

The complaint

Miss B has complained, with the help of a professional representative, about a transfer of her Sun Life Assurance Company of Canada (U.K.) Limited (Sun Life) personal pension to a small self-administered scheme (SSAS) in December 2014. Miss B's SSAS was subsequently used to invest in an overseas property investment with The Resort Group (TRG.) The investments now appear to have little or no value. Miss B says she has lost out financially as a result.

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

What happened

I've already issued a provisional decision in which I set out, in detail, the background and circumstances leading up to this complaint. Rather than repeat this here, I've included a copy of my provisional decision below, which forms part of this final decision.

In my provisional decision, I concluded Miss B's complaint shouldn't be upheld.

Sun Life replied to my provisional decision and said it agreed with my decision.

Miss B, through her representative, disagreed with my decision. In summary, Miss B's representative said the following:

- It is unfair for me to conclude that Miss B was prepared to conceal information by reason of the answer she gave on Sun Life's questionnaire. The wording of the question she was asked is important – she was asked if the transfer was recommended by a financial adviser, not if she'd 'received advice' or 'been advised.' Because FRPS's paperwork said they weren't financial advisers, it's probable Miss B thought she was answering the question accurately.
- Sun Life was aware of the involvement of two unregulated firms, so they asked me to reconsider my decision that Sun Life had no reason to think Miss B had been advised by an unregulated business.
- While they agree Sun Life's due diligence was reasonable, they disagree with the actions I said it should've taken as a result – my description contains no reference to provision of a warning. Sun Life's communication to Miss B should've said it had identified concerns which mirrored those set out in the long form July 2014 Scorpion insert. This warning along with the longer leaflet (a more official looking leaflet than the 2013 version) would've been a powerful warning and would not have imposed a burden on Sun Life.

- My conclusion on causation is not fair or reasonable. It is understandable that Miss B didn't react to the encouragement in the 2013 Scorpion insert to get regulated advice because the context in which this was presented – i.e. pension liberation – wasn't relevant to her situation. Miss B might have been to some extent under the spell of FRPS, but the warnings Sun Life should've given – the different updated leaflet alongside a more targeted and powerful warning – would've been important to breaking that spell.

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.

Having done so, and carefully considered what Miss B's representative has said in response to my findings, I've not been persuaded to change my mind. I've decided to reach the same conclusion and for the same reasons as I set out in my provisional decision. I comment as follows on the points Miss B's representative has raised in response to my findings.

Firstly, on the point of the language used in the question Miss B was asked about receiving advice and that she probably asked it accurately given how the question was worded – I'm not persuaded Miss B would have appreciated the significance of the language used at the time as her representative argues was likely the case. To someone with knowledge and experience of pensions and investments, the term 'financial adviser' might typically conjure up a FCA regulated and qualified adviser. But Miss B described herself as someone who was not sophisticated in and had no experience of pensions or investments. She also said she did not appreciate the significance of the person she was dealing with from FRPS not being FCA authorised. Miss B understood that she had been advised or recommended at the time to transfer her pension and make the investments. And this was a significant financial transaction or matter.

So, regardless of how FRPS may or may not have described themselves, given what I've said above and the context of the interaction Miss B had with FRPS, I think she would've reasonably seen and described the person from FRPS as an adviser. And so when asked by Sun Life if the transfer had had been recommended by a financial adviser, I think she ought reasonably to have understood what it was driving at and offered up FRPS' details. As I said in my provisional decision, I don't think Miss B would've given a different answer had Sun Life asked the same question in a different format or used different language – possibly in part too because she'd been coached or told how to answer the declaration by the unregulated party.

I maintain that, given the questions Miss B was asked by Sun Life and the answers she gave – specifically that she was not cold called and had not been recommended to transfer by a financial adviser – this is evidence she was prepared to conceal information from Sun Life. And this was likely because she trusted the FRPS adviser and that she believed they were acting in her best interests.

I also remain of the view that Sun Life had no reason to believe Miss B had been advised by an unregulated business. It was aware of the involvement of two unregulated parties because it had received requests from them for information to start the transfer process. But Miss B, when asked, told Sun Life she hadn't been cold called and hadn't been recommended to transfer. Miss B didn't have to receive advice to carry out the transfer and as I said in my provisional decision, I think Sun Life was entitled to rely on what she had told it. So, I don't think Sun Life had reason to believe Miss B had received unregulated advice.

On the point about my description of what Sun Life ought to have done containing no reference to provision of a warning – I said in my provisional decision that Sun Life ought to have provided Miss B with a warning rather than refer things to its technical team. I then went on to explain what I meant by that and what I think Sun Life ought reasonably to have done. And that was to explain to Miss B that she should take regulated advice and how to access it and provide her with the longer Scorpion leaflet which contained information, or warnings about pension scams. I remain of the view that, in the circumstances, even if Sun Life believed it wasn't getting the real version of events from Miss B there was only so much it could do in the circumstances. It had to take a proportionate approach and balance the need for consumer protection with the need to also execute a transfer promptly and in line with a member's rights. I think the provision of the warnings in the longer Scorpion leaflet along with explaining to Miss B about getting regulated advice, was the appropriate information and warnings Sun Life ought reasonably to have given in the circumstances.

Finally, Miss B's representative disagrees with my findings on causation. I haven't got anything I feel I can usefully add to what I said in my provisional decision. So, for the same reasons I gave in my provisional decision (I don't need to repeat those reasons here) if Sun Life had done what it ought reasonably to have done, I don't think Miss B would more likely than not have acted differently by heeding the warnings and either sought advice or guidance elsewhere and ultimately decided not to go ahead with the transfer.

So, for the reasons given in my provisional decision, and above, I don't uphold Miss B's complaint.

COPY OF PROVISIONAL DECISION

The complaint

Miss B has complained, with the help of a professional representative, about a transfer of her Sun Life Assurance Company of Canada (U.K.) Limited (Sun Life) personal pension to a small self-administered scheme (SSAS) in December 2014. Miss B's SSAS was subsequently used to invest in an overseas property investment with The Resort Group (TRG.) The investments now appear to have little or no value. Miss B says she has lost out financially as a result.

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

What happened

On 30 June 2014, Miss B signed a letter of authority allowing a business called Capital Facts Limited (CFL) to obtain details, and transfer documents, in relation to her pension. Miss B says this followed an unsolicited approach offering her a free pension review. Following CFL's request to Sun Life in July 2014, it provided them with the requested information. CFL was not authorised or regulated by the Financial Conduct Authority (FCA).

Miss B says she was then introduced to and met with a representative of First Pension Review Services (FRPS) and had at least one meeting at her home. Miss B, who was 48 at the time, says they recommended she transfer her pension to a SSAS and invest in an overseas commercial property investment with TRG. She says she believed they were acting in her best interests, so she agreed to go ahead. FRPS was not regulated to provide advice.

On 17 September 2014, a company was incorporated with Miss B as director. I'll refer to this company as A Limited. On 8 October 2014, a SSAS was established and then registered with HMRC on 10

October 2014. A Ltd was recorded as the SSAS's principal employer and Cantwell Grove Limited (CGL) was recorded as the administrator. CGL was not subject to FCA regulation.

On 23 October 2014, Sun Life received documents from CGL to allow Miss B's pension to be transferred to the SSAS. The letter accompanying the paperwork said that CGL was aware of concerns around 'pension liberation', it supported the efforts of the pension industry, and that its business model, as a pensions administrator, had been vetted by HMRC. It also said CGL supported the 'Scorpion' campaign of The Pension Regulator (TPR) and that the 'Scorpion' information leaflet, which warned about the risks of pension liberation, had been shared with Miss B.

CGL enclosed the completed application for the transfer, copies of the scheme trust deed and rules, the HMRC registration confirmation and a scheme details Q&A document, which gave answers to some general questions, including which investments were under consideration. The Q&A document said that the investments under consideration were a commercial property investment provided by TRG and a discretionary fund management service. The document said that appropriate advice, about whether the investments were satisfactory for the aims of the scheme, was being taken by the trustees of the SSAS from Sequence Financial Management Limited (SFML). The letter said SFML was registered with and regulated by the FCA.

I note at this point there is no evidence that SFML did in fact provide any advice to Miss B – whether in relation to the transfer to the SSAS itself or the investments under consideration. The trustee advice was provided by another business, Broadwood Assets Ltd (BAL.) I'll refer to this in more detail below.

Also enclosed with the transfer request paperwork was a letter signed by Miss B. This letter said she was aware there had been a rise in cases of pension liberation fraud and she was aware of the issues relating to this. The letter said Miss B wanted to confirm she was requesting a transfer to take advantage of investment opportunities, none of which were connected with pension liberation. And it said she was not looking to access her pension before age 55 – the trust deed of the SSAS would not permit this – and she had not been offered a cash or other incentive to transfer.

On 23 September 2014, BAL wrote to Miss B advising her on the suitability of the TRG investment. The letter said it was providing her with advice, in her capacity as trustee of the SSAS, on the potential suitability of the TRG investment "both as a specific example of an overseas commercial property investment, and more generally as an investment to be held within a SSAS." It said it had not advised on the establishment of the SSAS, was not providing advice that would be deemed regulated – BAL was not regulated or authorised by the FCA – and it wasn't advising on whether the TRG investment was "suitable for the particular needs and objectives of the members of beneficiaries of the SSAS." This letter was signed by Miss B later on in December 2014.

On 24 October 2014, in response to the transfer request Sun Life wrote to Miss B asking her to complete an 'Additional information and declaration' form.

On 21 November 2014, Sun Life received a response from HMRC to its enquiry about A Ltd SSAS. HMRC said A Ltd SSAS was registered and it didn't believe there was significant risk of liberation with this scheme.

On 17 December 2014 Miss B signed and returned the additional information and declaration form sent to her by Sun Life. The form asked Miss B to indicate 'yes' or 'no' to a series of questions. Miss B confirmed that:

- She hadn't been offered any incentives to transfer
- She hadn't been told she could take more than a quarter of the transfer value in cash
- She was under 55 and hadn't been told she could take money out of her pension before 55
- A financial adviser hadn't recommended the transfer

- She hadn't received a cold call or unsolicited messages which led to her transfer request
- She agreed she had read and understood the Scorpion leaflet available on Sun Life's website (a website address was given and a paper copy was offered on request.)

Sun Life has also provided a copy of a transfer request checklist it used during the course of the transfer process. The form is dated 24 October 2014 with updated entries of 19 December 2014. It appears this was used to assess whether there was any cause for concern with Miss B's request, including identifying pension liberation risk, and whether those concerns should prompt a referral to its technical / legal team before proceeding with the transfer. I can see here that a referral was made in this case because Sun Life had the following concerns:

- CGL was the SSAS administrator
- Whether a genuine employer had established the scheme
- Miss B indicated she hadn't received advice to transfer but there was evidence of the involvement of CFL who weren't regulated
- Setting up a limited company to enable a pension scheme to be registered wasn't something a customer would do without advice or specialist knowledge
- TRG was the proposed investment who deal in overseas property investments
- The scheme rules contain elements that could lead to pension liberation.

Sun Life says a referral to its technical team took place. And while it hasn't been able to provide the referral response, the transfer went ahead on 24 December 2014. Miss B's transfer value was around £4,400. According to the SSAS bank statements provided, Miss B invested just over £1,100 of that money into TRG.

In April 2015, Miss B also transferred the benefits of a pension she held with another provider into her SSAS and she made a further investment in TRG, giving a total investment of around £27,900. Miss B has brought a separate complaint about that provider, which has now been resolved informally in her favour.

I understand the TRG investment has since failed and as such has little or no value.

In July 2020, Miss B complained to Sun Life. Briefly, she said it ought to have spotted, and told her about, a number of warning signs in relation to the transfer. These included but were not limited to: Miss B having been cold called, the SSAS being newly registered with no genuine employment link to the sponsoring employer, receiving unregulated advice and the intended investment being unregulated and overseas. Miss B said if Sun Life had properly informed her of these warning signs, she wouldn't have transferred.

Sun Life didn't uphold the complaint. In summary it said Miss B had a legal right to transfer and that it was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

Miss B then referred her complaint to the Financial Ombudsman Service. Our Investigator was unable to resolve the dispute informally, so the matter was passed to me to decide.

What I've provisionally decided – and why

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

The relevant rules and guidance

Personal pension providers are regulated by FCA. Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority (FSA). As such Sun 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 Miss B'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 SIPP and SSASs in pensions scams was highlighted, as was an increase in the use of unregulated and/or illiquid investments. The FCA further published its own factsheet for consumers in late August 2014. It highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.

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.

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. In deciding how to apply the guidance, they needed to consider the guidance 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, 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:

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?

Miss B says that she received an unsolicited phone call from CFL who offered her a free review. She then gave them her authority to approach Sun Life for information about her pension. And Sun Life released that information to CFL. As I said earlier on, CFL was not authorised by the FCA.

Miss B says she was then introduced to and met with FRPS at least once at her home who recommended she transfer her pension to a SSAS. She says they told her she would receive significantly better returns on her pension if she invested in TRG. She says she was told she wasn't at risk of losing money and that the intended transactions were in her best interests. She says she believed what she was told by FRPS, so she agreed to go ahead.

I think the evidence in this case supports what Miss B says that it was FRPS she met with. I say this because FRPS' company stamp appears on a number of documents, including in the context of witnessing Miss B's signature on her SSAS trust deed. And witnessing of a signature requires physical presence. Furthermore, Miss B has provided a meeting pack she says she was given by FRPS, which sets out the structure of and details of what they would cover during the meeting with her. This included FRPS' terms of business, information about the use of a SSAS, the trust deed required to establish a SSAS, and information about the TRG investment including a brochure detailing its key features.

So, taking all of the above into account, I think it is more likely than not that Miss B dealt with FRPS, which was unregulated.

As I've said above, Miss B's recollections at the time of the complaint are that she was cold called and following an in-person meeting, she was advised by FRPS to transfer her pension. I can see Miss B has said she had no experience of pensions or investments. And I've seen nothing which leads me to think otherwise. What Miss B has said about what she was told by the representative of FRPS is in my view, consistent with her being advised – for example if she was told transferring was in her best interests and that she could achieve better investment returns from investing elsewhere. I also think the documentary evidence supports FRPS giving Miss B advice and it is consistent with what we know about how FRPS operated and their involvement in other cases we've seen.

So, on balance, I think FRPS advised Miss B to transfer her pension as she says.

However, when Sun Life sent Miss B the 'Additional information and declaration' form in October 2014

following receipt of her transfer request to gather more details about the transfer, Miss B said here that she had not been cold called and hadn't received advice in relation to the transfer. I'll come back to this later on.

What did Sun Life do and was it enough?

The Scorpion insert:

For the reasons given above, my view is that personal pension providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information.

Firstly, the transfer paperwork CGL submitted to Sun Life said that it had explained and provided Miss B with the Scorpion leaflet.

Miss B would likely in any event have been made aware of the risks of pension liberation by CGL, which is what her signed letter explaining why she wanted to go ahead with the transfer suggests. But in this case the risks were broader than just pension liberation – they covered wider scams more generally.

Sun Life didn't send Miss B a physical copy of the insert. But it referred to the availability of the insert on its website within the additional information and declaration, which Miss B signed to say she had read and understood. But the declaration referred to the same version of the leaflet CGL said it had given Miss B. So, it's possible Miss B signed the declaration without visiting the website because she'd seen the leaflet before from CGL. I accept Sun Life's website might have referred to the updated version about scams more generally, but I can't be certain it was given the way the declaration described it. So, given both CGL and Sun Life referred to or described the insert as being about liberation and early access to funds, I don't think it would've had much impact on Miss B on its own.

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 pension liberation and more broadly pension scams and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk.

In this case, I can see Sun Life contacted HMRC to check the scheme's registration. It also appears to have used a check list to assess whether there were any warning signs with Miss B's transfer, which might mean she was at risk.

Given the information Sun Life had at the time, two features of Miss B's transfer would have been potential warning signs of a scam: Miss B's SSAS was recently registered and the proposed investment was unusual and overseas. I can see from its checklist (begun before it wrote to Miss B) that Sun Life did recognise warning signs, including some of these - but it also appears to have had concerns about the scheme administrator (CGL) and the likelihood that the employer wasn't genuine. Those concerns were what prompted it to write to Miss B in October 2014 and ask further questions. I'd add here that I don't think Sun Life could take any comfort from the apparent involvement of SFML in the process. Its claimed role was limited to advising the trustee only with no involvement in the advice to transfer itself.

As I referred to earlier on, the questions Sun Life asked of Miss B were set out in the 'Additional information and declaration' form it sent her. This asked Miss B if she'd been offered a loan, savings advance, cash incentive or bonus, to which Miss B ticked 'no.' It also asked her if she'd been told she could take more than 25% of the pension as tax free cash or access it before age 55. Again Miss B ticked 'no.' And crucially in my view, the form asked if Miss B had been advised and whether she'd been cold called or contacted on an unsolicited basis. It also asked if she'd been encouraged to speed up the process. Miss B answered 'no' to all of three questions.

These were all questions that the July 2014 action pack for businesses suggested ceding schemes could ask when looking at whether the member might be at risk. So, I think

Sun Life asked relevant questions of Miss B, in line with the guidance at the time, to determine whether a scam risk was present before proceeding with the transfer.

Should Sun Life have done more with the information gathered?

Sun Life was aware there were some potential warning signs in this case. But it did ask for further information from HMRC and from Miss B. And on the one hand her answers ought reasonably to have reassured it that other warnings signs were not present.

She said she hadn't been cold called or been advised. And I think Sun Life was entitled to believe what Miss B had said. The questions it asked were not ambiguous, so I don't think it could've been clearer about what it was asking or that if it had asked the same questions again in a different format, that it would've likely received a different answer. So, I think Sun Life had no reason to think Miss B had been cold called or been advised by an unregulated business.

That said, it appears from the updated notes recorded on the transfer checklist, that Sun Life had lingering concerns about the advice point because it noted that it was unusual or unlikely for a consumer to set up a limited company to enable a pension scheme to be registered without advice or specialist knowledge. I think it was reasonable for it to be concerned here given no adviser is a warning sign under the guidance. And it noted that CFL had been involved somehow at a preliminary stage of the transfer process.

So, while I think Sun Life undertook reasonable due diligence into the transfer, I don't think in the circumstances it went quite far enough. I say this because I think at this point Sun Life ought to have provided Miss B with a warning rather than refer things to its technical team for them to seemingly give the green light to go ahead without any further contact with Miss B.

But I'm mindful that Miss B didn't have to get advice to transfer. And even if Sun Life believed it wasn't getting the real version of events from Miss B, there was only so much it could do here. I think Sun Life could've explained to Miss B that she should take regulated advice and where she could access it. And I think it could've sent her the longer booklet issued by TPR which gives more information, including example scenarios, about pension scams.

Would this have made a difference?

While I think it would have been appropriate for Sun Life to have given Miss B the information and warnings above, I don't currently think it would've made a difference here.

The longer TPR booklet did contain more information about pension scams and it included case studies or example scenarios of scams. But the overall messages given and the key warnings about cold calls, not being rushed and to only rely on regulated advisers were broadly the same as in the initial insert Miss B saw. Whilst I've taken into account that the example scenarios were more hard-hitting, I've also noted that Miss B didn't react to the encouragement in that insert to get regulated advice or heed the warning about cold calls – notwithstanding that most of the insert was about liberation.

Furthermore and crucially in my view, Miss B demonstrated that she was prepared to conceal information, when asked, which prevented Sun Life discovering the two important things it was important for her to be warned about – unsolicited contact and unregulated advice. I accept it's possible Miss B was told or coached – perhaps by the unregulated party – how to answer the declaration. But I think that only goes to support my view that I think Miss B trusted or was 'under the spell' of the adviser. She said she believed they were acting in her best interests, which is why she went ahead. So, taking all of the above into account, it strikes me that even if Sun Life had done more, Miss B wouldn't more likely than not have acted differently by heeding the warnings and either sought advice or guidance elsewhere and ultimately decided not to go ahead with the transfer.

So, I don't intend to uphold this complaint.

END OF PROVISIONAL DECISION

My final decision

My final decision is to not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 3 December 2024.

Paul Featherstone
Ombudsman