

The complaint

Mr W has complained, via a Claims Management Company ('CMC'), about a transfer of his Capita Life & Pensions Regulated Services Limited ('Capita') personal pensions to a small self-administered scheme ('SSAS') in October 2015. Mr W's SSAS was subsequently used to invest in Llana Beach Resort, an overseas commercial property development in Cape Verde. The investment now appears to have little value. Mr W says he has lost out financially as a result.

Mr W says Capita failed in its responsibilities when dealing with the transfer request. He says that it should have done more to warn him of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance he says was required of transferring schemes at the time. Mr W 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 W says he had a meeting at his home with an individual who he thinks was a representative of First Review Pension Services Limited ('FRPS') or Strategic Alternatives Limited. This followed an unsolicited telephone call in which he was offered a free review of his pensions. He says this individual advised him to transfer two personal pensions he had with Capita to a SSAS, and to invest in an overseas commercial property development in Cape Verde.

Mr W signed a letter of authority allowing FRPS to obtain details, and transfer documents, in relation to his pensions. FRPS then wrote to Capita requesting information about Mr W's pensions and discharge forms to allow a transfer. Capita sent FRPS the requested information on 8 June 2015, and it enclosed an *"awareness campaign leaflet that was published recently by The Pensions Regulator regarding pension scam activity for your information."* FRPS wasn't authorised by the Financial Conduct Authority ('FCA').

Mr W says he was attracted by what he thought was a realistic opportunity to achieve a significantly higher investment return than what he was currently receiving. He says he had no knowledge of investments or pensions, and he trusted the advice and information he was given.

Mr W has said that at the time, he was earning around £22,000 a year.

In June 2015, a company was incorporated with Mr W as Director. I'll refer to this company as 'Business O.' On 13 July 2015, Mr W signed documents to open a SSAS with Rowanmoor Group plc ('Rowanmoor'). Business O was recorded as the SSAS's principal employer, and Strategic Alternatives Limited was recorded as the trustee adviser. It was also recorded that an arrangement fee of £125 would be paid from the SSAS to Strategic Alternatives Limited. The SSAS documents also recorded that the SSAS was to be used to invest around £47,400 in fractional ownership of a unit in a development called Llana Beach Resort in Cape Verde, which was being developed by The Resort Group ('TRG').

On 31 July 2015, Rowanmoor sent Mr W's transfer papers to Capita by post. Included in the transfer papers were: transfer authorities for both of Mr W's pensions that had been signed by him and completed with the details of his Capita pensions, and ceding scheme information forms for Capita to complete in relation to each pension.

On 6 August 2015, Capita sent Rowanmoor transfer discharge forms and receiving scheme warranties to complete, and a copy of the same pension scam warning leaflet that it had previously sent to FRPS.

Then on 26 August 2015, Rowanmoor returned the completed transfer discharge forms and warranties for both of Mr W's pensions to Capita, along with a letter from HMRC confirming that the SSAS had been registered on 31 July 2015.

On 1 September 2015, Capita wrote to Mr W stating *"Please find enclosed an awareness campaign leaflet that was published recently by the Pensions Regulator regarding pension liberation activity for your information. Further details can be obtained from the Pension Advisory Service at the following internet address."* A website address was provided and a copy of the same leaflet Capita had previously sent FRPS and Rowanmoor was enclosed. The letter went on to request clarification about whether Mr W's divorce proceedings affected his pensions.

Mr W's pensions was then transferred on 7 October 2015. His transfer values were around £24,200 and £27,000 respectively. He was 47 years old at the time of the transfers.

Later in October 2015, Mr W invested £47,400 from his SSAS in a fractional share of a unit at the Llana Beach Resort. It seems the SSAS received sporadic rent payments in connection with the investment over the years until 2019. As I understand it, the investment did not perform as expected and it now has little to no value. There are legal difficulties with the title to the property and there's no market for the investment, so it's illiquid.

In June 2021, Mr W complained to Capita via the CMC. 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 (Business O was dormant and set up solely to facilitate pension holdings), the catalyst for the transfer was an unsolicited call, he had only been advised by unregulated businesses, and the proposed investment was in unregulated, overseas, high risk, non-diversified assets.

Capita didn't uphold the complaint. In summary, it said it wasn't its business to request information about the proposed investment, and in the circumstances it wasn't within its rights to halt or raise concerns about the transfer. It said none of the information it had about the transfer at the time gave it cause for concern, and that it was satisfied it had conducted an appropriate level of 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.

Provisional decision

I recently issued a provisional decision on Mr W's complaint explaining that I did not intend to uphold it. The reasons I explained were as follows:

"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 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 to 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 2000 ('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 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 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 SIPP's 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, which is relevant for this complaint. 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 March 2015 Scorpion guidance

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.

In the absence of more explicit direction, I take the view that the member-facing Scorpion warning materials were to be used in much the same way as previously, which is for the shorter insert (which had been refreshed in March 2015) to be sent when someone requested a transfer pack and the longer version (which had also been refreshed) made available when members sought further information on the subject.

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 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.

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

I set out above the chain of events that led to the transfers of Mr W's pensions based on the documents that have been provided to us by the CMC and Capita. I won't repeat all of that here, but I will refer to that documentation where necessary.

Mr W has provided us with submissions about the chain of events in addition to his documented complaint. He has been consistent throughout that the chain of events began with a cold call that was followed by a number of meetings at his home, and that during those meetings, he was given a recommendation to transfer his Capita pensions to a SSAS and invest in an overseas commercial property.

Mr W told our Investigator he couldn't recall who the person he dealt with was working for and that he hadn't previously been contacted about transferring his pensions. He said he was told his pensions could be in a better place and that they were costing him more where they were. He said he was provided with "glossy" promotional material for the investment and was shown graphs setting out the likely returns from it. His understanding of the investment at the time was that it was a single overseas property that would be rented out and he'd receive a percentage of the rent. He said the documents he was given included a leaflet with a scorpion on it. He didn't contact anyone about the transfer as the leaflet suggested, because he didn't think it would have been given to him by someone looking to take advantage of him.

Mr W said he was told the "review" of his pensions wouldn't cost him anything, although he thought the person he dealt with would have received a fee for "selling" the transfer to him. He said he wasn't offered any incentive for proceeding with the transfer and that at the time, he was single and simply wanted a better pension, and essentially, he was "sold the dream." Mr W said he wasn't contacted by anyone else about the transfer and that the documents he had to complete were sent to him by a courier.

I'm mindful the evidence of these events is limited to Mr W's own recollections, some promotional material about the investment and a business card he's sent us that he says was given to him by the person who recommended the transfer. I think that's understandable given those events took place several years ago, and this complaint is about Capita, who wasn't party to those particular events.

Based on the consistency of Mr W's submissions, I accept he was cold called. It's less clear who he was dealing with. In his complaint he said it was a representative of FRPS or Strategic Alternatives Limited, but Mr W told our Investigator he couldn't recall who the person he dealt with was working for. The business card he provided to us gave the name of a 'Consultant' from Choices Wealth Limited. The Directors of that business were also Directors of FRPS, and I note Capita's reply to the initial request it received for information about Mr W's pensions was addressed to FRPS and referred to correspondence it had received from them. Therefore I think the person Mr W dealt with was ultimately representing FRPS.

The pension arrangement Mr W transferred to was complex and unusual, especially with his circumstances and apparent lack of knowledge or experience of pensions and investments in mind. So I think it's unlikely he decided to enter into this arrangement on his own, or without advice or some form of recommendation to do so.

Mr W's recollections of what he was told about the transfer amount to him being told it would be advantageous to him – in effect, a recommendation to transfer. One of the Directors of both Choices Wealth Limited and FRPS was also a Director of TRG, the developer of Llana Beach Resort. That means FRPS likely had an interest in directing investment towards TRG developments. So, it's my finding that Mr W was contacted by a representative of FRPS, and advised by them to transfer his Capita pensions to a SSAS and then invest in the Llana Beach Resort.

In addition, Mr W's recollections indicate he was provided with a copy of the Scorpion leaflet by FRPS. He's said the documents he was given included a leaflet with a scorpion on it, and he didn't act on the contents of it because he didn't think it would have been given to him by someone trying to take advantage of him. I note Capita's response to FRPS's request for information about Mr W's pensions said an "awareness campaign leaflet that was published recently by [TPR] Pensions Regulator regarding pension scam activity" was enclosed. Capita sent us a copy of the longer version of the March 2015 Scorpion leaflet with its letter to FRPS. I think that leaflet was enclosed with Capita's response to FRPS and then given to Mr W by FRPS.

Capita's letter to Mr W on 1 September 2015 included the same reference to a leaflet being enclosed, and the copy of that letter it sent us was accompanied by the longer version of the March 2015 Scorpion leaflet as well. Mr W told our Investigator he doesn't recall receiving the leaflet from Capita, although he said in his complaint that the leaflet was provided with the letter. I think the leaflet was sent to him with Capita's September 2015 letter.

Mr W has explained he wasn't offered any incentive for proceeding with the transfer, and that his motivation for transferring was simply to get a better pension. I find what he's said about this to be persuasive and consistent with other evidence we've received showing no payments were made to him from the SSAS. So I consider that Mr W's motivation for transferring was accessing better investment returns on his pensions.

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.

It's common ground that Mr W received a copy of the Scorpion leaflet. What's in dispute is when this was provided to him and by who. Capita has said it sent the Scorpion insert to him with its letter dated 1 September 2015. Mr W said in his complaint that the Scorpion insert was provided with Capita's September 2015 letter, but the letter didn't draw his attention to it. Mr W told our Investigator that the Scorpion leaflet was given to him by FRPS amongst other documents, and that he didn't recall receiving it from Capita.

Capita's September 2015 letter included a clear and direct reference to the leaflet being enclosed and a website address containing further information about pension scams. I accept that letter was also a request for information about Mr W's divorce proceedings. Mr W doesn't recall receiving the leaflet from Capita, but he said in his complaint that it was provided with Capita's September 2015 letter. Weighing everything up, I think it's more likely than not that the leaflet was enclosed with this letter. Therefore it's my finding that Capita sent Mr W the Scorpion leaflet, albeit much later than the point in the course of the transfer that the PSIG Code said ceding schemes should send it.

Aside from Capita's September 2015 letter to Mr W, there's no evidence it sent him any other letters. I note Capita's letter to FRPS and its 6 August 2015 letter to Rowanmoor both said an "awareness campaign leaflet that was published recently by [TPR] regarding pension scam activity" was enclosed with them. Capita sent us copies of those letters along with the longer version of the March 2015 Scorpion leaflet. I'm prepared to accept the leaflet was enclosed with those letters. But all that means is that the leaflet was sent to FRPS and Rowanmoor. And that is contrary to the PSIG Code, which guided ceding schemes to send pension scam awareness material, including the Scorpion insert, to the member's home address with transfer packs. But as I explained above, I've found that Mr W was still given the Scorpion leaflet at the outset (by FRPS) despite Capita's failing.

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 Mr W'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 Capita's actions using the 2015 Scorpion guidance as a benchmark instead.

Capita says it received evidence that the SSAS was correctly registered with HMRC. It says Mr W was presented with the Scorpion warnings before he proceeded with the transfer and it received the completed relevant transfer forms from him. It says that where he proposed to invest his SSAS was not its concern. It's also highlighted that Rowanmoor were a well-established provider and were regulated in respect of their SIPP business.

Given the limited information it had about the transfer, and the Code's 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," and the fact that Capita received such a request for information about Mr W's pension from FRPS, I don't think Capita's due diligence should have ended there.

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 Capita could have taken comfort from this. I disagree. The Scorpion guidance gave ceding schemes an important role to play in protecting customers wanting to transfer a pension. It would defeat the purpose of the Scorpion guidance for a ceding scheme to have delegated that role to a different business – especially one that had a vested interest in the transfer proceeding. An important aspect in this is the fact that there is little regulatory oversight of SSASs like this; they don't have to be registered with TPR. In the absence of that oversight, Capita was assuming, in effect, that Rowanmoor would want to maintain its standing in the industry and the trustee subsidiary would comply with its legal and fiduciary duties. In the context of guarding against pension scams – and an environment where providers and trustees clearly didn't always act as they should have done – I don't consider this to have been a prudent assumption.

The fact that a different part of Rowanmoor's business was regulated by the FCA doesn't change my thinking on this. The key point is that Rowanmoor Group plc and Rowanmoor Trustees Limited (both of which were involved in the operation of the SSAS) weren't FCA-regulated, so I see no reason why they would have operated with FCA regulations and Principles in mind – or why their actions would have come under FCA scrutiny. As such, I'm not persuaded Capita could, reasonably, have derived sufficient comfort about the Rowanmoor SSAS as a destination for Mr W's transfer.

For the reasons given above, Capita could not have considered the receiving scheme/administrator as being free of scam risk. So the initial triage process should have led to Capita asking Mr W 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 full. Suffice to say, at least three of them would have been answered "yes":

- o Did receiving scheme/adviser or sales agents/representatives for the receiving scheme make the first contact (e.g. a cold call)?*
- o Have you been promised a specific/guaranteed rate of return?*
- o 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 makes the point 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 Capita should have addressed all four sections of the SSAS due diligence process and contacted Mr W to help with that.

What should Capita have found out – and would it have made a difference?

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

Capita would have known from the information provided to it that the SSAS had been registered with HMRC on the same date that Rowanmoor had sent it the transfer request. It could also have easily deduced that Business O was the sponsoring employer. A simple search of the Companies House register would have revealed that Business O had been recently incorporated, was a dormant company, and that Mr W was its Director. Keeping in mind Mr W's apparent lack of knowledge or experience of pensions and investments, if Capita had asked him whether he was employed by Business O and how it'd come to be set up, I think he would have told it that he'd been directed to establish the company to facilitate the transfer of his pension, that he had no employment link to it, and that he was employed elsewhere. Those discoveries should have caused Capita concern about the lack of employment link between Mr W and Business O.

To add to that, investigations under part (c) of the Code should have been particularly concerning to Capita. The Code repeatedly references cold calling and unsolicited approaches as being warning signs of a scam. If Capita had asked Mr W about how he'd become aware of the proposed scheme, I think he would have told it that events began with a cold call offering him a review of his pension. A representative of a company (that after some limited investigation Capita could have established was FRPS) visited his home further to that call and recommended a transfer to the scheme. That should have alerted Capita to the risk of a scam and prompted it to ask Mr W further questions.

If Capita had asked Mr W further questions about what he'd been told, I think Mr W would have said he'd been told his pensions would be in a better place, earning higher returns, if he transferred them to the SSAS and invested in an overseas property. Capita should have identified the investment was of a type the Code identified as being linked to high fraud risk. More importantly, Capita should have concluded it was likely Mr W had been advised to transfer by a representative of FRPS.

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 Capita should therefore have been concerned by FRPS's involvement because it pointed to a criminal breach of FSMA. On the balance of probabilities, I'm satisfied such a breach occurred here. Capita's failure to uncover that and to warn Mr W 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 Capita to have informed Mr W that the person he had been advised by was unregulated and could put his pension at risk. Capita should have said only authorised financial advisers are allowed to give advice on personal pension transfers, so he risked falling victim to illegal activity and losing regulatory protections. It would also have been appropriate for Capita to have informed Mr W of the other warning signs it had identified. I've seen nothing that leads me to think Capita could reasonably have dismissed these warning signs and proceeded with Mr W's transfer without discussing them with him.

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

What I need to consider now is whether receiving further warnings from Capita would have changed Mr W's mind about proceeding with the transfer

Mr W said in his complaint that if Capita had warned him about the risk factors involved in the transfer, he would have heeded those warnings and decided not to proceed with the transfer. A number of the warning signs that I've found Capita should have informed him of were clearly set out in the longer version of the March 2015 Scorpion leaflet. The leaflet gave a clear warning about dealing with unregulated advisers and it explained how scheme members could check the adviser they're dealing with is registered by the FCA. The essence of that warning is the same as the warning Capita should have given Mr W about dealing with FRPS.

In the section 'How to spot the warning signs,' the leaflet set out what it said were "some of the most common tactics used by scammers to trick you out of your savings." These included:

- *"A cold call...offering you a **"free pension review"**"*
- *"Overseas transfer of the funds"*
- *"Convincing marketing materials"*
- *"Paperwork delivered to your door by courier"*
- *"A proposal to put your money in a single investment. **In most circumstances, financial advisers will suggest diversification of assets.**"*

By the time Mr W received the leaflet from FRPS, he would have known all of these warning signs were present in his transfer. And certainly by the time the leaflet was provided to him again by Capita. Mr W would have known he had been cold called and offered a free review of his pensions. He's told us he understood the proposed investment to be in a single property overseas, that he was provided with "glossy" promotional material for the investment, and that documents for him to sign were sent to him by a courier. So, the contents of the leaflet should have resonated strongly with Mr W and put him on notice that there were warning signs of a scam in his transfer. But that didn't deter him from transferring.

Mr W has said he didn't act on the contents of the Scorpion leaflet because he didn't think it would have been given to him by someone trying to take advantage of him. But that couldn't have been the case when Capita sent it to him though, given it wasn't trying to take advantage of him.

Mr W said in his complaint that his attention wasn't drawn to the Scorpion leaflet in any way by Capita's September 2015 letter. He also told our Investigator that he doesn't recall receiving the leaflet from Capita. That was a number of years ago though and it's not in dispute that the letter was sent to him. The letter began by stating:

"Please find enclosed an awareness campaign leaflet that was published recently by [TPR] regarding pension liberation activity for your information.

Further details can be obtained from [TPAS] at the following internet address."

That clearly drew the Scorpion leaflet enclosed with the letter to Mr W's attention. I accept the letter went on to ask him for information about his divorce proceedings. But that request didn't mean the Scorpion leaflet had no relevance to Mr W, and I don't think that led him to not consider the leaflet.

The warnings given in the Scorpion leaflet did not dissuade Mr W from proceeding with the transfer. Consequently, taking everything I've said above into account, it's my view that had Capita informed Mr W of the warning signs it should have identified in relation to his transfer, I don't think that would have led him to decide not to transfer."

Responses to my provisional decision

I provided Mr W and Capita with the opportunity to make any further submissions before I reached my final decision.

Capita confirmed it had nothing further to add and it accepted my provisional findings.

Mr W's CMC said he did not accept my provisional findings. They disagreed with my conclusion that had he received further warnings from Capita he would still have transferred his pensions.

I've reviewed their submission in full and I consider their main points to be as follows:

- The PSIG Code and the Scorpion guidance show the regulators' view was that it wasn't sufficient for ceding schemes to just send out the Scorpion leaflet in situations where scam warning signs were present and identifiable.
- There would have been a fundamental difference between warnings from Capita and the Scorpion leaflet.
- Warnings from Capita would have been bespoke and specific to Mr W's transfer request, and they would have been preceded by communication from Capita asking Mr W questions about his transfer. So the warnings from Capita would have come across as warnings he should specifically take heed of.

- Mr W was not invited to review the Scorpion leaflet carefully and to pause to think about whether he wanted to go ahead. In contrast, the warnings that Capita should have given him would have been structured as a pause to the transfer process to give him an opportunity to reconsider.
- Mr W could not have identified from the Scorpion leaflet alone the concern about dealing with an unregulated adviser, that it was FRPS who had advised him, that they were unregulated, and that in doing so FRPS were breaking the law.
- Had Capita provided Mr W with further warnings, it's highly likely he would have been prompted to think carefully about whether he ought to rely on what FRPS had told him. He would have had far more relevant knowledge about the risks present. He would have known that FRPS were unregulated and that it was an important part of a potential scam to have been cold called by them.
- The history of how Mr W had managed his pensions with Capita does not show someone who, when properly informed, would ignore warnings of a scam. He had previously opened one of these pensions with the advice of a regulated financial adviser. So there's no basis for doubting he would have engaged and paid for properly regulated advice had he been made aware FRPS were not regulated.
- The correct level of communication from Capita would have informed Mr W that: he ought to be wary of FRPS because they were unregulated; the SSAS structure was a sham; and investing in an unregulated investment meant he'd lose all regulatory protection and so he may well be moving into a pension scam scheme. This level of warning would have led him not to transfer.
- A significantly fairer outcome to Mr W's complaint would be to uphold it on the basis Mr W would not have transferred, but to make a deduction for contributory negligence to reflect the Scorpion warning he received but did not act on.

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.

When considering what is fair and reasonable, I am required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

Where the evidence is incomplete, inconclusive, or contradictory, I've reached 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.

Before setting out the reasons for my decision, I'd like to confirm I've carefully considered everything that has been submitted to us in this case. Although, for clarity, I haven't responded to every point that has been made. I've focussed my reasoning on what I consider to be the main points. I hope neither Mr W nor Capita will take this as a discourtesy.

I haven't been provided with any further submissions relating to my findings about what happened, Capita's due diligence and what it should have done differently. So I won't revisit my findings about all of that which I set out above.

The issue I need to determine here is if Capita had sent Mr W further warnings about the risks of a scam in his transfer as it should have done, would Mr W have still transferred?

As I explained above, the PSIG Code and the Scorpion guidance asked ceding schemes to do more than just send their members the Scorpion leaflet. I've found Capita did not do what the Code and the guidance said it should do in dealing with Mr W's transfer request. That on its own does not lead straight to the conclusion that if Capita had done what it should have, Mr W would not have transferred. Nor does the fact on its own that Capita sent Mr W the longer version of the March 2015 Scorpion leaflet lead straight to the conclusion that if Capita had done what it should have, Mr W would have still transferred. But given the contents of the Scorpion leaflet, the fact Mr W received it is highly relevant to determining if he would have still transferred because it's contemporaneous evidence of what he actually did in response to some significant, and pertinent, warnings.

I accept that warnings from Capita, especially that only authorised financial advisers are legally allowed to give advice on personal pension transfers and that FRPS were not authorised, would have been more specific than those in the Scorpion leaflet. The context of such warnings would have been Capita raising concerns about the risk of Mr W losing his pension as a result of unregulated and untrustworthy advice.

However, the longer version of the March 2015 Scorpion leaflet I've found Mr W was sent by Capita also stressed the importance of getting advice from an adviser authorised by the FCA. In the section 'Pension scams: the facts,' it said *"You might also want to speak to an adviser who is authorised by the [FCA] before making any decisions that could affect the rest of your life."* An example of a pension scam scenario was included in the leaflet that highlighted the threat of an adviser not registered with the FCA. And in the section 'How to scamproof yourself,' it said *"Make sure the adviser is registered by the [FCA]...If the adviser isn't registered, you risk losing everything."* The leaflet did not go so far as to explain that unregulated advisers might be breaking the law. But the context of the leaflet was clear: that it was to help individuals protect themselves from pension scams. And the leaflet made clear that dealing with an unregulated adviser was a warning sign of a scam which posed the risk of an individual's pension being lost.

Mr W's CMC says he understood at the time that FRPS were of a similar professionalism and knowledge to that of a regulated adviser who they say had previously provided him with pensions advice. They say Mr W would undoubtedly have engaged and paid for properly regulated advice as he had done before had he been made aware FRPS were not regulated. Mr W has maintained throughout his complaint that he was told the service he was receiving was free. He hasn't recalled being told at the time that he was dealing with individuals and/or firms that were regulated.

I'm not persuaded Mr W could reasonably have considered his previous adviser and FRPS as being equivalent given FRPS did not charge for their services - which he would have known was odd - and the Scorpion leaflet also warned about free pension reviews.

The fact the Scorpion leaflet was not as specific as warnings from Capita would have been does not mean Mr W would not have considered it. The leaflet was sent to him by Capita with a one page letter that, after confirming Capita's receipt of his discharge forms, said:

"Please find enclosed an awareness campaign leaflet that was published recently by [TPR] regarding pension liberation activity for your information."

That made clear the leaflet had come from the industry regulator, and its purpose was to raise awareness around pension liberation. I've found Mr W wasn't transferring his pension to liberate it, but I don't think he would have known at the time what pension liberation was such that he would have thought the leaflet was irrelevant to him.

The letter did not necessarily need to direct Mr W to give the leaflet careful consideration for him to be moved to do so. The leaflet featured on its cover a distinctive picture of a scorpion with the statements:

“Scamproof your savings

Pension scams. Don't get stung.”

As I explained in my provisional findings above, the leaflet set out a number of warning signs that Mr W would have known, from only a brief consideration of the leaflet, were present in his transfer by the time he received it from Capita. I don't consider he would have needed to be told those warnings were present in his transfer for him to have recognised that they were, and that the leaflet was therefore relevant to him.

Despite how Mr W had managed his pensions previously, the evidence is that he wasn't dissuaded from transferring his pensions by the Scorpion leaflet. And that leaflet made clear there were several warning signs of a pension scam in his transfer, and that he risked losing his pension savings if he proceeded.

In summary, I've found Capita did not meet its responsibilities to Mr W in dealing with his transfer request. Those responsibilities should have led it to identify and communicate to Mr W a number of warning signs of a pension scam in his transfer. If Capita had done that though, I don't think Mr W would have changed his mind about transferring because he was not dissuaded from transferring by the Scorpion leaflet that communicated a number of those warnings to him.

I've considered Mr W's CMC's comments that upholding his complaint and making a deduction for contributory negligence would be a fairer outcome to his complaint. To reach the position to consider doing that, I'd have to conclude first that Mr W would not have transferred if Capita had sent him further warnings. But as I've explained above, that isn't the conclusion I've reached.

My final decision

For the reasons I've explained, I don't uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 7 January 2025.

Asa Burnett
Ombudsman