

The complaint

Mrs S has complained about a transfer of her Sun Life Assurance Company of Canada (UK) Limited (Sun Life) personal pension to a small self-administered scheme (SSAS) in April 2015. Mrs S's SSAS was subsequently used to invest in Llana Beach, a resort development in Cape Verde offered by The Resort Group (TRG). The investment now appears to have little value. Mrs S says she's lost out financially as a result.

Mrs S says Sun Life failed in its responsibilities when dealing with the transfer request. She says it should've done more to warn her of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance she says was required of transferring schemes at the time. Mrs S says she wouldn't have transferred, and therefore wouldn't have put her pension savings at risk, if Sun Life had acted as it should've done.

What happened

I issued a provisional decision on 27 August 2024. I set out what had led up to Mrs S's complaint and my provisional findings. I've repeated what I said here:

'Sun Life received a request for information about Mrs S's pension policy, along with a letter of authority (LOA), from First Review Pension Services (FRPS) in January 2015. Sun Life carried out some checks – that the plan number was correct and Mrs S's signature matched one held on its records. A Financial Conduct Authority (FCA) register check was also done. Sun Life updated its records and a transfer pack was sent to FRPS in January 2015. It included Sun Life's 'Application to Transfer your Pension Benefits' form. FRPS called Sun Life on 2 February 2015. Sun Life confirmed that plan information had been sent on 29 January 2015.

Later in February 2015 a limited company, which I'll call S Limited, was incorporated with Mrs S as the sole director. And, towards the end of February 2015, Mrs S signed a trust deed establishing a SSAS with S Limited as the sponsoring employer.

On 10 March 2015 Cantwell Grove Limited (CGL) wrote to Sun Life with a request to transfer Mrs S's Sun Life policy to the SSAS. CGL called Sun Life on 13 March 2015 to check it had been received. Sun Life received it later that day. CGL gave the SSAS's PSTR (Pension Schemes Tax Reference) and enclosed a copy of HMRC's notice of registration, showing the SSAS was registered on 3 March 2015. CGL set out key receiving scheme details, including that, as required by section 36 of the Pensions Act 1995, the trustee of the scheme (Mrs S) was taking and considering appropriate advice on whether the proposed investment(s) were satisfactory for the aims of the scheme. That advice was being taken from Astute Financial Management UK Limited (an independent financial adviser, whose FCA register number and address were given). The investments under consideration were a General Investment Account with Aviva and a commercial property investment with TRG.

Also supplied was the completed transfer form which had originally been sent to FRPS. It included a declaration signed by Mrs S which said, amongst other things, that Sun Life hadn't given her any advice.

There was also a letter which Mrs S had signed on 10 March 2015 and which read:

“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 [PSTR number given] and that the trust deed and rules governing it only allow standard benefits 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 ‘pension 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.

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.

On this basis I would be grateful if you could please proceed to transfer my pension to the Scheme as requests as soon as possible.”

Sun Life was unable to proceed immediately as the SSAS wasn’t recorded on Sun Life’s Transfer Scheme Reference Check. The transfer was referred to Sun Life’s technical department who replied saying, ‘[CGL] SSAS model is OK but we require a high risk declaration to be completed by the client before we proceed’. Sun Life wrote to CGL on 18 March 2015 saying it had additional requirements and it had written to Mrs S. On the same date Sun Life wrote to Mrs S saying that, before it could proceed with her transfer request, she needed to complete and return the declaration enclosed.

Mrs S signed that on 20 March 2015. In doing so she declared that she was aware that any investment in overseas property development was unlikely to be covered by UK financial services compensation schemes and that any insurance covering broker default only covered the fund if the investment brokers collapse and was unlikely to cover her pension fund if the investment itself lost money.

We’ve seen that on the same date Mrs S also signed a letter from Broadwood Assets Limited (Broadwood). It said Broadwood had researched TRG investment. There were a number of caveats but Broadwood concluded it was a suitable investment for Mrs S’s SSAS, albeit for more adventurous investors. On the same date Mrs S signed an investment instruction letter to CGL.

Sun Life received Mrs S’s signed high risk declaration form back on 24 March 2015.

On 14 April 2015 Sun Life paid a transfer value of £17,085.32 to CGL. On the same date, £13,781.32 was invested in TRG. CGL wrote to Mrs S on 16 April 2015 confirming that sum

had been invested and saying the remainder of £9,650.60 would be invested as soon as funds reached the SSAS bank account. Further payments of £872.50 on 24 April 2015 and £120 on 30 September 2015 were made, making a total of £14,773.82 invested. But I don't think the full further sum referred to was invested. That's because, as I've mentioned further below, a transfer from another provider was also requested at about the same time as the transfer from Sun Life. But the other transfer didn't go ahead so those funds weren't available to invest.

Initially Mrs S's SSAS received some returns from her investment in TRG – a fractional share of a hotel room at the Llana Beach resort. But it stopped paying returns some years ago and now appears to have little value. I understand there are legal issues with the title to the property and there's no market for the investment and so it's illiquid.

By October 2019 Mrs S had become concerned and she complained, via her representative, to Sun Life. She said Sun Life had failed to identify potential warning signs including that the SSAS was newly registered and the sponsoring employer wasn't incorporated until April 2014 (which I think was an error and should've said February 2015); the company was dormant, not Mrs S's genuine employer and set up solely to facilitate the SSAS; the administrator wasn't FCA authorised, so Mrs S's pension arrangement had been taken outside the regulated sphere; Mrs S had been cold called and offered a free pension review; her decision to transfer was based on advice from an unregulated firm; and the proposed investment was unregulated, overseas, high risk and non diversified.

Sun Life didn't uphold the complaint. It had referred to its Transfer Scheme Reference Check in place for all transfer requests. It contains details of all the valid pension schemes at the time of the transfer and is kept up to date with new details added as and when Sun Life's technical department become aware of them. As the SSAS had been set up for the sole purpose of the transfer it wasn't recorded so Sun Life passed the transfer request to its technical department to make further checks. It confirmed the transfer request could be accepted but required Mrs S to complete a high risk declaration which, as set out above, she did. Sun Life also referred to the letter Mrs S had signed on 10 March 2015. It wasn't Sun Life's responsibility to make sure Mrs S had received advice before proceeding with the transfer.

Our investigator's view was that the complaint shouldn't be upheld. Mrs S's representative disagreed and made a number of points. The first was that Mrs S didn't have a statutory right to transfer – she wasn't in receipt of any earnings as she'd retired due to ill health. But, as I've mentioned further below, this was later corrected and so this argument falls away. In reaching my conclusions I've borne in mind the other points made which, very briefly, were:

- The 2013 Action Pack (mentioned further below) was intended to combat a wider range of potential scams and not just pension liberation (access to a pension fund prior to age 55).
- Mrs S's transfer request was part of a scam perpetrated on a significant number of UK pension holders, processed by a group of unregulated and/or overseas firms with the sole purpose of diverting UK pension fund monies to support the capital funding required for TRG's developments in Cape Verde.
- CGL's standard transfer pack did refer to Mrs S being aware of issues relating to pension liberation and said CGL had explained that to her. But the scam was sophisticated and it ought to have been obvious to Sun Life that Mrs S had been presented with a large number of documents to sign which she hadn't been taken through. Procuring consumers' signatures to declarations and confirmations in that way is a common tactic used in this type of scam. Mrs S's transfer didn't include early release pension liberation but was a more fundamental overall scam. There was nothing in what CGL supplied to show Mrs S was aware of that and accepted it.

- COBS 2.1.1R (the clients' best interests rule) was relevant. As was COBS 4.2.1R (fair, clear and not misleading communications). All pension providers were expected to comply with the Action Pack. Part of that due diligence included communicating with the member to gather information and about the existence of specific warning signs to the member to enable an informed decision to be made.
- There were a large number (some eight were listed) of warning signs in relation to the transfer, which such due diligence as Sun Life had undertaken hadn't addressed.
- Sun Life didn't communicate with Mrs S to gather necessary information or, if that due diligence identified any warning signs, communicate those to her. Sun Life accepts the Scorpion warning wasn't sent to Mrs S. Sun Life only sent a brief letter to Mrs S on 18 March 2015 (asking her to sign the high risk declaration). Sun Life had also relied on the pre-printed letter Mrs S had signed on 10 March 2015. Neither was adequate communication of the warning signs or indicated that overseas property investment could be seen as high risk or that the transfer might be a scam.
- Sending the Scorpion insert (which Sun Life hadn't done) wasn't sufficient if warning signs were present. Sun Life should've done more – specifically communicated with Mrs S. Sun Life's approach fell short of good industry practice at the time.
- The investigator hadn't made any findings as to causation – what Mrs S would've done if Sun Life had met its obligations. If she'd been informed by Sun Life, a reputable pension provider, that it had identified numerous warning signs that the transfer was potentially a scam, Mrs S, acting as a reasonable person, would've backed out of the transfer or alternatively taken independent FCA regulated advice.

As our investigator was unable to resolve the complaint, it's been referred to me to decide.

What I've provisionally decided – and why

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

The relevant rules and guidance

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 [RESPONDENT BUSINESS] 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 how personal pension providers deal with 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.

In February 2013, The Pensions Regulator (TPR) issued its Scorpion guidance to help tackle the increasing problem of pension liberation, the process by which unauthorised payments are made from a pension (such as accessing a pension below minimum retirement age). In

brief, the guidance provided a due diligence framework for ceding schemes dealing with pension transfer requests and some consumer-facing warning materials designed to allow members decide for themselves the risks they were running when considering a transfer.

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

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. So the content of the Scorpion guidance was essentially informational and advisory in nature. Deviating from it doesn't therefore mean a firm has necessarily 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 right to transfer.

That said, the launch of the Scorpion guidance in 2013 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.

The Scorpion guidance was updated in July 2014. It widened the focus from pension liberation specifically, to pension scams more generally – which included situations where someone transferred in order to benefit from "too good to be true" investment opportunities such as overseas property developments. An example of this was given in one of the action pack's case studies.

In a similar vein, in 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.

There was a further update to the Scorpion guidance in March 2015, which is relevant for this complaint. This guidance referenced the potential dangers posed by "pension freedoms" (which was about to give people greater flexibility in relation to taking pension benefits) and explained that pension scams were evolving. In particular, it highlighted that single member occupational schemes were being used by scammers. At the same time, a broader piece of guidance was initiated by an industry working group covering both TPR and FCA regulated firms: the Pension Scams Industry Group (PSIG) Code of Good Practice. The intention of

the PSIG Code was to help firms achieve the aims of the Scorpion campaign in a streamlined way which balanced the need to process transfers promptly with the need to identify those customers at material risk of scams.

The March 2015 Scorpion guidance

When the Scorpion guidance was launched in 2013, it included two standard documents that scheme administrators could use to warn their members about some of the potential dangers of transferring: a short “insert”, intended to be sent to members when requesting a transfer, and a longer booklet intended to be used for members looking for more information on the subject.

The March 2015 Scorpion guidance asked schemes to ensure they provided their members with “regular, clear” information on how to spot a scam. It recommended giving members that information in annual pension statements and whenever they requested a transfer pack. It said to include the pensions scam “leaflet” in member communications. In the absence of more explicit direction, I take the view that the member-facing Scorpion warning materials were to be used in much the same way as previously, which is for the shorter insert (which had been refreshed in March 2015) to be sent when someone requested a transfer and the longer version (which had also been refreshed) made available when members sought further information on the subject.

When a transfer request was made, transferring schemes were also asked to use a three-part checklist to find out more about a receiving scheme and why their member was looking to transfer.

The PSIG Code of Good Practice

The PSIG Code was voluntary. But, in its own words, it set a standard for dealing with transfer requests from UK registered pension schemes. It was “welcomed” by the FCA and the Association of British Insurers (amongst others). And several FCA regulated pension providers were part of the PSIG and co-authored the Code. So much of the observations I’ve made about the status of the Scorpion guidance would, by extension, apply to the PSIG Code. In other words, personal pension providers didn’t necessarily have to follow it in its entirety in every transfer request and failure to do so wouldn’t necessarily be a breach of the regulator’s Principles or COBS. Nevertheless, the Code sets an additional benchmark of good industry practice in addition to the Scorpion guidance.

In brief, the PSIG Code asked schemes to send the Scorpion “materials” in transfer packs and statements, and make them available on websites where applicable. The PSIG Code goes on to say those materials should be sent to scheme members directly, rather than just to their advisers.

Like the Scorpion guidance, the PSIG Code also outlined a due diligence process for ceding schemes to follow. However, whilst there is considerable overlap between the Scorpion guidance and the PSIG Code, there are several differences worth highlighting here, such as:

- The PSIG Code includes an observation that: “A strong first signal of [a scam] would be a letter of authority requesting a company not authorised by FCA to obtain the required pension information; e.g. a transfer value, etc.” This is a departure from the Scorpion guidance (including the 2015 guidance) which was silent on whether anything could be read into the entity seeking information on a person’s pension.*
- The Code makes explicit reference to the need for scheme administrators to keep up to date with the latest pension scams and to use that knowledge to inform due diligence processes. Attention is drawn to FCA alerts in this area. (I noted the*

contents of some of those alerts earlier in my decision.)

- Under the PSIG Code, an 'initial analysis' stage allows transferring schemes to fast-track a transfer request without the need for further detailed due diligence, providing certain conditions are met. No such triage process exists in the 2015 Scorpion guidance – following the three-part due diligence checklist was expected whenever a transfer was requested.*
- The PSIG Code splits its later due diligence process by receiving scheme type: larger occupational pension schemes, SIPPs, SSASs and QROPS. The 2015 Scorpion guidance doesn't distinguish between receiving scheme in this way – there's just the one due diligence checklist which is largely (apart from a few questions) the same whatever the destination scheme.*

TPR began referring to the Code as soon as it was published, in the March 2015 version of the Scorpion action pack. Likewise, the PSIG Code referenced the Scorpion guidance and indicated staff dealing with scheme members needed to be aware of the Scorpion materials.

Therefore, in order to act in the consumer's best interest and to play an active part in trying to protect customers from scams, I think it's fair and reasonable to expect ceding schemes to have paid due regard to both the Scorpion guidance and the PSIG Code when processing transfer requests. Where one differed from the other, they needed to consider carefully how to assess a transfer request taking into account the interests of the transferring member. Typically, I'd consider the Code to have been a reasonable starting point for most ceding schemes because it provided more detailed guidance on how to go about further due diligence, including steps to potentially fast-track some transfers which – where appropriate – would be in a member's interest.

The considerations of regulated firms didn't start and end with the Scorpion guidance and the PSIG Code. 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 either the Scorpion guidance or the Code – 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 her complaint to Sun Life Mrs S said that in 2015 she started to receive unsolicited phone calls offering a free review of her pension arrangements with a view to increasing the returns. Eventually she agreed to meet with someone. There was a meeting at her home with a representative from FRPS and/or Broadwood. Neither was authorised or regulated by the FCA. Over the course of a number of discussions, the reviewer recommended that Mrs S transfer her pension to a SSAS and invest in an overseas commercial property investment, a beach development in Cape Verde operated by TRG.

At the time Mrs S was aged 58 and we were given to understand she'd retired due to ill health, having previously been working and earning around £22,000 per year. But we've more recently been told that Mrs S, with the assistance of her husband, had been able to clarify the timeline of events. She was in good health at the time of the transfer and still working and it wasn't until late 2015 that she developed health problems. Those have caused memory issues, hence she was confused about when she'd become unwell and given up work. That was in 2016 when, following rehabilitation, she'd tried to get back to work but without success and it was then that she was medically retired.

Aside from clarifying the timeline, what had been said previously was maintained. Including

that Mrs S had no experience of pensions or investments and trusted the information she was given, which was that her existing pension was "frozen" and she was guaranteed higher returns if she transferred and invested as recommended. The reviewer didn't make it clear that he wasn't FCA authorised and Mrs S didn't appreciate the significance of that. Nor was she warned about the risks of the proposed investment abroad.

Mrs S agreed to go ahead and the reviewer provided her with the paperwork to establish a SSAS with CGL. Sun Life corresponded with CGL and didn't contact Mrs S directly regarding the intended transfer (aside from asking her to sign the high risk declaration). There's no evidence that Sun Life provided a copy of the Scorpion insert to Mrs S or drew her attention to its contents or gave any other warnings.

Sun Life released Mrs S's pension fund to the SSAS which had been set up for her and was administered by CGL, who wasn't FCA authorised. The sponsoring employer was a newly set up dormant company, established solely for the purpose of the SSAS and wasn't Mrs S's genuine employer.

Following the transfer, as initially recommended by the unregulated introducer who'd approached Mrs S, CGL organised the investment in TRG - fractional ownership of a suite at the Liana Beach Resort, Cape Verde. Mrs S, who is now 67, currently has no access to her invested capital and the asset is incapable of being sold on the open market.

Our investigator also spoke with Mrs S and her husband about what had happened. Mrs S had been cold called and there'd then been a meeting at their house. Very high rates of return were promised and Mrs S and her husband thought that buying a property sounded like a good investment. All the documents looked legitimate and Mrs S had no real concerns. She was told it was FCA regulated too. She didn't recall signing the letter dated 10 March 2015 or Sun Life's high risk declaration.

The investigator asked about the other personal pension with a different provider that it seemed Mrs S had wanted to transfer at the same time. Mrs S named the provider as being different to the one we'd noted. She said the provider sent the Scorpion leaflet and then refused to process the transfer, saying it was a scam. The investigator asked if that had made Mrs S think about the transfer from Sun Life and if she'd tried to take any steps to stop or reverse it. Mrs S said she and her husband hadn't – they'd figured it was still a good investment so they'd see how things went and, if the investment failed, Mrs S still had the other pension. It was only a few years later, when they saw the money wasn't growing as had been promised, that they realised it was a bad investment. Mrs S added that she'd have stopped the transfer if she'd received the Scorpion leaflet from Sun Life.

We asked Mrs S's representative if there was any more information about the other proposed transfer but no further details were available, aside from confirmation that the estimated transfer value was £11,605.58. And it seems the provider was the one we'd seen and not the one named by Mrs S. But I think that's an easy mistake to make, given the time that's elapsed and taking into account what's been said about Mrs S having memory issues.

I think what we've been told about what led up to the transfer from Sun Life is consistent with the documentation we've seen. In broad terms, what seems to have happened is that Mrs S received an unsolicited call from FRPS offering her a free pension review. She agreed and FRPS obtained information from Sun Life. There was then a meeting at her home. I think that was likely to have been with someone from FRPS, not Broadwood.

I say that because, from what I've seen, Broadwood's role was giving advice under section 36 of the Pensions Act. To explain, Mrs S, as a trustee of an occupational pension scheme (which a SSAS is) was required to consider if the proposed investment with TRG was

satisfactory for the aims of the scheme. That isn't regulated advice so Broadwood didn't need to be authorised by the FCA. It looks like it was originally proposed the advice would be given by Astute Financial Management UK Limited – that firm was mentioned on the key receiving details supplied by CGL in support of the transfer request. But I've not seen anything from that firm and, given the letter from Broadwood which Mrs S signed on 20 March 2015, it seems that firm was replaced by Broadwood.

The sort of advice which Broadwood gave would only be required once Mrs S had agreed to transfer and invest in TRG. And, at that stage, CGL also became involved – to assist in setting up the SSAS, which CGL would administer, and to request the transfer from Sun Life. CGL didn't need to be authorised either – operating an occupational pension scheme isn't a regulated activity. But advice or a personal recommendation that Mrs S should give up her existing pension with Sun Life to transfer to a SSAS and invest in TRG would be regulated advice and so should've only been given by a FCA authorised adviser which FRPS wasn't.

What did Sun Life 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. Sun Life has said that it didn't usually send out Scorpion warnings to the consumer as most of the transfer requests it received were from established companies. If there were any doubts following receipt of a transfer request, the Scorpion warning was sent. I don't think that's good enough. Sun Life would've been well aware of the industry guidance to try to combat pension scams at the time and Sun Life had a duty to ensure their member was given appropriate warnings.

I acknowledge that the transfer request did include the letter from Mrs S dated 10 March 2015 which, in broad terms, confirmed she was aware of the issues in relation to pension liberation and the risks involved and that she wasn't seeking to access her pension early. So it would've appeared to Sun Life that some steps had been taken to make Mrs S aware of the risks of pension liberation fraud. But, and as I've said above, since July 2014 the focus had widened from pension liberation specifically, to pension scams more generally. At, at about the same time as Mrs S's transfer, the PSIG Code was introduced.

Sun Life should've sent the insert in January 2015 when it was contacted by FRPS or in March 2015 when it received the transfer request from CGL. It would've been a relatively quick and easy step to take and which wouldn't have delayed the transfer unreasonably.

However, as I've discussed further below, it seems Mrs S did see the Scorpion insert or booklet anyway.

Due diligence

As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mrs S's transfer in that light. But I don't think it would make a difference to the outcome of the complaint if I had considered Sun Life's actions using the Scorpion guidance as a benchmark instead.

Sun Life did undertake some due diligence – as it didn't have details of the receiving scheme on its Transfer Scheme Reference Check (which it wouldn't have done as it was a single member SSAS), it referred the transfer to its technical department who said Mrs S needed to sign the high risk declaration which she did.

However, as I've referred to above, under the PSIG Code, there was an initial triage process. I think that should've led Sun Life to ask Mrs S further questions about the transfer as per Section 6.2.2 ("Initial analysis – member questions"). I won't repeat the list of suggested questions in full. Suffice to say, at least two of them would've been answered "yes":

- Did the receiving scheme/adviser or sales agents/representatives for the receiving scheme make the first contact (e.g. a cold call)?
- Have you been promised a specific/guaranteed rate of return?
- Have you been informed of an overseas investment opportunity?

Under the Code, further investigation should follow a "yes" to any question. The nature of that investigation depends on the type of scheme being transferred to. The SSAS section of the Code (Section 6.4.3) points to the following as being potential areas of concern:

- (a) Employment link: a lack of an employment link to any member of the SSAS.
- (b) Geographical link: a sponsoring employer that is geographically distant from the member.
- (c) Marketing methods: a SSAS being marketed through a cold call or an unsolicited approach.
- (d) Provenance of receiving scheme: a SSAS registered within the previous six months or a recently registered sponsoring employer or administrator one operating from 'virtual' offices, or using PO Boxes for correspondence purposes.

Underneath each area of concern, the Code set out a series of example questions to help scheme administrators assess the potential risk facing a transferring member.

Not every question would need to be addressed under the Code. Indeed, the Code makes the point that it is for scheme administrators to choose the most relevant questions to ask (including asking questions not on the list if appropriate). But the Code makes the point that a transferring scheme would typically need to conduct investigations into a "wide range" of issues to establish whether a scam was a realistic threat. With that in mind, and given the relatively limited information it had about the transfer, I think in this case Sun Life should've addressed all four sections of the SSAS due diligence process and contacted Mrs S to help with that.

What should Sun Life have found out – and would it have made a difference?

Had it done so, I think Sun Life would've established that Mrs S was transferring to a recently established scheme with a newly incorporated sponsoring employer. And, although she was a director of the sponsoring employer, it was unlikely to have been genuinely trading and providing her with an income – I note S Limited is recorded as dormant on Companies House and Mrs S was employed elsewhere. It was, essentially, a means to establish a pension arrangement, which the Scorpion guidance indicated could be a sign of liberation activity. Further, the intended investment was overseas and likely to be unregulated.

But what Mrs S would've likely told Sun Life about how she'd become aware of the receiving scheme would've been particularly relevant. Based on what she's told us, I think Mrs S would've said she'd been cold called and she'd then met with someone from FRPS or Broadwood. And that during that meeting she'd been recommended to transfer her personal pension with Sun Life to the SSAS in order to invest in TRG.

As I've said above, I think it was likely to have been someone from FRPS who Mrs S met with. Had Sun Life checked the FCA's register, which is a quick and easy step to take, Sun

Life would've seen that FRPS wasn't authorised. And, even if Mrs S had mentioned Broadwood, that firm isn't regulated either. As I've said above, advice pursuant to section 36 of the Pensions Act 1995 isn't regulated and so Broadwood didn't need to be authorised to give that sort of advice. But, if Mrs S was told she'd be better off giving up her pension with Sun Life and transferring to a SSAS to invest in TRG, that would amount to regulated advice and so shouldn't have been given by FRPS or Broadwood.

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 advice in the UK. The PSIG Code (and the Scorpion guidance) make much the same point. Indeed, the PSIG Code says firms should report individuals appearing to give regulated advice that aren't authorised to do so.

My view is that Sun Life should therefore have been concerned by FRPS' involvement (and any on the part of Broadwood outside its role in giving section 36 advice) 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 Mrs S – and would it have made a difference?

Had it done more thorough due diligence, there'd have been a number of warnings Sun Life could've given Mrs S in relation to a possible scam threat as identified by the PSIG Code (and the Scorpion action pack). Sun Life should also have been aware of the close parallels between Mrs S's transfer and the warnings the FCA gave to consumers in 2014 (and subsequently passed on to firms) about transferring to SSASs in order to invest in unusual investments. But the most egregious oversight was Sun Life's failure to uncover the threat posed by a non-regulated adviser. Its failure to do so, and failure to warn Mrs S accordingly, meant it didn't meet its obligations under PRIN and COBS 2.1.1R.

With those obligations in mind, it would've been appropriate for Sun Life to have informed Mrs S that the firm she'd been advised by was unregulated and could put her pension at risk. Sun Life should've said that only authorised financial advisers are allowed to give advice on personal pension transfers, so Mrs S risked falling victim to illegal activity and losing regulatory protections – essentially that she might be the target of a pension scam.

I need to consider what Mrs S would've likely done had Sun Life told her that. That's because, even where there have been failings by a business, I still need to consider if, had the business done all it should've done, the outcome would've been any different. I can't hold Sun Life responsible for Mrs S's losses unless I'm satisfied that those losses were caused by what Sun Life did (or didn't do). We reach decisions about that on the balance of probabilities, that is what we consider is likely to have happened, taking into account all the available evidence and the wider circumstances.

On the one hand, a message from Sun Life that those advising her were likely acting unlawfully would've been a fairly strong message to Mrs S and such that would likely make most people think again. But I also need to bear in mind that Mrs S did get some warnings.

I've mentioned above the Scorpion insert. Sun Life didn't send it to Mrs S and I haven't seen that she was given a copy by CGL (or FRPS). And she's said she wouldn't have gone ahead with the transfer from Sun Life if she'd seen it. But it seems she did see the Scorpion insert anyway. As I've said, she had another personal pension with a different provider that it seems she'd wanted (or been persuaded) to transfer at the same time as she was transferring her Sun Life pension.

We don't have all the details and we haven't contacted the other provider to find out more. But we've seen that provider wrote to FRPS on 4 February 2015, confirming that authority to provide information to FRPS had been registered and enclosing information about Mrs S's pension policy with discharge forms for completion and return if she wanted to transfer. CGL then made a transfer request to that provider on 10 March 2015 – the same date as CGL wrote to Sun Life requesting a transfer.

And, from what Mrs S told our investigator, the other provider sent the Scorpion insert. That had been updated in March 2015. Given the timing of Mrs S's transfer requests, I don't know whether the other provider would've sent the March 2015 version of the insert or the earlier, July 2014, edition. So I've considered both.

Looking first at the March 2015 insert, it mentioned several features which were present in Mrs S's case and which were highlighted as warning signs used by scammers: she'd been cold called and offered a free pension review; the transfer involved an overseas investment; and a proposal to put all of her pension in a single investment. The July 2014 insert was probably less helpful but it did highlight tricks that scammers might use – including an approach out of the blue over the phone, via text or in person and the offer of a free pension review.

But, whatever version Mrs S received and whatever she made of it and whether it should've made her reconsider the transfer, she's also said that the other provider warned her against transferring, saying it was a scam, and that transfer didn't go ahead. So Mrs S received a very clear and direct warning from the other provider that she was likely about to become the victim of a pension scam. But that didn't put her off going ahead with a mirror transfer (on advice from FRPS, to a SSAS with CGL and to invest in TRG) from Sun Life. If Mrs S was prepared to ignore a very clear warning from the other provider and proceed anyway, that suggests she'd have also ignored any similar warnings expressed by Sun Life.

I recognise that, had Sun Life also warned Mrs S against proceeding that might've been an even stronger message – that is, where both providers expressed the view that it was a scam, instead of, as things stood, Sun Life not saying anything. But, on the other hand, the message from the other provider was very clear – that this was a scam.

When the investigator asked Mrs S why she'd still gone ahead in the face of the other provider's warning, Mrs S said that she and her husband still thought the investment sounded good and, if it failed, she'd still have the other pension. I note that the transfer from Sun Life was the bigger fund – about £17,000 as opposed to £11,600 expected from the other provider. So it seems that Mrs S was prepared to risk the higher amount on the basis that she remained convinced about TRG investment and its potential. With the benefit of hindsight, Mrs S now realises that what she thought about the investment was wrong. But at the time it appears she was prepared to take the risk in the hope it would deliver the returns she'd been told she could expect. Unfortunately, what she appears to have recognised as a possibility at the time – that the investment could fail and she'd only have her other pension fund to fall back on – has turned out to be the case. But she was happy to continue with the investment in TRG (and didn't make any attempts to cancel or reverse the Sun Life transfer) in the knowledge that happen and in the face of a direct warning from the other provider that it was a scam. In the circumstances it's difficult to see that, had Sun Life given further warnings, it would've changed Mrs S's decision.

To sum up, I have sympathy for Mrs S. She's suffered losses as a result of transferring away from Sun Life and investing in TRG. And I've found there were shortcomings on Sun Life's part. But, despite those failings, for the reasons I've explained, I don't think the outcome would've been different even if Sun Life had done all it should've done. In the circumstances I can't say that Sun Life has caused Mrs S's losses and so it isn't fair and reasonable to

uphold the complaint and say that Sun Life should redress Mrs S.'

Responses to my provisional decision

Sun Life accepted my provisional decision.

Mrs S didn't and through her representative made further comments. I've summarised the main points:

- As to the facts, Mrs S pointed to what I'd said about Sun Life having checked the FCA's register in January 2015. Sun Life would've seen that FRPS wasn't authorised and so they were dealing with an unregulated firm. And, although CGL's transfer pack referred to Astute Financial Management UK Limited, a FCA regulated firm, she hadn't had any contact with that firm and advice had been provided by unregulated companies – FRPS and Broadwood. Further, I'd said the transfer payment had been made on 14 April 2015. But that was the date the payment was received in the SSAS bank account. Sun Life had actioned the transfer on 26 March 2015, as confirmed by a letter sent to CGL on that date.
- About my conclusions, Mrs S's main point was that Sun Life ought to have communicated with her directly about the transfer. She also referred to Sun Life having a form available – '*Pension Transfer – Customer: Additional Information & Declaration*' – to collect information about proposed transfers which it didn't seem had been used in her case.
- She agreed with my finding that, if Sun Life had undertaken adequate due diligence, it would've identified scam warning signs (Mrs S listed eight such indicators) in connection with the transfer. She further agreed that Sun Life should've told her that only authorised financial advisers are allowed to give advice on personal pension transfers.
- Mrs S said I'd assumed the warning from the other provider had been given before the Sun Life transfer had happened. I hadn't actually seen the documentation from the other provider and, given I'd accepted that Mrs S had memory issues, it was vital to obtain that documentation – by way of a DSAR (Data Subject Access Request). Any warning could only be relevant to causation if it had been given before the transfer was actioned by Sun Life. If afterwards, she wouldn't have been able to reverse the transfer.
- Sun Life hadn't raised any concerns about the transfer so she'd have inevitably considered a warning from the other provider as potentially overstated or incorrect. The situation would've been entirely different, and the message would have had far more impact, if both providers had given similar warnings before either pension had been transferred. There's nothing on CGL's file to indicate Mrs S was insistent – just a note that the other transfer was '*cancelled*' which indicates she heeded any warnings from the other provider and wouldn't have ignored warnings from Sun Life.

We granted an extension to allow a DSAR to be made to the other provider. The information obtained was shared with us. I've read all the documents provided but I'm only going to refer to those I think are directly relevant here.

- The other provider wrote to CGL on 16 March 2015 saying, to protect its customers when asked to process a transfer, it had a duty to undertake due diligence about the receiving scheme beyond simply determining whether it was registered. A supplemental form was attached for completion and return with copies of HMRC's letter of approval and the trust deeds.
- Part A of the form was for completion by the member. There was a section about pension scam/liberation which said transfers to such schemes may be fraudulent and

were often encouraged by cash payments, promises of early release of pension savings, loans or unrealistic promises of high investment returns. Significant tax charges could result and pension savings may be at risk or lost altogether. Mrs S was directed to TPR's pension scams leaflet. And there was a note saying that only insured products were eligible for compensation from FSCS (Financial Services Compensation Scheme). Opposite was a list of statements and Mrs S was asked to tick any that applied. And, if any did apply, she should consider carefully whether her pension savings were at risk. She ticked the first two boxes which appeared immediately below that statement. First that she'd been contacted about making a transfer by telephone call, text, email or through a website. Secondly that her adviser/agent wasn't authorised by the FCA.

- Mrs S signed the form on 26 March 2015. In doing so she confirmed she'd read and understood TPR's leaflet on pension scams entitled '*A lifetime's savings lost in a moment*'. And that if the provider had any doubt the transfer might not be a recognised transfer, believed the receiving scheme wasn't a genuine occupational pension scheme or that it or the member might incur tax charges, claims or losses following the transfer, the provider reserved the right to decline the transfer request. And would share information about it with Action Fraud, HMRC, TPR or the FCA as appropriate. And, if the transfer request was agreed, Mrs S accepted responsibility for any scheme sanction charge and that the provider couldn't be held responsible for any other claims or losses arising as a result of the transfer.
- The provider also wrote to Mrs S on 2 April 2015. The letter included the following: '*Following a detailed review of your transfer request we believe that a transfer to this scheme may lead to your pension savings being put at risk. For example, should HM Revenue & Customs determine that [the CGL scheme] is not being administered in accordance with its tax rules for pension schemes, you may be liable for unauthorised payment tax charges of up to 55% of the amount of the transfer and/or other payments you received. There may also be further risks to your pension savings such as high risk investment opportunities offering unrealistic rates of return. Therefore, we are sorry that we are unable to proceed with the transfer payment and we recommend you seek independent financial and/or legal advice. Please find enclosed an awareness campaign leaflet that was recently published by [TPR] regarding pension scam activity for your information.*'
- The letter went on to say that the FCA regulates firms providing financial advice and gave details of how to access the FCA's online register, adding that if a firm or individual isn't regulated by the FCA there was no access to this service or FSCS if things went wrong.
- I've also seen a letter from Mrs S to that provider dated 8 July 2016, headed '*Formal Maladministration Complaint*'. Mrs S referred to her transfer request having been made on 10 March 2015 and that there'd been delays whilst awaiting the outcome of a court case (Hughes v Royal London [2016] EWHC 319 (Ch)). She said it had been 14 months since her initial transfer request and over 14 weeks since the court ruling but her transfer still hadn't been effected. She asked the provider to confirm in writing within seven days that it would action the transfer. She said she'd be '*happy to receive any appropriate risk warnings and to sign any declaration, disclaimer or confirmation to proceed*'. On the same date she wrote to the provider asking it to accept the letter as a formal request to transfer to her SSAS.
- Mrs S completed a supplemental transfer form on 21 August 2016. Amongst other things she confirmed she'd read and understood TPR's leaflet about pension scams entitled '*Scammed out of his retirement*', she'd considered and understood the risks of transferring and she still wished to proceed.
- Mrs S's complaint was rejected although a payment of £100 was made as it had taken longer than eight weeks to deal with the complaint. In its final response letter the provider said that the transfer request had been declined due to concerns that the

receiving scheme wasn't a genuine occupational pension scheme and so Mrs S's pension savings could be at risk. And the agent arranging the transfer wasn't regulated by the FCA and the proposed investments may not be protected by FSCS. If Mrs S still wanted to proceed she'd need to complete a new application. However, following a BBC Panorama programme on 11 July 2016 transfers to schemes arranged by agents linked to TRG had been suspended. CGL was such a scheme and the provider was concerned that transferring to that arrangement could put pension savings at risk. The provider was in ongoing correspondence with CGL and TRG and, until matters were satisfactorily resolved, transfers to schemes arranged by CGL would remain suspended.

Mrs S said the further information provided confirmed that the warning she'd received from the other provider was after the transfer of her Sun Life pension – Sun Life had actioned the transfer on 26 March 2015 and the other provider wrote to Mrs S on 2 April 2015. Although she agreed the other provider had given a clear and direct warning, she said there was no evidence she'd put pressure on the other provider to go ahead anyway. Had Sun Life given her a similar warning, she wouldn't have transferred her Sun Life pension.

What I've decided – and why

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

I've corrected above, under the heading, '*The complaint*', the date of the transfer – in my provisional decision I said it was April 2014 when in fact (and as reflected in the balance of my provisional decision) it was April 2015. I also acknowledge that Sun Life actioned the transfer on 26 March 2015, not 14 April 2015.

And I agree, had Sun Life checked the FCA's register in January 2015, Sun Life would've seen that FRPS didn't appear and so known that FRPS wasn't a registered firm. But Mrs S had given authority for FRPS to receive information about her pension and Sun Life didn't act incorrectly by sending information to that firm. Nor was it a requirement for Mrs S to obtain regulated advice in connection with any transfer. And, although it was only two months later that Sun Life received Mrs S's transfer request, I don't think that meant Sun Life should've automatically assumed she'd received (unregulated) advice from FRPS. Although, in any event, I've said that would've come to light if Sun Life had carried out more thorough due diligence.

As to any involvement by Astute Financial Management UK Limited, a regulated firm, I noted in my provisional decision that firm was shown (on the key receiving scheme details supplied by CGL in support of the transfer request) as giving advice pursuant to section 36 of the Pensions Act 1995. But I said it appeared that Broadwood had in fact given that advice instead. Broadwood wasn't a regulated firm. But advice under section 36 isn't regulated and so, in giving such advice, Broadwood didn't need to be regulated. Mrs S's point here may be that, if Sun Life assumed she was taking regulated advice, that wasn't the case. But again I don't think anything turns on this, given that, as I've said, exactly who was advising Mrs S would've emerged anyway.

Mrs S doesn't disagree with my findings about that. I note here what she says about Sun Life having a form to get further details about proposed transfers which wasn't used in her case. But, again, I don't see anything turns on this given I've said, regardless of what information gathering tools were used, that Sun Life should've made further enquiries. And Mrs S agrees that Sun Life should've told her that only authorised financial advisers are allowed to give advice on personal pension transfers so she risked falling victim to illegal activity and losing regulatory protections.

Where Mrs S does disagree with me is as to what would've likely happened had Sun Life shared with her its concerns and warned her against proceeding. In my provisional decision I concluded, in view of the warnings Mrs S said she'd received from the other provider – essentially that it was a scam – further warnings from Sun Life wouldn't have changed things. Hence I couldn't say Sun Life's failings had caused Mrs S's losses. In saying that I was relying on what Mrs S herself had said she'd been told by the other provider. I've now seen what that other provider (and I note the transfer from that provider didn't, in the end, go ahead) actually said.

Mrs S accepts that the warning the other provider gave was clear and direct. But she points out that the warning wasn't given until 2 April 2015 which was after Sun Life had actioned her transfer. I accept that was the case – as I've said, Sun Life processed the transfer on 26 March 2015. But the transfer proceeds didn't reach the SSAS bank account until 14 April 2015 and TRG investment was made on the same day. So, when Mrs S received the other provider's letter, although it would've been too late to stop the transfer, it wasn't too late to retract her instruction to make an investment in TRG. Most of her losses have arisen in consequence of TRG investment (the transfer value paid was £17,085.32 of which £14,773.82 in total was invested in TRG). So the bulk of the transfer value could've been preserved, had that investment not been made. Further, had Mrs S expressed concerns about the transfer, it may not have been too late to take steps to cancel or reverse it.

Further I don't think the warning the other provider gave on 2 April 2015 should've come as a complete surprise to Mrs S. There'd been earlier indications, and before the transfer from Sun Life was actioned, that the other provider had doubts about the transfer. That's evidenced by that provider's letter of 16 March 2015. Although that letter was sent to CGL, the enclosed supplemental form was for Mrs S to complete. She clearly saw it as she signed it on 26 March 2016. It referred to transfers which were scams or for liberation purposes and said that, as well as significant tax charges, pension savings might be at risk or lost altogether. And that if any of the features set out were present – and here Mrs S ticked the first two boxes – she should consider carefully if her pension savings were at risk.

Mrs S was also directed to TPR's pension scams leaflet and in signing the form she confirmed she'd read the leaflet entitled '*A lifetime's savings lost in a moment*'. I'm unsure whether the reference to a leaflet meant the insert or the longer version of the booklet (both had the same title) so I'll assume it was the shorter insert. It said pension scams were on the increase and that '*scammers have a variety of tricks to catch you out*'. Some of those featured in Mrs S's case – she'd been approached out of the blue over the phone, offered a free pension review and an investment opportunity that would generate high returns. Again, if Mrs S had acted then, there'd have been time to stop TRG investment and possibly cancel the transfer too. And if it was the longer version she saw, the example of '*Henry*' which involved a cold call offering a free pension review leading to an overseas property investment should've rung some alarm bells.

The letter dated 2 April 2015 also enclosed a Scorpion insert or booklet. The Scorpion campaign was updated in March 2015 and it's possible – because the letter refers to a '*recently published*' leaflet – that the updated version – entitled '*Scamproof your savings*' might've been the document enclosed (rather than a further copy of the one entitled '*A lifetime's savings lost in a moment*'). The tricks or warning signs listed were much the same although the March 2015 version did specifically refer to a proposal to put all the money in a single investment when diversification would usually be recommended. So, that might've been another indication to Mrs S, if she saw that insert, that she should be wary.

Mrs S did tell our investigator that, if she'd seen the Scorpion warnings, she'd have thought again. But it seems Mrs S did see the July 2014 insert at least but it didn't prompt her to

rethink whether transferring was a good idea. And I don't think she decided against trying to stop the investment or reverse the transfer because she thought it was all too late. Rather it seems she remained unconvinced that she might be making a mistake.

I say that taking into account that Mrs S did see updated versions of the insert or booklet. Even if she didn't see the March 2015 edition she did see the June 2016 insert or booklet, entitled '*Scammed out of his retirement*' – she signed a supplemental transfer form on 21 August 2016 and in doing so confirmed she'd read and understood that leaflet. Assuming it was the shorter insert, it set out ten steps to protect a pension. Including being wary of cold calls, checking the FCA's register, steering clear of overseas investments, such as unregulated investment in a hotel, and not falling for guaranteed returns. I know that was over a year after Mrs S's transfer from Sun Life had been made. But I still think it's relevant as it didn't prompt her to think again about what she was doing and if she might be acting unwisely. Instead she complained to the other provider in July 2016 that her transfer request still hadn't been actioned. And she confirmed she still wanted to go ahead and signed further forms for the transfer to proceed. So I don't see it's the case that she heeded the warnings given by the other provider – rather that provider maintained its stance in declining to action the transfer request and Mrs S gave up trying to persuade that provider otherwise.

I noted, in my provisional decision, what Mrs S and her husband had said about their thinking at the time – that the investment sounded good and, if it failed, they'd still have the other pension so, on that basis, Mrs S was prepared to risk the higher transfer value from Sun Life. But, from what I've seen, their confidence in the investment may have been higher, given that Mrs S tried, albeit unsuccessfully, to persuade the other provider to agree to the transfer so she'd have more to invest in TRG.

I know Mrs S might say that all the while she remained influenced by the unregulated introducer. But what I have to consider is whether, if Sun Life had acted as I consider it should've done, that would've changed the outcome. From what I've seen, Mrs S had decided on a particular course and she wasn't swayed from that despite the other provider's clearly expressed concerns and consistent refusal to accede to the transfer request. I acknowledged in my provisional decision that, had Sun Life also warned Mrs S about transferring, that might've been a stronger message – that is where both providers took the view that she was about to fall victim to a scam. But, given her determination to proceed with the other transfer in the face of that provider's clear view that her pension savings would be at risk, I can't say that further warnings from Sun Life would've changed things.

My final decision

I don't uphold the complaint and I don't make any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 26 November 2024.

Lesley Stead
Ombudsman