The complaint

Mr W2 has complained about a transfer of his Scottish Equitable Plc trading as AEGON personal pension to a small self-administered scheme (SSAS[1]) in 2014. Mr W2's SSAS was subsequently used to invest in commercial property developments both overseas and in the UK. The investments now appear to have little value. Mr W2 says he has lost out financially as a result.

Mr W2 says Scottish Equitable failed in its responsibilities when dealing with the transfer request. He says it should have done more to warn him of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance he says was required of transferring schemes at the time. Mr W2 says he wouldn't have put his pension savings at risk, if Scottish Equitable had acted as it should have done.

What happened

Mr W2 is an employee and company secretary of a family business, which I'll call company K. Mr W2's brother, who I refer to as Mr W1 is the company's sole director. Both brothers have transferred pensions from their previous pension providers to the same SSAS and complained about those providers actions when doing so.

The events concerning both brothers, across all of the transferred pensions are relevant to each of their individual complaints. They have consented to sharing their personal information across the various complaints. Accordingly, for completeness, in the sequence of events below, where the actions on other transfers or potential transfers are relevant to this complaint, I have referred to the actions relating to each brother and the various pension providers involved.

Mr W1 held personal pensions with three providers, which I'll refer to as providers A, R and F.

In April 2013 Mr W1 signed a letter of authority (LOA) to allow a firm I'll call V to access information about his personal pensions. Firm V sent a request for information to Mr W1's three pension providers.

Provider A then wrote to Mr W1. It said that it would give firm V the requested information. It added that while most pension transfers are trouble free some firms were seeking to persuade people to access their pension funds early, what is known as pension liberation. It enclosed a leaflet produced by the Pension Regulator (TPR) – the leaflet is known as the 'Scorpion insert' because of the imagery it contains. I say more about the Scorpion information below.

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[1] A SSAS is a type of occupational pension in which the members are also trustees and therefore take responsibility for operating the scheme. It's an arrangement typically intended to meet the needs of people who run their own companies. SSASs are not regulated by the financial services regulator, the Financial Conduct Authority (FCA). They can hold a wider range of investments and assets than many personal pensions. As an occupational pension, a SSAS must be sponsored by an employer company.

Later that month provider R wrote to Mr W1. It said that firm V wasn’t authorised by the FCA and as such it hadn't shared his pension information with it but would do so if Mr W1 contacted it.

Around two months later it appears that Mr W1 corresponded with another firm I’ll call firm G about transferring his pension. I haven't seen any paperwork from firm G. But, Mr W1 contacted provider R in June 2013. He said that if it received forms to transfer his pension to firm G it should ignore those. I've seen no evidence that firm G ever submitted transfer forms to any of Mr W1’s pension providers.

In November 2013 Mr W1 signed an LOA to allow a firm I’ll call VC to access his pension information. I understand that firm VC is a going concern and currently acts as a mortgage broker specialising in overseas mortgages. Although I don't have any detail of what investment opportunities it might have been offering or introducing at that time. After receiving the LOA provider A wrote to Mr W1. It repeated its earlier warning about pension liberation and again enclosed the Scorpion insert.

On 19 February 2014 a firm, which I’ll refer to as firm I, sent LOAs requesting details of Mr W1’s pension to his three providers. Firm I also sent an LOA signed by Mr W2 to Scottish Equitable for details of his pension. At that time firm I was authorised by the FCA. Scottish Equitable sent firm I the requested information including pension discharge forms on 28 February 2014.

On 27 March 2014 Scottish Equitable wrote to Mr W2. It said that following his "recent request” it was enclosing the forms needed to complete the discharge of his pension to another provider. It’s not clear from the evidence I've seen what this letter was in response to.

On an unknown date Mr W2 introduced Mr W1 to a representative of a firm called Freedom Protect. Mr W2’s told us, via his representatives, that he was looking into obtaining life insurance. And while doing so he was put in touch with Freedom Protect’s agent (‘the adviser’). The brothers have told us that they understood the adviser was appropriately authorised and regulated to advise on a wide range of financial products. Mr W2 said the adviser was keen to speak to Mr W1.

On an unspecified date the adviser recommended that Mr W1 and Mr W2 transfer their personal pension funds to a SSAS. Rowanmoor Group PLC (Rowanmoor) was the recommended SSAS provider and Rowanmoor Trustees Limited were to be its independent trustee. The adviser recommended Mr W1 and Mr W2 invest in three investment vehicles: Dolphin Capital and High Street Commercial Finance (HSCF) loan notes alongside an investment in the Harmony Bay resort. The loan notes were a form of investment in a group of companies developing properties in Germany and the UK respectively. The investments were intended to pay back the capital invested plus fixed rate returns over a set period of time. Harmony Bay was a hotel development offered by the Akbuk Resort Group (ARG) in Turkey.

On 13 May 2014 Mr W2 signed forms to establish a Rowanmoor SSAS and to allow Scottish Equitable to transfer his pension funds to it. Mr W1, his wife and Mr W2 were the SSAS’ trustees and members. The SSAS was named as an executive pension for company K.

Later that month, on 29 May 2014 in response to a “recent request” provider A sent Mr W1 information and papers to enable him to transfer his pension with it. It again included the warning about pension liberation and the Scorpion insert.

In June 2014 the adviser verified Mr W2's and his brother's identities on their SSAS application documents. When signing the documents the adviser said that he worked for a firm I'll call firm E.

On 18 July 2014, Scottish Equitable received a request to transfer Mr W2's pension funds to company K's SSAS via the Origo system[2]. Scottish Equitable transferred his pension funds of £38,688 to the SSAS on 25 July 2014. Mr W2 was 48 years old at the time.

In the meantime, on 24 July 2014, provider F wrote to Mr W1. It said it had received a request to transfer his pension funds but required him to complete a supplemental transfer form before transferring.

On the same day provider A received a request to transfer Mr W1's pension funds to his SSAS via the Origo system.

The day after provider A received the transfer request, 25 July 2014, provider R wrote to Mr W1, it said it had received his transfer request. It said he might lose benefits if the transfer went ahead and asked him to ring it to discuss the matter. Mr W1 then rang provider R on 4 August 2014. Provider R has recorded that it told him that he had guaranteed benefits he would lose by transferring his pension away.

In the interim provider A wrote to Mr W1 on 29 July 2014 to confirm it had transferred his pension fund of £13,913 to his SSAS.

The same day, 29 July 2014, Mr W1 told the adviser that he'd agreed a price to buy a property for company K and asked for information about the possibility of using his SSAS to help fund that.

On 6 August 2014 Mr W1 completed provider F's supplemental transfer form. Amongst other things the form asked Mr W1 to tick a box if certain circumstances applied to his transfer. Of relevance to this complaint Mr W1 did not tick the boxes next to statements that:

- His adviser was not authorised by the FCA (the form gave instructions on checking the FCA's register).
- He'd been offered guaranteed or high return investments (described as often being in overseas/land/forestry/green or eco investments).

Mr W1 also signed to confirm that he had read and understood the Scorpion leaflet.

On 12 August 2014 Rowanmoor sent a request to provider F to transfer Mr W1s pension funds with it to his SSAS.

On 28 August 2014 provider F wrote to Mr W1. It said it was unable to process his transfer request through the Origo system but if he completed enclosed forms it would consider the matter.

On 3 September 2014 Mr W1 called provider R and asked what was delaying the transfer. He said he was in the process of buying a commercial property and if he incurred any additional charges because of the delay he would take matters further.

On 6 September 2014 provider R transferred Mr W1's pension of £21,145 to company K's SSAS.

[2] Origo is an electronic platform which allows the transfer of pensions and investments which can make transfers more efficient and reduce transfer times.

In mid September 2014 SSAS funds of £43,525 were invested in Harmony Bay.

Provider F confirmed it had completed the transfer of Mr W1's remaining pension with it, of £27,252, to company K's SSAS on 5 November 2014.

Shortly after SSAS funds of £10,000 were invested in HSCF loan notes. Further SSAS funds of £40,000 were invested in Dolphin in December 2014.

In May 2015 Company K transferred a further £50,000 into the SSAS. It was subsequently used, in February 2016, for further investment in Dolphin.

As I understand it, while the Harmony Bay development did pay some returns until 2016, since then all of the investments have failed. Neither Mr W2 nor Mr W1 is likely to receive any further significant return on their SSAS investments.

In November 2020 Mr W2 complained to Scottish Equitable. Briefly, his argument is that it 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; he had been advised by an unregulated firm and there was no evidence of the involvement of a regulated firm; the proposed recommendations were in overseas, high risk and unregulated investments.

Scottish Equitable didn't uphold the complaint. It said it had received the transfer request via the Origo system. It said that due diligence was carried out on each entity using that system and those which did not meet the required standards were not allowed to use it.

Scottish Equitable added that Rowanmoor was a well-known and reputable company, which it had no concerns about. It added that it's not responsible for advising customers on their investments or liable for any losses as a result of those investments. Instead it's required to assess whether the receiving scheme will be appropriately run. And it was satisfied that Rowanmoor met that criterion and the scheme was appropriately registered with HMRC. It was also satisfied it had carried out appropriate due diligence. It also commented that considering the provisions of the Limitation Act 1980 Mr W2 had made his complaint too late.

Mr W2 brought his complaint to the Financial Ombudsman Service. One of our investigators looked into it. She explained why she was satisfied that Mr W2 had brought his complaint in time. She added that while she thought Scottish Equitable should have sent Mr W2 the Scorpion insert she didn't think it would have made a difference and she didn't think Scottish Equitable needed to carry out further due diligence.

Mr W2 didn't accept our Investigator's complaint assessment. As the investigator was unable to resolve the dispute informally, the matter was passed to me to decide.

Provisional decision

On 4 October 2024 I issued a provisional decision setting out both why I thought Mr W2 had brought his complaint in time but also why I didn't intend to uphold it. For ease of reference I've reproduced the relevant extracts below.

"*What I've provisionally decided – and why*

Before setting out my provisional conclusions I'll explain that Mr W2 has told us, via his representatives, that around the time of the advice and the transfer he unexpectedly suffered some extremely difficult and worrying family circumstances. He's said that as a result he was largely preoccupied with his personal life. He's told us that this has impacted on his *recollection of events. He therefore said it would be helpful to refer to his brother's case when considering his complaint.*

I've considered all the available evidence concerning both brothers' complaints. Having done so it's apparent that it was Mr W1 who took the lead in dealing with the adviser and has been the principal player in the transfers and decision making process. In effect it appears that Mr W1 has acted on behalf of both himself and Mr W2 when dealing with the pension transfers and the subsequent investments.

…

<u>Merits of the complaint</u>

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

When doing so I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

As I've said above Mr W1 and Mr W2 have made their own individual complaints against the relevant pension providers. And we're dealing with each of those complaints under different reference numbers. So, in this decision my findings are limited to Mr W2's complaint about Scottish Equitable. But, as the actions on Mr W1's transfers from the other pension providers have a bearing on my findings here I have referred to the relevant events relating to the other pension transfers for context purposes.

<u>The relevant rules and guidance</u>

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 Scottish Equitable 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 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 after Scottish Equitable received the transfer request via Origo on 18 July 2014 but a day before it actually made the payment to the SSAS). The update widened the focus from pension liberation – that is unauthorised access of pension funds – specifically, to pension scams, which it said were on the increase. I cover the Scorpion campaign in more detail below.

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 they 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.*

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 as 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. It was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And its specific purpose was to inform and help ceding firms, like Scottish Equitable, 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 a turning 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.

<u>What did personal pension providers need to do?</u>

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. In deciding how to apply the guidance, they needed to consider it as a whole, including the various warning signs to which it drew attention, the case studies that highlighted different types of scam, and the checklist and various suggested actions ceding schemes might take. And where the recommendations in the guidance applied, without 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:

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 other 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 first evidence of Mr W2 personally considering a pension transfer appears on his Scottish Equitable file in January 2014, when he signed an LOA for firm I. But it's apparent that Mr W1 had been considering transferring all of his personal pensions to another pension or investment vehicle for some time.

There is evidence on each of Mr W1's pension providers' files of him providing his LOA for firm V to obtain information about his pensions from as early as April 2013. Firm V wasn't authorised to give financial advice. Mr W1 hasn't provided us with any detail about what investment or pension opportunity firm V was offering. However, I note that firm V's headed paper at the time gave the statement of "alternative investment opportunities" under its name. That might well indicate that it was offering investment vehicles that were of a less than conventional nature, which were more likely to be higher risk than the mainstream pensions Mr W1 already held.

Mr W1 has also referred to a potential investment with firm G in June 2013. However, save for a single phone call on provider R's file, there's no other reference to firm G on Mr W1's other pension providers' files at all.

My understanding is that firm G was a SSAS provider and administrator similar to Rowanmoor. So it didn't, as far as I'm aware, generally recommend or advise on pension transfers. Instead it set up SSASs to hold the funds and the invested assets. In those circumstances it seems more likely that firm V or another firm had recommended that Mr W1 set up a SSAS with firm G in order to hold whatever investment was recommended. And it seems that Mr W1 had intended to go ahead with this but then changed his mind. I say that because the evidence on provider R's file is that Mr W1 rang it to tell it to disregard the transfer forms authorising a transfer to firm G. But I've seen no evidence that provider R ever received those transfer forms.

Mr W1 was also clearly considering another pension investment opportunity later that year as he signed an LOA for VC to receive his pension information in November 2013. Mr W1 told us he doesn't recall what investment opportunities he was looking at. But I note that VC is still an ongoing company specialising, these days, in overseas mortgages. It is not now and was not at the time FCA authorised. That said, other than requesting pension information there's no evidence of further involvement from VC. And Mr W1 can't remember what investments he was considering.

Also, in January 2014 both Mr W1 and Mr W2 signed LOAs for firm I to gather pension information. Firm I was a trading name of an (at that time) FCA regulated firm whose key business was as a mortgage and investment broker. But again it seems neither Mr W1 nor Mr W2 can now recall what investment opportunity they were considering with firm I.

So the evidence up to January 2014 is that Mr W1 was actively considering transferring his personal pensions and using the funds to invest elsewhere. It would appear he was most likely considering investing in overseas property or alternatively using the pension funds to *support a property purchase for company K. And it seems that, around January 2014 Mr W2 also took an active interest in considering his pension options.*

The adviser became involved after Mr W2 was looking to source life insurance and was introduced to the adviser. Mr W2 then introduced the adviser to his brother.

I've noted that the adviser worked for at least two different firms, Freedom Protect and firm E. Firm E was an FCA authorised insurance business. Freedom Protect was not authorised to give financial advice. The adviser's business card said he was an "Advisor" for firm E, and gave its FCA registration number. That business card gave the same mobile phone number the adviser used for Freedom Protect. So it appear that the adviser could 'wear different hats' depending on the circumstances.

When signing emails for Freedom Protect the adviser described himself as an "insurance and investment consultant". The footer to Freedom Protect's emails, initially at least, described the sort of products the firm offered help with. The majority of these were insurance related, although it also referred to other things including mortgages and wills. It doesn't list pensions as something it would offer help with.

Mr W1's told us, via his representatives, that the adviser said he had dealings with or represented a number of companies and he was authorised to advise on a range of products. Mr W1 says he believed that he was – at all times – dealing with a regulated firm. He said he didn't find it unusual that Mr W1 should give him a business card which gave the name of firm E rather than Freedom Protect.

As I've said above the evidence is that Mr W1 was considering using his pension funds for either overseas investments or to support a property purchase for his business. Apart from the LOAs he signed, the above is demonstrated in emails I've seen between himself, the adviser, company K's accountant and Rowanmoor. In those a property purchase and overseas investments are being considered. Clearly the adviser recommended that, in order to do these things, Mr W1 would need to transfer his funds to a SSAS. And it seems likely, given the earlier involvement of firm G, this was something Mr W1 had considered previously, although on that occasion he withdrew from the transfer before it happened.

Mr W1 and Mr W2 both signed the papers to set up the SSAS in May 2014. When doing so next to a box to give the reasons for the scheme the following are listed: commercial property development, Dolphin, Store First[3], Akbuk, and "to allow better control of funds". So, I'm persuaded that Mr W1 and Mr W2 were keen for their pension funds to achieve significantly better returns than they could receive from leaving them invested with their then pension providers. They were clearly attracted to the prospect of either overseas property development opportunities, or using the funds to support Company K in buying a property[4]. That wasn't something they could have done by leaving their funds invested with their other pension providers.

It follows that this wasn't the case of an unregulated adviser or introducer almost randomly contacting members of the public and enticing them with the offer of a free pension review (which was a common feature of pension liberation or scams). Instead, as I've already said,

[3] Store First was a business offering investment opportunities from renting out storage pods. There's no evidence that Mr W1 invested in Store First.
[4] If there are sufficient funds to do so a SSAS may buy and 'own' commercial property with rent returns being paid into it. Also (assuming sufficient funds are available) a SSAS may legitimately lend a proportion of its liquid funds to the sponsoring employer and receive interest payments on the loan.

the adviser was introduced to Mr W2 when he was looking for a life insurance policy. He has then introduced the adviser to Mr W1.

Mr W1's account is that he initially engaged with the adviser in connection with a potential property purchase for company K. But this later morphed into the adviser recommending alternative ways Mr W1 and Mr W2 could achieve better returns on their pensions. And the adviser then recommended the overseas property developments in Germany and Turkey and the smaller property investment in the UK.

After the transfers were completed the SSAS funds were used to invest as set out above. I can understand why Mr W1 and Mr W2 would have thought those investments met their needs. They promised 'guaranteed' returns which were far higher, at between 8 to 13.8% a year, than they were receiving from their current providers. The establishment of the SSAS meant they could also use any residual funds to loan to company K if the need arose.

I've seen evidence that Mr W1 continued to seek advice about using SSAS funds to support company K. Indeed in May 2015 company K made a payment of £50,000 into the SSAS. And I've seen emails which showed that Mr W1 was considering using these funds, via the SSAS, to either support a property purchase or as a loan to company K for investing in machinery. However, in February 2016 the funds were used for a further investment in Dolphin.

It appears that the Akbuk investment ran into problems in 2016. As I've said above the adviser reassured Mr W1 that fluctuations in income were usual and that as the situation was settling the development should improve and start making returns. But that apparently didn't happen and the investment failed. In subsequent correspondence in 2019 Mr W1 said the adviser had told him that his investment in Akbuk was safe and guaranteed.

Similarly, I understand that Dolphin ceased trading sometime in 2019 and HSCF also went into administration around the same time. So the SSAS investments have little, if any, value.

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

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.

In this instance I've seen no evidence that Scottish Equitable sent Mr W2 the Scorpion insert or gave him any form of warning about pension liberation at any point. I think that was clearly an oversight on its behalf.

However, for the reasons I've given above, I don't think I can consider Mr W2's circumstances in isolation from that of his brother. As I've already said, it seems that Mr W2 was content to let Mr W1 take the lead on matters. And it's notable that Mr W1's pension providers sent him the Scorpion insert on at least six separate occasions.

Mr W2 told us that he doesn't recall ever seeing the Scorpion insert or his brother bringing it to his attention. But it seems unlikely that it would have made a difference if Scottish Equitable had sent it to him. That's because, understandably given his distressing family situation, he had seemingly handed over the responsibility for pension matters to his brother. So, while Mr W2 might well have raised the point with Mr W1 if Scottish Equitable had sent him the Scorpion insert, this was clearly something that Mr W1 had already seen *but dismissed. And in those circumstances it seems likely that, if they had discussed it, Mr W1 would have said that he'd already seen it and that it didn't raise concerns.*

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 other appropriate action if it was apparent their customer might be at risk.

Given the information Scottish Equitable had at the time one feature of Mr W2's transfer, the fact that his SSAS was recently registered would have been a potential warning sign of a scam. I accept that it wouldn't have been clear from the Origo request when the SSAS was registered. But in checking the SSAS was correctly registered – which Scottish Equitable would have needed to do – it would have become apparent when that had happened. So Scottish Equitable should have been aware that the SSAS was recently registered and the Scorpion guidance says this is a warning sign to look out for.

Scottish Equitable said that as the transfer request came via the Origo system it wasn't required to do any further due diligence. But I disagree. In taking that stance, in essence Scottish Equitable has handed over responsibility for due diligence checks to Origo. But it hasn't provided any details of what exactly Origo did in this respect. In other words Scottish Equitable was relying on due diligence conducted by a third party even though it doesn't appear to have really known what that involved. The due diligence was aimed at preventing pension liberation and scams. Doing it could help to prevent the loss of entire pension funds. There were clear steps that were expected of ceding schemes to prevent this happening. And given the duties of personal pension providers under PRIN and COBS 2.1.1R, I don't think Scottish Equitable's approach was good enough here.

Similarly, Scottish Equitable has referred to the involvement of Rowanmoor. It said Rowanmoor was a company which was well known to it and which it had no concerns about. So, it's essentially said that Rowanmoor's involvement indicated that further due diligence wasn't required.

I note that at the time of the transfer Rowanmoor was a long established SSAS provider and had some repute in the industry. Rowanmoor Trustees Limited also had legal and fiduciary duties as a professional trustee. There's an argument, therefore, that Scottish Equitable could have taken comfort from this. I disagree. The Scorpion guidance gave ceding schemes an important role to play in protecting customers wanting to transfer a pension. It would defeat the purpose of the Scorpion guidance for a ceding scheme to have delegated that role to a different business – especially one that had a vested interest in the transfer proceeding.

An important aspect in this is the fact that there is little regulatory oversight of SSASs. In the absence of that oversight, Scottish Equitable 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 Scottish Equitable could, reasonably, have derived sufficient comfort about the Rowanmoor SSAS as a destination for Mr W2's transfer.*

It follows that I don't think that the involvement of Rowanmoor, or the transfer request being routed via Origo were sufficient reasons for Scottish Equitable not to do further due diligence. And the newly registered SSAS was a warning sign the Scorpion guidance alerted providers to look out for. So Scottish Equitable should have followed up on it to find out if other signs of a scam were present. In those circumstances I think it would have been fair and reasonable – and good practice – for Scottish Equitable to look into the proposed transfer. The most 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 checklist could have been addressed by checking online resources such as Companies House and HMRC. Others would have required contacting the consumer. The checklist is divided into three parts (which I've numbered for ease of reading and not because I think the checklist 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 checklist identified actions that should help the transferring scheme establish the facts.

I don't think it would always have been necessary to follow the checklist in its entirety. And I don't think an answer to any one single question on the checklist would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the checklist to establish whether a scam was a realistic threat. Given the warning sign that should have been apparent when dealing with Mr W2's transfer request, and the relatively limited information it had about it, I think in this case Scottish Equitable should have addressed all three parts of the checklist and contacted Mr W2 as part of its due diligence.

With a few simple enquiries I think Scottish Equitable would have established that the SSAS was sponsored by Mr W2's genuine employer. Company K was actively trading, Mr W1 was it sole director and Mr W2 was the company secretary. So I don't think the fact that the SSAS was recently established would have caused any further concerns.

Also Mr W2 hadn't been offered the opportunity to access his pension funds in any unauthorised way, nor had he been enticed by any form of cash incentive to transfer. So I don't think those points would have led Scottish Equitable to warn Mr W2 that he could be putting his funds at risk.

However, Mr W2's chosen investment vehicles could have raised some concerns. As the majority of his funds were destined for overseas property investments. The day before Scottish Equitable transferred the funds the Scorpion guidance had been updated. And the updated version indicated that overseas investment vehicles might be signs of a scam. Although the version of the guidance available at the time Scottish Equitable received the transfer request was still the one which focused on the unauthorised access to pension funds – or pension liberation.

But, there's also evidence on file that Mr W1 and Mr W2 were considering using the SSAS funds to support company K in the purchase of a property, which wouldn't have appeared as a warning sign. Instead it may have given the impression that the investments and Mr W2's motivation for setting up the SSAS were not something that raised warning flags about pension liberation or scams more generally.

Further, regardless of the apparent warning signs I think if Scottish Equitable had asked Mr W2 about his intended investments it seems unlikely his responses would have caused Scottish Equitable to refuse or delay the transfer.

I say that because Mr W2's evidence is that the adviser was appropriately FCA authorised. We are now fully aware that Freedom Protect was not authorised to give regulated financial advice, which would be required in order to advise on transferring out of a personal pension. So if Mr W2 had told Scottish Equitable he'd been advised by Freedom Protect it could have told him that firm was unregulated and as such the adviser could be acting unlawfully.

However, Mr W2 had largely, it would seem, delegated responsibility for dealing with pension matters to his brother. And Mr W1 was clearly aware that the adviser worked for firm E, which was regulated, as he supplied us with the relevant business card. Further, it's notable that, when provider F instructed Mr W1 to complete its supplemental transfer form it asked him to tick a box if he'd been advised to transfer by someone who wasn't authorised. And it gave an instruction on how to check the FCA register. But Mr W1 left the box blank. In other words his answer to that question was that he had not been advised by an unauthorised adviser. So I think, on the balance of probabilities, that if Scottish Equitable had put this question to Mr W2 he would have discussed the matter with Mr W1 or asked him to deal with it. And, given that both brothers said they believed they were being dealt with by an authorised adviser that's the evidence they would have given to Scottish Equitable.

It's also notable the Mr W2 hadn't been cold called, he hadn't been offered any incentive to transfer and he wasn't put under any pressure to make the transfer.

So, had Scottish Equitable looked into this further, it's unlikely Mr W2 would have given the impression that he was being led through a process by another party acting in a potentially unlawful way – which would be the usual pattern for someone falling victim to a scam. Indeed, as I've already said, Mr W2's evidence is that he believed the adviser was *appropriately authorised and FCA regulated. And I haven't seen anything that Scottish Equitable would, reasonably, have been aware of that should have alerted it to the potential of Mr W2 putting his pension funds at risk of a scam. He was a company secretary and employee of an actively trading business. He was entitled to establish a SSAS using his family's company as its sponsoring employer for the purposes of being able to act as trustee of his own pension scheme. And his evidence is likely to have been that he was following the advice of a regulated adviser.*

Where a ceding scheme like Scottish Equitable believed a regulated adviser had provided appropriate financial advice it's unlikely it would intervene further even where the chosen investment products might otherwise give rise to a risk warning. That's because Scottish Equitable's role was not to give Mr W2 advice about the suitability of a transfer or his chosen investments. Its role in doing due diligence would principally have been to ensure Mr W2 was transferring to an appropriately registered scheme (he was) and to give him the warnings associated with pension liberation or scams and transfer risks in general. So, if it believed Mr W2 was being advised by an appropriately authorised adviser, it's extremely unlikely that Scottish Equitable, which wasn't acting – nor was it authorised to act – in an advisory capacity, would have told Mr W2 that he might be putting his pension at risk if he followed the advice given by someone (it would have believed) to be regulated.

So while I think that Scottish Equitable should have done more than it did, I don't think those actions would have made a difference to the outcome. That's because both Mr W1 and Mr W2 believed they were taking advice from an appropriately qualified individual and I don't think it's likely that they would have told Scottish Equitable that their adviser was unauthorised. Or if they had discovered that Freedom Protect was unregulated, they would have taken comfort from the fact that the adviser also worked for a firm which was regulated.

I say this as the Scorpion insert itself advises consumers like Mr W1 to check that their adviser is regulated and explains how to go about that. While Scottish Equitable didn't send the insert to Mr W2, Mr W1 received it on at least six occasions. In addition he signed provider F's form to say that he'd read and understood it less than a fortnight after Scottish Equitable had completed Mr W2's transfer. At that point Mr W1's transfer with providers F and R still had not completed. But if he had read and understood the Scorpion insert, which gave advice about how to check if an adviser was authorised, then Mr W1 doesn't appear to have acted on it, as he apparently didn't identify that Freedom Protect was not regulated.

Mr W1's said that the adviser had prepared him to receive the Scorpion insert explaining it was standard procedure for providers because they do not want to lose customers. Mr W1 also said the adviser stressed that their pensions were not performing well and that by transferring they would be much better off. So it seems that Mr W1 was expecting the various pension providers to try to persuade him and Mr W2 to remain in their current arrangements. Something they clearly didn't want to do as they were looking to increase their returns elsewhere.

I think it's also notable that not only did Mr W1 say that he hadn't received advice from an unregulated adviser when completing provider F's form but he also said he hadn't been offered guaranteed or high return investments. However, the evidence on file is that Mr W1 and Mr W2 had been promised guaranteed returns at significantly higher rates than they could have expected from standard investments.

For example the HSCF loan note offered a 10% yearly return. Similarly, one of the Dolphin loan notes promised a 10% return each year with a bonus 10% after the fifth year. The other *loan notes promised an average return of 13.8% a year. And the Harmony Bay resort was guaranteeing 8% a year returns for the first two years. Also the last two were overseas based investments; something provider F's supplemental form asked Mr W1 if he was investing in. But Mr W1 didn't tick the box to say that he was. So it seems that either Mr W1 didn't read or understand the form, which seems unlikely given that it involved the transfer of over £27,000. Alternatively that he was prepared to answer the pension provider's questions in a way which was more favourable to the transfer going ahead smoothly without any further delay. And given that Mr W1 was the main player in the brothers' pension transfers, it seems unlikely that any questions Scottish Equitable put to Mr W2 would have elicited a different sort of reply.*

I'll add that, it appears the adviser was prepared to chop and change how he presented the service he was offering. For example when completing the SSAS application form the adviser gave the details of Freedom Protect as being the trustee adviser for the SSAS. But left the boxes about who Freedom Protect was regulated by blank. But when witnessing Mr W2's identity, the adviser said he was employed by firm E and gave its FCA registration number. So it seems that the adviser was prepared to switch 'hats' as suited the situation.

Further, I've said above that Mr W1 told us, via his representatives, that he wasn't concerned about the adviser giving him a business card for another firm as he thought the adviser was authorised to give advice on a wide range of products. And Mr W2 similarly told us he believed the adviser was suitably authorised and regulated. We haven't spoken with either Mr W1 or Mr W2 directly – as our questions have been routed through their representatives – and it's not clear why they believed the adviser was suitably authorised. But given the updated information on the footer to Freedom Protect's emails it seems likely the adviser was happy to acknowledge that in his role for Freedom Protect he wasn't FCA authorised had either Mr W1 or Mr W2 put that question to him.

Mr W1's told us that he hadn't noticed that the footer to Freedom Protect's emails had altered and said it wasn't FCA authorised. He said that if he'd found out that Freedom Protect wasn't authorised he'd have stopped dealing with it and instead looked to invest in property, potentially with the help of another adviser. I don't doubt that this is Mr W1's true belief now. After all he's now well aware that having followed the recommendations of an unauthorised adviser he and his brother have put their pension savings at risk.

But for the reasons given above I'm not convinced that even if Scottish Equitable had done further due diligence Mr W2 would have been in a different position. As I've already said Mr W2 had let Mr W1 take the lead in the decision making process. And both before and after some of those transfers went ahead Mr W1 was advised to check whether his adviser was suitably authorised and if not to approach an adviser who was not involved in making the recommendation. But he didn't do so. He also answered provider F's question about guaranteed and high rate returns in a manner inconsistent with the evidence.

So, it seems likely that if Scottish Equitable had put additional questions to Mr W2, Mr W1 would have advised him to answer those in a similar vein. That is Mr W2 would have said that he was receiving suitable advice. Advice it seems he was happy with and believed was in his best interests. In those circumstances I don't think it's likely that he would have advised Mr W2 to change course if Scottish Equitable had asked him further questions.

it follows that, while Scottish Equitable didn't do appropriate due diligence nor issue the Scorpion insert, i don't think the outcome would have been different for Mr W2 if it had."

Developments

Mr W2 didn't agree with my provisional decision. Via his representative he made a number of points. Amongst other things he said:

- He didn't accept that the letters sent to Mr W1 during 2013 and 2014 were relevant to his complaint. While there was evidence of the Scorpion warning information being sent to Mr W1 Scottish Equitable didn't provide him with an equivalent communication.

- Similarly Mr W2 was not considering transferring his pension prior to January 2014 when he signed the LOA for firm I. The first step in the actual transfer happened after Mr W2 was put in touch with the adviser following his enquiries into life insurance.

- Whether or not Mr W1 was given the Scorpion materials isn't crucial to the complaint as Scottish Equitable should have provided specific information to Mr W2 about the scam warning signs.

- The link between Mr W1 receiving warning information referencing how to check an adviser's regulatory status was "rather tenuous" in a complaint brought by Mr W2 and bears no relevance. Mr W2 said that was particularly so as the information provided concerned pension liberation – accessing pension before the age of 55 – which neither brother was trying to do.

- Mr W2 referred to another Ombudsman's decision where my colleague said that the pension provider concerned should have looked at the FCA register itself to check whether the adviser was registered. He said my provisional decision put the onus on Mr W1 to do that. And the scorpion action pack also said that the ceding scheme should check the FCA register. Had Scottish Equitable done that it would have warned Mr W2 that the adviser was not regulated and the implications of that.

- Mr W1 had been considering transferring his pensions to a different type of scheme. But his history demonstrates that he was careful and prepared to back out of pension transfers. And if Scottish Equitable had given Mr W2 the appropriate scam risks warning, he would not have gone ahead with the transfer.

- Mr W2 hadn't realised that Freedom Protect wasn't FCA regulated. But, if Scottish Equitable had carried out its due diligence competently it should have easily identified and told him the adviser was not regulated and so was acting in breach of FSMA by giving advice on a pension transfer. While Mr W1 was taking the lead Mr W2 did not defer to Mr W1 completely. Mr W2 had his own opinions of financial matters. And he could have answered Scottish Equitable's questions about the adviser and his investment intentions.

- While Mr W2 was not cold called and offered a free pension review, nevertheless there were a number of common indicators of a scam: the adviser was actually unregulated; the advice was provided on a "free" basis as the adviser didn't charge Mr W2 and was working on commission from the investment providers; the recommended investments were all non-standard, unregulated, high risk, and two were based overseas.

- Mr W2 didn't agree with my conclusion on what would have happened if Scottish Equitable had done appropriate due diligence.

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.

Mr W1, via his representative, has made a number of points. However, I don't intend to address each of those individually. Instead In this decision I will focus on what I see as being the key issues and the reasons for my decision.

Some of Mr W2's points in response to my provisional decision appear contradictory. On the one hand he has accepted that Mr W1's knowledge about the regulatory status of the adviser was relevant to his own complaint, but on the other he said that warning information sent to Mr W1 bore no relevance to his complaint and was somewhat tenuous. But I disagree.

As I said in my provisional decision it's clear Mr W1 was the principal driver behind the pension transfer decisions even if this hadn't been something Mr W2 had been considering prior to January 2014. So Mr W1's knowledge and history is relevant to the decisions both he and Mr W2 made concerning their pensions.

At the time of the events Mr W2 clearly had some very troubling personal circumstances and his focus was understandably on this very worrying family situation. So, he essentially appointed Mr W1 to act for him in the matter. I accept that Mr W2 would have had his own opinions and was capable of answering questions himself. However, given the dynamics of the situation, where the process was primarily being driven by Mr W1 and he was the key decision maker, his knowledge and actions are particularly relevant to the outcome for Mr W2.

I agree with Mr W2 that sending the Scorpion insert to Mr W1 was not crucial to the merits of his complaint. But, for the reasons given above it is not insignificant. I also agree that the early version of the insert, which was sent to Mr W1 on six occasions focused primarily on accessing pensions before the age of 55. And, as I said in my provisional decision I think Scottish Equitable should have done more than it did. But, the significance of the Scorpion insert being given to Mr W1 is that it should have put him on notice that pensions scams were something to be aware of. It was also clear that those advising on pensions needed to be FCA authorised. And Mr W1 was given advice about how to check that and that was relevant to both Mr W1's and Mr W2's transfers.

Mr W2's said that it was Scottish Equitable's duty and not his or his brother's to check the FCA register. I agree that Scottish Equitable should have made enquiries about the regulatory status of the advising firm. The onus was not on Mr W1 or Mr W2 to do this. However, I thought it was significant that this was something Mr W1 could have done for himself and Mr W2 but seemingly chose not to do so.

Mr W2's also said that if Scottish Equitable had done the appropriate due diligence it would have learned that Freedom Protect was not authorised and could have warned him of a breach of FSMA. This is something I considered in my provisional decision when I said:

"… *Mr W2 had largely, it would seem, delegated responsibility for dealing with pension matters to his brother. And Mr W1 was clearly aware that the adviser worked for firm E, which was regulated, as he supplied us with the relevant business card. Further, it's notable* *that, when provider F instructed Mr W1 to complete its supplemental transfer form it asked him to tick a box if he'd been advised to transfer by someone who wasn't authorised. And it gave an instruction on how to check the FCA register. But Mr W1 left the box blank. In other words his answer to that question was that he had not been advised by an unauthorised adviser. So I think, on the balance of probabilities, that if Scottish Equitable had put this question to Mr W2 he would have discussed the matter with Mr W1 or asked him to deal with it. And, given that both brothers said they believed they were being dealt with by an authorised adviser that's the evidence they would have given to Scottish Equitable.*

It's also notable the Mr W2 hadn't been cold called, he hadn't been offered any incentive to transfer and he wasn't put under any pressure to make the transfer.

So, had Scottish Equitable looked into this further, it's unlikely Mr W2 would have given the impression that he was being led through a process by another party acting in a potentially unlawful way – which would be the usual pattern for someone falling victim to a scam."

Nothing Mr W2's said in response to my provisional decision persuades me that conclusion was wrong. I'll add that I didn't find in my provisional decision that Scottish Equitable needed to have an oral conversation with Mr W2. However, it should have contacted him, but that could have been in writing. And – assuming Mr W2 told Scottish Equitable that it was Freedom Protect and not firm E which was advising him – had it checked the FCA register Scottish Equitable could have warned Mr W2 that Freedom Protect was not authorised. However, it seems likely that in those circumstances Mr W2 after discussing the matter with Mr W1 would have also referred to firm E when corresponding with Scottish Equitable.

I say the above as Mr W1 told us, via his representatives, that the reason he believed the adviser to be regulated was "*particularly due to the business card*" the adviser provided. That card referred to firm E not Freedom Protect. And firm E was regulated. Similarly when supplying us with additional evidence Mr W1 copied to us the page from his SSAS application which had "*the* [firm E] *FCA number on it*". So, even if Scottish Equitable had cast doubt on Freedom Protect's regulatory status, as I found in my provisional decision, on the balance of probabilities I think Mr W1 would have explained to Mr W2 that he had taken comfort from the fact that the adviser also worked for a firm which was regulated. And Mr W1 was clearly motivated to go ahead with the transfers as he considered those to be in his best interests. I think, given that he was taking the lead in the matter and was the primary decision maker, he would have advised Mr W2 to follow suit and proceed with the transfer.

I'm aware that Mr W1 had previously changed his mind about making a pension transfer, when he backed out of the transfer to firm G. But he couldn't provide us with any detail about what the investments he was considering were or why he changed his mind. And Mr W2 was not involved at that time. So Mr W1's actions don't demonstrate that he would have undoubtedly changed his mind about transferring and also persuaded Mr W2 to follow suit, if Scottish Equitable had done further due diligence. There's simply no evidence that whatever caused Mr W1 to change his mind about transferring to firm G was a factor in Mr W2's transfer from Scottish Equitable. And there could be numerous reasons that caused Mr W1 to think again about the transfer to firm G.

Also, as I said in my provisional decision, when responding to provider F's question some of Mr W1's answers were inconsistent with the facts, which signifies that Mr W1 was very keen for his transfers to go through. And given his leading role in the decision making process for both brothers, I think Mr W2 would have accepted Mr W1's advice on the matter.

I also agree with Mr W2 that some of the factors in his transfer were indicative of scam type activity. But I also considered this in my provisional decision. And given that Mr W1 would most likely have told Mr W2 to advise Scottish Equitable of the involvement of an FCA authorised business in firm E it's doubtful that Scottish Equitable would have chosen – nor would it have been obliged to – intervene further. Nothing Mr W2's said in his response to my provisional decision alters my conclusions on that.

It follows that I remain satisfied that even if Scottish Equitable had done further due diligence it's likely Mr W2 would have continued with the transfer anyway.

My final decision

For the reasons given above I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W2 to accept or reject my decision before 18 November 2024.

Joe Scott
Ombudsman