DRN-5248316

The complaint

Mr T has complained about a transfer of his Capita Life & Pensions Regulated Services Limited personal pension to a small self-administered scheme (SSAS[1]) in August 2015. Mr T's SSAS was subsequently used to invest in a UK property development which failed. The investment now appears to have little value. Mr T says he has lost out financially as a result.

Mr T's personal pension was branded in the name of another pension provider. And a separate firm – Curtis Banks Limited – has corresponded about the complaint on Capita's behalf. However, as Capita has accepted that it is the appropriate respondent to the complaint I will only refer to it within this decision.

Mr T 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 it, in line with the guidance he says was required of transferring schemes at the time. Mr T 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 T held two pension policies administered by Capita.

In April 2014 Mr T signed a letter of authority allowing a firm trading under the name of Oxford Chambers Limited to obtain details and transfer documents in relation to his pensions. At the time Capita responded to Oxford Chambers' request for that information, in June 2014, it was an appointed representative of a firm authorised by the Financial Conduct Authority (FCA). But there's no evidence on the file of papers I've seen of Oxford Chambers contacting Capita again.

On 22 October 2014 a company was incorporated with Mr T as director. I'll refer to this company as P Ltd. Four days later, on 26 October 2014, apparently in a response to a request from Mr T himself, Capita sent him a transfer pack with the required forms to transfer his Capita pensions to another scheme. Capita said it had enclosed a leaflet produced by the Pensions Regulator (TPR) regarding pension scam activity for his information. The leaflet it enclosed is known as the Scorpion insert because of the imagery it contains. I say more about it below. The version enclosed was produced in July 2014.

Mr T told us that his interest in a pension transfer followed an unsolicited approach from a firm he believed was called Fortitude Capital which was trading under the name Pension Transfer Options (PTO). That firm was not FCA regulated. He said PTO offered him

[1] A SSAS is a type of occupational pension in which the members are also trustees and therefore take responsibility for operating the scheme. It's an arrangement typically intended to meet the needs of people who run their own companies. SSASs are not regulated by the FCA. They can hold a wider range of investments and assets than many personal pensions. As an occupational pension, a SSAS must be sponsored by an employer company.

the chance to invest in a UK based commercial property development. The literature Mr T's provided said that, once the site was developed, investors could expect returns of between 6 to 8% a year over a period of five years. It also said using a 'property SSAS' was a tax efficient way for clients to have 'control of their fund'. Mr T said this sounded like a viable investment opportunity.

On 28 October 2014, Mr T signed documents to transfer the funds from his Capita pensions into P Ltd's SSAS although at that time the SSAS was yet to be registered with HMRC. HMRC registered the SSAS on 24 November 2014.

In February 2015, Capita sent Mr T's pension transfer information, and the Scorpion insert, to a firm called Transglobe Strategic Solutions Limited (TSSL), which – at that time – was an appointed representative of an FCA regulated firm. Capita hasn't provided me with documents which show why it sent the papers to TSSL but its covering letter indicated this was following TSSL's request. I haven't seen any documents showing further interaction between TSSL and Capita following this.

On 14 April 2015 a SSAS administrator trading under the name Cranfords[2] sent completed transfer forms including those Mr T had signed on 28 October 2014, to Capita asking it to transfer the funds from Mr T's personal pensions to P Ltd's SSAS.

Capita wrote to Cranfords on 23 April 2015. It said it had received the transfer request but in order for that to go ahead it required Cranfords and Mr T to fill in the relevant parts of a 'supplemental transfer form'.

On 30 April 2015 Mr T signed Capita's supplemental transfer form. On it he confirmed that he was employed as a director of P Ltd. He said the company was not trading and he wasn't receiving a wage or other remuneration from it. Elsewhere on the form in a section called 'pension liberation checklist for members' it asked Mr T to tick boxes next to a number of statements to say whether those applied to his transfer. It said that if any of them did apply he should think carefully about whether his pension savings were at risk. Mr T did not tick boxes next to any of the statements. Of particular relevance to this complaint Mr T did not tick the following statements:

- He was contacted about making a transfer by telephone call, text, email or through a website.
- His adviser/agent was not FCA authorised. The form explained how to check this.
- He had been invited to join an occupational pension scheme sponsored by a company he did not work for.
- He had been offered guaranteed or high return investments (often in overseas land/forestry/green or eco investments).

Mr T did though confirm he had read and understood the Scorpion leaflet. He also agreed that the personal pension administrator could not be held liable for any losses arising from the transfer.

In July 2015 Capita wrote to HMRC. Its letter said that this was a follow up to earlier letters sent in April and May asking for the same information, but I haven't been shown those letters. Capita asked HMRC whether P Ltd's SSAS, administered by Cranfords, remained

[2] The company's registered name was 3110950. The company is now dissolved.

appropriately registered. It also asked if the information HMRC held indicated whether there was a significant risk that the SSAS was set up or being used to facilitate pension liberation.

HMRC replied later that month. It confirmed that the SSAS remained registered and the information it held did not indicate the scheme was used to facilitate pension liberation.

On 12 August 2015, Capita wrote to Mr T and Cranfords to confirm it had transferred the funds from Mr T's two pensions to P Ltd's SSAS. Together the amount transferred was £45,994.47.

In December 2015, a firm purporting to be a property development company called Diamond (Runwell) Ltd (DRL) issued a share certificate to Mr T showing he had bought 43 'B' shares at £1,000 each in the company.

Mr T later became concerned about his investment and raised the matter with the police. The police concluded, in 2018, that there was 'no evidence of a fraud having been committed'. Also that there was no evidence that the parties (DRL's directors) had spent the funds for personal gain.

In 2020 Mr T complained to Capita. Briefly, his argument is that Capita ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including (but not limited to) the following: Capita hadn't given Mr T advice; didn't find out enough information about Mr T's motivation for transferring; establish whether he'd received financial advice; or was offered an incentive to transfer.

Capita didn't uphold the complaint. It was satisfied it had handled the matter appropriately given the requirements of the time.

Mr T brought his complaint to the Financial Ombudsman Service. One of our Investigator's looked into it and didn't recommend the case be upheld. Mr T didn't agree with our Investigator's complaint assessment.

As our Investigator was unable to resolve the dispute informally the matter was passed to me to decide.

Provisional decision and developments

I issued a provisional decision on 10 December 2024. I explained why I intended to uphold the complaint and what I thought Capita should do to put things right. I invited the parties comments with a deadline of 24 December 2024 to reply.

Mr T accepted my provisional decision. Capita asked for a 'few weeks' extension to reply. It said it had seen a screenshot on its file of an FCA authorised adviser operating from the same address as Cranfords. It said it could not 'see why this was searched or the link to Mr T[…] at this point'. It said it wanted to recover some 'old files' to find out.

We granted Capita a further two weeks to respond. In our reply to it we explained that I was aware that an FCA authorised firm operated from the same address as Cranfords when I drafted my provisional decision. But unless Capita had evidence of an FCA authorised firm giving Mr T advice in connection with his transfer, a shared address would not affect my final decision.

Capita did not provide any further comment on the matter.

As neither party has provided any comments or evidence calling my provisional findings into question I see no reason to alter those. So, I have repeated my provisional findings below as my final decision.

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 bringing this complaint Mr T – via his representatives – has made a number of detailed points. But in this decision I don't intend to address each and every issue raised. Instead I will focus on what I believe are the key matters at the heart of his complaint and the reasons for my decision.

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

The relevant rules and guidance

Personal pension providers are regulated by the FCA. Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority (FSA). As such Capita was subject to the FSA/FCA Handbook, and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA/FCA rules governing 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 (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. It was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And its specific purpose was to inform and help ceding firms, like Capita, when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

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

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 Self-Invested Personal Pensions (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 (SSASs) 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[3]) 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.

[3] At the time the group operated under the title of the Pension Liberation Industry Group. But as it later changed its name and is now known as PSIG I will only use that name within this decision.

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. That is for the shorter insert (which had been refreshed in March 2015) to be sent when someone requested a transfer pack. And for 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 Qualifying Recognised Overseas Pension Schemes (QROPS). The 2015 Scorpion guidance doesn't distinguish between receiving schemes 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.

So, 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?

Mr T says that he initially received unsolicited contact from PTO. It then provided him with information about the property investment, which claimed to offer significant tax advantages by investing in DRL through a SSAS, which he thought sounded like a viable investment.

Mr T told our Investigator that he didn't recall receiving the Scorpion insert. But I've seen clear evidence that Capita sent it to him. Similarly Mr T told us that he was surprised to learn that he'd become a director of a limited company, as he was employed elsewhere. However, I think that Mr T's recall has most likely faded owing to the passage of time. I say that as when Mr T signed Capita's supplemental transfer form it was annotated that he was employed by P Ltd as a director. So he should have been aware of that at the time, even if this detail later slipped his memory.

I'm aware that there's evidence on file of other advising firms, which were appointed representatives of FCA authorised firms, requesting pension transfer information. But there's no evidence of them giving Mr T advice in connection with this transfer.

Oxford Chambers requested pension information in April 2014 – around a year before Cranfords submitted the actual transfer request, with no further evidence of its involvement in that period.

And some months later Capita sent Mr T pension transfer information to him directly, along with the Scorpion insert. Capita told us it did so after Mr T phoned it asking for that information. Mr T told us that this came about following the unsolicited contact from PTO. And he's shown us literature from PTO in connection with the benefits of a 'property SSAS' and the returns likely from it. So I'm persuaded that it was Mr T who asked Capita for the transfer pack, and it was the advice from PTO which informed the request to transfer and not the involvement of Oxford Chambers.

I'm also aware that TSSL asked for pension transfer information in February 2015. It's not clear what sparked the interest from TSSL. But by that time P Ltd had already been incorporated, HMRC had registered the SSAS and Mr T had completed transfer forms for his pension funds to invest in the SSAS. So it appears that he was already someway down the road to investing in the SSAS, and the DRL investment opportunity, before TSSL asked for details of his pension. And I've seen no other evidence of TSSL, or any other FCA authorised firm, giving Mr T advice to transfer.

I haven't seen anything to suggest Mr T had a lot of experience of pensions and investments. And I also haven't seen anything about his circumstances or what he's said that leads me to think he'd likely have embarked on such a complicated arrangement on his own. That is: setting up a new company, opening a SSAS, transferring his existing pension and investing in a commercial property development. So, I think it likely was the prospect of better returns that persuaded him to transfer. Advice to transfer out of his Capita personal pensions would be regulated advice which should only have been given by an FCA authorised adviser. But I'm satisfied that, on balance, it was PTO's unregulated adviser who made that recommendation.

I'm also satisfied that a firm telling Mr T that he would receive better returns, and so have a better retirement income by transferring away from his personal pensions to a SSAS and investing with DRL represented advice to transfer. For the reasons already given I'm satisfied PTO gave that advice and it was the catalyst for the transfer. And the documents indicate the SSAS was only established to facilitate the investment in DRL. So, I think it was likely PTO that recommended this investment and that Mr T transferred his pension in order to invest in DRL.

I also accept that the DRL investment is likely to have little or no value now. To explain why I'll set out my understanding of DRL and the investment it offered, some of which we have learned from other, similar, complaints we have dealt with.

DRL was a limited company incorporated in March 2012. It was offering 'B' shares in its company at a cost of £1,000 per share. These shares were not publicly listed, they attracted no dividends or voting rights. The purpose of the company was stated to purchase land, achieve 'rezoning' – presumably because the property discussed was cited in a green belt zone – and sell the land on at an increased price.

The total number of 'B' shares DRL offered was said to be 12,200. In other words it sought to sell shares to an equivalent value of £12,200,000 in order to proceed with the development. However, I note that Mr T's share certificate, issued in December 2015, said he had bought 43 shares numbered from 1,971 to 2,013. So, assuming the share certificates were issued in a sequential order – starting from number 1, 2, 3 etc and reaching 2,013 when Mr T bought his – then by that time, some 45 months after the company was incorporated, DRL had only managed to sell around 16.5% of its full share requirement.

From information available from Companies House it appears that DRL's company secretary – a law firm – ceased to act in that capacity from November 2015. But DRL didn't ever appoint another secretary, which is a legal requirement. As a result, Companies House began attempting to strike DRL off the register on 16 February 2016 (only two months after Mr T received his share certificate) – this took a number of attempts before the company was dissolved in 2018.

So it appears that the DRL investment was – most likely – struggling from the time it was first offered to Mr T, and its prospects of success were, at best, hopeful and at worst this was simply a scam to persuade investors to part with their money. In fact Mr T was sufficiently

concerned about what had happened to his funds to report the matter as a crime. Although ultimately the police decided there was no evidence of a fraud.

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.

As I've said above, I'm satisfied that Capita did send the most recent version of the Scorpion insert directly to Mr T in October 2014. That's because Capita's letter refers explicitly to having included it within the information sent. Also, when Mr T signed the supplemental transfer form in April 2015, he confirmed that he'd read TPR's leaflet concerning pension liberation (although the form actually refers to an earlier version of the leaflet with a different title) and that he'd understood it. So I'm satisfied that Mr T had seen it, even if he couldn't recall this some years later. And there were two points in that insert which could have caused Mr T some concerns. Those were warnings about being cold called and offered a free pension review. But, it seems that these didn't resonate with Mr T at the time to the extent that he doesn't recall ever seeing the Scorpion leaflet.

Further, by the time that Cranfords sent Capita the transfer request TPR had updated the Scorpion guidance. I wouldn't have expected Capita to reissue the updated version of the Scorpion insert, but I would have expected it to be mindful of the updated information the Scorpion materials contained and, if required, to convey this to Mr T.

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 T'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 Scorpion guidance as a benchmark instead.

I've firstly looked at what due diligence Capita carried out in this case to consider whether it was sufficient. Capita has said that while it didn't explicitly follow the PSIG guidance at the time, looking back at what it did, it would have reached the same outcome. That is it would have concluded that there were no relevant concerns and as such it could proceed with the transfer.

It's apparent that when coming to that conclusion Capita is relying on Mr T's evidence when he completed the supplemental transfer form. That form addressed a number of the points the PSIG Code said (Section 6.2.2) to be on the look out for, most notably that – according to Mr T's answers on the form:

- He had not been offered any form of cash incentive to transfer.
- The initial contact had not come from the adviser.
- He had not been told he could access his pension before age 55 or that he could draw a higher tax free cash lump sum as a result of transferring.
- He had not been offered a guaranteed or high rate of return.

- He had not been offered an overseas investment opportunity.

So, on those points alone I think the information Mr T had given Capita would not have raised concerns.

But, the PSIG guidance doesn't end with the above considerations. It says that ceding schemes needed to go on and consider further points depending upon 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 the 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, it 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 three of the four sections of the SSAS due diligence process[4] and contacted Mr T to help with that.

I think it's worth noting that Capita told us that, while it did follow the Code's 'base principles', given the Code had only recently been published it wasn't expected to follow it at that time. But I disagree. The Code had only been available for one month when Capita received Cranfords' transfer request. However, it was available for use straightaway. And the updated version of the Scorpion action pack for ceding schemes, published in March 2015, referred to using the Code immediately. And, by that time, businesses were better placed to implement the updated guidance without delay. So there was an expectation that businesses would begin to be informed by the Code straightaway.

But, in any event, while Capita initially received the transfer request in April 2015, it didn't actually make the transfer until August 2015. That was some five months after the Code was published, which gave Capita ample opportunity to apply it in Mr T's case.

What should Capita have found out?

As I've said above, I think Mr T's initial responses on the supplemental transfer form might have given Capita some reason to believe that his transfer fell into a low risk category. However, from August 2014, the FCA had begun publishing its concerns about the use of

[4] P Ltd was registered from Mr T's home address and as such a 'geographical link' was not in Question.

SSASs to facilitate pension scams. And the PSIG Code said that ceding schemes needed to consider specific questions when, as was the case for Mr T, the transfer was to a SSAS.

Further it's evident that Capita already had concerns about the transfer, as it asked HMRC for information about whether the SSAS remained registered and if HMRC was aware if it was being used for liberation purposes. While HMRCs response didn't identify any concerns – that it was aware of – the reply also made it clear that Capita should not rely on HMRC's information alone. So I think, in order to carry out appropriate due diligence Capita needed to consider some further points concerning the SSAS.

As I've said above the Code said there were a number of key types of information for ceding schemes to consider when the proposed transfer was to a SSAS. In particular the Code said that there should be an employment link between the member and the sponsoring employer. And it said that in order to identify this ceding schemes should establish if there was evidence of employment, for example by asking for a payslip. It said that if such an employment link did not exist the ceding scheme should ask the consumer for a brief explanation of why they wanted to transfer their pension to a SSAS.

The above would have been a fairly simple and relatively brief exercise for Capita to undertake. And following it could have led to it to asking Mr T further questions. I note that Mr T said on his supplemental transfer form that he was employed by P Ltd and gave his role as 'director. However, company directors are not necessarily company employees unless they have a relevant contract of employment. And in this case Mr T had told Capita that P Ltd was not trading nor paying him any remuneration at all. So, from that information alone, I think Capita should have suspected that Mr T was not genuinely employed by P Ltd.

In those circumstances, I think Capita should have followed up any initial enquiries with Mr T. Had it done so, by following the SSAS questions in the Code, I think it's likely Capita would have learned that:

- P Ltd and its SSAS had recently been set up explicitly to allow the investment with DRL.

- The motivation for making that investment had come following a cold call from PTO recommending he buy shares in a property company.

A brief search of the FCA's register would have revealed that PTO was not authorised to give pension transfer advice. And 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 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 PTO's involvement because it pointed to a criminal breach of FSMA. On the balance of probabilities, I'm satisfied such a breach occurred here.

What should Capita have told Mr T – 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 given to Mr T in relation to a possible scam threat as identified by the PSIG Code (and the Scorpion action pack). And, as I've said above, Capita should also have been aware of the close parallels between Mr T's transfer and the warnings the FCA gave to

consumers in 2014 (and subsequently passed on to firms) about transferring to SSASs in order to invest in unusual investments.

But the most stark oversight was Capita's failure to uncover the threat posed by a non regulated adviser. As I've said above, while the information Mr T initially gave on the supplemental transfer form indicated he hadn't been advised by an unregulated adviser, that might have been an incorrect assumption on his part. However, had Capita followed the other questions recommended in the Code, concerning marketing methods and the provenance of the scheme, then I think this would have quickly come to light. But despite the warning signs around the lack of an employment link to the SSAS, Capita didn't follow these routes of further enquiry. Its failure to do so, and failure to warn Mr T 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 T that the firm which had advised him 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.

I don't think this would have been a disproportionate response given the scale of the potential harm Mr T 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 T, that it was replicating the responsibilities of the receiving scheme or that it was putting in place unnecessary barriers to exit.

I'm satisfied any messages along these lines would have changed Mr T's mind about the transfer. The messages would have followed conversations or correspondence with Mr T so would have seemed to him (and indeed would have been) specific to his individual circumstances. And Capita would have imparted it in the context of raising concerns about the risk of losing pension monies as a result of untrustworthy advice. So Capita's information would have carried far more weight than simply being sent the Scorpion insert without any real context for how that affected Mr T personally.

And warnings of the above nature would have made Mr T aware that there were serious risks in using an unregulated adviser. I think the gravity of any messages along these lines would prompt most reasonable people to rethink their actions. I've seen no persuasive reason why Mr T would have been any different. So, I consider that if Capita had acted as it should, Mr T would have made a mental shift from believing that he was investing in a 'viable' investment opportunity to a position where the prospect of losing all his pension savings to a high risk investment recommended by an unauthorised party was a real possibility. And having made that shift I don't think he would have proceeded with the transfer out of his personal pension or suffered the investment losses that followed. I therefore uphold Mr T's complaint.

Putting things right

Fair compensation

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

To compensate Mr T fairly, Capita should subtract the value of the SSAS from the notional value if the funds had remained with Capita. If the notional value is greater than the actual

value, there is a loss.

I haven't been provided any evidence of the current value of Mr T's DRL 'B' shares. However, given that the company was struck off in 2018, I think it's more likely than not that those shares are either valueless or entirely illiquid.

Further, I recognise the apparent difficulty that Mr T has in obtaining any updated valuation for his SSAS since Cranfords is now also dissolved. I consider that it will similarly prove impossible for Capita to obtain the actual value of the P Ltd SSAS. So it's fair and reasonable in this case for it to instead treat the entire SSAS as having a nil value. I think this is reasonable as the investment of £43,000 in DRL is illiquid and the remainder from the transfer of Mr T's pension funds of £1,994 (£45,994.47 - £43,000) would most likely have been entirely eroded by ongoing SSAS fees. However, in return for assuming a nil SSAS value Capita may ask Mr T to provide an undertaking, to account to it for the net proceeds he may receive in future on withdrawing all funds from the P Ltd SSAS. Capita will need to meet any costs in drawing up this undertaking.

If Capita asks Mr T to provide an undertaking payment of the compensation awarded may be dependent upon provision of that undertaking.

Notional value

This is the value of Mr T's funds had he remained invested with Capita up to the date of my Final Decision.

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

Payment of compensation

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

Capita should reinstate Mr T's original pension plan as if its value on the date of my Final Decision was equal to the amount of any loss established from the steps above (and it performs thereafter in line with the funds Mr T was invested in).

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

If Capita is unable to reinstate Mr T's pension and it is open to new business, it should set up a **new** pension plan with a value equal to the amount of any loss on the date of my Final Decision. The new plan should have features, costs and investment choices that are as close as possible to Mr T's original pension.

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

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

To make this reduction, it's reasonable to assume that Mr T is likely to be a basic rate taxpayer in retirement. So, if the loss represents further 'uncrystallised' funds from which Mr T was yet to take his 25% tax-free cash, then only the remaining 75% portion would be taxed at 20%. This results in an overall reduction of 15%, which should be applied to the compensation amount if it's paid direct to him in cash.

Alternatively, if the loss represents further 'crystallised' funds from which Mr T had already taken his 25% tax-free cash, the full 20% reduction should be applied to the compensation amount if it's paid direct to him in cash.

If payment of compensation is not made within 28 days of Capita receiving Mr T's acceptance of the Final Decision, interest must be added to the compensation at the rate of 8% per year simple from the date of the Final Decision to the date of payment.

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

This interest is not required if Capita is reinstating Mr T's plan for the amount of the loss – as the reinstated sum should, by definition, mirror the performance after the date of my Final Decision of the funds in which Mr T was invested. However, I expect any such reinstatement to be achieved promptly.

Details of the calculation must be provided to Mr T in a clear, simple format.

My final decision

For the reasons given above I uphold this complaint. I require Capita Life & Pensions Regulated Services Limited to take the steps set out under 'putting things right' above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 5 February 2025.

Joe Scott
Ombudsman