

The complaint

Mrs F has complained about a transfer of her Alliance Trust Savings (ATS) self-invested personal pension (SIPP) to an occupational pension scheme, the Focusplay Retirement Benefit Scheme (“the Scheme”) in April 2015. The Scheme has been suspected of being involved in pension liberation, and its benefits are thought to have little value. Mrs F says she has lost out financially as a result. Interactive Investor Services Limited acquired ATS in 2019 and is the respondent to this complaint.

Mrs F says ATS failed in its responsibilities when dealing with the transfer request. She says that it should have 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 F says she wouldn't have transferred, and therefore wouldn't have put her pension savings at risk, if ATS had acted as it should have done.

What happened

On 7 May 2014 one of Mrs F's previous pension providers, Standard Life, issued her with a transfer pack for the group personal pension (GPP) of her former employer. This pack stated on the covering page that it included a *“Pension liberation fraud leaflet – from the Pensions Advisory Service”*. Immediately below that it explained:

“About the pension liberation fraud leaflet

This leaflet from the Pensions Advisory Service [TPAS] warns of the dangers of early pension release. You can get more information online from their website www.pensionsadvisoryservice.org.uk”

On 30 July an unregulated firm which has since dissolved, Milton and Wade Ltd, sent Mrs F's husband (whom I'll call Mr F in this decision) an application form for the ATS SIPP. Mrs F says that this firm called them out of the blue. This organisation provided him with a 'No Advice' document which set out that it provided general information about the investment process which should not be treated as advice – adding:

“With regards to making a decision to transfer your pension, you should always seek advice from a professional Independent Financial Adviser”; and

“You must not rely on the information provided as an alternative to independent financial advice from suitably qualified person. If you have any specific questions about any investment or pension products, you should consult a financial adviser. You should never delay seeking financial advice, disregard advice, or commence or discontinue any financial advice because of information provided.”

A covering sheet suggests Milton and Wade was aware that Mrs F would be transferring her existing pensions to the SIPP and prominently explained:

“THE 20% CASH INCENTIVE IS PAID BY THE INVESTMENT PROVIDER!!! NOT BY THE SIPP PROVIDER!!! THEY WILL HAVE NO INFO ABOUT THIS, SO PLEASE DO NOT ASK.”

Mrs F completed the ATS application form on 20 August and it opened the SIPP on 2 September 2014. There was no adviser disclosed on the application and no investment instructions were given.

On 11 September she transferred in £10,548 from Standard Life, followed by £16,530 from Capita (the administrators of another occupational pension she held) – representing all her pension savings. Mr F contacted ATS at one point to chase for the proceeds of this transfer. The proceeds then remained in the SIPP bank account.

On 29 October Milton and Wade sent Mr F an application form for an FCA-regulated stockbroker, referring to discussions Mr F was having with ‘Ricky’. A person of that name who appears to have worked for Meads Park Investments (MPI) – another unregulated firm – had already emailed Mr F an application for a different FCA-regulated broker on 1 October. MPI’s website at the time suggests that it acted as an introducer to other organisations to provide clients with FCA-regulated advice on ‘alternative investments’.

Someone else from Milton and Wade then emailed Mr F a revised stockbroker application form for use with a SIPP on 13 October. The email reads:

“Once completed and returned the account will be open in 3 working days after wish you will b [sic] able to trade and then receive your incentive. If you have any questions, please call Ricky on [...].”

For some reason the investments via a stockbroker didn’t proceed. It then appears that Mr F had a phone conversation with an organisation called ‘Logistic Marketing Nationwide’, which then sent him a booklet for the Scheme as well as details of charges and prospectuses for several investments on 10 December: Strat Aero (an aerospace services company), Farina Investments (a boutique corporate finance and asset management company), and Sport:80 (a sports management and events company). Amongst other things, the Scheme booklet set out that the normal retirement age would be 65 but the earliest a member could ask to retire was 55 (unless in ill health). It also said loans from the scheme or ‘commission sharing’ were forbidden.

On 15 December Mrs F signed a letter of authority (LoA) allowing the trustees of the Scheme to obtain details from ATS in relation to her pension, as well as an application form to join the Scheme which involved her declaring:

“I confirm that I have not been paid or offered any financial or other incentive in relation to joining the Scheme or transferring existing pension benefits to it.” ...

“I have received, read and understood the two leaflets The Pensions Liberation fraud transfer pack insert for members and The Pension Liberation fraud awareness leaflet for members.

I have not been paid or offered any loan or other unauthorised benefit from the Scheme and I have been made aware that no such loans or unauthorised benefit will be available to me from the Scheme and specifically that, save where expressly permitted by the Finance Act 2004, I am not entitled to receive benefits earlier than Normal Minimum Pension Age (55).”

The application also explained that gaining access to benefits in an unauthorised way would mean Mrs F had to declare this to HMRC and this would attract a tax charge of at least 40%

plus further charges and penalties. It recommended she take independent advice from an 'appropriately qualified' adviser, as the Scheme would not be providing her with advice. The space on the form to name an adviser was blank, and Mrs F had ticked to confirm she had not been advised on the transfer by "*an FSA [sic] regulated Financial Adviser*". This had resulted in her also signing to agree, amongst others, the following statement:

"I am aware of the alternatives to this pension, such as a stakeholder pension, SIPP or a personal pension, and have discounted these as being unsuitable options. I understand and am comfortable with the level of risk connected with a self-directed personal pension [sic]."

Mrs F gave no specific investment instructions on this form. It disclosed that she was a teacher with no figure given for earnings (although I understand from her solicitor these were £12,000, and she had just left her previous job earning £40,000 to work on a self-employed basis). It also included a fee agreement to pay £500 + VAT to "*my Adviser/Consultant/Intermediary*" (who was unnamed on the agreement). The form said "*Please note that any Fees shown here are in addition to the Scheme 'Establishment Charges' and 'Annual Management Fees'.*"

Mrs F then signed a letter of instruction for the Scheme trustees on 6 January 2015. It read:

"I hereby confirm that:

- The monies I have transferred from my previous pension arrangements to your scheme are to be invested as per my previous instructions into one or more investments chosen by me.*
- I have not been offered or solicited the offer of any cash or other payment, whether for the benefit of myself or anyone else, in relation to my membership of your scheme or the investments I have instructed.*

The above paragraph does not relate to any tax free drawdown to which you may be entitled as a result of reaching age 55 years

- I have received and read and understood the leaflet on the subject of Pensions Liberation Fraud entitled "Predators Stalk Your Pension" issued by the Pensions Advisory Service.*
- I understand the potential consequences of receiving directly or indirectly any benefit from my pension fund other than those benefits that are authorised by UK law and it is not my intention to seek or receive any other benefits."*

On that day the Scheme's back office paperwork (which has been obtained by the solicitor representing Mrs F) show that it sent an "*Introduction and Scorpion letter*" to her.

On 7 January, the Scheme's internal notes suggest it wrote to ATS, requesting Mrs F's transfer. ATS's notes indicate it received a phone call from the Scheme on 19 February, and established that documents had been sent to the wrong address. It then received a transfer request on 25 February giving the Scheme's agreement to receive the transfer. This also included:

- A printout from HMRC's website confirming that the Scheme had been registered since 2 May 2013; a copy of HMRC's original registration letter confirming the same.
- A printout from TPR's website of the information TPR held about the Scheme (dating from July 2014), including the trustees.

- The Scheme's trust deed, which gave details of the sponsoring employer which had been trading since 1999 (Focusplay Ltd, a steel wholesaler) and date of establishment (23 April 2013).
- The Scheme's rules, which indicated that people other than employees of the company could be admitted at the trustee's discretion, and that it could invest in a wide range of assets including unregulated products.
- An "About us" sheet confirming the above information about the sponsoring employer, and the pedigree of the trustee company – referring to its long trading history as a firm of accountants. This included a declaration from the trustee confirming that he wasn't intending to make unauthorised payments; wasn't involved with a previous scheme that was deregistered or subject to any investigation; held written confirmation from the member that they hadn't been offered any incentives to transfer and was aware of the consequences of unauthorised payments; and that the member had read and understood the TPR pension liberation leaflet entitled "Predators Stalking [sic] Your Pension".

ATS phoned the Scheme on 26 February to advise the transfer application was rejected, as it had an e-signature and it didn't provide the same address for Mrs F as ATS. The Scheme agreed to send in a wet signature.

On 4 March Mrs F signed and returned a proforma letter to the Scheme in response to it contacting her two days earlier. The letter gave her the option to say she had decided not to transfer to the Scheme, or that she would like the trustees to arrange an independent financial adviser to contact her. However the option she selected was that she wanted to go ahead with the transfer immediately.

On that same day she signed a new combined LoA addressed to ATS to request information and give a transfer instruction. On 10 March Mrs F called ATS to chase progress on the transfer. Mr F also called ATS on 11, 26 March and 9 April and was reminded that ATS was still awaiting the wet signature. ATS then received a signed letter from Mrs F with the correct signature and address dated 9 April. The letter read:

"As per telephone call I am happy to authorise transfer of full funds held in the above account to Gleeson Bessent with immediate effect. Could you please call me on [...] or my husband...[on...] on receipt of this letter to confirm transfer has been carried out."

Mrs F's SIPP was transferred to the Scheme on 14 April 2015. Her transfer value was around £26,650. She was 34 years old at the time of the transfer.

On 15 April a further unregulated firm known as Barker Gray wrote to Mr F referring to a phone conversation it had with him. It asked him to confirm he (in reality Mrs F) was willing to make three specified investments with her pension fund. Mr F replied the following day agreeing to make the investments.

On 16 April the trustees of the Scheme wrote to a company known as the Enduro Partnership setting out that Mrs F wished to invest £6,720 from the Scheme (30%) in unlisted shares in 'Truspine', £13,440 (60%) in unlisted shares in 'Farina Investments', and £2,240 (10%) in unlisted shares in 'Sport80'. The latter two were the same investments as discussed with Mr F previously, and he and Mrs F have provided prospectuses for all three. They wrote to Mrs F on 20 April 2015 confirming this. A fee of £600 was apparently paid to a company known as 'Hesketh Boyd' which doesn't appear to be regulated.

In March 2017 the trustee companies, Gleeson Bessent Trustee Services Ltd and Gleeson Bessent Trustees Ltd, were wound up in the public interest by The Insolvency Service – who

in July 2018 also disqualified all four directors of the companies for a total of 21 years, for their role in the companies' mismanagement of the Scheme's funds. In May 2017 the Pensions Regulator (TPR) determined that the trustees were not fit and proper, and appointed new trustees (Dalriada) to take over the scheme.

One of the directors had redirected more than £290,000 of pension scheme funds into his bank account and those of companies controlled by him. Other funds paid tax bills for his accountancy business and provided capital to the businesses of clients and relatives. The scheme made other investments including bonds in Dolphin Trust, a German unregulated property scheme. However it's not clear whether these investments were made with Mrs F's funds (which from the structure of the scheme were meant to be held in her own 'account').

Dalriada has confirmed that some funds were sent to the Enduro Partnership (i.e. the investments Mrs F was supposed to be making). It's confirmed these were early-stage funding for four companies which it has been attempting to recover. In the event that Mrs F's funds were invested as intended (and we do not know this at this stage), it's worth noting that only Farina Investments has dissolved. The other two companies are still trading.

In February 2021, Mrs F complained to Interactive Investor through her solicitor. Amongst other things the complaint cites ATS' obligations under the FCA's Principles for Businesses; asks what investigation ATS carried out into Mrs F's reasons for transferring, such as whether she had been offered any incentives; and notes that ATS hadn't sent her the TPAS pension liberation fraud leaflet (mentioned above).

Interactive Investor didn't initially investigate the complaint as it didn't accept the solicitor's authority to complain on Mrs F's behalf – and then said it was time barred. After I issued a jurisdiction decision on 27 March 2024, confirming that this was a complaint the Financial Ombudsman Service could consider because it was brought to ATS within six years of the transfer to the Scheme, Interactive Investor provided its comments. These included:

“...it is important to note that regulations surrounding pension transfers were not as stringent in 2015 as they are today. SIPP account holders weren't required to seek any advice surrounding the suitability of the transfer and firms were not expected to send any pension scams literature.

It is unclear or rather not evidencable what due diligence checks ATS may have completed at the time; however, what can be determined is that Mrs F's instruction to transfer out was completed without any communication surrounding any associated risks involved. As a non-advisory execution-only service, ATS simply followed the instruction provided, presumably under the assumption that Mrs F had found a service more suited to her needs given the timing of her transfer in and subsequent transfer out, within the period of 4 months.

It would not have been ATS' responsibility to question Mrs F over her instruction once a signed transfer form and discharge form was received from Gleeson Bessent, rather, they were responsible for the handling and processing of the transfer within a prompt timely manner, which they did.

Whilst it is regrettable that Mrs F suffered financially, it was her decision to transfer her assets without seeking financial advice. Due to this, I am unable to agree that ATS, now IISL, are culpable for the losses claimed, as the criminal activity involved was outside of our control and only discovered the following year after her subsequent instructed transfer.”

I issued my Provisional Decision on this complaint on 10 September 2024. In that decision, I explained why there were a number of features of Mrs F's transfer that might have suggested she was at greater risk of falling victim to a pension scam. Those included the Scheme being permitted to make unregulated investments and admit members who were not employees of the sponsoring employer (made more likely in Mrs F's case because of her geographical distance from that employer); and Mrs F's funds remaining in the SIPP bank account throughout the time she was with ATS.

However, I also thought that if ATS had made further enquiries into what had prompted Mrs F into transferring, she likely *wouldn't* have disclosed that she had been promised a 20% cash incentive to transfer. She would likely have given a reasonably clear impression of her investment plans, which her husband was involved with and which were shares in UK companies rather than overseas, rather than indicating that she was relying on advice from someone who was unregulated.

I therefore concluded that ATS wasn't in a position to give a warning to Mrs F about the risk of a scam that would have been effective enough, on balance, to stop her transferring her pension.

Interactive Investor hasn't responded to the Provisional Decision. Mrs F's solicitor responded to the decision on her behalf on 19 September 2024. In summary, they said:

- Mr F had briefly been a trainee investment manager almost 20 years ago, during which time he didn't deal with any clients or advise any client to make investments.
- He relied on Milton and Wade to assist him and Mrs F on the transfer.
- Mr and Mrs F haven't seen, and do not know what a 'Scorpion letter' is, and haven't seen evidence of Standard Life sending one to Mrs F. *"If they had seen one, they may have second guessed the transfers."*

I've taken these points into account in reaching my Final Decision, which follows. (What I set out below includes a correction of a statement in my Provisional Decision that ATS first received the transfer request [from the Scheme] on 25 February 2014 – the date should have read 25 February 2015. I apologise for this error).

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.

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 ATS 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, 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 SSAs (rather than the type of scheme Mrs F transferred to) in pensions scams was highlighted, as was an increase in the use of unregulated and/or illiquid investments. The FCA further published its own factsheet for consumers in late August 2014. It highlighted the announcement to insurers and advisers in a regulatory round-up published

on its website in September 2014.

The materials in the Scorpion campaign comprised:

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

There was a further update to the Scorpion guidance on 16 March 2015, which was issued after ATS received Mrs F's transfer request but was awaiting a wet signature. This guidance referenced the potential dangers posed by "pension freedoms" (which were about to give people greater flexibility in relation to taking pension benefits) and explained that pension scams were evolving. This update also referred to a broader piece of guidance 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 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?

Mrs F's solicitor says it believes from the evidence that the trustees of the Scheme, Gleeson Bessent, provided advice. However that doesn't seem to me to fit with the wider evidence or Mrs (or Mr) F's direct recollections.

Their testimony is that Milton and Wade cold-called in the first place, with the initial strategy of transferring from former pension arrangements to the ATS SIPP. I believe it is worth reflecting at this stage on the fact that the approach seems to have been made to Mr F rather than Mrs F, as Mr F seems to have some involvement in the financial services industry. He is currently the sole director of an FCA-regulated firm which has insurance and consumer credit permissions and which more recently certified Mrs F's identity in order for Interactive Investor to process her data subject access request.

Mr F points out that his current role doesn't deal with pensions but I haven't said that it did. I also accept that he wasn't carrying out a role which required FCA approval in 2014-15. But the FCA's register shows that he had also been a trainee investment adviser with three major UK banking and insurance firms between 2002 and 2006. I think that's relevant here given that the proposed investments in single company shares, which don't look to have been suitable for Mrs F, brought a considerable part of the risk in this transaction.

It's evident from Mr F's involvement in the transfer process that decisions which needed to be made were not left entirely to his wife. Most if not all of the email exchanges with Milton and Wade and other third parties were conducted by Mr F. I note Mr F's comments that as a trainee investment manager, he didn't deal with any clients or advise any client to make investments. However in my view this is as much about an understanding of risk, and what investments are appropriate for different clients on a hypothetical basis, as it is whether Mr F's career progressed to advising clients himself.

Mr F progressed between three different firms – and even if he wasn't with each for a very long time, he confirms he was training to be an investment manager. So I find it much more likely than not that the training he received gave him an introduction to these fundamental issues as well as an understanding of the nature of investment advice being a regulated activity.

Mr and Mrs F's testimony goes on to say that they consider Milton and Wade did give them advice. But I have to take into account Milton and Wade's clear statement that it was not doing so. That in my view should at the very least have given Mr F (if not Mrs F) cause to reflect on why that company would be making such a statement, and why it was referring them to an independent financial adviser if they required advice.

There was nothing in the correspondence to suggest that Milton and Wade was authorised by the FCA to give advice – which (as I've said above) was a concept I would expect Mr F to have been familiar with. I further note that Mrs F signed an application form for the Scheme which had been ticked to say she wasn't taking advice from a firm that was regulated.

Mrs F's solicitor went on to say that *"The clients believed that Milton and Wade were a legitimate company providing good financial advice. The clients were not knowledgeable on the situation and trusted the brokers to do what is right by the clients...The clients wholly believed in the brokers."*

However in their direct testimony Mr and Mrs F admitted that they *"questioned the paperwork slightly and called [Milton and Wade] out on it."* That's certainly plausible to me as with his past background in this industry, I think Mr F at least ought reasonably to have been suspicious of not only an approach he wasn't expecting from Milton and Wade (if that was the case) – but also its statements that it wasn't providing them with advice (if they felt it actually was). The promise that a 20% incentive would be paid should also, in my view, have been surprising at least to Mr F given that this would have to be accounted for somehow in how the investments performed.

Mr and Mrs F go on to say that they were reassured by Milton and Wade when they asked questions, but I fail to see how they could have been completely reassured. When taken together, they were aware they weren't seeking independent advice from a firm regulated to provide that advice – and I consider that they should have known more than the average layperson about the implications of this.

In one part of Mr and Mrs F's testimony they say that funds had to be redirected from ATS to the Scheme because a better opportunity had come along. I take it from what they're saying that the same incentive – which they were told would come via the investments and not from

the SIPP provider – would again come via the investments after Mrs F had transferred to the Scheme. I say this as I doubt the Scheme would have looked to be a better opportunity unless the same, or similar, incentive was going to be paid.

However in a different part of their testimony, they suggest they thought it was the usual process to transfer to a SIPP first, and then the Scheme. I don't see how both claims can be correct. Particularly given the level of understanding I'd expect from Mr F, this comment suggests they were aware that there was some perceived obstacle or difficulty in transferring directly from Mrs F's two previous pension arrangements to the Scheme, which the transfer to the SIPP would overcome.

One explanation for such an obstacle would have been found in the *"Pension liberation fraud leaflet"* from TPAS, which Standard Life stated was included in the transfer pack it sent to Mrs F. I should clarify that the material provided by TPAS itself was solely this leaflet. The 'Scorpion letter', which Mr and Mrs F refer to in response to my Provisional Decision, looks to be some sort of covering or stand-alone letter the Scheme recorded as having sent to Mrs F subsequently.

But what I'm referring to here is Standard Life sending Mrs F this leaflet alone. Mr and Mrs F say they have no recollection of getting a 'Scorpion letter', which I assume includes reference to this leaflet. However a copy of the letter sending this to Mrs F was received by ATS on 2 September 2014 alongside Mrs F's completed ATS SIPP application form – presumably to evidence the values of the benefits Mrs F was transferring. I've asked the Investigator to send a copy of this application form to Mrs F's solicitor by secure email with this decision.

Standard Life's letter was correctly addressed and made reference to the leaflet. On the balance of probabilities I consider a correctly addressed letter would have been received by Mrs F, although I think that is put beyond doubt here by the fact Mrs F was able to include the letter she received from Standard Life with her application. Moreover I think a leaflet that was specifically captioned by Standard Life was more likely than not included with that letter. As the letter was sent in May 2014 it would have been the February 2013 version of this leaflet titled *"Predators Stalk Your Pension"*, and reads:

"Companies are singling out savers like you and claiming that they can help you cash in your pension early. If you agree to this you could face a tax bill of more than half your pension savings.

'Pension loans' or cash incentives are being used alongside misleading information to entice savers as the number of pension scams increases. This activity is known as 'pension liberation fraud' and it's on the increase in the UK.

In rare cases – such as terminal illness – it is possible to access funds before age 55 from your current pension scheme. But for the majority, promises of early cash will be bogus and are likely to result in serious tax consequences.

What to watch out for

- *Being approached out of the blue over the phone or via text message*
- *Pushy advisers or 'introducers' who offer upfront cash incentives..."*

In a section titled 'Five steps to avoid becoming a victim' the insert recommended that Mrs F find about the company's background through information online – because any financial advisers should be registered with the FCA. And to speak to an adviser that is not associated with the proposal you've received, for unbiased advice. Links were provided to

the TPR and TPAS websites, as indeed Standard Life had already done in its letter.

Standard Life sent this leaflet before the point Mr F was speaking to Milton and Wade. I consider she, or Mr F, ought reasonably to have read it as it was relevant to what she was doing. It appears in any event that this was the same leaflet that the Scheme subsequently sent her, which she then signed to acknowledge receipt of. Mr and Mrs F proceeded to make two transfers in pursuit of the type of incentive the TPAS insert warns about. So I'm satisfied on the balance of probabilities that they did so with reasonable knowledge that there was a risk of a significant tax charge.

This was also reflected in the nature of the disclaimers Mrs F was required to sign when applying to join the Scheme. She was declaring that she wasn't being offered an incentive, which from her testimony she knew she had been promised. The statement was in plain language and I don't think there was any possibility of it being misunderstood even if Mrs F wasn't familiar with the details of transferring a pension.

What did ATS do and was it enough?

The Scorpion insert:

Interactive Investor says that firms were not expected to send any pension scams literature at the time of Mrs F's transfer. That's not correct in my view. For the reasons given above personal pension providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information.

However, I haven't been able to establish that anyone made a request for a transfer pack from ATS, which would normally trigger the issuing of this insert. That may be because those involved in the transfer already knew all the details of the ATS pension, having set it up – and it doesn't appear a particular ATS discharge form was needed in order to transfer her pension elsewhere.

In this particular case, Mrs F had already been provided with this insert by Standard Life – although it was an earlier version than the one current at the time the Scheme requested the transfer. (I said in my Provisional Decision that ATS didn't know this, but in fact I've noted above that it had previously received a copy of the letter Standard Life sent Mrs F saying this with the original SIPP application.) Standard Life was also told generically by the Scheme as part of the onward transfer request that that the member had read and understood this leaflet. But clearly, it would have been contrary to the whole purpose of the Scorpion campaign for ATS to accept this assurance from the Scheme itself, or to rely entirely on an earlier warning a different provider had sent Mrs F.

So, even in the event that it didn't find any warning signs of a scam in Mrs F's transfer that warranted taking further action, I consider it would have been reasonable for ATS to at least provide Mrs F with substantially the same warnings as in the up to date version of the Scorpion insert when it received her transfer request. So firstly, I'll consider if there were any evident warning signs in the paperwork ATS received.

Due diligence:

Interactive Investor suggests that ATS' role as "*a non-advisory execution-only service*" somehow removed its obligation to carry out due diligence – and that the short gap between Mrs F's transfer in and transfer out was more likely to suggest she was actively making her own investment decisions. This runs contrary to the whole purpose of the Scorpion guidance as well as the FCA's principles and rules – including those to act in Mrs F's best interests.

At the time ATS first received the transfer request on 25 February 2015, the 2014 version of the TPR action pack expected firms to look out for initial warning signs in the information already known to them at the time of the transfer request. Notably, one of the signs that's often apparent when transferring to another occupational scheme used for pension liberation is that the scheme was recently established. But that sign wouldn't have been apparent in this case.

ATS had a copy of the trust deed for the Scheme, showing it was established on 23 April 2013 and had been registered with HMRC since 2 May 2013, nearly two years prior. Whilst I've considered whether the assurances that the Scheme would not liberate Mrs F's pension, given as part of the transfer request, could have been seen as an attempt to 'whitewash' such activity, I find little basis for that conclusion without the benefit of hindsight.

Since 2013 both TPR and HMRC had made significant efforts to stamp out pension liberation activity, including closing down pension schemes. Both the July 2014 revision to the TPR guidance and the FCA alert communicated to firms in September 2014 suggested that offers of high-yielding investments were now more of a focus of scam activity. I think the length of time the Scheme had remained running whilst subject to regulatory scrutiny would have given enough confidence that Mrs F wasn't likely to be the victim of pension liberation activity for the Scheme's assurances in this regard to at least have been viewed neither positively nor negatively by ATS.

This says nothing about the wider risk that the Scheme might be involved in scam investments. Nevertheless, by the standards of TPR's 2014 action pack I would need to identify a reason for ATS to make further enquiries into this. Clearly ATS didn't know that Mr F had apparently been cold-called and promised an incentive, which was the basis on which he and Mrs F had acted. There was also little evidence of Mrs F being put under pressure to transfer, even if I include correspondence ATS didn't see. In one place Milton and Wade's emails to Mr F say *"The process can take anywhere between 3 & 8 weeks, therefore your urgent attention is very much appreciated."* But this was in April 2014, and it's self-evident that the process wasn't happening very quickly – with a significant time having passed, Mr F being sent full prospectuses for the proposed investments, and his agreement to make them on behalf of Mrs F being sought beforehand.

I've taken into account that Mr and Mrs F chased ATS several times over the course of a month about the transfer, with the Scheme itself chasing ATS once, about a month prior (to learn that its paperwork had gone to the wrong address). I don't think this is particularly unusual or that it suggests an obvious element of pressure in the transfer process. The only other 'initial' warning sign from the 2014 action pack which could potentially apply is where the member was being offered one-off investment opportunities – reference is made there to these investments being overseas, or (in the checklist itself) unregulated.

As I've noted, ATS was provided with a copy of the Scheme rules which do indicate that it may make unregulated investments. So I consider that might have given ATS reason to become concerned that the Scheme could become the vehicle for investment scams. And as it had those rules I think it would also have been reasonable for ATS to take notice of the fact that the scheme could admit members who weren't employees of Focusplay Ltd.

Sponsoring employers who don't employ the member was mentioned as a matter of concern in TPR's checklist, along with a sponsoring employer that was geographically distant from the member. Focusplay Ltd's address in Warrington was provided in the transfer request and it's 3½ hours' drive away from where Mrs F resides.

I've also taken into account that the transfer away from ATS came only a short time after she transferred into its SIPP. She hadn't made any investments – her funds were sitting in the

SIPP bank account. As much as suggesting a change of mind, as Interactive Investments indicates, it might also suggest a lack of clear plan at the outset as to how Mrs F was going to invest her pension. Combined with the somewhat unlikely link of Mrs F as an employee to a sponsoring employer so far away, I think ATS ought to have been alive to the fact that it might be being used as a link in a chain to move Mrs F's funds as part of a scam.

So I think there were potentially some matters in the transfer request to cause ATS more concern than it just lacking a wet signature from Mrs F. And I've therefore considered what it would have learned had it carried out further enquiries. A reasonable way of going about that would have been to turn to the checklist in the action pack to structure its due diligence into the transfer.

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

1. The nature/status of the receiving scheme

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

2. Description/promotion of the scheme

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

3. The scheme member

Sample questions: Has the transferring member been advised by an 'introducer', been advised by a non-regulated adviser or taken no advice? Has the member decided to transfer after receiving cold calls, unsolicited emails or text messages about their pension? Have they applied pressure to transfer as quickly as possible, without receiving documentation from the new scheme, or been told they can access their pension before age 55?

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

I don't think it would always have been necessary to follow the check list in its entirety. And I don't think an answer to any one single question on the check list would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the check list to establish whether a scam was a realistic threat. Given the relatively limited information ATS had about what had prompted Mrs F to transfer, the geographical separation between Mrs F and the sponsoring employer, and the concerns it should reasonably have had about the two transfers in quick succession, I think in this case it should have addressed all three parts of the check list and contacted Mrs F as part of its due diligence.

What should ATS have found out?

As I indicated above, ATS already had information in its possession which would largely satisfy part 1 of the checklist: essentially, although the sponsoring employer had been trading since 1999, Mrs F was geographically distant from it – and the Scheme permitted unregulated investments to be made. If it had contacted Mrs F as the guidance suggested, it would have been able to confirm that she wasn't genuinely employed by Focusplay Ltd.

Enquiries under part 2 of the checklist could have revealed that Mrs F had been promised a 20% cash incentive, but on the evidence we have in this particular case I'm not persuaded that it would have done. I say this because Mr and Mrs F had already determined to proceed with a transfer into ATS, and then onward to the Scheme, where they were told the pension providers would not be party to any incentive – and not to 'ask' them about this. I think they would have appreciated that the reason for this was that the incentive would (or should) attract tax charges, as they were told this on several occasions. Mrs F had already signed documents denying to the Scheme that she was going to receive an incentive. So on balance I'm not persuaded that she would have mentioned the incentive to ATS.

However I see no reason why Mrs (or Mr F) would not have been able to give a reasonably clear impression to ATS of what they were going to be investing in, because this had all been provided to them in the prospectuses beforehand. So this wouldn't have appeared to be a case of the member being given no documentation, as suggested in part 3. It's unclear how those investments would be made, so I don't think ATS could rule out that these were 'preference shares'. However a share is not an unregulated investment, and these were (as far as I can tell) UK companies that hadn't yet listed on the stock exchange, so they weren't overseas investments.

Under part 3 of the checklist, I'm mindful that Mr F was told that Milton and Wade were *not* providing advice, and no adviser had been declared on the application forms either for the ATS SIPP or the Scheme. I've highlighted above that Mr F had past experience in the industry, and whilst it's possible he didn't solicit the initial contact from Milton and Wade, this is not something I'm in a position to verify. I do think that Mrs F was willing to go along with the proposed transfers because of her husband's interest in proceeding, and by the point ATS would have been making its enquiries she was more than six months into that process. I think it's most likely that she would have referred to her husband rather than anyone else as having guided her into transferring – whether this was described as advice or some other form of assistance.

What should ATS have told Mrs F – and would it have made a difference?

If ATS had reviewed the results of its enquiries in the round, I don't think there would have been much doubt that Mrs F was making use of an occupational pension scheme as principally an investment vehicle, rather than having any connection to the sponsoring employer. But the Scheme's rules confirmed that it could admit members in her situation. She was earning an income (even if it wasn't coming from the sponsoring employer), so this meant that she had a statutory right to transfer from the ATS SIPP. As I think she would have been able to give a fairly clear impression of what she was going to be investing in – if necessary with the help of Mr F, whom she would likely have explained was co-ordinating the transfer – I think ATS would have had a limited ability to question further what she was doing.

To the extent that ATS would have had a concern it would have mainly been about the non-traditional use of an occupational pension scheme to make investments, rather than to build up pension funds for a particular employment. This would have involved Mrs F ceding control of her funds to a trustee, who she would then be reliant upon to act in her best

interests – even though the Scorpion campaign had shown that not all trustees behaved in that way. Unlike the ATS SIPP, the Scheme also wasn't regulated by the FCA.

However ATS wasn't in a position to advise Mrs F against making the transfer, so it was limited in what it could say. I do think in the circumstances it would have been reasonable for ATS to provide Mrs F with the up to date version of the Scorpion insert that I mentioned above, or the longer booklet with examples of people who had been scammed. The 2014 insert included the following:

"The scammers have a variety of tricks to catch you out. They may:

- claim that you can access your pension pot before age 55*
- approach you out of the blue over the phone, via text message or in person door-to-door*
- entice you with upfront cash*
- offer a free 'pension review' or try to lure you in with so-called 'one-off' investment opportunities.*

The scammers may even pretend that the Government has asked them to contact you. What they won't tell you is that you'll probably never see your pension pot again. Don't be fooled by their promises."

This version of the insert wasn't perhaps as thorough in highlighting the importance of taking independent, regulated financial advice, so it would also have been reasonable for ATS to remind Mrs F that it was important for her to do this. However I've taken into account that this message, as well as the same observation about offers of upfront cash, was given in the version of the insert that Standard Life sent Mrs F previously; as well as the same prompts to call TPAS or visit TPR's website as in the later version.

TPAS' longer booklet contained a list of the same warning signs that ATS would have been following when assessing Mrs F's transfer, and as I've highlighted above not all of these were apparent in her case. The examples given were of property or overseas investments, which weren't features of the investments Mrs F was making. And as the previous warning about cash incentives in the Scorpion leaflet Standard Life sent her hadn't been heeded by Mrs F, I'm not persuaded on the balance of probabilities that she would have been deterred by the example given of someone who transferred in pursuit of a cash incentive and then lost the rest of their money.

I've also considered whether ATS would have had enough information for it to give a harder-edged warning to Mrs F, for instance if she had mentioned Milton and Wade (or later, Logistic Marketing Nationwide)'s involvement by name. Firstly I think it's less likely in the circumstances of this particular case that Mrs F would have mentioned these firms, because Mr F had discussions with them rather than her. But in any event the mere mention of those firms wouldn't have been enough on its own for ATS reasonably to venture beyond the overall recommendation in the Scorpion literature that it was best to seek advice from an independent, regulated adviser – for instance to suggest that their involvement was in some way unlawful.

I say this because unregulated firms are generally able to provide services to an individual acting solely as a member of an occupational pension scheme, because these are not regulated activities. What would have been most concerning is if Mrs F had indicated to ATS that these firms were advising her specifically on transferring her benefits from the SIPP to the Scheme, as that would have suggested they were acting unlawfully. But for all the reasons I've discussed above I find it unlikely on the balance of probabilities that Mrs F was getting advice of this nature, or that she would have confirmed this to ATS at the time.

I mentioned above that whilst ATS should have been carrying out its due diligence, TPR

updated its action pack (on 16 March 2015). That, in turn, referred to the PSIG Code. The main change in the action pack is that TPR now expected its checklist to be used in all transfers. But as I've indicated above, I think ATS ought to have been carrying out further due diligence anyway – and looking to that checklist as a guide.

The PSIG Code provided the opportunity for ATS to triage Mrs F's transfer request based on asking her some initial questions. These were similar to the questions I think ATS would already have had reason to ask her when following the checklist – such as whether she had been cold called or promised an incentive, was being guaranteed an investment return or was investing overseas. So I don't think the outcome would have been any different. I haven't restricted my findings to this point because Mrs F's transfer request had already been in ATS' possession for several weeks by this stage and I think its enquiries would reasonably already have begun in line with the existing (July 2014) TPR guidance.

So in summary, I've concluded that ATS failed to take reasonable steps to send Mrs F the Scorpion insert or carry out due diligence into her transfer. But I'm satisfied that she'd already received some key information that affected her decision to transfer from Standard Life previously (and potentially the Scheme she was transferring to), and hadn't been deterred by the warnings given. I also find it unlikely on the balance of probabilities that ATS would have been able to gather enough information from Mrs F for it to remain sufficiently concerned about a heightened risk of a scam, beyond providing her with similar general warnings to those she had already received.

I therefore don't consider on the balance of probabilities that ATS would have been able to put Mrs F off making this transfer so that she avoided the potential losses she's suffered. I realise my decision will be disappointing for Mrs F. But I have to take into account the wider background to this particular case – including the actions Mrs F had already taken to make false declarations to the Scheme, the awareness she had from the Scorpion leaflet she'd already received, and from her husband's involvement in the transfer.

My Final Decision

For the reasons I've given above, I do not uphold this complaint or make any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 28 October 2024.

Gideon Moore
Ombudsman