DRN-5219710

The complaint

Mr P has complained about a transfer of his personal pension with Nucleus Financial Services Limited (Nucleus) to a small self-administered scheme (SSAS) in late March 2015. Mr P's SSAS was subsequently used to invest in an overseas property development – White Sands Beach Resort in Cape Verde – through The Resort Group (TRG). The investment now appears to have little value. Mr P says he's lost out financially as a result.

Mr P says Nucleus failed in its responsibilities when dealing with the transfer request. He says it should've 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 P says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Nucleus had acted as it should've.

What happened

I issued a provisional decision on 3 December 2024. I've repeated here what I said about what happened and my provisional findings.

'In 2011 Mr P transferred an existing personal pension to a SIPP (self invested personal pension) on the Nucleus platform. Nucleus is an adviser centric business. Mr P had an adviser who I'll call Mr S. Both Mr S and his firm were authorised and registered with the Financial Conduct Authority (FCA).

Mr P says that, some years later, he was cold called and offered a free review of his pension. He says it was in late 2014 and likely to have been First Review Pension Services Limited (FRPS) who called him and later visited him at his home. Mr P was shown a video of a resort development in Cape Verde and he says it was suggested that he invest in the White Sands Beach Resort.

In January 2015 a limited company, which I'll call P Limited, was established with Mr P as the sole director. On 27 February 2015 Mr P signed a trust deed establishing a SSAS. P Limited was the sponsoring employer, Mr P was the trustee and Cantwell Grove Limited (CGL) was the SSAS administrator.

On 10 March 2015 CGL sent a transfer request to Nucleus (which Nucleus received on 12 March 2015). CGL enclosed signed discharge forms and a copy of HMRC's letter confirming the SSAS had been registered on 3 March 2015 and giving the Pension Schemes Tax Reference (PSTR) number. Key (receiving) scheme details were included. Which, amongst other things, said that Astute Financial Management UK Limited (Astute), an independent financial adviser whose FCA registration number was given, would be providing advice under section 36 of the Pension Schemes Act 1995 (I think that should've read Pensions Act 1995). The investments under consideration were a General Investment Account with Aviva and a commercial property investment provided by TRG.

Section 36 of the Pensions Act 1995 imposes a requirement on a trustee (which Mr P is) of an occupational pension scheme (which a SSAS is) to take and consider appropriate advice on whether the proposed investments are satisfactory for the aims of the scheme. But I haven't seen anything to show that Astute did provide the section 36 advice. There's a letter dated 22 January 2015 from Broadwood Assets Ltd (Broadwood) to Mr P, which he signed

on 13 March 2015 to confirm he'd read and understood it and which appears to be section 36 advice about the proposed TRG investment. The letter explained that the scope of Broadwood's advice was limited to that; Broadwood hadn't advised about the establishment of the SSAS; the advice was provided to Mr P in his capacity as a trustee of his SSAS only and not in his personal capacity as a member of the SSAS; Broadwood's advice wasn't regulated under FSMA (Financial Services and Markets Act 2000); and Broadwood wasn't authorised to provide regulated financial advice. If Mr P preferred to obtain regulated advice on the suitability of the investment for him personally, he should seek such advice from an independent financial adviser. The letter also set out a number of risk factors. It concluded the investment was suitable for Mr P's SSAS subject to some caveats and for more adventurous investors.

CGL also supplied a letter dated 10 March 2015 signed by Mr P in support of the transfer request. In summary it said he was aware of the issues relating to pension liberation and that there'd recently been a significant rise in cases of pension liberation fraud which meant increased scrutiny of transfer requests. Mr P said he was transferring to take advantage of investment opportunities, none of which were in any way connected with pension liberation. He'd received detailed information about the scheme, how it operated, who administered it and the risks associated with transferring out of his existing pension arrangement. Mr P said he wasn't seeking to access his pension benefits before age 55 and he was aware of the significant tax liabilities if he attempted to do so.

On 28 March 2015 Nucleus paid a transfer value of around £28,000 to CGL.

On 8 April 2015 CGL wrote to Mr P confirming that £22,900 had been invested in White Sands – fractional ownership of a suite at the resort. CGL said that Mr P had funds remaining in his SSAS bank account and so his details had been sent to Astute who offered a discretionary fund management (DFM) service although Mr P was under no obligation to use that service in which case the funds would remain in the SSAS bank account. There's a letter dated 12 November 2015 from Mr P (in his capacity as a trustee) to CGL saying he'd obtained and considered advice from Astute following which he wanted to invest £2,759.58 on an Aviva platform with further amounts that were in future credited to the SSAS bank account to be credited to that platform (subject to minimum funds in the SSAS bank account being maintained).

Some time later, and according to Mr P's representative, construction of the White Sands resort stopped. In any event, even for completed properties, there's no market for Mr P's investment and it appears he's unable to get his money back.

In August 2021 Mr P, through his representative, complained to Nucleus. Briefly, his argument is that Nucleus 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 as was the sponsoring employer (P Limited); the latter was a dormant company, set up solely to facilitate the SSAS and Mr P had no genuine employment link to P Limited; the catalyst for the transfer was an unsolicited call; Mr P had been advised by an unregulated business; he'd been promised unrealistically high returns; and the proposed investment was in unregulated, overseas, high risk and non diversified assets.

Nucleus didn't uphold the complaint. It said it had received confirmation that Mr P had sought independent financial advice from a FCA registered adviser; he was aware of pension liberation fraud and he didn't intend to access the fund before age 55; the transfer was to facilitate a commercial property purchase which wasn't an option with his existing pension plans; and the receiving scheme was a registered pension scheme. Nucleus referred to the documents submitted by CGL in support of the transfer request, including the Q&A document which said that Mr P was taking investment advice from Astute. Nucleus said

the issue seemed to be that Mr P wasn't aware of the risk factors but Nucleus was unable to advise him if the investment was out with his risk profile. The documentation received confirmed financial advice had been sought from a FCA registered adviser (which isn't necessary for a SIPP transfer). Unless there was evidence that the transfer didn't meet legal requirements, Nucleus wouldn't have blocked it. At the time of the transfer, Mr P had a FCA authorised adviser aligned to his account, to whom he was paying an ongoing advice fee and to whom he should've spoken, ahead of making any financial decisions.

Our investigator was unable to resolve the dispute informally, so the matter was passed to me to decide. In doing so I've taken into account the points made by Mr P, through his representative, in response to the investigator's view.

What I've provisionally decided – and why

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

The relevant rules and guidance

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

<u>The March 2015 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.

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.

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

As I've mentioned above, Mr P says he was cold called by FRPS in late 2014 and offered a free pension review. This was with a view to increasing returns by investing in a property development in Cape Verde. Mr P thought that sounded interesting. FRPS then came to his home and showed him a video of resort developments in Cape Verde and suggested he should invest in TRG's White Sands Beach Resort. Mr P was told that the resort was under construction, that existing resorts there were very successful, the market was strong and the investment would do far better for him than his existing pension. FRPS wasn't authorised or regulated by the FCA, the significance of which wasn't apparent to Mr P. Nor was he aware of FRPS's links to TRG.

Mr P trusted the information and advice he was given. It sounded like a realistic and safe opportunity to achieve a significant increase on his pension savings, therefore providing for his future retirement. The person he was dealing with came across as very professional and knowledgeable and that was validated by the visual presentation that was used. Mr P was reassured by the fact that, although the investment was abroad, he was told it would be managed by a company in the UK. Mr P agreed to go ahead. The reviewer provided him with paperwork to establish a SSAS with CGL.

At the time Mr P was in his mid forties. He was a business development manager, earning about £37,000 pa. He had savings of £10,000 to £15,000 and owned his own home subject to a small mortgage. His personal pension with Nucleus was his only provision for retirement (aside from any state pension entitlement) and was invested across a range of unit trusts, following financial advice. Mr P said, if Nucleus had contacted him with concerns about the transfer, he'd have done more research and asked for clarification which he thought would've resulted in him not proceeding with the transfer.

We'd seen that, prior to being submitted to Nucleus, the complaint was drafted by Mr P's representative and sent to Mr P for approval. When he returned it to his representative he commented that he'd only dealt with Nucleus through his financial adviser who'd told him it was a risky investment. Mr P said he'd been misled by FRPS and queried if his claim should be against them. We asked Mr P who that adviser was. He confirmed it had been Mr S, the adviser who'd brought him to Nucleus in 2011 and who remained in place as Mr P's adviser on Nucleus' records. But Mr P said the conversation was limited to the adviser saying TRG investment was risky. No further information was given and Mr P said he didn't feel the need to question that as all investments carry a level of risk.

Mr P later added that, although he'd had some contact with Mr S in 2015, it wasn't formal advice. Mr P was being advised by FRPS and he simply told Mr S that he was intending to transfer away from Nucleus to invest in TRG Cape Verde investment. Mr S's brief comment was that the investment was risky. He didn't have all the detail sand he didn't give properly formulated regulated advice. Nucleus didn't communicate that there were warning signs and Mr P didn't see the need for such advice. The position would've been different if Nucleus had

discharged their due diligence and communication obligations and alerted Mr P to the fact that there were a number of scam warning signs, of which he was completely unaware. There's a fundamental difference between a person being told, or understanding, that they are moving into a pension or investment which carries risk (as all investments do) and being told they are moving into something which has warning signs of a scam.

As to the letter from Broadwood, that sort of letter was provided to every consumer who invested in TRG through a SSAS with CGL. It mentioned risks but there was no reference to scams and ultimately it concluded that TRG investment was appropriate to hold within a SSAS. It wasn't the case that Mr P had consulted with his regulated financial adviser and was still determined to go ahead with the transfer. Had Nucleus complied with their due diligence and communication obligations, Mr P may have sought formal advice but he didn't.

In broad terms, I accept what Mr P has said about what happened and how the transfer and TRG investment came about – that he was cold called by FRPS who visited him at home and encouraged him to transfer to a SSAS so he could invest in TRG. FRPS had links with TRG (a director in common) and, from the cases we've seen, FRPS was involved in persuading UK investors to transfer to SSASs to invest in TRG. I think that's what likely happened here. I also take into account that Mr P wasn't an experienced investor. A SSAS is a relatively complex pension arrangement, especially for someone in Mr P's circumstances where he didn't already have his own company. And TRG investment – fractional ownership of overseas hotel accommodation – is also complex and unusual. I don't think Mr P would've decided for himself and without advice that he wanted to transfer to a SSAS so he could invest in TRG. I think whatever FRPS said to Mr P was likely to have amounted, expressly or implicitly, to a recommendation that he transfer.

But Mr P did have some discussion with a regulated financial adviser – Mr S – about TRG investment. According to Mr P, what was said was very brief and didn't amount to advice. and I haven't seen any formal written advice, although whatever Mr S said may have amounted to oral advice. For example, if Mr S told Mr P that TRG was too risky and so he shouldn't transfer and use his existing pension fund to invest. But I think it would be very difficult now, getting on for ten years after the event, to draw reliable conclusions about exactly what would've been said and whether the TRG investment was discussed in any detail. The conclusions I've reached below don't turn on exactly what Mr S may have said to Mr P but rather on what view Nucleus could've reasonably taken if it had found out that Mr P had at least been in contact with Mr S about the plan to invest in TRG.

<u>What did Nucleus 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.

When Nucleus received Mr P's transfer request on 12 March 2015, the guidance published in July 2014 (with refreshed insert and booklet) was in use. So, if Nucleus had sent the Scorpion insert, it would've been that version. Here Nucleus didn't send Mr P the Scorpion insert or give him substantially the same information. Sending the insert would've been a relatively quick and easy step to take and wouldn't have got in the way of dealing with transfer requests promptly.

Due diligence:

By the time Mr P's transfer was actioned, the Scorpion campaign and materials had been

relaunched again, along with the PSIG Code. On that basis, as explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mr P'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 Nucleus's actions using the 2015 Scorpion guidance as a benchmark instead.

I've looked first at what due diligence Nucleus carried out in this case to consider whether it was sufficient. It seems to have consisted of checking the documents sent with CGL's transfer request, including that the SSAS had been registered with HMRC. Nucleus says confirmation was included that advice had been sought from a FCA registered adviser. I think Nucleus is referring here to Astute who was named on the Q&A document. Mr P has more recently said that he did contact the adviser aligned to his account with Nucleus. But I don't think, at the time, Nucleus would've known that had happened.

Astute was a regulated firm. But, from the Q&A document, Astute's involvement was as the SSAS's proposed investment adviser and pursuant to the requirement in section 36 of the Pensions Act 1995 that Mr P take advice as a trustee. As I've explained, that isn't regulated advice and isn't given to Mr P in his personal capacity as a member of the SSAS. Astute was also involved later – I've noted above Mr P's letter dated 12 November 2015 to CGL saying he'd obtained and considered advice from Astute following which he wanted to invest on an Aviva platform. But Mr P said he was writing in his capacity as a trustee so it would appear that any advice at that stage obtained from Astute would've also been section 36 advice. But I mention that largely in passing anyway as my focus is on what Nucleus would've known and what Nucleus should've done when it got Mr P's transfer request in March 2015.

As I've said, by the time Nucleus came to process Mr P's transfer, the Scorpion campaign had been refreshed and, at the same time, the PSIG Code had been introduced. Nucleus should've also been aware of the close parallels between Mr P'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 – overseas property was specifically mentioned.

I've referred above to the initial triage process under the Code which I think should've led Nucleus to ask Mr P 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 two of them would've been answered "yes":

• Did receiving scheme/adviser or sales agents/representatives for the receiving scheme make the first contact (e.g. a cold call)?
• 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 Nucleus should have addressed all four sections of the SSAS due diligence process and contacted Mr P to help with that.

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

Nucleus would've known, from the documents supplied in support of the transfer request (which included the trust deed and HMRC's notification of registration) that the SSAS had only very recently been set up (in February 2015, the month before the transfer request was made) and registered with HMRC (only a few days before the transfer request was made).

As to queries about any employment link, I think Mr P would've said he wasn't employed by P Limited, the sponsoring employer of the SSAS, in any meaningful way – I note P Limited is shown on Companies House as a dormant company and I understand that Mr P was employed elsewhere. I think he'd have said that P Limited had been set up purely to facilitate the SSAS.

And in response to enquiries about marketing methods, I think Mr P would've told Nucleus that he'd received a cold call about transferring to a SSAS so he could invest in TRG. That would've led to a discussion about who'd called him and what had been discussed. Based on what Mr P has told us about what happened, he'd have said he'd been dealing with FRPS who'd told him he'd be better off if he transferred to a SSAS so he could invest in TRG – so essentially that he'd been advised by FRPS to transfer.

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. So, on the face of things, Nucleus should've been concerned by FRPS's involvement because it pointed to a criminal breach of FSMA.

But Nucleus' records showed that Mr P had a regulated financial adviser in place. Moreover, Mr P has told us that he'd contacted that adviser and there'd been some discussion about TRG investment. So I think Mr P would've told Nucleus similar – that although the idea to transfer to a SSAS and invest in TRG had come from FRPS, he'd also been in contact with the registered financial adviser shown on Nucleus's records about TRG investment. I note what's been said about Mr P, because Nucleus hadn't told him that there were any warning signs associated with the transfer, not seeing the need to seek any advice from Mr S. But the fact of the matter is that Mr P did contact Mr S anyway and Mr S told Mr P that TRG investment was risky.

In my view, Nucleus could've reasonably taken comfort from the fact that the regulated financial adviser shown on its records remained in place and that Mr P had spoken to him about the transfer and the proposed investment. I don't think Nucleus would've needed to go into further detail with Mr P or ascertained if he'd been given formal advice. I think the fact that he had access to a regulated adviser (who he'd been dealing with since at least 2011

when his Nucleus plans were set up) and he'd been in contact with that adviser about the proposed transfer and investment would've been enough for Nucleus' purposes. And without probing further as to precisely what the adviser might have said and if formal advice had been given. So, against that background, I think it would've been reasonable for Nucleus to conclude that there was no reason to warn Mr P against proceeding.

I've said above that Nucleus should've sent Mr P the Scorpion insert and that it would've been the July 2014 version. Nucleus didn't send it (or give Mr P substantially the same information in a different format). So I've thought about whether, if Mr P had seen the insert, it would've changed his mind about the transfer.

As I've said, when launched the focus of the Scorpion campaign was early access pension liberation fraud. Mr P had been given some information about that as evidenced by the letter he signed dated 10 March 2015. It was a template which had been pre prepared but it was only a page long and I think Mr P would've read it before signing it. So he'd have known there could be issues with transferring a pension, if the aim was to access pension benefits early. But, by the time his transfer request was made, the guidance had been widened to pension scams more generally, which is reflected in the revised wording of the July 2014 insert. Some of the warning signs set out did feature in his case – he'd been approached out of the blue and offered a free pension review. But other warning signs didn't feature – he wasn't seeking to access his pension pot before age 55 and he hadn't been offered any upfront cash or other incentive.

On balance, I think it's difficult to say, even if Mr P had seen the insert, that it would've resonated with him. Even if it might've prompted him to seek a second opinion, he did that anyway – even though he didn't see the insert he took the precaution of getting his financial adviser's opinion about TRG investment. And, despite being told the investment was 'risky', he still went ahead. So I don't think providing the insert would've changed things for Mr P.

I also note here the letter from Broadwood dated 22 January 2015. It did include some risk warnings and said that TRG investment wasn't suitable for a cautious investor who needed the protection of the UK investor compensation and regulatory environment which both the SSAS and the proposed overseas investment didn't have. I agree there was nothing to indicate that the transfer had signs of being a scam but Broadwood's message was, if Mr P wanted advice about the suitability of the investment for him personally as a member of the SSAS and not as a trustee, he should seek independent financial advice. Mr P did approach his regulated adviser but, despite the latter telling him the investment was risky, Mr P chose to proceed anyway. So it's difficult to see that further warnings from Nucleus would've changed Mr P's thinking.

In summary, although there were failings on Nucleus' part, I don't think the outcome would've been different if Nucleus had done all it should've. So I can't say that Nucleus is responsible for Mr P's losses.'

Responses to my provisional decision
Nucleus didn't respond to my provisional decision.

We did hear further from Mr P. He didn't accept the findings in my provisional decision as to causation and, through his representative, made further comments. In summary:

- Nucleus should've sent him a copy of the July 2014 Scorpion insert. And contacted him in March 2015 as part of its SSAS due diligence process. Nucleus would've asked him a wide range of questions (covering all four sections of the PSIG Code) and from which he'd have known that there were issues representing scam warning signs.

- During those discussions Mr P would've told Nucleus that he'd contacted Mr S and there'd been some discussion about TRG investment. Based on that last point, I'd decided Nucleus didn't need to go further with more detailed communication or due diligence. But the different factual situation which would've prevailed if Nucleus had acted correctly must be considered in deciding if Mr P would've acted differently. I hadn't done that – I'd only thought about what would've happened if Mr P had been sent the Scorpion insert.
- Mr P wasn't a sophisticated investor or a high net worth individual and he'd tried to make careful decisions about his pension. He'd taken FCA regulated advice when he'd moved to Nucleus in 2011 and had retained Mr S as his adviser to look after his investments on the Nucleus platform between then and 2014. But numerous different firms were involved in 2014/2015 with the transfer to the SSAS and TRG investment (including FRPS, Broadwood, Astute, CGL and TRG) and which, as this service knows, projected a professional and regulated appearance to targeted consumers.
- For a consumer with minimal investment experience and no knowledge of FCA regulatory issues, the process appeared to be a well-organised group of connected firms working together. It's understandable that Mr P assumed he was being 'looked after' by these firm although, despite that, he'd made a brief call to Mr S.

Mr P maintained that, had the factual position been different and Nucleus had done all it should've, he'd have acted differently. He'd have been alerted to potentially very important concerns about the advisory process, the structure of the receiving scheme and the proposed investment. In that scenario his willingness to trust in the advisory structure linked with the SSAS would've been fundamentally undermined. He wouldn't just have made an informal, brief, contact with Mr S. Rather he'd have taken more care to assess whether he was doing the right thing by transferring – he'd have sought more formal advice from Mr S or another FCA regulated adviser or he'd have just pulled out of the transfer. It wasn't logical or fair to conclude he'd have ignored the serious concerns that would've been revealed to him (including the likely criminal breach of FSMA).

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.

In doing so, I've considered very carefully the points made on Mr P's behalf in response to my provisional decision. But I haven't been persuaded to revise my views.

I don't disagree with what Mr P has said about what Nucleus should've done. But I don't agree that my views on causation were confined to what would've likely happened if Nucleus had sent Mr P the Scorpion insert. I dealt with that towards the end of the section in my provisional decision headed,, '*What should Nucleus have found out – and would it have made a difference?*' I concluded that providing the insert was unlikely to have changed things for Mr P.

But my views on causation – and my finding that Mr P would've gone ahead anyway – didn't just turn on the Scorpion insert not having been sent. Nor do I agree that I failed to take into account the (hypothetical) situation which would've prevailed if Nucleus had done all it should've. Earlier in the same section I've referred to, I set out what Nucleus would've found out, had it undertaken enquiries in accordance with the PSIG Code. Including that Mr P would've told Nucleus that he'd been dealing with FRPS.

I acknowledge here what Mr P has said about multiple parties having been involved but it was FRPS who'd cold called him, visited him at home and suggested he should transfer to a SSAS to invest in TRG. So FRPS's role was pivotal. In my provisional decision I recognised

that FRPS was an unregulated firm and, as such, unable (acting lawfully) to give advice about pension transfers. So my conclusions were against the background that FRPS's involvement could point to a criminal breach of FSMA.

But I went on to consider what Mr P would've told Nucleus about who'd been advising him. And I thought the fact that he'd approached Mr S was relevant. I went on to say that Nucleus could've taken comfort from that – the fact that a regulated adviser was also involved. So it would've appeared to Nucleus that Mr P wasn't transferring just based on what he'd been told by an unregulated adviser – who may not have had Mr P's best interests at heart and who may not have been as trustworthy as Mr P had been led to believe.

Instead, Mr P also had access to a regulated adviser and he'd been in touch with that adviser. Even if the discussion may have been brief (and we don't know exactly what was said), Mr P had at least run the proposal to invest in TRG past his regulated adviser.

I further note what's been said about Mr P trying to take a careful approach to his pension savings. But it appears his regulated adviser did say that what Mr P was proposing to do was risky. And, despite that, Mr P was still prepared to go ahead.

All in all I maintain the views set out in my provisional decision. I've recapped above what I said there and it forms part of this decision.
For the reasons I've given I'm not upholding Mr P's complaint.

My final decision

I don't uphold the complaint and I'm not making any award.
Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 15 January 2025.

Lesley Stead
Ombudsman