

## The complaint

Mr H has complained about a transfer of his Sun Life Assurance Company of Canada (UK) Limited (Sun Life) Free Standing Additional Voluntary Contributions (FSAVC) policy – which is a type of personal pension – to a small self-administered scheme (SSAS) in October 2014. Mr H's SSAS was subsequently used to invest in The Resort Group plc (TRG). The investment stopped providing returns several years ago and now appears to have little value.

Mr H says Sun Life 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 H says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Sun Life had acted as it should've done.

## What happened

I issued a provisional decision on 29 August 2024. I've repeated here what I said about what had happened and my provisional findings.

*'Sun Life says it received authority from Mr H in April 2014 to provide information about his pension policy to First Review Pension Services Limited (FRPS) and Moneywise. We haven't seen what Sun Life received. But we've seen a copy of the covering letter and letter of authority (LOA) signed by Mr H at the end of March 2014 in connection with a pension policy held with another provider. So I'd assume a similar letter and LOA was sent to Sun Life. FRPS wasn't a regulated firm. Moneywise Financial Advisers Limited (Moneywise) was. The firm has since been dissolved but, at the time, was authorised by the FCA to provide regulated financial advice about pensions.'*

*The information requested included transfer values and details of the benefits provided, including any that were guaranteed – so the sort of information that would normally be requested by a financial adviser in recommending a pension transfer. Discharge forms were also requested. Sun Life says it sent the information requested although I haven't seen exactly what was sent and whether it was sent to FRPS or Moneywise or both.*

*In late May 2014 a limited company was incorporated with Mr H as the sole director. I'll refer to this company as H Limited. And in August 2014 a SSAS was established with H Limited as the sponsoring employer.*

*On 13 August 2014 Bespoke Pension Services (BPS) wrote to Sun Life. The letter said Mr H was requesting a transfer to the SSAS. The enclosures to the letter included:*

- HMRC's registration letter for the SSAS showing it had been registered on 7 August 2014.*
- A copy of the February 2013 booklet produced by The Pensions Advisory Service (TPAS) to warn about the risks of pension liberation and scams and known as the*

*Scorpion booklet (and which I've mentioned further below). The first page was signed by Mr H on 7 August 2014 below a printed statement which read, 'I can confirm I have read this document. I am not party to any such pensions liberation activity in anyway whatsoever.'*

- A pension transfer request signed by Mr H with his reasons – his letter of 7 August 2014 (and to which I've referred further below).*
- Confirmation that Mr H was employed by H Limited – an agreement dated 28 May 2014 showing he'd been appointed as the managing director of H Limited, the sponsoring employer of the SSAS.*
- A copy of BPS's 'Policy on Pension Liberation' which, amongst other things, detailed that it administered around 700 SSASs and its staff had extensive industry experience.*
- The SSAS trust deed and rules dated 6 August 2014, which had been drafted by a large London law firm.*
- A letter from that firm confirming they'd drafted the trust deed and rules which conformed to the Finance Act 2004 as a registered pension scheme and hadn't been drafted in a way which knowingly allowed the scheme to be operated other than as a registered pension scheme.*

*The letter from Mr H dated 7 August 2014 included the following:*

*'The purpose of this letter is to provide you with additional confirmation of the basis upon which I have made this request and to seek to provide a record of the fact that I am aware of the issues relating to pensions liberation. Indeed I have carefully considered my decision to request a transfer to the scheme and have not made it lightly.*

*I confirm that the scheme is a registered pension for HMRC purposes [reference number given] and that the trust deed and rules governing it only allow standard benefit options such as annuities and drawdown in accordance with the applicable legal requirements.*

*From guidance and information I have received in connection with this decision I appreciate that there has recently been a significant rise in cases of 'pensions liberation' fraud. As a result there is increased concern and scrutiny around transfer requests being made, to ensure members fully understand the implications of making a transfer.*

*I therefore wish to confirm that the transfer request is being made in order that I can take advantage of investment opportunities available under the scheme, none of which are in any way connected with pension liberation. I have received detailed information about the Scheme, how it operates, who administers it and the risks associated with making a transfer out of my existing pension arrangement.*

*In making this transfer I am not seeking to access my pension benefits before age 55 and I am aware of the potentially significant tax liabilities that would arise were I to attempt to do so. Indeed the trust deed and rules of the Scheme do not permit benefits to be taken prior to age 55, except in circumstances of ill health which meet HMRC requirements. I also confirm that I have not been offered any cash or other incentive by any person as part of my decision to transfer my pension to the Scheme.'*

*BPS's letter also included transfer forms and bank details for the transfer payment. BPS confirmed they were a co signatory to the account and the trustees were unable to move any*

*funds without BPS's authority which protected the fund against any risk of pension liberation.*

*On 19 August 2014 Sun Life wrote to Mr H saying that, following contact by BPS in connection with the proposed transfer of the policy and in order to proceed with the transfer, Sun Life required completion of the open market option or transfer form. A copy was enclosed. The one BPS had supplied was an old version and no longer valid. And completion of the additional information and declaration forms by Mr H and the receiving scheme was also required.*

*On the same date Sun Life wrote to HMRC saying Mr H was requesting a full transfer from Sun Life to BPS and requesting verification of the following details: is the scheme registered?; is there any indication of pension liberation?; was there any other cause for concern?*

*On 17 September 2014 Sun Life wrote to Mr H referring to a telephone call from him on 16 September 2014 and enclosing a copy of Sun Life's letter of 19 August 2014 (which I don't think Mr H had received, hence his telephone call) detailing its outstanding requirements to proceed with the transfer request.*

*On 20 September 2014 HMRC wrote to Sun Life in response to Sun Life's enquiry. HMRC said it could only provide confirmation of registration status of the SSAS when both of the following conditions apply:*

- the transferee scheme is registered with HMRC and is not subject to a deregistration notice*
- at the present time the information held by HMRC does not indicate a significant risk of the scheme being set up or being used to facilitate pension liberation.*

*HMRC confirmed that at the time the above conditions apply. HMRC added: 'This confirmation was given to help your scheme, as part of the process you are required to carry out, to satisfy yourselves whether or not a transfer should be made. Obtaining this confirmation should not be the only check carried out and relied upon when deciding whether or not to make a transfer.'*

*On 23 September 2014 BPS wrote to Sun Life enclosing the completed forms – the open market option or transfer form signed by Mr H on 8 September 2014. He'd ticked the box saying he'd like to effect a full transfer of benefits to the provider detailed overleaf – his SSAS. There were also additional information forms signed by BPS and Mr H. In signing the member declaration form Mr H confirmed he hadn't received any financial incentive to proceed with the transfer; hadn't been told he could take more than a quarter of his transfer value in cash or take money out of his pension prior to age 55; hadn't received any cold calls, unsolicited emails or text messages that led to the request for the transfer; he wasn't under any pressure to speed up or hurry along the process of transferring his pension and he'd read and understood the 'Predators Stalk Your Pension' booklet.*

*The transfer seems to have gone through some internal checks. I've referred to those further below. Sun Life made a transfer payment of £11,321.01 to BPS on 3 October 2014. At around the same time a transfer payment of £14,721.40 was made by another provider. Subsequently £17,500 of Mr H's SSAS fund was invested in TRG.*

*Mr H says he didn't expect to get anything back for about four years while the resort was still being built. He says it was after watching a TV programme later that he thought he may have been scammed.*

*In September 2020 Mr H, through his representative, complained to Sun Life. Briefly his*

*argument is that Sun Life ought to have been aware of the cross government initiative to prevent pension scams and which had been widely published in the financial services industry from February 2013 onwards. In dealing with Mr H's pension transfer, Sun Life fell short of the guidance. Sun Life ought to have spotted, and told Mr H 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; BPS, the SSAS administrator was relatively newly incorporated and not authorised by the FCA; the catalyst for the transfer was an unsolicited call; Mr H had been promised very high returns; the proposed investment was in unregulated, high risk and non diversified assets; and Mr H hadn't received FCA regulated advice about the transfer.*

*Sun Life didn't uphold the complaint. Sun Life said in April 2014 authority had been received from Mr H to provide information to FRPS and Moneywise. The latter was a FCA regulated company, showing on the FCA's register as regulated from 30 August 2012 to 6 October 2017. Information was issued as requested.*

*In August 2014 Sun Life had received completed transfer forms from BPS saying Mr H wanted to transfer to a SSAS. A declaration signed by Mr H was included, confirming he was fully aware of the issues in relation to pension liberation. Sun Life had written direct to Mr H on 19 August 2014 with additional information and declaration forms for signature by him and the receiving scheme. Sun Life also provided its contact details should Mr H wish to discuss the form before submitting it. On 24 September 2014 Sun Life got the completed forms back. Sun Life referred to the declarations Mr H had signed. And the paperwork provided to him said that independent financial advice should be sought if he was unsure about the risks of the investment.*

*Sun Life knew about pension liberation and the regulatory warnings about it at the time of the transfer and had implemented appropriate procedures and controls prior to processing Mr H's transfer request, while at the same time recognising his statutory right to transfer and Sun Life's obligation to comply. Sun Life conducted a number of due diligence checks in line with the regulatory guidelines, including full verification of Mr H as the plan owner and checking the forms had been completed correctly. Information was gathered from various sources, such as HMRC. Sun Life was satisfied the funds were being transferred to an HMRC approved scheme as confirmed by the registration certificate. And additional enquiries were made with HMRC before moving forward with Mr H's request. The trust deed and scheme rules were sent to Sun Life's legal team and found to have been executed in accordance with section 44 of the Companies Act 2006.*

*Mr H's investment in TRG – a fractional share of a hotel room in a resort in Cape Verde - stopped providing returns several years ago and now appears to have little value. It is illiquid and there's no market for the investment. Mr H thinks the money he invested has been lost.*

*Our investigator was unable to resolve the dispute informally, so the matter 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.*

*As I've said, at about the same time as Mr H transferred his personal pension with Sun Life to the SSAS he also transferred another personal pension with another provider. Mr H has also complained about that transfer. We've dealt with that complaint under a separate reference but I've taken into account all the information that's been provided on both complaints in deciding each complaint.*

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

The guidance was updated on 24 July 2014 (which was before Mr H's transfer request was received and over two months before the transfer was actually made). It widened the focus from pension liberation specifically, to pension scams – which it said were on the increase. I cover the Scorpion campaign in more detail below.

In late April 2014 the FCA had also started to voice concerns about the different types of pension arrangements that were being used to facilitate pensions scams. In an announcement to consumers entitled "Protect Your Pension Pot" the increase in the use of SIPP and SSASs in pensions scams was highlighted, as was an increase in the use of unregulated and/or illiquid investments. The FCA further published its own factsheet for consumers in late August 2014. It highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.

### The Scorpion guidance

The materials in the Scorpion campaign comprised:

- An insert to be included in transfer packs (the 'Scorpion insert'). The insert warns

readers about the dangers of pension scams and identifies a number of warning signs to look out for.

- A longer booklet issued by TPAS which gives more information, including example scenarios, about pension scams. Guidance provided by TPR said this longer leaflet was intended to be used in ongoing communications with members so that could become aware of the scam risks they were facing.
- An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "watch out for" various warning signs of a scam. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where a transferring scheme still had concerns, they were encouraged (amongst other things) to contact the member to establish whether they understood the type of scheme they were transferring to and – where a member insisted on transferring – directing the member to Action Fraud or TPAS.

TPR issued the guidance under the powers at s.12 of the Pension Act 2004. Thus, for the bodies regulated by TPR, the status of the guidance was that it provided them with information, education and/or assistance, as opposed to creating any new binding rule or legal duty. Correspondingly, the communications about the launch of the guidance were predominantly expressed in terms that made its non-obligatory status clear. So, the tenor of the guidance is essentially a set of prompts and suggestions, not requirements.

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

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

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

In those circumstances, I consider firms which received pension transfer requests needed to pay regard to the contents of the Scorpion guidance as a matter of good industry practice. It means February 2013 marks an inflection point in terms of what was expected of personal pension providers dealing with transfer requests as a matter of fulfilling their duties under the regulator's Principles and COBS 2.1.1R.

#### 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. In deciding how to apply the guidance, they needed to consider the guidance as a whole, including the various warning

*signs to which it drew attention, the case studies that highlighted different types of a scam, and the checklist and various suggested actions a ceding scheme might take. And where the recommendations in the guidance applied, absent a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations.*

*With that in mind, I take the view that personal pension providers dealing with transfer requests needed to heed the following:*

- 1. As a first step, a ceding scheme needed to check whether the receiving scheme was validly registered.*
- 2. The Scorpion insert provided an important safeguard for transferring members, allowing them to consider for themselves the scam threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. So, all things considered, I think the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party.*
- 3. I also think it would be fair and reasonable for personal pension providers – operating with the regulator's Principles and COBS 2.1.1R in mind – to ensure the warnings contained in the Scorpion insert were provided in some form to a member before a transfer even if the transfer process didn't involve the sending of transfer packs.*
- 4. The Scorpion guidance asked firms to look out for the tell-tale signs of scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The guidance points to the warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. Therefore, whilst using the action pack wasn't an inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.*
- 5. The considerations of regulated firms didn't start and end with the Scorpion guidance. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn't involve anything specifically referred to in the Scorpion guidance – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's principles and COBS 2.1.1R.*

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

*In 2014 Mr H was aged 53. He'd been made redundant and was living off his savings which he says were modest. He had no other investments and he wasn't a sophisticated investor and he had no pensions or investment experience.*

*When Mr H's complaint was made to Sun Life, he said he'd received an unsolicited call, from what he thought was a government sponsored agency, offering a free pension review. He had his FSAVC policy and another personal pension with a different provider. He signed LOAs which were then sent to Sun Life and the other provider with a request for a transfer*

value. He then met with someone from the firm who'd contacted him or BPS on one occasion at his home. Neither firm was FCA authorised or regulated, the significance of which Mr H didn't understand.

Mr H says he was told his existing pensions weren't performing well and he could achieve better returns by transferring to a new pension arrangement and investing by purchasing a hotel room in a resort in Cape Verde. Mr H recalls the adviser being very persuasive about the benefits of the investment and the returns it would achieve. It turned out that investment was a high risk venture. The risks weren't explained, nor was the complexity of a SSAS and the obligations which came with it in terms of trustee and company director duties.

Mr H says he believed the adviser was acting in his best interest and he felt some pressure to accept the advice and, based on the recommendation he'd been given, he agreed to transfer his FSAVC policy from Sun Life to the SSAS. He signed and returned the documentation that had been given to him. BPS then set up the SSAS and liaised with Sun Life to facilitate the transfer. He says that, throughout the transfer process, there was no, or no effective, direct contact between him and Sun Life.

Our investigator also spoke to Mr H about what had happened. Mr H told our investigator that he couldn't recall how he'd first come across FRPS but he thought they were a government agency. He had a meeting with them and they said the investment would grow very quickly - £1,000 pm after four years and when the resort was finished. He was told his existing pensions weren't going to pay out very much so the prospect of high returns was attractive. His main pension provision was an occupational pension scheme (OPS) which he didn't transfer. But he did transfer his Sun Life FSAVC policy and another policy held with a different provider to the SSAS.

Mr H said the paperwork was confusing – there was lots of jargon and he didn't understand it all. He was unemployed at the time and, although he didn't have any debts, the promised growth was enticing. He did notice the Scorpion leaflets which were in the documents FRPS provided but they were glossed over. He couldn't recall what he thought about the letters from Sun Life.

Mr H's recollections are broadly consistent with the paperwork we've seen. It appears that he was cold called, asked about his pension arrangements and offered a free review. Information was sought from his existing providers. There was then a face to face meeting at which he was told he'd be better off if he transferred his existing pensions to a SSAS so he could invest in TRG which would generate much better returns. And Mr H went along with that.

Mr H is somewhat uncertain about who the meeting at his home was with. He initially said he didn't know if the person he met was from BPS or from the firm that initially contacted him and whose name Mr H wasn't sure about. But from what Mr H told our investigator later, it seems the meeting had been with someone from FRPS. I think that's likely to have been the case, given that FRPS sent a request for information and letter of authority to Sun Life at the outset. I acknowledge there's not much other evidence, aside from what Mr H recalls and which, as I've indicated, isn't entirely clear. But, to a large extent, that's understandable, given the time that's elapsed. And what Mr H has said is consistent with what we've seen in other cases involving FRPS and BPS.

Moneywise, a regulated firm, was also mentioned on the information request. FRPS wasn't recorded on the FCA register as an 'introducer appointed representative' to Moneywise, that is a firm that can gather information for a regulated firm but not itself advise. I'm not aware of any statements at a corporate level that FRPS always acted on Moneywise's behalf. Mr H hasn't said he was advised by Moneywise. Aside from the request for information which was



*made some months before the transfer actually went ahead, I haven't seen anything to suggest that Moneywise was advising Mr H. So I don't think Moneywise was actually involved.*

*It's possible, based on what Mr H initially said, that the meeting at his home was with BPS. But that firm wasn't authorised to give regulated advice either. To be clear, BPS, in its capacity as a SSAS administrator, didn't need to be authorised by the FCA – administering an occupational pension scheme (such as a SSAS) isn't a regulated activity. But it was different if BPS was giving regulated advice – for example, that Mr H should transfer his existing FSAVC arrangement to a SSAS. On balance, I think it's unlikely that BPS did that. From what I've seen, BPS's role was in relation to the setting up of the SSAS which it would administer. In my view, it was likely to have been FRPS who had the meeting with Mr H.*

*As to what happened during the meeting, what Mr H ended up doing – setting up his own limited company, establishing a SSAS, transferring his existing pension and investing in TRG – were complex and unusual arrangements for someone such as Mr H. He wasn't a sophisticated investor and I can't see he'd have done all that, or even known that sort of arrangement was available to him, unless he'd been told it would be a good idea and he'd end up better off – which is indeed what Mr H says he was told. So, essentially that course of action had been recommended to him. And, as he'd be investing in TRG using his existing pension savings, that would include a recommendation to transfer out of that arrangement.*

*Advice to transfer out of Mr H's FSAVC policy with Sun Life would be regulated advice and which should only have been given by an FCA authorised adviser. I think it's likely that during the meeting Mr H was advised to transfer his existing pensions to a SSAS so he could invest in TRG and which would perform better than his existing pensions.*

#### *What did Sun Life do?*

*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. TPR had said, as far back as February 2013, that it wanted this to become best practice. Sending the insert to members would've been a simple and inexpensive step for providers to take and one which wouldn't have prevented them from dealing efficiently with transfer requests.*

*Sun Life should've sent the insert direct to Mr H when FRPS got in touch in April 2014 to request details of Mr H's pension policies. I say that the insert should've been sent direct to Mr H as the contents were aimed directly at consumers and, given the warnings given about some intermediaries not acting in the consumer's best interests, it would've defeated the purpose of the insert by sending it to the intermediary in the hope that they'd share it with the consumer. From what I've seen Sun Life didn't send the Scorpion leaflet to Mr H or give him substantially the same information.*

*That said, Mr H did see the longer version – BPS's letter of 13 August 2014 enclosed a copy of the February 2013 booklet which Mr H had signed and confirmed he'd read it. And he recalls seeing it even if he wasn't encouraged to pay too much attention to it.*

*But, by the time Sun Life received Mr H's transfer request, the Scorpion guidance had been updated – to encompass pension scams more generally, rather than just pension liberation scams. Arguably Sun Life should've noticed that when it received the transfer request and provided Mr H with a copy of the updated insert/booklet. And as Sun Life wrote to Mr H on 19 August 2014 and again 17 September 2014 (Mr H not having received the earlier letter) a*

*copy of the updated insert/booklet could've been included. I've seen no evidence this happened. There's also a possibility Mr H may have received the updated (July 2014) insert/booklet from the other provider. But again the evidence about this is unsatisfactory. So on balance I think he didn't receive the updated leaflet. However, I don't think much turns on this, given what I go on to say about due diligence and what Sun Life should've done.*

*Due diligence:*

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

*Sun Life did undertake some further due diligence. I've seen that Sun Life had an internal checking process in place and to which Mr H's transfer request was subject. In summary, when Sun Life received BPS's letter of 13 August 2014 Sun Life noted that the receiving scheme, BPS, was on a caution list. So the transfer request was referred to Sun Life's technical department who said new forms needed to be completed as those submitted were no longer in use. And that additional information and declaration forms were needed from Mr H and BPS. Sun Life wrote to Mr H on 19 August 2014 explaining Sun Life's further requirements. Sun Life also wrote to HMRC on 20 August 2014. It seems Mr H didn't get the letter sent on 19 August 2014 and so, following a telephone call from him, it was resent on 17 September 2014. When the new completed forms were received and the information from HMRC was to hand, the transfer request was referred back to the technical department. The trust deed and rules were then referred to Sun Life's legal department who confirmed on 29 September 2014 that they were in order. The transfer was then approved and went ahead.*

*So Sun Life's due diligence consisted largely of confirming with HMRC that the SSAS had been registered and wasn't subject to deregistration or under investigation by HMRC; that the trust deed and rules were in order and ensuring that the up to date forms were used and which included the member declaration signed by Mr H. Which, as I've noted, contained a number of declarations. There's also the letter Mr H signed on 7 August 2014 and which, in broad terms, confirmed he was aware of the threat posed by pension liberation, that he wasn't doing that and that he wanted to proceed with the transfer. All in all I think, from the information Sun Life had, it could reasonably be reassured that pension liberation wasn't involved.*

*But, as I've noted, in July 2014, the Scorpion guidance had been updated and the focus had shifted from pension liberation to wider threats to pension funds. I've also referred to the concerns voiced by the FCA from late April 2014 and which were drawn to providers' attention in September 2014. Mr H's transfer request was made in August 2014 but the transfer wasn't completed until early October 2014. So, during the time when Sun Life was dealing with the transfer request and undertaking checks, Sun Life should've been aware that the guidance had been widened and factored that into the due diligence it undertook in relation to Mr H's transfer request.*

*Should Sun Life have undertaken further checks?*

*Given the information Sun Life had at the time, two features of Mr H's transfer would've been potential warning signs of a scam. First, Mr H's SSAS was very recently registered – on 7 August 2014. That was less than a week before BPS wrote to Sun Life on 13 August 2014 to request a transfer and it was the same day as Mr H signed the letter setting out details of why he wanted to transfer and his understanding of the position. The second potential issue – and something that Sun Life did pick up on – was that the receiving scheme (BPS) was on a warning list.*

*In the circumstances I think Sun Life needed to look into the proposed transfer and what lay behind Mr H's request. 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 a scam 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 Sun Life should've addressed all three parts of the check list and contacted Mr H as part of its due diligence. I note that Mr H contacted Sun Life by telephone on 16 September 2014 and which could've been an opportunity for Sun Life to discuss things further with him.*

*What would Sun Life reasonably have found out?*

*Under part 1 of the checklist, by referring to Companies House, Sun Life could've quickly established that the sponsoring employer – H Limited – had been incorporated recently – just over two months before the transfer request with Mr H as the sole director. And the SSAS itself had been established even more recently – on 6 August 2014, so only a week before BPS's transfer request was made (on 13 August 2014) and just the day before Mr H had signed the letter of 7 August 2014.*

*A contract of employment was provided. I understand Mr H was unemployed at the time. So*

*it might've been that he'd become self employed and he'd be working for himself through his own limited company. But I don't think that was the plan and the company was shown as dormant. If Sun Life had asked Mr H about why he'd set up the limited company and entered into an employment contract, I don't see any reason why he wouldn't have told Sun Life that he'd been told a limited company was needed as part of the new pension arrangement that was being set up.*

*Enquiries under Part 2 of the checklist would have revealed that, although Mr H hadn't been offered loans or other cash incentives for making the investment, the proposed investment was overseas – Mr H would be investing in a hotel room in Cape Verde. Fractional hotel ownership was a relatively new investment innovation and fitted the FCA's 'Protect your pension pot' warning about unusual investments including overseas property, especially as Mr H had apparently been motivated by a cold call which was also highlighted as a reason to be very wary.*

*And under Part 3 of the checklist Mr H says he was cold called and advised to transfer his existing pension to the SSAS so that he could invest in TRG. He's also referred to the adviser being persuasive and Mr H says he felt under pressure to accept the advice. Given what I've said above about what happened at the meeting at Mr H's home, I think Mr H would've told Sun Life that he'd been advised to do that by FRPS. Enquiries made at the time by Sun Life would've been when what had happened was fresh in Mr H's mind and I think he'd have recalled who'd been in contact with him and what they'd said and which amounted to advice or a personal recommendation from FRPS.*

*The checklist recommends that, in order to establish whether a member has been advised by a non-regulated adviser, the ceding firm should "check whether advisers are approved by the FCA at [www.fca.gov.uk/register](http://www.fca.gov.uk/register)". In other words, they should consult the FCA's online register of authorised firms. Sun Life should've taken that step, which is not difficult, and it would quickly have discovered that Mr H's adviser was indeed unauthorised. Being advised by an unauthorised firm to transfer benefits from a personal pension plan would have been a breach of the general prohibition imposed by FSMA, which states no one can carry out regulated activities unless they're authorised or exempt. Anyone working in this field should have been aware that financial advisers need to be authorised to give regulated investment advice in the United Kingdom – indeed, the Scorpion guidance itself makes this point.*

*My view is that Sun Life should have been concerned by the involvement of an unregulated adviser because it pointed to a criminal breach of FSMA. On the balance of probabilities, I'm satisfied such a breach occurred here.*

#### *What should Sun Life have told Mr H – and would it have made a difference?*

*I've reached my findings here taking into account that, as I've noted above, Mr H did see the February 2013 Scorpion booklet. It was aimed at pension liberation fraud – claims that savers could cash in their pension early (before age 55) and the tax bill that could result. The booklet did highlight some possible warning signs – including unsolicited calls and transfers overseas. Mr H's pension wasn't being transferred overseas – it wasn't a QROPS (Qualifying Recognised Overseas Pension Scheme) – but the investment was an overseas resort development. And the 'Five steps to avoid becoming a victim' section suggested finding out about the company's background through information on line and said that any financial advisers should be registered with the FCA.*

*But the main thrust of the booklet was pension liberation which Mr H wasn't seeking to do and which, as I've said, Sun Life could've been reasonably reassured wasn't happening. So I don't think the warnings would've really resonated with Mr H. As I've said, by the time Mr H's transfer request was made and certainly by the time it was processed, the focus had*

widened to pension scams more generally. As I've said, I can't be sure that Mr H saw the updated (July 2014) Scorpion guidance.

And, had Sun Life done more thorough due diligence against that wider background, there'd have been a number of warnings Sun Life could've given Mr H in relation to a possible threat to his pension savings as identified by the action pack. And Sun Life should also have been aware of the close parallels between Mr H's transfer and the warnings the FCA gave to consumers in August 2014 about transferring to SSASs (which was brought to the attention of pension providers the following month). But the most egregious oversight was Sun Life's failure to uncover the threat posed by non-regulated advisers. Its failure to do so, and failure to warn Mr H accordingly, meant it didn't meet its obligations under PRIN and COBS 2.1.1R.

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

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

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

Although Mr H has said he was interested in the prospect of high returns, he hadn't said he was unhappy with how his existing pensions were doing or that he was considering making changes anyway. Instead he was contacted out of the blue by someone offering a free review who told him he'd get better returns if he transferred and invested in TRG. So, although I can understand why he agreed, I don't think there's anything to suggest he'd have gone ahead anyway, and regardless of any concerns expressed by Sun Life. At the very least I think any reservations expressed by Sun Life would've prompted Mr H to check out what he was planning to do by taking regulated financial advice. I can't see, if he'd done that, he'd have been advised to proceed.

Mr H has also mentioned that he didn't transfer benefits he held in a former employer's pension plan. He's indicated that forms the major part of his pension provision. But I don't think that means he'd have gone ahead with the transfer of his FSAVC anyway and on the basis that he could afford to take a risk with that part of his pension provision. As I've said, Mr H also transferred another pension to the SSAS. The sums involved weren't insubstantial – in total about £26,000. Mr H has said he understood the firm he'd been contacted by was a government sponsored agency – so an organisation he could trust and rely on to act in his best interests. I don't doubt that he'd have been surprised and probably somewhat shocked if he'd been told that, on the contrary, he'd been advised by someone who shouldn't have been giving regulated advice and was acting unlawfully in so doing. I think that would've

*been enough for Mr H to reconsider and decide not to go ahead.*

*The upshot is, if Sun Life had acted as it should've done, Mr H wouldn't have proceeded with the transfer out of his FSAVC or suffered the investment losses he did in consequence of investing via a SSAS in TRG.'*

Both Mr H and Sun Life accepted 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.

As I've noted above, both Mr H and Sun Life accepted my provisional decision. In that light and in the absence of any further comments or arguments, my views remain as set out in my provisional decision. I've repeated what I said there above and it forms part of this final decision. So I'm upholding the complaint and I've set out below what Sun Life needs to do to put things right for Mr H and which follows what I said in my provisional decision.

### **Putting things right – fair compensation**

My aim is that Mr H should be put as closely as possible into the position he'd probably now be in if Sun Life had treated him fairly.

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

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

### **Actual value**

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

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

- Sun Life should give the illiquid investment(s) a nil value as part of determining the actual value. In return Sun Life may ask Mr H to provide an undertaking, to account to it for the relevant proportion of the net proceeds he may receive from those

investments in future on withdrawing them from the SSAS. Sun Life will need to meet any costs in drawing up the undertaking. If Sun Life asks Mr H to provide this undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

- It's also fair that Mr H should not be disadvantaged while he is unable to close down the SSAS. So to provide certainty to all parties, if these illiquid investment(s) remain in the scheme, I think it's fair that Sun Life should pay an upfront sum to Mr H equivalent to the relevant proportion of five years' worth of future administration fees at the current tariff for the SSAS, to allow a reasonable period of time for the SSAS to be closed.

### **Notional value**

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

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

### **Payment of compensation**

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

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

Sun Life shouldn't reinstate Mr H's original plan if it would cause a breach of any HMRC pension protections or allowances – but my understanding is that it might be possible for it to reinstate a pension it formerly administered in order to rectify an administrative error that led to the transfer taking place. It is for Sun Life to determine whether this is possible.

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

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

If it's not possible to set up a new pension plan, Sun Life should pay the amount of any loss direct to Mr H. But if this money had been in a pension, it would have provided a taxable income during retirement. Therefore compensation paid in this way should be notionally reduced to allow for the marginal rate of income tax that would likely have been paid in future when Mr H is retired. (This is an adjustment to ensure Mr H isn't overcompensated – it's not an actual payment of tax to HMRC.)

To make this reduction, it's reasonable to assume that Mr H is likely to be a basic rate taxpayer in retirement. So, if the loss represents further 'uncrystallised' funds from which Mr H was yet to take his 25% tax-free cash, then only the remaining 75% portion would be taxed at 20%. This results in an overall reduction of 15%, which should be applied to the compensation amount if it's paid direct to him in cash.

Alternatively, if the loss represents further 'crystallised' funds from which Mr H had already taken his 25% tax-free cash, the full 20% reduction should be applied to the compensation amount if it's paid direct to him in cash.

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

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

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

Details of the calculation should be provided to Mr H in a clear, simple format.

### **My final decision**

I uphold the complaint. Sun Life Assurance Company of Canada (UK) Limited must redress Mr H as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 16 October 2024.

Lesley Stead  
**Ombudsman**