DRN-5182265

The complaint

Mr H has complained about a transfer of his personal pensions which were administered by Capita Life & Pensions Regulated Services Limited to a small self-administered scheme (SSAS[1]) in June 2014. Mr H's SSAS was subsequently used to invest in an overseas property development. The investment now appears to have little value. Mr H says he has lost out financially as a result.

Mr H's personal pensions were branded in the name of another pension provider. However, as Capita administered those and has accepted responsibility for dealing with the complaint, I will only refer to it within this decision.

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

What happened

Mr H held two personal pensions administered by Capita.

On 21 February 2024 Capita wrote to a firm called First Review Pension Services (FRPS). Capita said it was aware that Mr H wished to transfer his pension. It enclosed some forms that would need to be completed in order for that to happen.

Mr H says he became interested in a transfer following a cold call from either FRPS or another firm called Moneywise Financial Advisors Limited offering him a free pension review. He said an adviser then visited him and recommended he invest in an overseas hotel development run by The Resort Group (TRG). The adviser told him that the investment would produce an excellent return far outstripping what he might receive from his Capita pensions

In March 2014, a company was incorporated with Mr H as director. I'll refer to this as company B. On 26 March 2014, Mr H signed documents to open a SSAS with Rowanmoor Group PLC (Rowanmoor) as provider and Rowanmoor Trustees Limited were shown as the payee to receive the funds. Company B was recorded as the SSAS's principal employer. The application included Mr H's signed authority to allow Rowanmoor to gather information about his pensions from Capita. Mr H said on the SSAS application form that he was planning on investing in the TRG developments and that Moneywise was the trustee adviser.

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

On 2 May 2014 Rowanmoor sent Mr H's transfer papers requesting to transfer the funds from both his Capita personal pensions to company B's SSAS. Rowanmoor included a copy of the HMRC registration showing the SSAS was registered from 3 April 2014.

On 25 June 2014 Capita confirmed it had transferred funds of £36,736.84 and £31,117.33 from both of Mr H's pensions to his Rowanmoor SSAS. He was 57 years old at the time of the transfer.

I understand the TRG investment did initially provide some returns, but these were lower than expected and – from my understanding of events – these payments would have dried up around 2019. The investments are now considered illiquid and incapable of sale on the open market.

In the meantime, in 2018, Mr H – via his representatives – submitted a claim to the Financial Services Compensations Scheme[2]. Amongst other things Mr H said:

- Following an initial cold call an adviser from Moneywise visited him.
- The adviser assured him that he could obtain guaranteed, huge returns by transferring.
- Mr H understood he was receiving financial advice from a regulated independent financial adviser (IFA).
- The IFA recommended the transfer to the SSAS and the TRG investment.
- No other adviser or firm, other than the Moneywise IFA, provided any advice.

In May 2019 the FSCS agreed that Mr H had a valid claim against Moneywise. The FSCS said its aim was to put him back, as far as possible, to the position he'd been in if he hadn't received the advice. It paid him compensation of £50,000, which was the maximum sum payable under its rules.

In October 2020 Mr H complained to Capita. Briefly, his argument is that Capita ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including (but not limited to) the following: the SSAS was newly registered, there wasn't a genuine employment link to the sponsoring employer, the catalyst for the transfer was an unsolicited call and he had been advised by an unregulated firm.

Capita didn't uphold the complaint. It said that none of the information it had about the transfer at the time gave it cause for concern. It said it had issued the Scorpion leaflet – which I say more about below – via Moneywise. It also referred to the involvement of a well-known firm in Rowanmoor and said it was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

Mr H brought his complaint to the Financial Ombudsman Service. One of our Investigator's looked into it. He didn't think Capital had treated Mr H fairly. So the investigator recommended the complaint be upheld and for Capita to take action to put things right.

Capita didn't agree with our Investigator's complaint assessment. As our investigator was

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[2] The FSCS helps consumers when a financial business is unable – or likely to be unable – to pay compensation due from a claim against the business. This usually happens when a business is insolvent or has stopped trading and doesn't have enough assets to pay claims made against it. In either situation, the FSCS can declare a business to be "in default" and so confirm that it will accept complaints about it.

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

Provisional decision

On 5 November 2024 I issued a provisional decision setting out why I didn't think the complaint should be upheld. I invited the parties' comments. However, neither Capita nor Mr H, via his representatives, had any substantive remarks to make.

As neither party has objected to my provisional findings I see no reasons to alter those. So, I have repeated my provisional findings below, as my final decision, and have not therefore included any further detail of them here.

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.

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

The relevant rules and guidance

Personal pension providers are regulated by the FCA. Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority (FSA). As such Capita 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 comprised the following:

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

- A longer leaflet issued by TPAS which gives more information, including example scenarios, about pension liberation. Guidance provided by TPR on its website at the time said this longer leaflet was intended to be sent to members who had queries about pension liberation fraud.

- An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "look out for" various warning signs of liberation. If any of the warning signs applied, the action pack provided a checklist that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where transferring schemes still had concerns, they were encouraged to write to members to warn them of the potential tax consequences of their actions; to consider delaying the transfer; to seek legal advice; and to direct the member to TPAS, TPR or Action Fraud.

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 statutory rights.

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

In those circumstances, I consider firms which received pension transfer requests needed to pay regard to the contents of the Scorpion guidance as a matter of good industry practice. It

means February 2013 marks a turning point in terms of what was expected of personal pension providers dealing with transfer requests as a matter of fulfilling their duties under the regulator's Principles and COBS 2.1.1R.

What did personal pension providers need to do?

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. And where the recommendations in the guidance applied, without a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations. With that in mind, I take the view that personal pension providers dealing with transfer requests needed to heed the following:

1. As a first step, a ceding scheme needed to check whether the receiving scheme was validly registered.
2. When TPR launched the Scorpion guidance in February 2013, its press release said the Scorpion insert should be provided in the information sent to members requesting a transfer. It said on its website that it wanted the inclusion of the Scorpion insert in transfer packs to "become best practice". The Scorpion insert provided an important safeguard for transferring members, allowing them to consider for themselves the liberation 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 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 pension liberation scams and undertake further due diligence and other appropriate action where it was apparent their client might be at risk. The action pack 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?

I've noted that there's been a couple of inconsistencies in Mr H's accounts of what's happened particularly around which firm gave him advice. That's certainly not unusual given the passage of time. However, Mr H has been consistent that he was initially approached via cold call and then an adviser visited him.

In his complaint to the Financial Ombudsman Service Mr H said, via his representatives, that the cold call was made by either FRPS or Moneywise and then it was an adviser from FRPS that called on him. However, in his claim to the FSCS he believed he'd been cold called by a body called "First Choice" and then it was an adviser from Moneywise who visited and advised him.

I've noted that Capita sent Mr H's pension information to FRPS in February 2014. Capita said that FRPS was a trading name of Moneywise. It added that Mr H had appointed Moneywise as his financial adviser. In 2014 Moneywise was FCA authorised to give financial advice, although it no longer is and has been found to be in default.

I've noted that Mr H initially referred to receiving a cold call from "First Choice". However, he later said that it was First Review Pensions Service (FRPS) which called him. I'm not familiar with First Choice as an introducer firm. However, I'm aware from other cases we've considered that FRPS contacted many people around that time offering pension reviews. So, I think that it's more likely than not that it was FRPS which cold called Mr H offering a pension review.

In his complaint to the Financial Ombudsman Service Mr H has said that it was FRPS which also advised him. However, in his claim to FSCS Mr H was very clear in that it was Moneywise's adviser who had visited him and given him advice. He said that no other firm was involved in giving him advice. And that at all times he understood that the adviser was fully regulated to advise him. I also note that Mr H submitted that claim in 2018, and while that was still some four years after the events complained about, it's likely he had a clearer memory of who did what then, rather than when he complained to Capita in 2020 or when he responded to our Investigator's request for further information in 2024.

Moneywise was named on the SSAS application form as the 'trustee adviser' and Capita also understood that Mr H had appointed Moneywise as his financial adviser. And while I've seen no written evidence of Moneywise's advice to Mr H, I've seen no evidence of written advice from any other entity either. But the above information corroborates Mr H's testimony in his FSCS application, which he signed to say was true and correct and that he had revealed all relevant facts, that it was Moneywise who gave him advice to transfer.

I also haven't seen anything about Mr H's circumstances or what he's said that leads me to think he'd likely have embarked on such a complicated arrangement on his own – setting up a new company, opening a SSAS, transferring his existing pension and investing in an overseas property development. And I think it was likely the promise of better returns that led him to transfer.

But given the information I've set out above I can't reasonably say that it was FRPS that made the promise or any recommendation to invest. Instead, I think it's more likely than not that – after making the initial cold call – FRPS arranged for Moneywise to act as Mr H's financial adviser. And it was Moneywise's representative who visited him at home. The IFA then advised him to set up a company, establish a SSAS, transfer his pension and invest in TRG.

What did Capita 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.

In this instance Capita confirmed that it did not send the Scorpion leaflet directly to Mr H. Instead Capita sent it to FRPS, which it believed was a trading style of Moneywise. But I don't think it was reasonable for Capita to rely on a third party to pass on information that could prevent its customers from being scammed out of their pensions. So, I think it should have sent the Scorpion insert directly to Mr H but it didn't do so.

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 needed to undertake further due diligence and other appropriate action if it was apparent their customer might be at risk. Capita didn't undertake any further due diligence.

When Rowanmoor submitted the transfer request it sent Capita a copy of HMRC's SSAS registration from April 2014, which was just one month prior to Rowanmoor submitting the transfer request. One of the warnings signs the Scorpion guidance advises ceding schemes, like Capita, to be on the look out for is a scheme that was recently registered. Given this warning sign, I think it would have been fair and reasonable – and good practice – for Capita to have looked into the proposed transfer. The most reasonable way of going about that would have been to turn to the checklist in the action pack to structure its due diligence into the transfer.

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

1. The nature/status of the receiving scheme

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

2. Description/promotion of the scheme

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

3. The scheme member

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

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

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

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

- Mr H was already aged 57, so there was no risk of him trying to access his funds before the age of 55, which was what the Scorpion guidance primarily focused on at that time.
- His reason for setting up the SSAS and transferring didn't involve a cash payment, loan or other incentive. So he wasn't intending to liberate his funds, that is to access his pension in an unauthorised way.
- A fully FCA authorised firm – Moneywise – was advising him.

However, Mr H's chosen overseas investment vehicle, TRG, could have raised some concerns. As could his decision to set up a dormant company, company B, for the purposes of establishing a SSAS without a genuine employment link to the sponsoring employer. And Mr H has argued that Capita should have brought these warning signs to his attention.

But I think those arguments misread what was reasonable to expect of transferring schemes at that time. Investigations into the receiving scheme, sponsoring employer and intended investments were a means to an end: to establish the risk of liberation. Once that threat was discounted then I think it reasonable for ceding schemes to consider the scam threat as being minimal and process the transfer as normal.

I also see no persuasive reason why a ceding scheme needed to share with its members the liberation warnings signs it found – but discounted – during its due diligence process or its reasons why it might have thought at some point liberation was a possibility. As I've said previously, a firm needed 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 statutory rights. Expecting a firm to share its due diligence "workings" in this way would cut across this (and could potentially be viewed as a self-serving tactic to hold on to a customer).

And, regardless of the apparent warning signs I think if Capita had asked Mr H about his intended investments and the set up of the SSAS it seems unlikely his responses would have caused Capita to refuse or delay the transfer. That's because, as I've already said, Mr H was already over 55 years old and wasn't intending to access his funds in an unauthorised manner. He was also clear in his evidence to the FSCS that he was receiving advice from Moneywise and that no other party had advised him. And, taking advice from a

regulated firm afforded him regulatory protections, which he later used when claiming to FSCS.

Further, where a ceding scheme like Capita believed a regulated adviser had provided appropriate financial advice it's unlikely it would intervene further even where the chosen investment products might otherwise give rise to a risk warning. That's because at that time Capita's role was not to give Mr H advice about the suitability of a transfer, his chosen investments or his method of making that investment. Its role in doing due diligence would principally have been to ensure Mr H was transferring to an appropriately registered scheme (he was) and to give him the warnings associated with pension liberation or scams and transfer risks in general.

As I've said above Mr H's evidence is that he was not looking to liberate his pension. And if Capita had questioned him about it, his response would have been that his motivation for transferring was because of the greater returns Moneywise, an authorised adviser, had recommended. And it's likely Capita would have reasonably expected a regulated financial adviser to give Mr H appropriate advice about the dangers of pension liberation and the risks of a transfer more generally.

As I've said previously, a firm needed 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 statutory rights.

Also, Mr H clearly believed an authorised advising firm in Moneywise was providing advice. So he wouldn't have given the impression that he was being led through a process by another party acting in a potentially unlawful way – which would be the usual pattern for someone falling victim to a scam. And, Mr H only needed to be employed to be a member of a SSAS, he didn't actually need to be employed specifically by the SSAS' sponsoring employer. So, I'm satisfied Capita wouldn't, reasonably, have thought a scam was in progress.

I'm also not persuaded that Mr H would have stopped the transfer even if Capita had done more thorough due diligence in line with the Scorpion action pack. The end result of any such due diligence wouldn't have resulted in Capita giving any warnings to Mr H. He wasn't trying to liberate his pension and he believed an FCA authorised firm was advising him. And I don't think the mere act of contacting Mr H and asking questions about the transfer would have prompted a change of heart. Capita would have asked any due diligence questions with the intention of establishing whether Mr H was facing a liberation risk – a risk that doesn't appear to apply here.

Similar considerations apply to the sending of the Scorpion insert. As discussed previously, Capita should have sent this directly to Mr H but didn't do so. But I think the content of the Scorpion insert at that time was unlikely to have resonated with Mr H. At that time the insert was focussed on the threat posed by liberation – and the consequences of taking cash from a pension before the age of 55 in particular. So I don't think it would have dissuaded Mr H from transferring given he intended to do so for different reasons.

Further, as Mr H's representatives are aware, it was only after this transfer completed that TPR's guidance widened into scams more broadly, supplemented by the increasing exposure of the FCA's own awareness campaign about SSAS transfers, where the nature of the investment Mr H was making would have attracted more scrutiny.

It follows that while I think that Capita should have done more than it did, I don't think those actions would have made a difference to the outcome. That's because Mr H believed an

appropriately qualified individual from an authorised firm was advising him. So I don't think it's likely that he would have told Capita that his adviser was unauthorised.

My final decision

For the reasons given above I do not uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 30 December 2024.

Joe Scott
Ombudsman