DRN-5039914

The complaint

Mr M complained about a transfer of two personal pension plans he held with Standard Life. In December 2014, both pension plans were transferred upon his request to a small self-administered scheme ("SSAS"). A SSAS is a type of occupational pension, in which the members are also trustees and therefore take responsibility for operating the scheme.

The company now responsible for answering Mr M's complaint is Phoenix Life Limited, but as we've been communicating with all parties using the original company name, I'll keep referring mainly to "Standard Life" throughout this Decision when mentioning Mr M's ceding pension scheme provider.

In this particular case, the transfer comprised of two pension policies with a total value of around £109,220. This included £39,032 in the first Standard Life pension policy, and £70,188 in the second policy and both transfers went ahead on or around 10 December 2014. After transferring, Mr M's SSAS was subsequently used to invest in collective investment schemes related to parking and storage lots ("Park First" and "Store First"). These have since run into trouble, are now in liquidation and cannot be sold. Mr M says he's lost nearly all the money from his Standard Life pensions as a result of transferring.

Mr M says that Standard Life failed in its responsibilities when dealing with the transfer request. He says that it should have done more to warn him of the potential dangers of transferring away from his personal pension and into a SSAS, and that it should have undertaken greater due diligence on the transfer, in line with the guidance he says was required of transferring schemes at the time. Mr M says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Standard Life had acted as it should have done.

What happened

Before going into all the details about Mr M's Standard Life pension(s) transfer, I am going to explain briefly that he also transferred another pension a few months before. I won't be dealing with this matter here because it's the subject of a separate complaint. However, I've looked carefully at this other complaint and I think there were material failures leading to the transfer of that pension. Having looked into this other transfer, I've found nothing which would or should have changed Mr M's approach to transferring his Standard Life pensions, nor have I found anything that affects the issuing of a Decision in his Standard Life case.

The value of this other pension scheme was around £20,429 and this was transferred from another business – "Firm CM" – on or around 22 July 2014. This means this transfer took place several months before Mr M's Standard Life policies and it was also transferred to a different SSAS pension scheme to the one Mr M later set-up to receive his Standard Life policies. Firm CM has also acknowledged there were considerable failures in its due diligence processes when transferring this other pension and agrees it shouldn't have gone ahead. So, to be clear, there's nothing I've seen in this other case which affects the Standard Life transfer I'm addressing here.

I will therefore move on to address the Standard Life transfer(s).

The evidence shows that there were initially three requests to transfer-out of Mr M's Standard Life pension policies. Standard Life says that a firm called Liddell Dunbar Limited ("Liddell Dunbar"), a pensions administrator firm (now dissolved), made transfer requests to Standard Life on Mr M's behalf in December 2013, June 2014, and in early November 2014. But on each of these occasions it seems Standard Life asked Liddell Dunbar for further information about the pension scheme to which his existing Standard Life pension policies were going to be transferred. And because it didn't get a satisfactory reply, Standard Life therefore closed each of these requests without any transfer being made.

However, further to this, Standard Life says that on 18 November 2014 a firm called "CIP" sent it a letter of authority, evidently signed by Mr M, allowing it to obtain details and transfer documents in relation to Mr M's Standard Life pensions. I've noted that a firm called CIP operated close to where Mr M lived at the time. The evidence shows that CIP became involved through a local person – I'll call this person "AM"- who was recommended to Mr M and who referred to himself as a financial adviser. The evidence shows that "AM" was much more likely an 'introducer' working with firms such as Liddell Dunbar and CIP and was also involved in promoting investments in unregulated overseas real estate and also parking and storage lots in the United Kingdom.

Mr M says the recommendation to invest in these collective investment schemes related to parking and storage came from "AM" whilst he was acting as a representative firstly of Liddell Dunbar and later, of CIP. Standard Life says that having received a request for transfer information from CIP on 18 November 2014, it sent it the requested information about Mr M's pension policies on 9 December 2014. Neither "AM" nor CIP were authorised by the FCA to provide regulated financial advice.

On 20 November 2014, a brand-new limited company was incorporated with Mr M as the sole director. I'll refer to this company as "Mr M Ltd". Then, on 25 November 2014 Mr M signed documents to open a SSAS with Rowanmoor Group Plc ("Rowanmoor"). "Mr M Ltd" was recorded as the SSAS's principal employer. The SSAS documentation also recorded that the SSAS was to be used to invest in Park First and Store First.

On 10 December 2014, Standard Life received a request on the Origo Options system, an electronic transfer service, requesting the transfer for both Mr M's Standard Life plans to the Rowanmoor SSAS. Mr M's pension was transferred on or around the same day, with his SSAS banking account showing the inward payments of £39,032 and £70,188 being received several working days later. Mr M was 50 years old at the time of the transfer. The investments Mr M made have become untradable and illiquid and so cannot be sold.

In February 2021 Mr M complained to Standard Life. Briefly, his argument is that Standard Life ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including (but not limited to) the following: the SSAS was newly registered, there wasn't a genuine employment link to the sponsoring employer, and he had been advised by an unregulated business. Standard Life didn't uphold the complaint. It said Mr M had a legal right to transfer and that none of the information it had about the transfer at the time gave it cause for concern. It was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

Mr M wasn't satisfied with this so he referred his complaint to the Financial Ombudsman Service. One of our investigators looked into it and said they didn't think we should uphold it. Still dissatisfied, Mr M asked for an ombudsman's decision.

I issued a provisional decision (PD) about this complaint on 19 August 2024 comprehensively setting out why I thought I should uphold this complaint. Mr M agreed with

my provisional findings. Standard Life said it had no comments to make in response to the PD.

What I've decided – and why

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

I have considered with care, everything that's been said after the issuance of my PD. And having done this, I'm now upholding Mr M's complaint.

The relevant rules and guidance

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

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

The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme if certain conditions are satisfied (and they may also have a right to transfer under the terms of the contract). This right came to be exploited, with people encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren't entitled to – for instance, because they were below minimum retirement age. At various points, regulators issued bulletins warning of the dangers of taking such action. But it was only from 14 February 2013 that transferring schemes had guidance to follow that was aimed at tackling pension liberation – the "Scorpion" guidance.

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

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

In late April 2014 the FCA had also started to voice concerns about the different types of pension arrangements that were being used to facilitate pensions scams. In an announcement to consumers entitled "Protect Your Pension Pot" the increase in the use of

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.

The Scorpion guidance

The materials in the Scorpion campaign comprised:

- An insert to be included in transfer packs (the 'Scorpion insert'). The insert warns readers about the dangers of pension scams and identifies a number of warning signs to look out for.

- A longer booklet issued by TPAS which gives more information, including example scenarios, about pension scams. Guidance provided by TPR said this longer leaflet was intended to be used in ongoing communications with members so that could become aware of the scam risks they were facing.

- An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "watch out for" various warning signs of a scam. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where a transferring scheme still had concerns, they were encouraged (amongst other things) to contact the member to establish whether they understood the type of scheme they were transferring to and – where a member insisted on transferring – directing the member to Action Fraud or TPAS.

In deciding on the appropriate actions to take when dealing with a transfer request, a ceding scheme needed to be mindful of the material in the Scorpion guidance in its entirety rather than treating the guidance as a series of discrete steps to be worked through in isolation.

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

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

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

That said, the launch of the Scorpion guidance was an important moment in so far it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing transfer

requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance's specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

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

What did personal pension providers need to do?

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. And where the recommendations in the guidance applied, absent a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations. With that in mind, I take the view that personal pension providers dealing with transfer requests needed to heed the following:

1. As a first step, a ceding scheme needed to check whether the receiving scheme was validly registered.

2. The Scorpion insert provided an important safeguard for transferring members, allowing them to consider *for themselves* the scam threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. So, all things considered, I think the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party.

3. I also think it would be fair and reasonable for personal pension providers – operating with the regulator's Principles and COBS 2.1.1R in mind – to ensure the warnings contained in the Scorpion insert were provided in some form to a member before a transfer even if the transfer process *didn't* involve the sending of transfer packs.

4. The Scorpion guidance asked firms to look out for the tell-tale signs of scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The guidance points to the warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. Therefore, whilst using the action pack wasn't an inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.

5. The considerations of regulated firms didn't start and end with the Scorpion guidance. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn't involve anything specifically referred to in the Scorpion guidance – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's

attention, or should have done so, would almost certainly breach the regulator's principles and COBS 2.1.1R.

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

The available documentation relating to the transfer sheds some light on which people and firms were involved and what role they played. I think it's helpful to summarise their parts in this:

- "AM": This person, based close to where Mr M lived, was recommended to Mr M although he can't now remember who by. "AM" had regular and personal contact with Mr M throughout 2013 and 2014 about his pensions and visited him at his home several times. He told Mr M that he was a financial adviser and he also said he could recommend investments which would generate around 8% growth per year in storage and parking. However, the evidence I've seen in this case shows "AM" to have *no* permissions from the FCA to provide regulated financial advice. The evidence is also persuasive that "AM" acted as an 'introducer' to firms which were involved in promoting or facilitating unregulated investments in high-risk areas such as overseas real estate, parking and storage lots. There is persuasive evidence that "AM" introduced Mr M's Standard Life pension affairs to both Liddell Dunbar and CIP with a view to transferring. "AM" introduced his CM pension to Liddell Dunbar, and he recommended the opening of a Liddell Dunbar SSAS to receive the transferred CM funds.

- Liddell Dunbar: This firm is now dissolved. At the time it was a pension scheme practitioner *not* authorised by the FCA to provide regulated financial advice about pensions. As I've said, there were three initial attempts by this firm to transfer Mr M's Standard Life pension policies to a SSAS Liddell Dunbar was likely administrating or seeking to administer. However, Standard Life didn't receive satisfactory answers about the provenance of this scheme, whether Mr M had taken independent financial advice, or the nature of the proposed investments after the transfer. Accordingly, no transfer of the Standard Life policies, involving Liddell Dunbar, was ever made in this case. Standard Life effectively denied the transfer requests.

- CIP: Standard Life says that after the failed attempts by Liddell Dunbar (as above) to transfer Mr M's pension policies, it received a letter of authority from a new firm allowing it to furnish the details of Mr M's existing policies and a transfer pack – this came from CIP. The request came, as before, with a view to transferring away from the Standard Life platform and into a SSAS, but this time the plan was to transfer to a different SSAS with a different provider (Rowanmoor). Mr M says that this was all recommended by and initiated through "AM". The evidence shows throughout the Standard Life transfer application process, "AM" was likely working at the time on behalf of CIP, promoting the unregulated investments, as above.

- Return on Capital Limited (ROCL): This company is now dissolved. At time though, it seems it was appointed to provide Mr M with advice under section 36 of the Pensions Act 1995, a provision which imposes a general requirement on a SSAS trustee that before making investment decisions, they must have regard to the appropriate diversification of investments and the proposed investment's suitability. ROCL provided this function to the trustees of the new SSAS, as is shown on the Rowanmoor SSAS application form which Mr M signed on 25 November 2014. ROCL *wasn't* authorised to provide regulated financial advice, although it didn't have to be in these circumstances.

- The Hetherington Partnership: Was a firm of solicitors, now struck off, used to

facilitate purchases of certain collective investment schemes related to parking and storage lots, which have since run into trouble. The Hetherington Partnership was *not* regulated by the FCA to provide financial advice. The connection of this firm was in assisting clients in transferring monies where title deeds featured. There are long-standing and well documented concerns in the public domain of fraudulent activities by this firm, relating to these types of scam investments.

- Rowanmoor Group Plc: This was a widely known provider of SSAS administration services at the time. Mr M's SSAS was arranged with Rowanmoor, and it was Rowanmoor which requested the release of Mr M's pension funds into the SSAS via the Origo system.

I think the evidence in this case is persuasive that Mr M's principal interest in transferring his pension was to achieve future higher growth in his funds, rather than accessing his pension ahead of the allowable pension age which was 55. I am also persuaded that the firms I've listed above were all variously linked and / or working together to persuade consumers like Mr M to transfer out of their existing schemes and invest their pension savings in high-risk and unregulated ventures, such as the parking and storage schemes we know Mr M was recommended to join.

I say this because, as I've mentioned earlier, it seems there were three initial attempts by Liddell Dunbar to have Mr M's Standard Life pensions transferred to a different pension scheme set up in his name, in late 2013 and 2014. The likelihood is that this was a SSAS operated by Liddell Dunbar as the administrator. Liddell Dunbar was based in the north of England, an area I'm not aware of Mr M having any connection with. He himself was based in Northern Ireland and his recollection of events is that "AM" first recommended him to use Liddell Dunbar to help with transferring his pension savings. And it was as a direct result of his dealings with "AM" that Mr M gave Liddell Dunbar the initial permission, in 2013, to collect his existing pension information with a view to transferring. ("AM" also recommended that Mr M should transfer his CM pension, although I'm not dealing with that matter in this Decision).

I don't have all the details of the pension scheme Liddell Dunbar was intending the funds to go into if it had managed to get his Standard Life policies transferred, but it was different to the SSAS he eventually *did* transfer to, which was administered by Rowanmoor. Standard Life's position on this attempted transfer was that because it couldn't satisfy itself that it was to an approved pension scheme, it turned down all of the requests and no transfer took place. Standard Life implies that this refusal to transfer shows strong due diligence and the protection of its then policyholder.

Nevertheless, we know that after the participation of Liddell Dunbar, this was quickly followed by the involvement of the new firm in making a fresh attempt to have Mr M's Standard Life pensions transferred. This new firm was CIP.

A new request for information about his pension affairs was sent by CIP to Standard Life on 18 November 2014. CIP was based much closer to Mr M's home and he says that once again that "AM" took the lead, recommending not only how he could achieve an 8% annual return on his investments if he transferred, but also that "AM" himself was investing in this type of scheme. In my view, the evidence is very clear that "AM" was working as CIP's introducer here. Mr M says it was "AM" who arranged for a new letter of authority to be sent to Standard Life, giving permission for CIP to be sent his pension information and a transfer pack. So, in my view, this evidence shows that "AM" was working with CIP and acting as the entity advising Mr M to transfer. Neither "AM" nor CIP were authorised by the FCA to provide regulated financial advice. CIP told Standard Life that the scheme being transferred into was a new Rowanmoor SSAS

In the event, after this new request, Standard Life transferred his two pensions very quickly indeed to the new / recently set-up SSAS operated by Rowanmoor. It replied to the information request from CIP on 9 December 2014 and it says the formal transfer request came in through the Origo transfer system the next day. Standard Life says the actual transfer took place on the same day as it received the request, this being 10 December (although the receiving SSAS doesn't show the incoming balances until 17 December 2014 and 2 January 2015 respectively). However, using Standard Life's own records, I think it's fair to say that these show that the transfer took place incredibly quickly.

For good order, I've considered the involvement of all the other firms I've mentioned. As I've said, there's information connecting them all, in individual parts, to promoting these types of

high-risk and unregulated schemes. Each of them is clearly complicit in arranging for consumers, like Mr M with his significant pension savings, to invest in these types of areas with each playing a bit-part in the continuum of events. For example, there's information I've seen connecting The Hetherington Partnership with similar very poor investments involving other clients and 'assisting' them in transferring monies where title deeds were involved (as with this case). I've also noted that ROCL, whilst specifically providing a function for the trustees of this new Rowanmoor SSAS under section 36 of the Pensions Act 1995, had the same postal address as the one used to incorporate the new sponsoring employer company - "Mr M Ltd" – which was geographically remote from Mr M and which was clearly only ever set-up to facilitate transferring to a SSAS. This implies a close connection with the subsequent events and assisting Mr M in establishing a limited company, a key part of the process.

Of course, neither ROCL nor The Hetherington Partnership were authorised by the FCA to provide regulated financial advice in any event. And whilst there's compelling evidence of their involvement at various stages in the process, the much more persuasive scenario as regards the actual recommendation to transfer his Standard Life pension funds, is that it was "AM" who acted as the unregulated 'adviser' to Mr M. In my view, it was through "AM" acting as the CIP introducer, who promoted the idea of the investment areas. "AM" also suggested that Mr M should set up a company as a sponsoring employer, told him to apply for a SSAS with Rowanmoor, and ultimately recommended that he should transfer out of his existing pension scheme with Standard Life. As for Rowanmoor, all the evidence strongly shows this was a provider of SSAS administration services only.

To be clear then, my finding is that whilst quite a few firms were involved, it's much more likely than not that "AM" acting for CIP was the entity which met with Mr M and advised him to transfer from his two Standard Life pensions to a Rowanmoor SSAS. This corresponds with Mr M's recollections. Neither "AM" nor CIP were authorised to give this type of advice and I think basic enquiries would have uncovered "AM's" involvement, together with other warning signs of a scam, which Standard Life should have spotted when applying reasonable due diligence.

What did Standard Life do and was it enough?

The Scorpion insert:

For the reasons given above, my view is that personal pension providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information. I've seen that Standard Life says it sent a Scorpion leaflet when responding to CIP's request for pension information. I accept this was probably sent out and the copy I've been supplied with by Standard Life does indicate that it was the shorter leaflet issued in the summer of 2014. This means this leaflet contained some information not only about pension liberation, but it also raised wider concerns about scams in general.

However, it seems to me that this was sent only to CIP – the firm that was, with "AM", clearly behind unlawfully advising Mr M and recommending that he ought to transfer. I say this because the Standard Life reply to CIP indicates this leaflet was enclosed, whereas the letter to Mr M himself does not indicate that a leaflet was enclosed. I've also noted that Standard Life itself says in its final response letter that the leaflet was sent out to "*the firm"*, as opposed to Mr M.

I also don't think it's likely that Mr M would have been sent the leaflet (or similar messages about wider pension scams) at the point of transfer either, which was a few weeks later. This is because the transfer was carried out via the electronic Origo system. My experience of this is that Origo transfers themselves did not cater for the sending of the Scorpion

information to transferees, and I've seen nothing in this case to persuade me otherwise. The dates of the transfer also indicate a very quick transfer process, with the request coming in on one day – and the transfer being completed straight away. So I think it's more likely than not here that Mr M himself wasn't told by Standard Life of the Scorpion campaign and / or its main messages.

I mentioned earlier the existence of another (earlier) pension transfer, with Firm CM. I've looked carefully at that transfer and thought about whether anything here would have alerted Mr M to potential pension scams. I accept that in this CM case, a Scorpion warning was probably sent out to Mr M himself. But given when it was sent, I think this would have been the earlier iteration of the Scorpion campaign and so would have contained messages only about pension *liberation*. As I've said, Mr M wasn't thinking about liberating his pension (by taking it earlier than allowed) so even if reading this version, I don't think he'd have thought it related to his situation.

To summarise this issue: I accept that Mr M may well have seen a Scorpion campaign leaflet relating to his earlier CM pension transfer. But this wouldn't have fitted with his situation of that time because this particular campaign leaflet only addressed concerns about improperly accessing a personal pension before the allowable age of 55. In other words, it was focussed on potential pension liberation activities. On the other hand, Standard Life likely failed to provide *any* Scorpion information directly to Mr M. It instead sent the updated leaflet only to CIP – and CIP was involved in the unlawful recommendation for him to transfer away from Standard Life and into a SSAS which then led to him investing in high-risk and unregulated financial products.

Due diligence:

In light of the Scorpion guidance, I think firms ought to have been on the look-out for the tell-tale signs of a pension scam and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk. Standard Life didn't undertake any further due diligence. As I've said, on 10 December 2014, Standard Life received a transfer request for both Mr M's Standard Life plans to the Rowanmoor SSAS and the transfer was processed more or less straight away. And notably, this was only a day or so after it had sent Mr M's pension information out to CIP.

In my view, this was an unfortunate turn of events. Standard Life itself said it had concerns about the original Liddell Dunbar attempts to transfer his two pension policies in 2013 and 2014. And it implies that its own due diligence in this matter effectively saved Mr M from being a potential victim of a scam. So, I understand the point being made. But this makes it all the more concerning that, armed with information about Mr M previously attempting several times to transfer to a pension scheme which couldn't be verified, and having got no responses from the firm apparently acting for him, Standard Life simply went ahead and transferred him to a different SSAS administrator at the first time of asking. The only rationale Standard Life gives for this substantial change in its approach, is that Rowanmoor was now involved – and that this was an established SSAS provider.

I accept 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. There's an argument, therefore, that Standard Life could have taken comfort from this. However, 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, Standard Life 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 Standard Life could, reasonably, have derived sufficient comfort about the Rowanmoor SSAS as a destination for Mr M's transfer.

Given the information Standard Life had at the time, a feature of Mr M's transfer would have been a potential warning sign of a scam: Mr M's SSAS was recently registered. Standard Life had also previously refused the initial transfer request from Liddell Dunbar on the grounds that key questions existed about the whole transfer proposal. Standard Life should therefore have followed up to find out if other signs of a scam were present.

As I've said, it wouldn't have been clear from the Origo request when the SSAS was registered. But in checking the Scheme was correctly registered – which it would have needed to have done – it would have become apparent when it was registered. Given the warning signs, I think it would have been fair and reasonable – and good practice – for Standard Life to have looked into the proposed transfer and the most reasonable way of going about that would have been to turn to the check list in the action pack to structure its due diligence into the transfer.

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

1. The nature/status of the receiving scheme

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

2. Description/promotion of the scheme

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

3. The scheme member

   Sample questions: Has the transferring member been advised by an 'introducer', been advised by a non-regulated adviser or taken no advice? Has the member

decided to transfer after receiving cold calls, unsolicited emails or text messages about their pension? Have they applied pressure to transfer as quickly as possible or been told they can access their pension before age 55?

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

I don't think it would always have been necessary to follow the check list in its entirety. And I don't think an answer to any one single question on the check list would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the check list to establish whether a scam was a realistic threat. Given the warning signs that should have been apparent when dealing with Mr M's transfer request, and the relatively limited information it had about the transfer, I think in this case Standard Life should have addressed all three parts of the check list and contacted Mr M as part of its due diligence.

What should Standard Life have found out?

Standard Life knew of the previous attempts by Liddell Dunbar to transfer Mr M's pension policies. And it was aware it had denied these attempts out of a concern that the scheme being transferred to couldn't be verified. It was also aware of the 'new' attempt to transfer using a Rowanmoor SSAS platform, rather than Liddell Dunbar. And finally, Standard Life was aware it had only just sent CIP the response to the information request on 9 December, which was then immediately followed by a transfer request the next day.

Standard Life also knew, or certainly should have known, of the threat posed by the newly incorporated company and SSAS. It would have easily learned there was no genuine employment link to the sponsoring employer, which was based geographically distant from Mr M, had never paid Mr M any salary and that he was the sole member of. So, investigations under part 1 of the check list would have revealed the SSAS's sponsoring employer was recently incorporated and set up to facilitate the creation of the SSAS rather than as an entity in its own right.

Investigations under part 2 of the check list would have revealed that Mr M was attracted to the unusual and unregulated investment techniques pitched to him.

I think investigations would have then revealed the existence of an 'introducer' to start this process off; again this was another risk area listed in part 3. I think these warning signals should have then caused investigations into the issue of unregulated advice. For this, I'm satisfied Mr M would have told Standard Life that he was being advised to transfer by "AM" - my previous findings in the "circumstances surrounding the transfer" section support this. Had Standard Life asked him about this – as it should have done under part 3 of the check list, it would have revealed signs of a scam.

The check list recommends that in order to establish whether its member has been advised by a non-regulated adviser, the ceding scheme should "*check whether advisers are registered with the FSA at www.fsa.gov.uk/fsaregister*". In other words, they should consult the FSA's online register of authorised firms. Standard Life should have taken that step, which is not difficult, and it would quickly have discovered that there were reasons to be suspicious, or at least, that further enquiries were appropriate.

My view is that Standard Life should have been concerned by "AMs" involvement because it pointed to a possible criminal breach of FSMA. On the balance of probabilities, I'm satisfied such a breach actually occurred here. Being *advised* by an unauthorised firm to transfer benefits from a personal pension plan would have been a breach of the general prohibition

imposed by FSMA, which states no one can carry out regulated activities unless they're authorised or exempt. Anyone working in this field should have been aware that financial advisers need to be authorised to give regulated investment advice in the United Kingdom – indeed, the Scorpion insert itself makes this point. And my findings are that "AM" gave advice to Mr M when unauthorised to do so.

What should Standard Life have told Mr M – and would it have made a difference?

Had it done any thorough due diligence, there would have been a number of warnings Standard Life could have given to Mr M in relation to a possible scam threat as identified by the action pack. Standard Life should also have been aware of the close parallels between Mr M's transfer and the warnings the FCA gave to consumers in August 2014 about transferring to SSASs (which was brought to the attention of pension providers the following month). But the most egregious oversight was Standard Life's failure to uncover the threat posed by a non-regulated adviser. Its failure to do so, and failure to warn Mr M accordingly, meant it didn't meet its obligations under PRIN and COBS 2.1.1R.

With those obligations in mind, it would have been appropriate for Standard Life to have informed Mr M that the person and firm he had been advised by was unregulated and could put his pension at risk. Standard Life should have said only authorised financial advisers are allowed to give advice on personal pension transfers, so he risked falling victim to illegal activity and losing regulatory protections.

I'm satisfied any messages along these lines would have changed Mr M's mind about the transfer. The messages would have followed conversations with Mr M so would have seemed to him (and indeed would have been) specific to his individual circumstances and would have been given in the context of Standard Life raising concerns about the risk of losing pension monies as a result of untrustworthy advice. This would have made Mr M aware that there were serious risks in using an unregulated adviser. I think the gravity of any messages along these lines would prompt most reasonable people to rethink their actions. I've seen no persuasive reason why Mr M would have been any different.

Other considerations

I've considered that Mr M's relationship with "AM" likely started at or near the end of 2013 as demonstrated by the first attempts to transfer the Standard Life pensions to Liddell Dunbar. I've therefore considered whether, with this knowledge and recent experience, Mr M should have known by November / December 2014 that transferring away from his existing Standard Life platform was an evidently risky thing to be doing, given Standard Life ultimately refused to transfer his two pension policies to Liddell Dunbar. In short, with these delays in mind, should he not have realised something didn't feel right with transferring?

However, I think it's fair to consider that at the time of all these events happening, Mr M was experiencing significant personal stress due to the passing away of someone very close to him. He also wasn't an experienced investor nor was he experienced in the area of pensions, and he says he found these financial issues somewhat beyond him. Mr M says "AM" was clear that transferring was the right thing for him to do and of course, we know that his CM pension transfer *did* successfully happen, in mid-2014 and 'without incident'. "AM" portrayed the difficulties in transferring the Standard Life policies simply as unhelpful bureaucracy and he suggested – after almost a year of trying – that Mr M should abandon attempting to transfer to Liddell Dunbar and use Rowanmoor instead. Mr M viewed this proposal as a reasonable suggestion in the circumstances and we know that Standard Life transferred his pension straight away.

I've also thought about why, after successfully transferring his CM pension, Mr M didn't immediately use these to participate in the storage and parking investment areas. But at the time I think Mr M would have been expecting the imminent arrival of his Standard Life funds whereupon he could take stock of the entire amount and start to move the monies around at that point.

I've mentioned these issues to show I have considered whether there were any types of warning signals that Mr M should have reasonably seen, which somehow should have reasonably caused him to stop and think - and to halt the Standard Life transfer application for fear it wasn't the right thing to be doing. However, there's persuasive evidence that Mr M simply placed all his trust in "AM" and the answers he was being given about the elongated Standard Life transfer process seemed credible.

Summary

Standard Life initially refused to transfer Mr M's two pension policies. It then received another attempt from an unregulated firm to transfer – and this time to a different SSAS platform. The evidence was clear that Mr M had, by this time, set up another 'sponsoring employer' only very recently. The sponsoring employer was geographically remote and had clearly been set up with the sole purpose of enabling the transfer to the new SSAS to take place. Standard Life then failed to carry out any meaningful due diligence.

With the comprehensive evidence and information I've set out above, I consider that if Standard Life had acted as it should, Mr M wouldn't have proceeded with the transfer out of his personal pension or suffered the investment losses that followed.

Putting things right

Fair compensation

My aim is that Mr M should be put as closely as possible into the position he would probably now be in if Standard Life had treated him fairly.

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

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

Actual value

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

My aim is to return Mr M to the position he would have been in but for the actions of Standard Life. This is complicated where an investment is illiquid (meaning it cannot be readily sold on the open market), as its value can't be determined. On the basis of the

evidence I have, that is likely to be the case with the investment(s) in Park First and Store First. And I don't think it's realistically possible for Standard Life to only acquire a part of the investment from the SSAS as I'm only holding it responsible for the loss originating from a transfer in of the Standard Life funds. Therefore as part of calculating compensation:

- Standard Life should give the illiquid investment(s) a nil value as part of determining the actual value. In return Standard Life may ask Mr M to provide an undertaking, to account to it for the relevant proportion of the net proceeds he may receive from those investments in future on withdrawing them from the SSAS. Standard Life will need to meet any costs in drawing up the undertaking. If Standard Life asks Mr M to provide this undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

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

Notional value

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

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

Payment of compensation

There doesn't appear to be any reason why Mr M needed a pension arrangement that wasn't privately held, administered by an established provider and under FCA regulation. So I don't think it's appropriate for further compensation to be paid into the SSAS.

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

Standard Life shouldn't reinstate Mr M's original plan if it would cause a breach of any HMRC pension protections or allowances – but my understanding is that it will be possible for it to reinstate a pension it formerly administered in order to rectify an administrative error that led to the transfer taking place. If Standard Life doesn't consider this is possible, it must explain why.

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

If Standard Life considers that the amount it pays into a **new** plan is treated as a member contribution, its payment may be reduced to allow for any tax relief to which Mr M is entitled based on his annual allowance and income tax position. However, Standard Life's systems will need to be capable of adding any compensation which doesn't qualify for tax relief to the

plan on a gross basis, so that Mr M doesn't incur an annual allowance charge. If Standard Life cannot do this, then it shouldn't set up a new plan for Mr M.

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

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

Alternatively, if Mr M has already taken his 25% tax-free cash from the SSAS, the full 20% reduction should be applied to the compensation amount if it's paid direct to him in cash.

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

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

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

Neither Mr M or Standard Life have responded to dispute any of the following:

- the assumption that Mr M will be a basic rate taxpayer in retirement
- the assumption of nil value for Park First and Store First at the date of my Final Decision

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

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £160,000 in this case, plus any interest and/or costs that I think are appropriate. If I think that fair compensation could be more than £160,00, I may recommend that the business pays the balance. The amount of compensation remains to be determined in this case.

Decision and award limits: I think that fair compensation should be calculated as set out above. My final decision is that Phoenix Life Limited should pay Mr M the amount produced by that calculation – up to a maximum of £160,000 – plus any interest (if required in the steps above) on that amount.

Recommendation: If the amount produced by the calculation of fair compensation is more than £160,000, I recommend that Phoenix Life Limited pays Mr M the balance, plus any interest (if required in the steps above) on that balance. However, this recommendation is not part of my determination or award. Phoenix Life Limited doesn't have to do what I recommend in respect of any amount over £160,000. It's unlikely that Mr M can accept my

decision and go to court to ask for the balance. Mr M may want to get independent legal advice before deciding whether to accept this final decision.

My final decision

I uphold this complaint.

I now direct Phoenix Life Limited to pay the compensation as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 October 2024.

Michael Campbell
Ombudsman