DRN-5161496

The complaint

Mrs C has complained, via her representatives, about a transfer of her personal pension held with Old Mutual Wealth Management Limited (now Quilter Life & Pensions Limited, 'Quilter') to a small self-administered scheme ('SSAS'), which completed in November 2016. Mrs C's SSAS was subsequently used to invest in loan notes, with Dolphin Trust GmbH/ German Property Group ('Dolphin'). The investment now appears to have no value as Dolphin entered administration in 2020. Mrs C says he has lost out financially as a result.

Mrs C believes Quilter failed in its responsibilities when dealing with the transfer request. Her representatives say 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 they say was required of transferring schemes at the time. Mrs C says she would not have transferred, and therefore wouldn't have put her pension savings at risk, if Quilter had acted as it should have done.

What happened

Between April and September 2016, Mrs C's existing pensions were transferred to Quilter (then Old Mutual Wealth) with the recommendation of a regulated financial adviser. The same was done for her husband as both were looking to consolidate their personal and workplace pensions.

In or around September 2016, Mrs C and her husband were introduced by an acquaintance, to Return On Capital Ltd (ROC), an unregulated financial advice firm. Shortly before this, Mrs C had left her employment to work as a freelancer. For this, she had established her own company in August 2015, which I'll call 'W Ltd'. On 9 September 2016, Mr and Mrs C signed documents to open a SSAS with Rowanmoor Group Plc. W Ltd was recorded as the SSAS's principal employer.

Mr and Mrs C jointly said that they were "blindsided" and "mis-guided" by their acquaintance, Mr W, who worked together with the agent from ROC to set up the SSAS and facilitate their investments into Dolphin loan notes. This was fuelled by the promise of higher returns and Mr and Mrs C said they were classified as high-risk investors, even though their previous regulated adviser had found they had a low-medium attitude to risk.

This complaint only concerns Mrs C's pension transfer to the Rowanmoor SSAS, but some information about her husband's transfer that happened roughly at the same time is mentioned for context.

On 3 October 2016, the transfer was requested by Rowanmoor through Origo Options, an electronic transfer system. Mrs C's pension was transferred on 15 November 2016. She was 51 years old at the time of the transfer and the transfer value was around £361,000. Together with her husband's pension that was transferred at roughly the same time, around £300,000 was invested in the Dolphin loan notes. The loan notes had a five-year term and an interest rate of 10% p.a. to be paid on maturity. A 10% bonus was also to be paid at maturity. Dolphin Trust GmbH, now known as the German Property Group, is a German property venture which has gone into liquidation. The funds are now worthless, which means that Mrs C is unable to access her pension benefits in retirement. Another £100,000 was invested in another company's loan note in July 2017, however at the time of Mrs C's complaint it's not clear if this still has any value.

In November 2022, Mrs C complained to Quilter. Briefly, her argument is that Quilter ought to have spotted, and told her about, a number of warning signs in relation to the transfer, including (but not limited to) the following: the SSAS was newly registered, the purpose of the SSAS was a high-risk, unregulated investment with unrealistic return expectations, and she had been advised by an unregulated business.

Quilter didn't uphold the complaint. It said the administrator was on its internal 'white list' and therefore it didn't have any concerns about the transfer or needed to carry out further due diligence given the requirements of the time.

Our investigator was unable to resolve the dispute informally, so the matter was passed to me to decide.

My Provisional Decision

In advance of this decision, I issued a provisional decision to the parties in which I said that I thought Mrs C's complaint should be upheld. Mrs C accepted the provisional decision with no further comments, but Quilter rejected it and gave additional points.

What I've decided – and why

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

I don't consider that I need to change the findings I reached in my provisional decision. I have set these out below and adopt them as my findings in this final decision. I have also addressed Quilter's additional comments at the end of this decision. I have decided that Mrs C's complaint should be upheld.

In my provisional decision I said:

"<u>Time limits</u>

The rules under which the Financial Ombudsman Service operate are set out by the regulator, the FCA. These are known as the DISP rules. These rules set out the limits to what our service can and can't consider. One of the things these rules cover is whether the complaint has been brought in time for us to consider.

DISP 2.8.2(R) says;

"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:
…
(2) more than:

(a) six years after the event complained of; or (if later)
(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;
unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;

unless:

(3) in the view of the Ombudsman, the failure to comply with the time limits … was as a result of exceptional circumstances; or
…
(5) the respondent has consented to the Ombudsman considering the complaint…"

Quilter has indicated it doesn't consent to us considering the complaint.

The transfer completed on 15 November 2016. This is evidenced on the SSAS bank statements that show the transfer amounts being credited. Assuming a BACS transfer time of three working days, the transfer would have been likely completed on Quilter's side on 10 November 2016. The complaint was received by Quilter on 9 November 2022. So the complaint was raised just inside the six years.

Quilter argued the transfer happened in October 2016. I haven't seen any evidence of this, but even if that was the case and the complaint falls outside of the six-year limit, as the rules I've referred to set out, a consumer can have more than six years to complain if, under the three-year part of the rules, the point at which they were or ought reasonably to have become aware of having cause to complain, is later. So I've considered this here.

Under the Financial Conduct Authority handbooks' definition of a complaint, a consumer must have been aware:

1. broadly, that a loss has been or may be suffered;
2. that it was a result of some act or omission, and
3. on whom responsibility for that act or omission rests.

Quilter hasn't provided any comment on when it thinks Mrs C ought to have been aware of having had cause to complain about it allowing the transfer to the SSAS.

The Dolphin loan notes had terms until 2020 and 2022 respectively, so no returns would have been expected before 2020. However, Mrs C lodged a joint complaint with her husband to their unregulated adviser at ROC in May 2020, stating that the Dolphin loan notes had lost their value and voicing their concerns about the suitability of the investment advice. This was likely triggered by the German Property Group going into liquidation in 2020 and the FCA warning customers about the investments and recommending them to contact their financial advisers in the same year. This shows that by May 2020, they were aware of a loss, and that it was a result of some act or omission. Then in or around December 2020, Mr and Mrs C liaised with their previous representatives about complaints to the regulated parties of the advice process regarding their transfers to Quilter and those complaints were assessed by this Service.

Only after outcomes of those complaints had been determined, Mr and Mrs C then went on to lodge a complaint about Quilter and its due diligence as a ceding scheme. It's unclear at what point the representatives made her aware that Quilter also had obligations with regards to the transfer and therefore might also be responsible for her losses.

However, even if I were to say that from early 2020 onwards, when it became clear they suffered a loss from the Dolphin loan notes, they could reasonably have become aware that Quilter may be responsible for such loss, then their complaint received by Quilter in November 2022 would still have been made within three years of such reasonable awareness. Given the lack of any communications between Quilter and Mrs C during the time of the transfer, I don't see how Mrs C would have been aware of Quilter's responsibilities before this.

So, in the circumstances, I think the complaint has been made within six years after Quilter transferred Mrs C's pension. However, even if that were not the case, I agree with our investigator that based on the available information, I don't think I can fairly say that Mrs C ought to have been aware of having cause for complaint more than three years before she made her complaint in November 2022. And as a result, I'm satisfied we can consider her complaint under our rules.

So, I've gone on to consider the merits of the complaint.

<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 Quilter was subject to the FSA/FCA Handbook, and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA/FCA rules governing how personal pension providers deal with pension transfer requests, but the following have particular relevance here:

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

In February 2013, The Pensions Regulator (TPR) issued its Scorpion guidance to help tackle the increasing problem of pension liberation, the process by which unauthorised payments are made from a pension (such as accessing a pension below minimum retirement age). In brief, the guidance provided a due diligence framework for ceding schemes dealing with pension transfer requests and some consumer-facing warning materials designed to allow members decide for themselves the risks they were running when considering a transfer.

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

The FSA's endorsement of the Scorpion guidance was relatively informal: it didn't take the form of Handbook Guidance, because it was not issued under s.139A of the Financial Services and Markets Act (FSMA), which enabled the FSA to issue guidance provided it underwent a consultation process first. Nor did it constitute "confirmed industry guidance", as can be seen by consulting the list of all such FSA/FCA guidance on its website. So the content of the Scorpion guidance was essentially informational and advisory in nature. Deviating from it doesn't therefore mean a firm has necessarily broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's right to transfer.

That said, the launch of the Scorpion guidance in 2013 was an important moment in so far it provided, for the first time, guidance for personal pension providers dealing with transfer *requests – guidance that prompted providers to take a more active role in assessing those requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance's specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.*

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

The Scorpion guidance was updated in July 2014. It widened the focus from pension liberation specifically, to pension scams more generally – which included situations where someone transferred in order to benefit from "too good to be true" investment opportunities such as overseas property developments. An example of this was given in one of the action pack's case studies.

In a similar vein, in April 2014 the FCA had also started to voice concerns about the different types of pension arrangements that were being used to facilitate pensions scams. In an announcement to consumers entitled "Protect Your Pension Pot" the increase in the use of SIPPs and SSASs in pensions scams was highlighted, as was an increase in the use of unregulated and/or illiquid investments. The FCA further published its own factsheet for consumers in late August 2014. It highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.

There was a further update to the Scorpion guidance in March 2015. This guidance referenced the potential dangers posed by "pension freedoms" (which was about to give people greater flexibility in relation to taking pension benefits) and explained that pension scams were evolving. In particular, it highlighted that single member occupational schemes were being used by scammers. At the same time, a broader piece of guidance was initiated by an industry working group covering both TPR and FCA regulated firms: the Pension Scams Industry Group (PSIG) Code of Good Practice. The intention of the PSIG Code was to help firms achieve the aims of the Scorpion campaign in a streamlined way which balanced the need to process transfers promptly with the need to identify those customers at material risk of scams.

The Scorpion guidance was updated again in March 2016, with the Scorpion insert being updated in June 2016, but these updates didn't contain any major changes that would influence the outcome of this decision.

<u>*The Scorpion guidance*</u>

The March 2015 update to the Scorpion guidance asked schemes to ensure they provided their members with "regular, clear" information on how to spot a scam. It recommended giving members that information in annual pension statements and whenever they requested a transfer pack. It said to include the pensions scam "leaflet" in member communications.

When a transfer request was made, transferring schemes were also asked to use a three-part checklist to find out more about a receiving scheme and why their member was looking to transfer.

The 2016 update to the Scorpion guidance, which is the most up to date one at the time Mrs C's transfer was requested, contained similar messages to those from 2015 but emphasised some of the actions it suggested. The update asked schemes to direct *members to TPR's 'booklet' which set out how to spot a scam. The action pack included a link to this information online. The update also said to use its checklist and carry out due diligence on all transfer requests. It said ceding schemes should proactively engage with members they considered at risk and if, after due diligence, they suspected that a receiving scheme may be involved with a scam, this should be communicated to members and a record kept of this communication.*

The PSIG Code of Good Practice

The PSIG Code was voluntary. But, in its own words, it set a standard for dealing with transfer requests from UK registered pension schemes. It was "welcomed" by the FCA and the Association of British Insurers (amongst others). And several FCA regulated pension providers were part of the PSIG and co-authored the Code. So much of the observations I've made about the status of the Scorpion guidance would, by extension, apply to the PSIG Code. In other words, personal pension providers didn't necessarily have to follow it in its entirety in every transfer request and failure to do so wouldn't necessarily be a breach of the regulator's Principles or COBS. Nevertheless, the Code sets an additional benchmark of good industry practice in addition to the Scorpion guidance.

In brief, the PSIG Code asked schemes to send the Scorpion "materials" in transfer packs and statements, and make them available on websites where applicable. The PSIG Code goes on to say those materials should be sent to scheme members directly, rather than just to their advisers.

Like the Scorpion guidance, the PSIG Code also outlined a due diligence process for ceding schemes to follow. However, whilst there is considerable overlap between the Scorpion guidance and the PSIG Code, there are several differences worth highlighting here, such as:

- *The PSIG Code includes an observation that: "A strong first signal of [a scam] would be a letter of authority requesting a company not authorised by FCA to obtain the required pension information; e.g. a transfer value, etc." This is a departure from the Scorpion guidance (including the 2015 guidance) which was silent on whether anything could be read into the entity seeking information on a person's pension.*

- *The Code makes explicit reference to the need for scheme administrators to keep up to date with the latest pension scams and to use that knowledge to inform due diligence processes. Attention is drawn to FCA alerts in this area. (I noted the contents of some of those alerts earlier in my decision.)*

- *Under the PSIG Code, an 'initial analysis' stage allows transferring schemes to fast-track a transfer request without the need for further detailed due diligence, providing certain conditions are met. No such triage process exists in the 2015 Scorpion guidance – following the three-part due diligence checklist was expected whenever a transfer was requested.*

- *The PSIG Code splits its later due diligence process by receiving scheme type: larger occupational pension schemes, SIPPs, SSASs and QROPS. The 2015 Scorpion guidance doesn't distinguish between receiving scheme in this way – there's just the one due diligence checklist which is largely (apart from a few questions) the same whatever the destination scheme.*

TPR began referring to the Code as soon as it was published, in the March 2015 version of the Scorpion action pack. Likewise, the PSIG Code referenced the Scorpion guidance and indicated staff dealing with scheme members needed to be aware of the Scorpion materials.

Therefore, in order to act in the consumer's best interest and to play an active part in trying to protect customers from scams, I think it's fair and reasonable to expect ceding schemes to have paid due regard to both the Scorpion guidance and the PSIG Code when processing transfer requests. Where one differed from the other, they needed to consider carefully how to assess a transfer request taking into account the interests of the transferring member. Typically, I'd consider the Code to have been a reasonable starting point for most ceding schemes because it provided more detailed guidance on how to go about further due diligence, including steps to potentially fast-track some transfers which – where appropriate – would be in the interest of both parties.

The considerations of regulated firms didn't start and end with the Scorpion guidance and the PSIG Code. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn't involve anything specifically referred to in either the Scorpion guidance or the Code – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's principles and COBS 2.1.1R.

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

Mrs C and her husband said an acquaintance at the time, who they met through friends and who I'll call Mr W, introduced them first to a regulated adviser, Mr L, who recommended the transfer to Quilter and then, around six months later, to an agent at ROC. The ROC adviser then facilitated the setup of the SSAS with Rowanmoor, with Mrs C's company, W Ltd, as sponsoring employer. The SSAS was used to invest in a relatively esoteric way – five-year loan notes, the returns from which depended on the performance of overseas property developments. The motivation to transfer into the SSAS and investing in Dolphin came from promises that the investment in property would bring much better returns.

Mrs C and her husband explained that at this point in mid-2016, their adviser Mr L was no longer involved and the recommendation for the investment in Dolphin loan notes came from Mr W, ROC and Rowanmoor. They also said; "Transactions were now handled by [adviser] at ROC and Rowanmoor over many months, with much paperwork and signatures. [Mr W] would call as needed to "pop over" to our house with more paperwork that required a quick signature and ID."

Mr and Mrs C have mentioned that they had been put into another risk category as "high-end investors and able to invest in property abroad using our homes in the UK and Spain to prove our wealth."

There's contemporaneous documentary evidence to show that ROC was involved in this transfer process. The firm appears on Mrs C's SSAS application form, the Origo transfer request, and as the recipient of a fee on the SSAS's bank statement shortly after the transfer.

ROC's role on Mrs C's SSAS application form was recorded as providing advice on the SSAS to the member trustees. Whilst I haven't seen evidence of that advice, this indicates the advice was intended to allow the SSAS's trustees to comply with Section 36 of the Pensions Act. Such advice given by ROC would therefore have likely been in relation to the appropriateness of the Dolphin investment for Mrs C's SSAS and would likely have indicated such an investment was appropriate in that context. As stated, ROC wasn't authorised by the FCA, but to act in this capacity it didn't need to be.

However, Mrs C's testimony is very clear that it was the adviser from ROC who recommended the SSAS setup and the investment into Dolphin loan notes (and a year later in another company's loan note), together with Mr W who wasn't a financial adviser but seems to have been involved in property management. Looking at the initial process to start the transfer, I think what was said to Mrs C by the ROC agent and Mr W was likely to have amounted to advice or a personal recommendation for Mrs C to transfer out of her personal pension to a SSAS to invest in Dolphin loan notes. I say that because I can't see Mrs C would have sought or been prepared to enter into yet another transfer just six months after her previous transfer and when her workplace pension had just been transferred to Quilter as well, unless she'd been told it would be a good idea and she'd be better off as a result. Mr and Mrs C's recollections confirm this, stating they were told by Mr W and ROC that the proposed transfer would get them a better investment return, which is tantamount to advice to transfer.

There was another firm noted on the SSAS application form which signed the "identity verification certificate". In doing so, it confirmed that it had verified Mrs C's identity. The firm was authorised by the FCA at the time of the transfer. But I haven't seen anything to suggest its role extended beyond doing this one specific task.

So, I'm satisfied that ROC and likely Mr W gave Mrs C advice to transfer her pensions to a Rowanmoor SSAS.

<u>What did Quilter 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.

Quilter said it did not send a Scorpion leaflet as the transfer request came through an automated system, Origo, and from a well-known SSAS provider, Rowanmoor. It argued that this transfer request came from a SSAS administrator which had been placed on its internal 'white list'. This 'white list approach' formed part of the initial filter questions for transfers at low scam risk under the PSIG Code. I will discuss this further below.

Due diligence

As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mrs C's transfer in that light. But I don't think it would make a difference to the outcome of the complaint if I had considered Quilter's actions using the 2015/2016 Scorpion guidance as a benchmark instead.

The bar for a transfer that can be fast-tracked with minimal further due diligence is high (see PSIG section 6.2: Initial Analysis). I'm satisfied it wouldn't have been reasonable to fast-track this transfer request.

As stated above, Quilter argued that it fast-tracked Mrs C's transfer request in line with the "Initial analysis" section (section 6.2.1) of the PSIG Code. This would have allowed it to fast-track a transfer request if it came from an accepted club (such as the Public Sector Transfer Club) or if Quilter had already identified the receiving scheme/administrator as being free from scam risk. Further details on how to manage that process were provided in Section 6.11 ("Internal white list approach").

Quilter hasn't argued that it considered Mrs C's transfer request as coming from an accepted club. But I carefully considered Quilter's arguments that it took assurance from the involvement of Rowanmoor and Origo which in its view mitigated the risk of a scam and therefore reduced the need for additional due diligence. Quilter said it had placed Rowanmoor on its 'white list' and therefore didn't have a need to carry out further due diligence.

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 Quilter could have taken comfort from this, but I disagree. The Scorpion guidance and the PSIG Code 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 and the PSIG Code for a ceding scheme to have delegated that role to a different business – especially one that had a vested interest in the transfer proceeding. The regulation of SSASs is limited and in the absence of that regulatory oversight, Quilter was assuming, in effect, that Rowanmoor would want to maintain its standing in the industry and the trustees would comply with 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 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 Quilter could not rely on them being operated with FCA regulations and Principles in mind.

The PSIG Code states in its section 6.11 – Internal white list approach, "It is for each organisation to decide if they wish to build and maintain a process to manage a list of organisations, scheme or individuals that do or do not present a risk of pension scams and ensure that they have robust and ongoing due diligence to support it." Quilter has not provided us with any evidence of initial or ongoing due diligence on Rowanmoor and why it decided to put the administrator on its 'white list', aside from the reasons mentioned above. By late 2016, due diligence on Rowanmoor would likely also have shown that there were some industry concerns as it administered a number of SSASs with investments that posed a scam risk as per the Scorpion guidance, such as unregulated overseas property developments and loan notes, as in this case. So I'm not persuaded that Quilter could, reasonably, have derived sufficient comfort about Rowanmoor not presenting a risk of scam activity as per the PSIG 'white list' approach – or indeed the Rowanmoor SSAS as an inherently safe destination for Mrs C's transfer.

The FCA had also warned about the increased use of SSASs to enable scams. This isn't to say that every SSAS would have been involved in scam activity. However, with the limited information Quilter had about Mrs C's transfer, I don't think it could assume that there was no need for further investigation. The Origo request also showed ROC as adviser firm, so this should have made Quilter aware than an unregulated party was involved.

I think it would have been fair and reasonable – and good practice – for Quilter to have looked into the proposed transfer and the most reasonable way of going about that would have been to turn to the check list of the PSIG Code applicable when Mrs C requested the transfer in October 2016.

The initial triage process should have led to Quilter asking Mrs C further questions about the transfer as per Section 6.2.2 ("Initial analysis – member questions"). I won't repeat the list of suggested questions in the PSIG Code in full. Suffice to say, at least two of them would have been answered with "yes":

- *Have you been promised a specific/guaranteed rate of return?*
- *Have you been informed of an overseas investment opportunity?*

Under the Code, further investigation should follow a "yes" to any question. The nature of that investigation depends on the type of scheme being transferred to. The SSAS section of the Code (Section 6.4.3) points to the following as being potential areas of concern:

a) *Employment link: a lack of an employment link to any member of the SSAS.*

b) *Geographical link: a sponsoring employer that is geographically distant from the member.*

c) *Marketing methods: a SSAS being marketed through a cold call or an unsolicited approach.*

d) *Provenance of receiving scheme: a SSAS registered within the previous six months or a recently registered sponsoring employer or administrator operating from 'virtual' offices, or using PO Boxes for correspondence purposes.*

Underneath each area of concern, the Code set out a series of example questions to help scheme administrators assess the potential risk facing a transferring member.

Not every question would need to be addressed under the Code. Indeed, the Code makes the point that it is for scheme administrators to choose the most relevant questions to ask (including asking questions not on the list if appropriate). But the Code mentions that a transferring scheme would typically need to conduct investigations into a "wide range" of issues to establish whether a scam was a realistic threat. With that in mind, and given the relatively limited information it had about the transfer, I think in this case Quilter should have addressed all four sections of the SSAS due diligence process and contacted Mrs C to help with that.

<u>What should Quilter have found out?</u>

Had it done more thorough due diligence, there would have been a number of warnings Quilter could have identified and communicated to Mrs C in relation to a possible scam threat as identified by the PSIG Code (and the Scorpion action pack).

As stated above, Quilter should have found out that the SSAS had only been registered with HMRC in September 2016, shortly before Rowanmoor had sent it the transfer request in October 2016. If Quilter had asked her whether she was employed by W Ltd and how it'd come to be set up, I think she would have told Quilter that it was her newly formed company with, at that point, very limited trading, and that the SSAS had been established to facilitate the transfer of her and her husband's pension, with the sole purpose of investing into overseas property loan notes. Even though there was a genuine employment link between Mrs C and W Ltd, those discoveries should have caused Quilter concern about the purpose of the SSAS and transfer.

Quilter could also have identified the investment was of a type the PSIG Code determined as being linked to high fraud risk.

Under the PSIG Code, Quilter also had a duty to ask Mrs C about the advisory process. This should have prompted Quilter to carry out further due diligence and find out more about ROC's involvement in the transfer. As set out above, I'm satisfied ROC gave advice to Mrs C. Quilter has said it had no reason to question the advice process because Mrs C had *a regulated adviser with ongoing fees on its file. And as the request came through Origo, it didn't start further enquiries. However, as set out above, had Quilter carried out sufficient due diligence, then it would have needed to ask Mrs C about the advice process. The transfer to the SSAS also followed a very recent transfer to Quilter, so the timeline should have raised further queries.*

The PSIG Code sets out the example question to be requested from the member in writing or by telephone as, "Have you received any advice in connection with transferring your pension benefits? If so, please provide details of the organisation or company that provided you with that advice." So any questions along these lines would have revealed that Mrs C had not received advice from her previous regulated adviser noted on Quilter's file, but instead had been introduced to ROC who had, together with Mr W, given the transfer recommendations and handled the SSAS setup. Mr and Mrs C's testimony is clear that they were well aware of the involved parties' roles and that by this time, their previous (regulated) adviser "had disappeared".

Being advised by an unauthorised firm to transfer benefits from a personal pension plan would have been a breach of the general prohibition imposed by FSMA, which states no one can carry out regulated activities unless they're authorised or exempt. Anyone working in this field should have been aware that financial advisers need to be authorised to give regulated advice in the UK. The PSIG Code (and the Scorpion guidance) make much the same point. Indeed, the PSIG Code says firms should report individuals appearing to give regulated advice that aren't authorised to do so.

My view is that Quilter should therefore have been concerned by ROC's involvement because it pointed to a criminal breach of FSMA. On the balance of probabilities, I'm satisfied such a breach occurred here.

<u>What should Quilter have told Mrs C – and would it have made a difference?</u>

Had it done more thorough due diligence, there would have been a number of warnings Quilter could have given to Mrs C in relation to a possible scam threat as identified by the PSIG Code (and the Scorpion action pack). Quilter should also have been aware of the close parallels between Mrs C's transfer and the warnings the FCA gave to consumers in 2014 (and subsequently passed on to firms) about transferring to SSASs in order to invest in unusual investments. But the most egregious oversight was Quilter's failure to uncover the threat posed by a non-regulated adviser. Its failure to do so, and failure to warn Mrs C accordingly, meant it didn't meet its obligations under PRIN and COBS 2.1.1R.

With those obligations in mind, it would have been appropriate for Quilter to have informed Mrs C that the person she had been advised by was unregulated and could put her pension at risk. Quilter should have said only authorised financial advisers are allowed to give advice on personal pension transfers, so she risked falling victim to illegal activity and losing regulatory protections. It would also have been appropriate for Quilter to have informed Mrs C of the other warning signs it had identified. I've seen nothing that leads me to think Quilter could reasonably have dismissed these warning signs and proceeded with Mrs C's transfer without informing her of its findings.

I don't think this would have been a disproportionate response given the scale of the potential harm Mrs C was facing and Quilter's responsibilities under PRIN and COBS 2.1.1R. And I don't think any such warnings would reasonably have caused Quilter to think it was running the risk of advising Mrs C, that it was replicating the responsibilities of the receiving scheme, or that it was putting in place unnecessary barriers to exit.

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

Mrs C has told us that she and Mr C were asked to obtain a classification as high-risk investors from their accountant which initially made her feel uneasy. She further said, “The request was presented in a way that made it seem necessary, implying that refusing could jeopardize our investment. [Mr W] even gave us the exact wording – a single sentence – to send to our accountant, making it feel like a mere formality rather than a significant financial decision. Additionally, [Mr W] emphasized our financial position – owning a mortgage-free property in Spain from my parents [sic] small inheritance – enabled me to pay off my mortgage. [Mr C’s] mortgaged house […] and my healthy [occupational] pension pot – placed us in a higher wealth bracket. This portrayal added to the pressure and gave the impression that our reclassification was justified, even though we were not truly comfortable with being labelled high-risk investors.”

I appreciate that Mrs C was introduced to ROC and the idea of investing in overseas property company loan notes through an acquaintance who may have been persuasive in any promises of better returns for Mrs C’s and her husband’s pensions. But if the scam risk of unregulated overseas schemes and the illegal activity of unregulated pension transfer advice had been pointed out to her, I’m satisfied that this would have had more weight than the influence of an acquaintance and would have made Mrs C and her husband stop and think about the risk they were taking. Mrs C has mentioned that she had felt uneasy at a few steps, such as being re-classified as high-net-worth/high-risk investors. And her testimony makes clear that she and her husband were following each step guided and influenced by Mr W and ROC. So warnings from Quilter, a source outside of that influence, would have made a difference. But when asked, she also confirmed that she had never received or seen a warning leaflet such as that of the Scorpion campaign – and I have seen no evidence that any of the other providers in the transfer to Quilter provided such warnings to her and her husband. Even if she had received this, at this point she was still dealing with a regulated adviser and was transferring to Quilter, a well-established, regulated provider, so any scam warnings at that point would have not seemed relevant.

Mrs C also transferred her money purchase part of her occupational pension to Rowanmoor in 2017 (after she had already transferred her defined benefit part to Quilter in 2016.) We don’t hold much information about this later transfer, but I have not seen any evidence that Mrs C received any warnings then either.

I think it’s plausible that warnings such like the ones in the campaign – given to her directly, outside of the influence of ROC and Mr W – would have resonated with Mrs C, as she would have seen the parallels in the scam warnings to the advice she and her husband had received for the transfer into the SSAS. So if she’d had received information and warnings from Quilter, I think she likely would have paused and reconsidered the transfer.

So, I consider that, if Quilter had acted as it should, Mrs C would not have proceeded with the transfer out of her personal pension or suffered the investment losses that followed. I therefore intend to uphold Mrs C’s complaint.”

Responses to my Provisional Decision

In response to my provisional decision, Quilter has come back and made some additional comments.

Firstly, it disagreed with my findings that further warnings would have made a difference in the course of the transfer and says that it would not have resulted in Mrs C changing her mind. That's because Quilter says it was used as a 'stepping stone' to consolidate pensions, but the real destination of the whole transfer process was the SSAS. It said this is evidenced by the SSAS having been registered before the transfer of Mrs C's large occupational pension transfer was received, and the fact that shortly after Mr and Mrs C's transfers to Quilter from some of their respective pensions had been made, the investments were changed from a diversified portfolio to a cash fund.

It may well have been the case that the intention of Mr W, their introducer, had always been the transfer of Mrs C's pension to the SSAS, even though it's unclear how far that had been understood from the outset by Mrs C. However, even if that were the case and Mrs C was aware of this, the crucial point is whether any further communication and warnings from Quilter would have changed the course of the transfer, regardless of what the initial intention was.

In a scenario like this, where Quilter has failed in its duties to Mrs C (as I set out in my provisional decision), I can't know for certain what Mrs C may have done instead. So I have to base my decision on what I think would, more likely than not, have happened if Quilter had complied with the PSIG code and warned Mrs C accordingly.

It's not disputed that Mrs C was heavily influenced by the advisers and introducer involved. And Quilter has also raised the argument that if Mrs C was already uncomfortable with being classed as a high-risk investor, the fact that she still went ahead with the transfer shows she was willing to move her pension, irrespective of any warnings. But I don't think this is a fair or reasonable conclusion to reach. A warning 'from the outside', i.e. not coming from the same sphere of her advisers and Mr W, would have likely balanced that influence and had an effect. Ultimately, Quilter played an important role in the process with responsibilities under the Scorpion and PSIG guidance and it was its duty to warn customers like Mrs C against precisely the scenarios she experienced.

Even if the intention may have always been to use Quilter as a 'stepping stone' and warnings had come 'mid process', I think that they still would have had an impact. Mrs C may have had some reservations about the reclassification of her and her husband's attitude to risk. But her compliance with this was based on her trust for the parties advising her. The warnings that Quilter should have provided would more likely than not have caused her to question the trust she was placing in those parties. She would have been made aware that they were not regulated to be advising her as they were, and the implications of that. I can't overlook the fact that the PSIG code existed to provide a way for Quilter to help Mrs C avoid falling victim to this situation. I think that Quilter's complying with that guidance more closely would, on a balance of probability, have had the intended effect. Which was to adequately warn Mrs C against the risks of what she was intending to do with her pension.

Quilter argues that the SSAS and its trustees are the party most directly responsible for the investment losses that Mrs C suffered. So it says that Mrs C's complaint should have gone to the Pensions Ombudsman (TPO) instead, as only TPO has the remit to look into the administration of occupational schemes such as a SSAS. Quilter alleged that the Financial Ombudsman Service only reached the preliminary findings about Quilter because it doesn't have jurisdiction over Rowanmoor, but that Rowanmoor should be held accountable.

It is correct that this Service does not have the remit to assess whether Rowanmoor has done anything wrong, this would indeed fall into the jurisdiction of TPO. However, Mrs C brought her complaint about Quilter as a ceding scheme to our Service and under the Memorandum of Understanding between the two organisations, both TPO and our Service have the remit to look into complaints about the administration of personal pensions. Mrs C held a personal pension with Quilter, which is subject to this complaint, and as a pension holder she is an eligible complainant under the DISP rules. So it was her choice to approach the Financial Ombudsman Service about her complaint about Quilter and it falls into our jurisdiction. It's not our task to apportion blame for each party involved in a complaint, but to determine whether the respondent to a complaint has done anything wrong and needs to put things right. In this case, I looked into the responsibilities Quilter had under the Scorpion guidance and PSIG code and found that it did not meet its duties as a ceding scheme.

Quilter's argument is that the investments in the SSAS caused the loss, not the transfer away from Quilter. However, the investments would not have been made but for the failure to appropriately warn Mrs C about the risks of unregulated advisers, a transfer into the SSAS, and unregulated, overseas investments. As explained above, I think such warnings would have prevented the transfer. The purpose of the Scorpion guidance and the PSIG Code is to put responsibilities on ceding schemes to spot scam risks and warn members of those risks. And, as discussed in detail in my provisional decision, failing to do so where such a risk came to a firm's attention, or should have done so, would almost certainly lead to a breach of the regulator's principles and COBS 2.1.1R. Therefore, it's reasonable to hold Quilter responsible for the losses Mrs C has suffered.

Lastly, Quilter has argued that it could rely on Rowanmoor's legal and fiduciary duties and given Rowanmoor's size and long standing in the industry, it was reasonable to put it on its internal 'white list'. It also said that Rowanmoor as trustees of the SSAS had considerable duties and that s36 of the Pensions Act demanded that it seeks advice on the proposed investments.

To clarify, advice in line with s36 on the appropriateness of the investments was given to Mrs C as the member trustee, likely by ROC, as set out in my provisional decision. However, as mentioned above, whether or not Rowanmoor has failed in its duties as trustees is not subject to this complaint. What is determined is instead whether Quilter failed in its duties to warn Mrs C under the Scorpion guidance and PSIG code. Quilter also seems to make the assumption that any scheme approved by the HMRC can be treated as risk free, because "*HMRC only register schemes run by fit and proper people*". But I don't think that was a reasonable conclusion to reach as it is at odds with the purpose of the Scorpion guidance and PSIG code.

The PSIG Code at s6.11 allows for a 'white list approach' in which businesses can decide "*if they wish to build and maintain a process to manage a list of organisations, scheme or individuals that do or do not present a risk of pension scams and ensure that they have robust and ongoing due diligence to support it.*" Quilter has argued that Rowanmoor had legal and fiduciary duties, and it was a large and long-standing entity in the industry, so it relied on these factors to find Rowanmoor to be a trustworthy provider. However, even if Quilter had this belief, it did not provide us with any evidence of "*robust and ongoing due diligence"* which would support the decision to class Rowanmoor as such. In line with the purpose of the PSIG Code and the Scorpion guidance to protect consumers from scams, thorough due diligence would have involved finding out whether investments such as those the warnings pointed out – for example, unregulated overseas schemes and loan notes – were frequently allowed in SSASs (or other schemes) Rowanmoor administered. Ultimately, the transfer request was made to the W Ltd SSAS, and Quilter had not carried out any further due diligence on the scheme itself either, aside from checking its HMRC registration. Had it done so, then it would have found out that the scheme was newly set up and this would have prompted the need for further investigation under the check list of the PSIG Code.

So I'm not satisfied that Quilter could rely on either the size and industry position of Rowanmoor, or only the HMRC registration of the SSAS itself, to reasonably allow the transfer without further checks under the 'white list approach' of the PSIG Code.

Overall, I'm still of the opinion that had Quilter acted as it should have done and had communicated and provided further warnings to Mrs C, as it was its duty under the PSIG Code and the Scorpion guidance, then Mrs C's transfer to the SSAS could have been prevented and she would not have lost out on her pension funds as she did.

I'm therefore upholding her complaint and direct Quilter to put things right as set out below.

Putting things right

My aim is that Mrs C should be put as closely as possible into the position she would probably now be in if Quilter had treated her fairly.

The SSAS only seems to have been used in order for Mrs C to make an investment that I don't think she would have made from the proceeds of this pension transfer, but for Quilter's actions. So I think that Mrs C would have remained in her pension plan with Quilter and wouldn't have transferred to the SSAS.

To compensate Mrs C fairly, Quilter should subtract the proportion of the actual value of the SSAS which originates from the transfer of Mrs C's pension, from the notional value if the funds had remained with Quilter. If the notional value is greater than the actual value, there is a loss.

Actual value

This means the proportion of the SSAS value originating from Mrs C's transfer (the **'relevant proportion'**) at the date of calculation. To arrive at this value, any amount in the SSAS bank account is to be included, but any overdue administration charges yet to be applied to the SSAS should be deducted. Mrs C may be asked to give Quilter her authority to enable it to obtain this information to assist in assessing her loss, in which case I expect her to provide it promptly.

As stated above, the aim is to return Mrs C to the position she would have been in but for the actions of Quilter. This is complicated where an investment is illiquid (meaning it cannot be readily sold on the open market), as its value can't be determined. On the basis of the evidence I have, that is likely to be the case with the Dolphin investment, because I understand the loan notes have lost their value. Therefore, as part of calculating compensation:

- Quilter should seek to agree an amount with the SSAS as a commercial value for the illiquid investment(s) above, then pay the sum agreed to the SSAS plus any costs, and take ownership of those investment(s). The actual value used in the calculations should include anything Quilter has paid to the SSAS for illiquid investment(s).

- Alternatively, if it is unable to buy them from the SSAS, Quilter should give the illiquid investment(s) a nil value as part of determining the actual value. In return, Quilter may ask Mrs C to provide an undertaking, to account to it for the net proceeds she may receive from those investments in future on withdrawing them from the SSAS. Quilter will need to meet any costs in drawing up the undertaking. If Quilter asks Mrs C to provide this undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

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

Notional value

This is the value of Mrs C's funds had he remained invested with Quilter up to the date of calculation.

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

Payment of compensation

I don't think it's appropriate for further compensation to be paid into the SSAS given Mrs C's dissatisfaction with the outcome of the investment it facilitated.

Quilter should reinstate Mrs C's previous Quilter pension plan as if its value on the date of calculation was equal to the amount of any loss established from the steps above (and it performs thereafter in line with the funds Mrs C was invested in).

Quilter shouldn't reinstate Mrs C's original plan if it would cause a breach of any HMRC pension protections or allowances – but my understanding is that it might be possible for it to reinstate a pension it formerly administered in order to rectify an administrative error that led to the transfer taking place. It is for Quilter to determine whether this is possible.

If Quilter is unable to reinstate Mrs C's pension and it is open to new business, it should set up a *new* pension plan with a value equal to the amount of any loss on the date of calculation. The new plan should have features, costs and investment choices that are as close as possible to Mrs C's original pension.

If Quilter considers that the amount it pays into a new plan is treated as a member contribution, its payment may be reduced to allow for any tax relief to which Mrs C is entitled, based on her annual allowance and income tax position. However, Quilter's systems will need to be capable of adding any compensation which doesn't qualify for tax relief to the plan on a gross basis, so that Mrs C doesn't incur an annual allowance charge. If Quilter cannot do this, then it shouldn't set up a new plan for Mrs C.

If it's not possible to set up a new pension plan, Quilter should pay the amount of any loss direct to Mrs C. But if this money had been in a pension, it would have provided a taxable income during retirement. Therefore compensation paid in this way should be notionally reduced to allow for the marginal rate of income tax that would likely have been paid in future when Mrs C is retired. (This is an adjustment to ensure that Mrs C isn't overcompensated – it's not an actual payment of tax to HMRC.)

To make this reduction, it's reasonable to assume that Mrs C is likely to be a basic rate taxpayer in retirement. So, if the loss represents further 'uncrystallised' funds from which Mrs C was yet to take her 25% tax-free cash, then only the remaining 75% portion would be taxed at 20%. This results in an overall reduction of 15%, which should be applied to the compensation amount if it's paid direct to her in cash.

Alternatively, if the loss represents further 'crystallised' funds from which Mrs C had already taken her 25% tax-free cash, the full 20% reduction should be applied to the compensation amount if it's paid direct to her in cash.

If payment of compensation is not made within 28 days of Quilter receiving Mrs C's acceptance of my final decision, interest should be added to the compensation at the rate of 8% per year simple from the date of the final decision to the date of payment.

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

This interest is not required if Quilter is reinstating Mrs C's plan for the amount of the loss – as the reinstated sum should, by definition, mirror the performance after the date of any final decision of the funds in which Mrs C was invested. However, I expect any such reinstatement to be achieved promptly.

Details of the calculation should be provided to Mrs C in a clear, simple format.

<u>Our award limit</u>

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £170,000, plus any interest and/or costs/interest on costs that I think are appropriate. If I think that fair compensation is more than £170,000, I may recommend that the business pays the balance.

I do not know what award the above calculation might produce. So, for completeness I have included information below about what ought to happen if fair compensation amounts to more than our award limit.

Determination and money award: It's my decision that I require Quilter to pay Mrs C compensation as set out above, up to a maximum of £170,000 plus any interest and costs payable.
As I've said above, until the calculations are carried out, I don't know how much the compensation will be, and it may be nowhere near £170,000, which is the maximum sum that I'm able to award in Mrs D's complaint. But I'll also make a recommendation below in the event that the compensation is to exceed this sum, although I can't require that Quilter pays this.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £170,000, I also recommend that Quilter pays Mrs C the balance.

If Mrs C accepts my final decision, the money award and the requirements of the decision will be binding on Quilter. My recommendation won't be binding on Quilter.

Further, it's unlikely that Mr D will be able to accept my final determination and go to court to ask for the balance of the compensation owing to her after the money award has been paid. Mrs C may want to consider getting independent legal advice before deciding whether to accept this final decision.

My final decision

For the reasons given above, my decision is that I uphold Mrs C's complaint. I direct Quilter Life & Pensions Limited to compensate Mrs C in line with the approach outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 24 April 2025.

Lea Hurlin
Ombudsman