10 January 2020 the FSCS upheld Mr H's case and agreed to make an interim compensation payment around £29,600. Although that was later (in August 2021) calculated in full and Mr H was compensated to the, then, FSCS limit of £50,000.

On 14 January 2020, Mr H complained to MetLife via his CMC. Briefly, his argument was that MetLife ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including (but not limited to) the following: the SSAS was newly registered, there wasn't a genuine employment link to the sponsoring employer, the catalyst for the transfer was an unsolicited call and he had been advised by an unregulated business.

MetLife didn't uphold the complaint. It said Mr H had a legal right to transfer and that none of the information it had about the transfer at the time gave it cause for concern. It considered that Mr H was being advised by a regulated adviser.

Mr H sadly passed away in early 2022, prior to a final decision being given on his complaint. This complaint is now being brought by the CMC on behalf of Mr H's wife, Mrs H, who has the authority to now act for Mr H's estate.

Our investigator was unable to resolve the dispute informally, so the matter was passed to me to decide. I issued a provisional decision to let both parties know what I thought about the complaint.

### **What I said in my provisional decision**

*"I will start by offering my condolences to Mr H's family. And am sorry that our service was not able to resolve his complaint sooner. I'm satisfied that I am still able to give an answer to Mr H's original complaint given the rules that govern our service and that are set out in the FCA handbook under the DISP section. Within that, DISP 2.7.2R allows a complaint to be brought on behalf of an eligible complainant (which Mr H was) by a person authorised to act on that person's behalf."*

### **The relevant rules and guidance**

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

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

*The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme if certain conditions are satisfied (and indeed they may also have a right to transfer under the terms of the contract). This right came to be exploited, with*

*people encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren't entitled to – for instance, because they were below minimum retirement age. At various points, regulators issued bulletins warning of the dangers of taking such action. But it was only from 14 February 2013 that transferring schemes had guidance to follow that was aimed at tackling pension liberation – the “Scorpion” guidance.*

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

The circumstances surrounding the transfer – what does the evidence suggest happened?

*I am making a decision on events that occurred around ten years ago. So, where evidence is incomplete I am making a decision on what I think was most likely the case, based on a balance of probability.*

*I have evidence from MetLife that it received a request for information from FRPS in April 2014. And given the testimony that Mr H had been cold called by FRPS, and based on other cases our service has seen, I think that FRPS was, more likely than not, the company that approached Mr H for a pension review. And FRPS were not regulated by the FCA. In Mr H's complaint he explained that FRPS put him in touch with a representative of Moneywise. He explained that the representative visited him at home on a number of occasions and told him he could invest his pensions for a better return than MetLife could achieve.*

*Moneywise was named in the Origo transfer request as the advisor. I am also aware that the Origo request was submitted by Rowanmoor so not completed by Mr H. So is not, by itself compelling evidence that Moneywise advised Mr H on his pension transfer. But tends to corroborate the account given in Mr H's complaint. I have seen that prior to the transfer, in June 2014, Moneywise provided Mr H with advice in order to satisfy the requirement under section 36 of the Pensions Act 1995. This was advice in relation to his role as the SSAS trustee. It was not a personal recommendation to transfer his personal pension to the SSAS. But it also points to the involvement of Moneywise prior to the transfer being requested.*

*I've also seen additional evidence in Mr H's application to the FSCS in 2019, of who was advising Mr H on his transfer. In it his testimony was that he was advised on his pension transfer by Moneywise. That testimony named the person he'd received advice from. And that person was also on the FCA register as the director of Moneywise and was regulated to provide advice at the time. And, in answer to a question on the application for compensation, Mr H declared that he hadn't received pension advice from another party.*

*Taking all of the evidence into consideration I accept that there was an involvement of two different firms, but I'm persuaded that Mr H was, more likely than not, advised by Moneywise to transfer his MetLife pension to the Firm A SSAS.*

What did MetLife do and was it enough?

*The Scorpion insert:*

*For the reasons given above, my view is that personal pension providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information.*

*I have seen no evidence that MetLife sent Mr H the Scorpion insert or any other type of information that would have conveyed the same message that the Pensions Regulator's guidance of the time intended. In fact the only direct correspondence that I've seen that MetLife sent to Mr H was a letter on 15 July 2014 that confirmed his pension had been transferred. So I don't think that Mr H was sent the Scorpion insert.*

*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. MetLife didn't undertake any further due diligence. Its transfer notes show that it received the Origo request on 11 July 2014 and had approved the transfer on the same day. There is no record of any checks having been made and I don't think the time taken allowed for the kind of consideration of the transfer that the guidance required.*

*As I explained earlier, MetLife should have checked that the Firm A SSAS was a validly registered pension scheme before allowing the transfer. Therefore, the information MetLife ought to have had before transferring would have made it apparent that Mr H's SSAS was recently registered. This was a feature of Mr H's transfer that should have been seen as a potential warning sign of liberation activity as identified by the Scorpion action pack.*

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

*Had it done so, I think it likely that MetLife would have built up the following information about the transfer – all of which were signs of potential pension liberation under the Scorpion guidance:*

- Mr H was transferring to a recently established scheme with a newly incorporated sponsoring employer.*
- Although Mr H was a director of the sponsoring employer, it was unlikely to have been genuinely trading and providing him with an income. It was, essentially, a means to establish a pension arrangement, which the Scorpion guidance indicated could be a sign of liberation activity.*
- Mr H's intended investment was overseas and unregulated.*

*Against this, MetLife would also have known, and established, the following which would have indicated liberation wasn't a concern:*

- Mr H's reason for transferring was to access a particular investment and improve returns. He wasn't expecting a cash payment following the transfer.*
- Mr H was getting advice from Moneywise who was regulated.*

*So whilst MetLife would have (had it conducted thorough due diligence) found there to be some liberation warning signs, I think it would have ultimately concluded that the liberation threat was minimal given Mr H's reasons for transferring. So even if it had done all it should have done, I'm satisfied MetLife wouldn't have considered there to be reason to provide any warnings to Mr H, over and above those that it should have provided in the Scorpion insert.*

*Mr H's CMC argues MetLife should have done more to warn Mr H about what he was intending to do, even if the liberation threat would have appeared minimal. Specifically, it argues that MetLife should have warned about the warning signs that due diligence ought to have uncovered, including 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 H'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 warning 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, Mr H wouldn't have given 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. And I haven't seen anything that the business would, reasonably, have been aware of that should have alerted it to the potential of Mr H being misled in this way. He was entitled to establish an employer for the purposes of being able to act as trustee of their own pension scheme and, on its own, a non-trading employer isn't a significant enough cause for concern. It's an important point that goes to the heart of this case: Mr H's actions would have appeared to be following regulated financial advice (from the involvement of Moneywise) and a business could, reasonably, have taken comfort from that – especially when one considers the threat of pension liberation would also have appeared minimal. In the circumstances, I'm satisfied MetLife wouldn't, reasonably, have thought a scam was in progress.*

*I'm satisfied Mr H wouldn't have stopped the transfer even if MetLife had done more thorough due diligence in line with the Scorpion action pack. The end result of any such due diligence wouldn't have resulted in any warnings being given to Mr H that he could fall victim to pension liberation. And I don't think the mere act of contacting Mr H and asking questions about the transfer would have prompted a change of heart. Any due diligence questions would have been asked with the intention of establishing the liberation risk Mr H was facing – a risk that doesn't appear to apply here.*

*Similar considerations apply to the sending of the Scorpion insert. As explained previously, MetLife should have sent this but didn't do so. However, as the insert was focussed on the threat posed by liberation – and the consequences of taking cash from a pension before the age of 55 in particular – I don't think it would have dissuaded Mr H from transferring given he was transferring for different reasons.*

*As the CMC will know, it was only after this transfer completed that TPR's guidance widened into scams more broadly, supplemented by the increasing exposure of the FCA's own awareness campaign about SSAS transfers, where the nature of the investment Mr H was making would have attracted more scrutiny.*

### Other arguments

*I am also aware that in this, and other similar cases, Mr H's CMC has suggested that ceding schemes were required to check whether a member had a statutory right to transfer their pension. Which, it argues, meant that MetLife should have checked Mr H's employment status so as to ensure he had a right to transfer. The outcome of those checks would, in the view of Mr H's CMC, have caused MetLife concerns because of a lack of employment link to the SSAS's sponsoring employer. I've outlined the obligations businesses had earlier in this decision. I won't repeat them here other than to say they didn't include an obligation for ceding schemes to check, as a matter of course, whether the transferring member was earning an income. And MetLife had no reason to think Mr H wasn't earning either. Indeed, it would have been surprising if it had thought this – his CMC has told us he was employed at the time. So, I see no reason why MetLife would, or should, have probed this issue any further."*

### **Responses to my provisional decision**

MetLife offered no response to my provisional decision.

The estate of Mr H didn't agree with my provisional findings and detailed representations were made by its CMC. I have read and considered its representations in full but for brevity I will summarise those arguments as follows:

- The CMC disagreed with my view that MetLife didn't need to contact Mr H to ensure

that he had a statutory right to transfer. It re-emphasised the argument that it had made prior to my provisional decision and highlighted two decisions made by the Pensions Ombudsman that it said shared similar circumstances and supported its view.

- The CMC considered that my provisional decision had misrepresented what '*pension liberation*' encompassed in 2014. It considered that '*pension liberation*' should be considered to have included the movement of pension funds from a safe regulated environment into "*highly dubious and risky, unregulated investment structures, often based overseas.*" It asked that I consider and comment on all of the points that it highlighted from the TPR Action Pack.
- It suggested that my provisional decision was inconsistent with a specific decision that it referred to that our service had issued.
- The CMC doesn't agree, as a matter of principle, that the Scorpion guidance significantly broadened in July 2014. And it considered that I'd relied on incorrect information regarding an FCA consumer warning about scams. Which it said was first published in May 2014, rather than September 2014.

### **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 understand that the loss that Mr H suffered was not fully compensated by the FSCS because of its award limit and I am sorry for that. I therefore understand why the CMC is re-emphasising its arguments in order to persuade me to find in favour of the estate of Mr H in this case. But my role is to impartially weigh the evidence to come to an outcome that is fair and reasonable in the circumstances of this case. I am not persuaded that the arguments that have been made are new and they were already considered in coming to my provisional decision. I will explain why my final decision is still that MetLife are not responsible for the loss Mr H suffered.

In my provisional decision I set out what I thought the relevant rules and guidance were and what they meant for MetLife. I've considered Mr H's additional arguments but I haven't changed my mind on what the implication of these rules were on MetLife in this case. I will explain why.

#### *What did the 2013 guidance ask ceding schemes to look out for?*

The Pensions Act 2004 defines 'pension liberation' from a legal perspective. It is, in summary, where an amount is taken from a pension in an unauthorised way. It would include any unauthorised use, although it was generally the case at the time of Mr H's transfer that it involved money being obtained from a pension before a member reached their normal minimum pension age. Which is why, in my provisional decision, I described it as, "*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*".

So on this point I do not agree with the CMC. The moving of pension funds into more speculative, or unregulated investments was not the sole focus of the Scorpion campaign at the time of this transfer, but rather the literature said it could be a feature of schemes that enabled early access to funds. And I think MetLife could have ruled out that Mr H was seeking to do this. The CMC is effectively saying that MetLife should have been looking out

for issues that went broader than the guidance that had only recently been introduced in 2013 to tackle pension liberation. And I don't think it would be fair or reasonable for me to expect MetLife to have done this.

The CMC suggests that TPR's revised guidance of July 2014 didn't broaden the focus of the Scorpion campaign. But I disagree. It appears far more likely that update was made in response to an evolving understanding in the industry of the risks to consumers. I still think that the changing focus of the Scorpion guidance in 2014 is clear. It is indicated by the titles of the respective action packs. In 2013 the action pack is titled "*Pension liberation fraud*", but in July 2014 the title is "*Pension scams*".

To further clarify this I think it's helpful to refer to the content of the February 2013 Scorpion guidance (which is relevant for Mr H's complaint) and the content of the Scorpion guidance that was issued in July 2014 (which was made too late to apply to Mr H's complaint):

- The front page of the 2013 Scorpion insert has the following message: "*Companies are singling out savers like you and claiming that they can help you cash in your pension savings.*" Whereas the front page of the 2014 Scorpion insert says the following: "*A lifetime's savings lost in a moment... Pension Scams. Don't get stung.*"
- The 2013 Scorpion insert goes on to say: "*Pension loans or cash incentives are being used alongside misleading information to entice savers as the number of pension scams increases. This activity is known as 'pension liberation fraud' and it's on the increase in the UK. In rare cases – such as terminal illness – it is possible to access funds before age 55 from your current pension scheme. But for the majority, promises of early cash will be bogus and are likely to result in serious tax consequences.*" The 2014 Scorpion insert also warns about taking cash from a pension before age 55. But it additionally warns about the dangers of "*one-off investment opportunities*" and the potential to lose an entire pension pot. Adverse tax implications aren't mentioned at all.
- The case studies in the 2013 Scorpion action pack are solely about people wanting to use their pensions in order to access cash, the repercussion of which were tax charges and the loss of some pension monies to high administration fees. The warning signs that were highlighted followed suit: "*legal loopholes*", "*cash bonus*", "*targeting poor credit histories*", "*loans to members*". In contrast, the 2014 Scorpion action pack included a case study about someone transferring in order to benefit from a "*unique investment opportunity*" – an overseas property development – which subsequently failed causing the consumer to lose his entire pension.

The reference that the CMC made to TPR's press release, that accompanied the launch of the 2013 Scorpion guidance, helps to further illustrate the point. It highlighted the following statement from the press release:

*"The remainder of their funds are likely to be invested in highly dubious and risky, unregulated investment structures, often based overseas. The amount that has been 'liberated' from pension schemes in this way is known to be in the hundreds of millions of pounds, with thousands of members affected."*

Mr H's CMC's point is that accessing pensions early wasn't the only concern of the guidance – unregulated, overseas, investments were also a concern. But the context within which the above quote is framed is important here. On reading the press release as a whole, it's clear that attention isn't being drawn to overseas investments in order for ceding schemes to view them as a scam threat in their own right and to act accordingly. Rather, overseas investments are presented as a possible feature of scams involving the unauthorised release

of pension funds – and it is the early access of pension funds that is presented as the threat ceding schemes are told to be guarding against. The CMC's quote above notably refers to what then happens to the 'remainder' of the funds. The point is mirrored in the 2013 Scorpion action pack and insert which say:

*"One technique that pension fraudsters use is to send a large portion of the pension transfer overseas. This makes the funds harder to trace and retrieve when the arrangement is closed down."*

*"Ask for a statement showing how your pension will be paid at retirement, and question who will look after your money until then."*

The portrait of a scam as sketched out in the 2013 guidance isn't therefore one where the transferring member is solely motivated by a specific investment of the type Mr H invested in. Instead, the investment is a means to misappropriate transferred funds which were transferred for other reasons – namely to access pension savings in an unauthorised way. As explained above, I think that it was only in 2014 that the emphasis of TPR guidance was broadened and schemes were directed towards members wanting to transfer because they had become interested in a particular investment opportunity. So my view remains that the presence of unregulated investments wouldn't have remained enough of a concern once MetLife had ruled out that Mr H was gaining unauthorised access to his pension.

On this point, I note that Mr H's CMC has pointed to FCA warnings issued earlier than September 2014 that it thinks MetLife should also have been alive to, including warnings about SSASs being used to house unusual investments and people being offered 'free' pension reviews.

I am aware of these warnings which the FCA first issued to customers on their website in late April 2014. And I recognise the argument, which is that the nature of pension scams was evolving and businesses ought to have been aware of that. But I also think it's fair to recognise that TPR guidance – which was the only guidance directed at ceding schemes at the time – wasn't updated to cover wider scams until July 2014. And even then TPR didn't specifically point to the increased use of SSAS as vehicles for unregulated investments like the FCA had done.

I acknowledge that this doesn't mean all ceding schemes would have been completely unaware of any scam activity starting to evolve beyond pension liberation before the TPR guidance changed in July 2014. However, I think it was only in July 2014 with the updated TPR guidance that it ought to have become clear to all ceding schemes, including MetLife, that they then needed to more systematically look out for wider scam activity.

I remain satisfied that at the time when MetLife dealt with Mr H's transfer it wasn't unreasonable to still focus its checks on preventing pension liberation. Within the understanding of what that meant at the time that I have referred to here.

*Is my provisional decision inconsistent with decisions on similar cases?*

Mr H's CMC has drawn my attention to a decision by our service that it considers my provisional decision to be inconsistent with. In Mr H's case I have considered the evidence and circumstances specific to his case, where necessary on the balance of probabilities, in order to reach a fair and reasonable decision. But I have also considered relevant legislation, rules, guidance and industry best practice. I also understand that, faced with similar enough circumstances or the balance of probabilities the CMC would expect decisions from our service to be broadly similar.

I'll start by commenting on the other final decision that the CMC has chosen to refer to. I am aware of the circumstances of that case and the transfer in question did not complete until September 2014. So was firmly in the period where the standard that I think it's fair to hold MetLife to would be based on the 2014 Scorpion guidance.

In that previous decision, a key feature was the ombudsman's finding that the consumer in that case had, more likely than not, been advised by an unregulated party. Which the ceding pension company ought to have found out and then correspondingly warned the consumer about the risk of following financial advice from an unregulated party. That finding is fundamentally different to the one that I made in my provisional decision. Which is that Mr H had been following advice from Moneywise, a firm regulated to provide such advice. My reasons for coming to that conclusion were set out in my provisional decision and have not been contested. For clarity, I am still persuaded that Mr H was, more likely than not, acting on the advice of Moneywise. For these reasons I reject the CMC's assertion that the circumstances in the case it has quoted are similar enough that there is any inconsistency.

The CMC has also highlighted two decisions by the Pensions Ombudsman that it says supports its view that MetLife had to check that Mr H had a statutory right to transfer in this case. I disagree with the CMC on this point. It has suggested that the cases are similar. Whilst I am not bound to follow decisions by the Pensions Ombudsman, they also appear to be fundamentally different cases. In both of the cases that the Pension Ombudsman was considering, the consumer was transferring to new multi-member occupational pension schemes where there were more evident concerns about the nature of their new employment, such as its geographical separation – or the ceding scheme already having evidence that the consumer was unemployed. Those issues are not present to the same extent here.

It follows that I am not persuaded to change my mind on whether MetLife should have been suspicious of whether a statutory right to transfer existed. However, the fact remains that MetLife would have been able to confirm that that Mr H did have a statutory right in this case. As the CMC has confirmed.

#### *Should MetLife have done more in the case of Mr H's pension transfer?*

I set out in my provisional decision why I don't think MetLife sent Mr H the Scorpion insert. And nothing I have seen on this case has changed my mind on this point. In this regard I think that MetLife's service fell short of what I would expect. But I also need to consider whether this failing had a bearing on the subsequent harm that Mr H suffered. I've considered whether anything in the Scorpion insert would have alerted Mr H to the kind of harm that he was likely to be exposed to. And I don't think that it did. It focusses primarily on the risk to consumers of being persuaded to access pensions in an unauthorised way. This wasn't something that Mr H was about to do so I am not persuaded that being sent the Scorpion insert would have caused Mr H to change his mind about the transfer.

I am still persuaded that the due diligence that MetLife did fell short of what was required in this case. Quite simply, the existence of a warning sign in the action pack – a recently established receiving scheme – was enough to warrant MetLife doing more.

As MetLife didn't look into the transfer further, I explained in my provisional decision why I considered the checklist in the Scorpion Action Pack as representing a reasonable example of the enquiries that it could have made. That is still the case and on this point the estate of Mr H mostly agrees. As I set out in my provisional decision, I am still persuaded that MetLife would, more likely than not, have identified certain warning signs.

However, and for the same reasons that I set out in my provisional decision, I don't think that

MetLife would reasonably have concluded that there was a risk of pension liberation. By the understanding of what that meant at the time that I have explained above. None of the arguments that the CMC has put forward has changed my thinking on this.

Whilst I agree that some of the warning signs from the action pack would have been present, there would also have been significant reassurance that I think it would have been fair and reasonable for MetLife to have relied on. Namely: Mr H would have provided reassurance that he was not making any unauthorised access to his pension; and he was obtaining independent financial advice from a party regulated by the FCA to provide such advice. As I explained in my provisional decision, I am still persuaded that these things would, more likely than not, have reassured MetLife that pension liberation was not happening.

I've considered whether any of the other warning signs that it would likely have found, would have been things that would have caused it to separately suspect another type of scam was happening. But, for the same reasons I set out in my provisional decision earlier, I don't think that it's fair or reasonable to conclude that was the case.

### **My final decision**

For the above reasons I am not upholding the estate of Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr H to accept or reject my decision before 4 October 2024.

Gary Lane  
**Ombudsman**