DRN-5036932

The complaint

Mr H has complained about a transfer of his personal pension with Elevate Portfolio Services Limited (Elevate) to a small self-administered scheme (SSAS) in October 2015. Mr H's SSAS was subsequently used to invest in Park First and Dolphin Capital. The investments now appear to have little value. Mr H says he's lost out financially as a result.

Mr H says Elevate 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 Elevate had acted as it should've done.

What happened

I issued a provisional decision on 9 September 2024. I've repeated here what I said about what had happened and my provisional findings.

'In mid 2012 Mr H transferred the proceeds of several pensions held with various providers to Elevate, to set up a Pension Investment Account (PIA) which is a SIPP (self invested personal pension). Earlier in 2012 Mr H, who'd become self employed, had set up his own limited company which I'll call H Limited.

On 30 July 2015 Elevate received, via the Origo Options system, a transfer request. We've seen a screenshot of the request. Amongst other things it said the receiving provider and product was Rowanmoor Group plc (Rowanmoor) and a SSAS respectively. The name of the SSAS appeared under the Receiving Contract Details and its Pension Schemes Tax Reference (PSTR) number was given. An adviser firm was also shown – Return on Capital Group Ltd (ROC). ROC wasn't a regulated firm.

Elevate referred the transfer to its Technical Department who asked for sight of the SSAS trust deed and rules and HMRC's registration certificate. On 31 July 2015 Elevate emailed Rowanmoor requesting those documents which Rowanmoor supplied under cover of its letter of 6 August 2015. They showed the SSAS had been set up on 10 July 2015 and registered with HMRC on 13 July 2015.

On 10 August 2015 these were forwarded to the Technical Department who said they were 'mostly ok with this one, but we just want to query one more thing before we agree to transfer'. It was noted that the trust deed which had been supplied was an amendment to the original, which was an interim deed. A copy of the interim deed and rules was requested and an explanation as to why the deed and rules had been amended so soon after the SSAS had been registered. The Technical Department also added, 'Can we also find out if the adviser is involved in this transfer please?'.

Elevate contacted Rowanmoor again who supplied a copy of the interim deed and the deed of admendment. Rowanmoor said that, initially, when it received a new business request, this was established by the interim deed. Upon completion of the documentation, the trust

deed and rules established by the interim deed are executed. The product is limited to a maximum of one member so a deed of amendment is entered into shortly after the execution of the trust deed and rules to amend the documentation appropriately.

That information was forwarded to the Technical Department who confirmed the transfer could proceed. On 6 October 2015 £191,666.45 was transferred to Rowanmoor.

Subsequently investments in Park First and Dolphin Capital were made: Two amounts – £80,000 on 18 November 2015 and £100,000 on 25 November 2015 – were invested in Park First and £56,400 (by way of loan notes) in Dolphin Capital. Park First involved the purchase of airport parking spaces at Glasgow Airport. Dolphin Capital was a German based residential property development company.

There's a large amount of correspondence and documentation relating to those investments and in particular about Park First which involved the purchase of land and in respect of which solicitors were acting. It seems there was initially some confusion as to exactly which parking spaces Mr H would be buying. And in 2017 there was correspondence from Rowanmoor and Park First about restructuring Mr H's investment. I think that reflected ongoing issues to which I've referred further below.

Mr H made further member contributions to the SSAS – £5,000 on 1 February 2016 and £25,000 on 8 February 2016. H Limited made an employer contribution of £5,000 on 30 January 2018.

I've seen that a firm called Alpha Independent Financial Planning Limited (Alpha), a regulated firm, wrote to Rowanmoor on 25 January 2018, enclosing a letter of authority (LOA) and Rowanmoor's adviser fee agreement, both of which had been signed by Mr H, and requesting information about the SSAS. Rowanmoor replied on 14 February 2018 requesting an original LOA. Alpha resubmitted the LOA on 6 March 2018. Rowanmoor wrote on 22 March 2018 saying its systems had been updated to show Alpha as the financial adviser for the SSAS and information, including details of the contributions made and the current assets, was provided.

As to what's happened with the investments, in December 2017 the Financial Conduct Authority (FCA) announced its view that Park First involved collective investment schemes operating without authorisation. It obtained Park First's agreement to either offer investors the opportunity to buy back their investment or move into a new leaseback scheme that didn't contravene the restrictions on operating a collective investment. Four companies in the Park First Group went into administration in July 2019, having been unable to make the commitments they'd entered into in these arrangements. This appears to have included both the companies that were offering the buy back and lease back options for Glasgow airport (Mr H's investment). The car parks would continue to operate but, during the administration, no distributions would be made to investors.

The FCA then launched legal proceedings against Park First, other associated companies and some of their executives in October 2019, seeking compensation orders in favour of investors. The FCA secured agreements with the defendants which would make some £58 million available to investors. The agreements are conditional on investors' approval. I understand that matters are still ongoing.

From what I've seen, the Dolphin investment has also failed. Preliminary bankruptcy proceedings were commenced in Germany in 2020. It appears that Investors are very unlikely to get any of their money back.

By 2020 Mr H had become concerned about his SSAS and in May 2020 he complained, with

the assistance of his representative, to Elevate. Briefly, his argument is that Elevate failed to conduct adequate checks and enquiries in relation to the transfer and failed to give him relevant warnings about, in particular, the involvement of non authorised/non regulated parties who'd encouraged him to transfer.

Elevate didn't uphold the complaint. In its final response dated 17 December 2020 it said the transfer was via Origo to a scheme run by Rowanmoor, an established pension provider, and there was no real reason to be suspicious about it. It also queried how Mr H's alleged losses had arisen, what investments had been made and what had happened to them, although Elevate said it knew that Park First was in what it termed a 'distressed state'. Elevate later added that it didn't agree Mr H wouldn't have proceeded with the transfer if it had issued the 'Scorpion' leaflet – I refer further below to the Scorpion campaign. Elevate said the situation wasn't a pension scam in that Mr H's pension hadn't been stolen. Elevate maintained the checks it had done – obtaining the trust deed and rules and checking the SSAS was HMRC registered – were sufficient.

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.

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 SIPPs 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.

<u>The March 2015 Scorpion guidance</u>

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.

<u>The circumstances surrounding the transfer: what does the evidence suggest happened?</u>

In his complaint to Elevate, made through his representative, Mr H said that ROC, a non regulated firm which has since been dissolved, had requested a pension valuation and other information from Elevate which was provided. As I've said above, I don't think I've seen the information request with Mr H's LOA. But, in any event, the transfer went ahead very soon after Elevate had received the transfer request and without Mr H having received regulated financial advice. He'd understood that ROC was working in conjunction with Rowanmoor but ROC wasn't registered with the FCA which meant he had no protection. He was unclear why Elevate had dealt with ROC and hadn't advised him to seek regulated advice.

Our investigator spoke to Mr H at some length about what had happened. Mr H said he'd had seven pension plans in 2008 worth in total some £250,000. In 2011 he'd become self employed and wanted to maintain his pension contributions. He was advised to move his various plans to Elevate (formerly part of AXA UK plc). But performance with AXA wasn't good – by 2015 his fund value had fallen to around £190,000.

Then, out of the blue, he was contacted by Sesame Limited – I think the firm who'd advised Mr H in connection with setting up the SIPP was an appointed representative of Sesame Limited – saying that he may have been mis sold. Mr H wasn't entirely clear about the details but he thought the advice he'd been given to transfer his various pension plans into the SIPP hadn't been correct. And in May 2015 he got letters from the firm who was held on Elevate's records as the SIPP adviser saying they couldn't continue to act for him because the advice they'd given was being reviewed and might result in a claim or compensation. So Mr H

would need to find a new adviser.

Mr H asked around and a friend recommended an adviser I'll call Mr D who visited Mr H at home. From the outset, Mr D's advice was that Mr H should have a SSAS rather than a SIPP as it was a far better pension vehicle for those who were self employed such as Mr H. He signed up with Mr D to represent him. Mr D went through Mr H's risk profile and introduced the idea of a SSAS with Rowanmoor which then led to everything else that happened. Mr H stressed he'd never acted outside of a FCA regulated adviser or company. Yet he still found himself in a mess. He didn't think that at any point since 2011, when he'd amalgamated all his pensions, he'd received good advice and he said no one would take responsibility.

Mr H said he'd done what he termed layman's checks that Mr D and his firm, the name of which Mr H didn't immediately recall, were regulated by the FCA. Mr H later supplied a copy of the business card he'd been given by Mr D and which showed the firm was ARLWM Limited and gave that firm's FCA registration number. Mr H also recalled signing a terms of engagement document which was left with him although he never received a signed copy for his records. He later provided a blank copy of the document. He said he had some emails from 2015 that show Mr D was advising him on pension matters. Once Mr H had signed up with Mr D he did get some correspondence from ROC. But he didn't know where ROC fitted in to what he termed a 'myriad' of organisations and how Mr D, ROC and Rowanmoor all linked together.

The investigator pointed out that, on the SSAS paperwork, the adviser was shown as ROC and that Mr D or ARLWM Limited hadn't been mentioned by Mr H's representative or Elevate. And that ROC had made an information request to Elevate and Elevate had released information to ROC. Mr H queried how a registered financial adviser could then use a non regulated company and why Elevate had then released his fund to Rowanmoor. The investigator said that's what he was looking into – why Elevate had continued with the transfer and if they'd had an obligation to let Mr H know about the unregulated firm and check that he still wanted to continue.

Mr H said all the paperwork was completed at his home. He hadn't felt under any pressure, although he was told that, for Park First, the car parking spaces were limited so he needed to move quickly. A number of investment proposals were put forward, in the UK and abroad. He understood the Park First investment would involve buying land. He was told the Dolphin investment would be loan notes, which he understood to be a financial instrument. Returns of 8% pa were promised for Park First, with convincing marketing information to support that, backed up by RICS (Royal Institute of Chartered Surveyors) valuations. He was told he'd get compounded interest after five years for the Dolphin investment. He wasn't told he could access upfront cash or draw benefits earlier than age 55, nor was he offered any cash or other incentive for investing. He says he asked about liquidating and was assured all the assets were saleable.

Mr H didn't recall Mr D going through what he'd get as a pension when he came to retire. He knew, once he was 55, he could take a 25% tax free lump sum (which he didn't do). He didn't recall any discussion about some transfers being scams or pension liberation – although he now thinks that's what happened. He didn't recall being told that his existing provider would contact him to warn about those risks or the adviser suggesting what he should say in response. But he thought he'd been told Elevate would contact him because he'd have to authorise the release the funds. But as things happened, he didn't recall being contacted by Elevate – whether by letter, phone call or being sent a leaflet.

He said, if Elevate had told him it could potentially be a scam, without a doubt he'd have put a break on the transfer. The funds were his future so if someone as big as Elevate had told

him it could be a scam, he'd have definitely taken a step back – as anyone would've done. But no one had said it could be a scam. Mr D was FCA regulated which Mr H had checked. He didn't think he could've done much else.

About the Scorpion insert, a copy of which the investigator had sent in case it jogged Mr H's memory, Mr H said he didn't recall ever having seen it. But he said, if he'd have been given that information at the time, it would've raised very serious concerns, given the organisations which were backing it. He noted that the insert did refer to some warnings signs which featured in his situation: the vast majority of his fund was invested in a single investment; some of his funds had been transferred overseas; and he'd seen convincing marketing information showing returns of over 8%, backed up by valuations. He thought, if he'd seen the insert, it would've changed his mind about what he was doing and made him decide against transferring.

As to how he'd been affected by what had happened, Mr H said his whole life had been put on hold. The loss of his funds had caused significant stress (mental, emotional and financially) for both him and his wife. It's ongoing and may have stored up health effects in the future. They can't plan going forward and, if this situation hadn't arisen, they could've been in a position to retire before now. The opportunity to take a lump sum at 55 has been lost and the potential to take different life decisions has been taken away through no fault of their own. Even a modest rate of growth on the pension fund would've led to a different future financial picture. Mr H had suffered a complete loss of confidence in investing further in pensions or other investments and which could result in further financial loss. The situation has been going on since 2008 when AXA were first involved.

Essentially, what Mr H told our investigator isn't the same as what was said when the complaint to Elevate was made – which was that unregulated entities – and in particular ROC – had advised him in connection with the transfer to the SSAS and the investments in Park First and Dolphin. The documentation we've seen does show that Mr H had dealings with ROC and that firm was involved in the setting up of the SSAS.

First, although there's been mention of Mr H having signed a LOA in favour of ROC in July 2015 for Elevate to provide a valuation and other information to ROC, I can't now trace that. But, in any event, there's ample other documentation which demonstrates ROC's involvement, including the following:

- *A letter dated 6 July 2015 from ROC to Rowanmoor enclosing Mr H's SSAS application form (which he'd signed on 3 July 2015) and H Limited's certificate of incorporation and articles and memorandum of association. The SSAS application form included a section about the trustee adviser and ROC's details were shown. (I'd just point out here that the trustee adviser is different from an adviser who might've advised on the transfer itself. Under section 36 of the Pensions Act 1995 trustees of an occupational pension scheme (which a SSAS is) are required to take and consider advice as to whether the proposed investments are satisfactory for the scheme's aims. A firm giving such advice doesn't need to be authorised as the nature of the advice isn't regulated under FSMA.)*
- *On 9 July 2015 ROC sent further documentation to Rowanmoor, including identity verification certificates for Mr H and H Limited.*
- *On 15 July 2015 Rowanmoor wrote to Mr H c/o ROC thanking him for completing the application forms to establish the SSAS. And asking for various details including confirmation of whether the sponsoring employer was trading, the nature of the business and the number of people employed.*
- *Rowanmoor Trustees Limited signed a bank account application form on 15 July 2015 for the SSAS. The form said statements should be sent to Rowanmoor*

Trustees Limited and to ROC.

- *On 27 July 2015 ROC wrote to Rowanmoor enclosing documents signed by Mr H for processing and Mr H's signature on various documents – for example the deed of appointment and amendment and the definitive trust deed – was witnessed by the same person from ROC with that firm's address given.*
- *On 30 July 2015 Rowanmoor wrote to Mr H thanking him for returning documents to establish the SSAS and confirming they'd been executed by Rowanmoor and enclosing copies for Mr H's safekeeping. On the same date Rowanmoor also wrote to ROC with various documents.*
- *There's an email from Rowanmoor to ROC sent on 13 October 2015 advising that the funds had been received. On 15 October 2015 Rowanmoor wrote to Mr H, c/o ROC, to confirm that the transfer value had been received and Rowanmoor's fee for establishing the SSAS and the annual administration charged and been settled.*
- *There's also an invoice dated 19 October 2015 from ROC to Rowanmoor for ROC's fees (£3,834).*

There are also several telephone notes showing that ROC was chasing progress. And ROC's involvement didn't end once the transfer had been completed. From what I've seen, ROC was instrumental in making sure the investments in Park First and Dolphin went ahead. For example, there's correspondence and telephone calls between ROC to Rowanmoor in October and November 2015 in connection with the Park First investment.

I know that Elevate won't have seen much of what I've referred to – all I think Elevate would've seen which could've alerted it to ROC's involvement was the Origo transfer request. Elevate may also have picked up on the fact that the witness to some of Mr H's signatures on the documentation was an employee of ROC whose business address was given. But what I'm considering here is who did what, including the extent of ROC's involvement.

I've mentioned above that Mr H was also in contact in 2018 with another firm, Alpha. I don't know how or why that came about. Alpha was and remains a regulated firm. According to the FSA register, it's been authorised since 22 February 2016 for specific activities and product types, including pensions although there are some limitations. I note that Mr D is now shown as being involved with activities at that firm. Looking at his history and previous roles, I don't think that would've been the case in 2018 as it seems he was still working for ARLWM Limited up until 23 July 2019. But it does seem somewhat of a coincidence that he's now involved with Alpha. But I don't think anything much turns on this, given that I'm looking at what happened earlier, in 2015 and, in particular, what Elevate should've done in response to Mr H's transfer request.

On that issue, on the one hand, as I've pointed out by reference to the contemporaneous written documentation we've seen, it's apparent that ROC, an unregulated entity, was heavily involved, both in setting up the SSAS and afterwards. So it's possible that ROC could've been the party who suggested to Mr H that he'd be better off if he transferred to a SSAS and invested in Park First and Dolphin and which would amount to a personal recommendation or advice to transfer which should only be given by a regulated adviser, which ROC wasn't.

But, when he spoke to our investigator, Mr H was very clear about what had led to him transferring his SIPP away from Elevate and who'd advised him in connection with that – namely Mr D. Mr H subsequently produced Mr D's business card which showed the name of his firm – ARLWM Limited – and its FCA registration number. I accept what Mr H says about having felt, at the time, let down by his previous financial advisers and because his SIPP hadn't performed well. And that he was only prepared to deal with FCA regulated entities

(which has always been his position). But it seems Mr H felt able to trust Mr D, who'd been recommended by a friend. Mr H checked out that Mr D and his firm ARLWM Limited were on the FCA's register. And Mr H accepted what Mr D said he should do – transfer his existing SIPP fund with Elevate to a SSAS with Rowanmoor – which would be better for him as he was self employed – and he could then invest in Park First and Dolphin.

As well as getting Mr D's business card, Mr H also recalls signing an agreement with ARLWM Limited. Although we don't have a copy of a signed agreement, Mr H has produced a blank copy of the terms of engagement document he recalls signing. It sets out the charges for work done by ARLWM Limited in three stages – financial review and recommendation, implementation of solutions and ongoing review services. I think the agreement (albeit it's not signed) and what Mr H has said about it is further evidence of ARLWM Limited's involvement at the time.

We don't have a copy of any written advice Mr D gave – such as a suitability letter setting out why he considered Mr H should transfer to a SSAS and invest in Park First and Dolphin. So, either one was never produced or it's since been lost. But Mr H's own and very clear evidence is that it was Mr D who advised him. And Mr H's understanding was that Mr D was acting on behalf of ARLWM Limited and the checks he'd carried out confirmed that both were FCA regulated. So I accept that's what happened – that it was Mr D who advised Mr H to transfer to a SSAS.

Against that background I've considered what Mr H would've said had Elevate looked into the transfer further before allowing it to proceed. I've also considered what Mr H has said about the Scorpion insert – that he didn't see it but, if he had done, it would've changed his mind about what he was doing and made him decide against transferring.

<u>What did Elevate do and was it enough?</u>

The Scorpion insert:

For the reasons given above, my view is that personal pension providers should've, as a matter of course, sent transferring members the Scorpion insert or given them substantially the same information. Sending the Scorpion insert would've been a relatively quick and easy step to take and not something which would've delayed the transfer process unreasonably.

Here Elevate didn't send Mr H the Scorpion insert. Elevate's position seems to have been that the insert wasn't sent because the transfer request came via Origo and the transfer was to a Rowanmoor SSAS. But Elevate had a duty of care to treat Mr H fairly. Elevate should've been well aware of the guidance and the pension industry's attempts to combat pension scams at the time and which, as I've said, date back to the launch of the Scorpion guidance in February 2013. Here Mr H's transfer request was received at the end of July 2015 and processed in early October 2015 – and by which time the Scorpion guidance had moved on and the PSIG Code had been introduced.

Regardless of the fact that the transfer request was made via Origo and that the receiving scheme was administered by Rowanmoor, Elevate still had a duty to ensure their member, Mr H, was given appropriate warnings. So the warnings contained in the insert should've been given anyway or as part of Elevate's due diligence process – I note here that the transfer wasn't processed immediately so the warnings could've been given in the run up to the transfer and as part of Elevate's due diligence.

Due diligence

Elevate did carry out some due diligence. As I've said above, the transfer was referred to its

Technical Department who asked for some further enquiries to be made and documentation to be obtained. But that was primarily aimed at checking the SSAS documentation – the trust deed and rules and why an interim deed was used – and that the SSAS had been properly registered with HMRC. The Technical Department also raised a query about if 'the adviser' was involved. I assume that indicates the Technical Department had noted that the Origo request did show an (unregulated) adviser. I can't see this point was followed up. And Elevate's position seems to be that it didn't need to – when we asked Elevate about it, it said that it wouldn't necessarily know (or need to know) who the adviser was because the receiving provider had already confirmed they had undertaken checks and accepted the liability.

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

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

And Elevate may also be suggesting that Origo would've already completed due diligence checks on the receiving scheme's administrators, so negating the need for it to do its own due diligence. However, Elevate hasn't provided any details on what exactly Origo did in this respect. And I think it would be a problem if Elevate relied on due diligence conducted by a third party even though it doesn't appear to have really known what that due diligence involved. I've taken into account what the due diligence in question was aimed at preventing – pension scams, the end result of which can often be the loss of entire pension funds – and the clear steps that were expected of ceding schemes to prevent this happening. Given also the duties of personal pension providers under PRIN and COBS 2.1.1R, I don't think Elevate's approach was good enough here.

So it follows that I don't agree with Elevate that the due diligence it undertook – which was limited to checking the trust deed and rules and that the SSAS was registered with HMRC – was sufficient and against the background I've set out above as to what was expected of ceding schemes at the time.

As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mr H'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 Elevate's actions using the 2015 Scorpion guidance as a benchmark instead.

As I've said, I don't think Elevate could've considered the receiving scheme/administrator as being free of scam risk. So the initial triage process should have instead led to Elevate asking Mr H 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 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 Elevate should've addressed all four sections of the SSAS due diligence process and contacted Mr H to help with that.

<u>What should Elevate have found out – and would it have made a difference?</u>

Elevate knew that the SSAS was newly set up (10 July 2015) and newly registered with HMRC (13 July 2015) with the transfer request to Elevate made on 30 July 2015 – only a couple or so weeks later. But H Limited wasn't a newly incorporated company. It had been established in early 2012. And the nature of the business was repairing electrical equipment. Which is what Mr H, as a contractor, did. So there was a genuine employment link between him and H Limited. And a SSAS wouldn't be a particularly unusual choice of pension vehicle for someone who had their own limited company through which they worked. So Elevate would've been to some extent reassured by the fact that H Limited hadn't been set up purely to facilitate the SSAS.

As I've noted above, the Origo request did indicate that Mr H had an adviser – ROC. Had Elevate, as I consider it should've done, checked ROC's status, Elevate would've seen that ROC was unregulated. I think Elevate should've been concerned by the possible involvement of an unregulated adviser. But I need to consider what Elevate would've found out, had Elevate probed that further and asked Mr H about how his transfer request had come about, what had led up to it and if he'd been given any advice and, if so, by whom. I don't see any reason to assume that Mr H would've told Elevate anything different to what

he's told us – essentially that he hadn't been dealing with ROC directly, ROC hadn't given him any advice and he'd been advised by Mr D of ARLWM Limited.

I don't see that Mr H would have said he'd been cold called. Rather he'd have said he'd actively sought a new adviser, given that his existing adviser was no longer prepared to continue to act for him. And he wasn't happy with the performance of his SIPP and he was concerned that it might've been mis sold. He'd got in contact with Mr D on a friend's recommendation. And he'd checked that Mr D and his firm ARLWM Limited were regulated and shown on the FCA's register.

And, if Elevate had double checked, they'd have seen that was correct: ARLWM Limited was authorised by the FCA, as was Mr D, its sole director. ARLWM Limited – which later traded as Montgomery Financial Consultants – was no longer authorised from 23 July 2019 and, as I understand it, was declared in default by the Financial Services Compensation Scheme (FSCS) in 2020. But in 2015 ARLWM Limited was a regulated firm. So, as far as Elevate was concerned, Mr H was receiving regulated advice by an authorised adviser about his pension fund. Against that background I don't see that Elevate would've considered it necessary to provide any further warnings to Mr H. It seemed he was taking regulated financial advice about his accumulated pension fund and Elevate would've reasonably assumed that a regulated financial adviser would be acting in Mr H's best interests and that he wasn't about to become a victim of a scam.

That would still be my view even though Mr H may have mentioned the investments that had been proposed. I note here, from the SSAS application form, that the then proposed investments were different to what Mr H actually invested in. The SSAS application form shows Halcyon Retreat (which is a Chateau resort development in France) and Akbuk (a holiday resort development in Turkey). I'm not sure when the proposed investments changed to Park First and Dolphin. But, in any event, Dolphin was an overseas investment and so ought to have prompted similar concerns.

And I've also referred above to the FCA's concerns about unusual investments. As well as overseas property, forestry, storage units, care homes, biofuels or other businesses unfamiliar to the investor were also mentioned. Arguably at least I think Park First could be considered in that category – an unusual and non mainstream investment which, as such, might raise concerns. But again I think, once Elevate had established that Mr H was being advised by a regulated adviser, Elevate could've taken comfort from that and reasonably concluded that Mr H wasn't about to fall prey to a scam, nor was he being led into something that might not be in his best interests by unregulated third parties whose motives might be questionable.

I've also considered the Scorpion insert. Mr H doesn't recall seeing it and I haven't seen anything to suggest that Elevate sent it. So I'm satisfied Mr H didn't see it. As I've said above, Elevate should've sent it. I've considered very carefully if Mr H's position would've likely been different if he had seen it. If he'd been provided with the insert it would've been the version in use in March 2015. That was the one the investigator shared with Mr H. I note all Mr H has said about why, if he'd seen it and without approaching the matter with the benefit of hindsight, it would've made him rethink what he was about to do.

The section in the insert, 'How to spot the warning signs', did include some tactics which might indicate a scam and which did feature in Mr H's case. He's said he was shown convincing marketing material promising an 8% return. Further, one of the funds was overseas. He's also pointed to what was said about putting his money in a single investment. But I don't think that directly applied, given that he was investing in both Dolphin and Park First – although I can see that splitting his money across two higher risk investments was something that he considers he shouldn't have been advised to do. And he hadn't been

approached out of the blue (although he said that applied to Sesame's approach about the advice he'd received). Instead, he'd been actively seeking a new adviser and had gone with a friend's recommendation after checking that the adviser and his firm were FCA regulated.

I recognise that Mr H is being entirely honest in saying what he'd have thought about Scorpion insert and what he'd have likely done, had he seen it. And that he's trying not to use the benefit of hindsight. But, although there were one or two warning signs which Mr H may have thought were present in his case, I don't think he'd have immediately recognised his own situation from the warnings that were given. All in all, I'm not convinced that the warnings in the Scorpion insert would've resonated strongly with Mr H. So, on balance, I can't say, that had Mr H seen the insert, it would've changed his mind about the transfer. In the circumstances I can't say that the Scorpion insert would've changed the outcome so I can't say Elevate's failure to send it caused Mr H's losses.

I have a great deal of sympathy for Mr H. As he's stressed, he's always acted on regulated financial advice and had pension products with regulated providers. But he doesn't seem to have been served well by those he instructed and things have gone badly wrong for him. I note the effect this matter has had on him and his wife and their retirement and future plans have been devastated. But I'm only considering Elevate's part in the matter. Although Elevate didn't do all it should've done I don't think, for the reasons I've explained, that the outcome would've been any different if Elevate had done more. I don't know if there's any possibility Mr H can make a claim to FSCS about the advice he says he received from Mr D. I understand that FSCS is accepting claims against ARWLM Limited who was declared in default in 2020. There are limits to the amount of compensation which FSCS can pay. But, if he hasn't done so already, I'd suggest that Mr H investigates that possibility.'

Responses to my provisional decision

Elevate accepted my provisional decision and didn't have any further comments. Mr H didn't accept it and made detailed comments. I've read and carefully considered all he's said, some of which echoed what was said when his complaint to Elevate was made. Essentially Mr H maintained Elevate had failed in its responsibilities and, if Elevate had acted as it should've done, he wouldn't have transferred. I've summarised Mr H's main points.

- Elevate had failed to follow the FCA's Principles for Businesses and conduct adequate checks and enquiries to properly assess the new receiving scheme and hadn't acted with the requisite integrity, due skill, care and diligence in treating customers fairly and in their best interests.
- Elevate should've ensured any third party it was dealing with in connection with the transfer had the appropriate permissions, qualifications and skills. Elevate should've conducted and retained appropriate and sufficient due diligence on the entities involved and sought appropriate clarification if there were any concerns. If Elevate had made further enquiries a number of issues would've been identified.
- Elevate should've referred to the action pack and asked Mr H why he was transferring to a scheme sponsored by an employer that didn't employ him (although as I've said below I think he was employed by H Limited) and how he'd become aware of the receiving scheme. That would've enabled an open discussion about the transfer request and allowed Elevate to provide information on the risks of transferring and the benefits of remaining in the AXA Elevate PIA. Mr H understood that Elevate wasn't expected to give advice but Elevate was obliged, especially if it had concerns, to seek further information.
- Further enquiries would've also identified that overseas investments were proposed. And may have revealed the names of some of the parties involved and that they'd been previously involved in other schemes which had been publicly linked to pension

liberation.

- Even if none of the warning signs were present, it would've been good practice for Elevate to have gathered further information. Moving pension monies on an execution only basis was something only suitably qualified individuals, such as IFAs and investment professionals, would be expected to do.
- Elevate dealt directly with ROC who were listed as the advisers. Elevate knew ROC wasn't regulated as Elevate's own Technical Department brought this up – the email dated 12 August 2015 refers. Elevate didn't have sight of any other adviser. The Origo request clearly showed ROC as the adviser. Elevate had said in its response to us that they didn't identify any risk with the transfer which was clearly untrue as their own Technical Department raised it internally. Elevate had also said that they should've checked the adviser who requested the transfer or who provided the recommendation was regulated.
- The PSIG Code said the transferring scheme needed to ask its member a series of targeted questions to determine the risks involved. Including if the member had been cold called, promised a specific or guaranteed rate of return, or informed of an overseas investment opportunity. If the answer to any of the questions was 'yes' then the transferring scheme needed to undertake further due diligence. Mr H would've answered 'yes' to at least two of the questions if they'd been asked.
- Elevate had said they didn't know Mr H intended to invest in an overseas investment. And that he should ask Rowanmoor, who'd have their own systems and controls in place, why the investment was allowed. But the SSAS application showed the investment.
- Warnings should've been given but weren't. Elevate didn't issue the Scorpion insert. Elevate had said its process at the time was to issue the leaflet if a risk of a pension scam or pension liberation was identified. But both the Scorpion guidance and the Code said the insert should be sent direct to policyholders whenever a transfer was requested. If Elevate had followed the regulatory guidance Mr H would've concluded that transferring without advice about the proposed overseas investments was unlikely to be in his best interests.

Mr H didn't agree with some of what I'd said in my provisional decision. Again I've read and considered all he's said although I'm only going to include here a summary.

- He didn't agree there was any discrepancy between what he'd told our investigator and what was said in his complaint to Elevate.
- As to what I'd said about Elevate not having seen much of the documentation, Elevate knew who the adviser was (ROC) and didn't have sight of any other adviser. And Elevate had raised concerns internally about ROC's involvement but hadn't carried out any due diligence.
- Elevate knew the SSAS had only been recently set up and registered with HMRC when the transfer request was made, only a couple of weeks later. And, although H Limited hadn't been newly set up just to facilitate the SSAS, the PSIG Code said a strong first signal of a scam would be a LOA from a company not authorised by the FCA, which was the case here.
- Concluding that he wouldn't have told Elevate anything different to what he'd told our investigator – that he'd been advised by Mr D of ARLWM Limited – was subjective. Mr H was a layman. ROC had been introduced into the process by Rowanmoor and he had no idea that ROC was unregulated or that the Scorpion guidance existed. But Elevate did. He'd received compensation in the mid 1990s due to the mis sale of his pension and in 2015 he was in the process of another mis selling claim which wasn't settled until 2016. Given his history it isn't reasonable to assume he wouldn't have acted differently if Elevate had expressed concerns.
- Even if there hadn't been what Mr H termed a 'classic cold call', he didn't know ROC

were unregulated. Elevate didn't know about ARLWM Limited but Elevate did know about ROC. If Elevate had checked with Mr H that would've triggered a discussion about both ARWLM Limited's and ROC's involvement. Elevate should've warned him about unregulated advisers and, as a minimum, issued the Scorpion leaflet.

- He'd never heard of the investments – Halcyon Retreat and Akbuk – shown on the SSAS application. That was a clear warning sign they hadn't been discussed with him. I'd said the investments (that is Park First and Dolphin Capital which were the investments Mr H actually made) were unusual but Elevate could've taken comfort from the involvement of a regulated adviser. That was again subjective and when Elevate hadn't taken any steps themselves to establish any facts and only had sight of ROC as advisers.
- I'd also reached subjective conclusions about what he'd have thought if he'd seen the Scorpion insert. He reiterated what he'd said about having been mis sold in the 1990s and when he'd transferred to the Axa Elevate PIA. It wasn't credible to say he wouldn't have stopped and taken in all that was said to him – about using a non regulated adviser, overseas investments and promised returns, all things which were highlighted in the Scorpion guidance. Elevate hadn't offered him the protection it should've done.

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.

In doing so I've paid particular attention to the points made by Mr H in response to my provisional decision.

To some extent I don't disagree with Mr H that Elevate failed to follow the FCA's Principles for Businesses and conduct adequate checks and enquiries to properly assess the new receiving scheme. As I said in my provisional decision, Elevate's due diligence was largely limited to checking the SSAS documentation. Elevate didn't follow up on the Technical Department's query about the adviser shown on the Origo request. And Elevate seems to have placed considerable reliance on the fact that the transfer was to Rowanmoor. I explained in my provisional decision why I didn't think that was justified.

Mr H says Elevate should've ensured any third party it was dealing with had the appropriate permissions, qualifications and skills to carry out the proposed transaction. I don't agree that, as Mr H wasn't a financial or investment professional, the transfer should've been investigated in any event. From what I've seen, Mr H would've had a statutory and contractual right to transfer and there was no requirement for him to seek regulated advice in connection with the transfer. And Elevate needed to balance the need to process transfers promptly with the need to identify those customers who might be at material risk of being a victim of a scam.

I agree that the involvement of an unregulated party was a warning sign. Mr H says there were also other concerns. He's pointed to the fact that the SSAS was newly set up and only recently registered with HMRC – about two weeks before the transfer request was made. From the outset of the Scorpion campaign, a potential warning sign of liberation activity, as identified by the action pack, was that the receiving scheme, often a SSAS, had been recently registered. So that was, potentially, also an issue. That was often linked to a newly incorporated sponsoring employer which didn't employ the consumer in any meaningful way. Mr H says he wasn't employed by the sponsoring employer but my understanding is that he was – H Limited had been set up in 2012 and Mr H was a contractor, working through H Limited. So, in his circumstances, setting up a SSAS may not have appeared an odd choice of pension vehicle.

Mr H also says the proposed investments – as shown on the SSAS application form and which Mr H says weren't discussed with him – should've given Elevate reason to be suspicious. But Elevate wouldn't have seen the SSAS application form. But I accept that, if Elevate had made further enquiries of Mr H, the investments which had been discussed with him would've come to light. And overseas investments, such as Dolphin Capital, which Mr H did invest in, may have been included.

And, in any event, and regardless of whether issues about the SSAS being newly registered and the proposed investments should've been followed up, I agree the involvement of an unregulated party – ROC – should've been of concern to Elevate. Although Mr H says Elevate dealt directly with ROC, I don't see that was the case. In my provisional decision I set out (starting at the end of page 8) correspondence and other documentation evidencing ROC's involvement. But that was all between ROC and Rowanmoor/Rowanmoor Trustees Limited and Mr H – there's no direct communication between ROC and Elevate. But there's no dispute that Elevate was aware of ROC's involvement – the Origo request showed ROC as the adviser. And Elevate's Technical Department picked up on and queried that (although that query wasn't followed through). I don't think there's any suggestion that any of the parties Elevate knew were involved – ROC and Rowanmoor – had been publicly linked to pension liberation. But ROC's involvement, as an unregulated party, was something that Elevate should've probed further.

The issue is what would've likely come to light if Elevate had made further enquiries. Mr H has referred to there being an 'open discussion' about the transfer request, with Elevate giving information on the risks of transferring versus the benefits of remaining in the AXA Elevate PIA. But I think that sort of discussion could've amounted to advice which Mr H accepts that Elevate wasn't in a position to give.

Mr H doesn't agree with the conclusions I reached in my provisional decision about what would've happened if Elevate had made further enquiries. I understand his point about my views being subjective. But, given that Elevate didn't make any further enquiries, the question is necessarily hypothetical and it's not possible to say, with certainty and after the event, what would've happened. In that sort of situation I reach my conclusions on the balance of probabilities – that is what I consider would've likely happened – in the light of such information and evidence as is available and taking into account the wider circumstances.

I maintain it's reasonable to assume Mr H would've told Elevate similar to what he told our investigator about what had happened: that he hadn't been cold called, he'd actively sought a new adviser, he'd approached Mr D of ARLWM Limited on a friend's recommendation and he'd checked that Mr D and ARLWM Limited were regulated and shown on the FCA's register. I think that's different to what was said when the complaint was made to Elevate and which didn't mention Mr D or ARLWM Limited. But I don't think Mr H disputes that, if he'd spoken to Elevate, he'd have mentioned both ROC and ARLWM Limited.

I know Mr H doesn't agree but I maintain Elevate could've reasonably derived considerable comfort from the involvement of ARLWM Limited, a regulated firm. It wasn't, and as would've appeared from the Origo request, that Mr H was acting on advice from an unregulated third party, ROC. Instead he was taking advice from an authorised and registered adviser who it could reasonably be assumed would be acting in line with their regulatory obligations (under the regulator's Principles for Businesses and the COBS rules) and any express or implied legal obligations and in Mr H's best interests. Even if Mr H had mentioned to Elevate that the proposed investments were of a type that might usually be regarded as a potential warning sign, I think the fact that a regulated adviser was behind the request to transfer would've been sufficient to reasonably allay any concerns. So essentially the position is that, although

Elevate should've made further enquiries, the outcome would've been that Elevate, acting reasonably, wouldn't have thought it necessary to give Mr H any warnings.

Mr H has said that the unregulated third party, ROC, in conjunction with Rowanmoor, was responsible for initiating the course of action that led to his loss and that Elevate, as the regulated entity, failed to put a stop to the transfer when it had the opportunity and obligation to do so. But I don't think it would be fair to ignore what Mr H has told us about the involvement of another regulated party whose actions – in advising Mr H to transfer and invest as he did – appear to have played an important part in the matter and Mr H's decision to transfer.

As to that other regulated party's involvement, I note here that Mr H has said that he'd have concluded that transferring without advice about the proposed overseas investment was unlikely to be in his best interests. I don't know if there's some suggestion that Mr H got regulated advice about the transfer to the SSAS and which didn't include advice about the proposed investments. As early as January 2013 the then regulator (the FSA) published an alert (with later updates) saying that advice on a pension transfer (or switch) must take account of the overall investment strategy the customer is contemplating, including the suitability of the underlying pension investments. So, even if the advice Mr H was actually given about the transfer purported to be limited in some way, Elevate could've reasonably assumed it included advice on the proposed investments.

Mr H has also said, if he'd seen the Scorpion insert – which I've acknowledged Elevate should've sent to him but didn't – he'd have acted differently and wouldn't have proceeded with the transfer. In my provisional decision I said, although there may have been one or two features that Mr H might've recognised as being present in his case, the insert wouldn't have resonated strongly with him and such that it would've changed his mind about the transfer.

Again I recognise my conclusions about that are, necessarily, hypothetical. But, on balance, I still can't say, if Mr H had seen the March 2015 version of the Scorpion insert, the outcome would've been any different. The focus of the insert was pension scams. It referred to 'scammers' who'd try to 'flatter, tempt and pressure' the investor into transferring their pension fund into an investment with guaranteed returns. I don't immediately see that Mr H would've recognised a regulated adviser and firm as likely being a 'scammer'. And, as I said in my provisional decision, the warning signs identified in the insert didn't feature strongly in Mr H's case.

Mr H has stressed, having been subject to mis-selling twice before, he'd have heeded any warnings given by Elevate. But, as I've said, I don't think, even if Elevate had looked into the transfer further, Elevate would've thought, given Mr H had a regulated adviser in place, that he was about to become a victim of a pension scam and so warned him against proceeding. And I can't see that Mr H would've thought any warnings about acting on the advice of unregulated third parties applied to him, when he'd had advice from a regulated adviser. It is of course the case that acting on regulated advice can give rise to problems. But it will remain the adviser's responsibility. Or, if the firm is no longer in business, a claim to FSCS might be possible. As I mentioned in my provisional decision, Mr H may want to investigate if there's any possibility of a claim to FSCS against ARWLM Limited.

All in all I maintain the conclusions I reached in my provisional decision. I've set those out in full above and they form part of this decision. I'm sorry for the situation that Mr H is in. And I can understand he will be very unhappy that, although I've said there were shortcomings on Elevate's part, I'm still not upholding the complaint. But I could only do that if I was satisfied that, had Elevate acted differently, Mr H's losses would've been avoided. For the reasons I've explained, I don't think the outcome would've been different.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 November 2024.

Lesley Stead
Ombudsman