

The complaint

Ms C has complained, via her representatives, about a transfer of her self-invested personal pension ('SIPP') held with Zurich Assurance Ltd and administered by Capita Life & Pensions Regulated Services Limited ('Capita') to a small self-administered scheme ('SSAS'), which happened in August 2015. Ms C's SSAS was subsequently used to invest in a fractional share of a hotel complex, through The Resort Group ('TRG'). The investment now appears to have little value and there is no market to sell the shares. Ms C says she has lost out financially as a result.

Ms C believes Capita failed in its responsibilities when dealing with the transfer request. Her representatives say that it should have done more to warn her of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance they say was required of transferring schemes at the time. Ms C says she would not have transferred, and therefore wouldn't have put her pension savings at risk, if Capita had acted as it should have done.

What happened

Ms C's transfer was initiated after 'cold calls' she received, followed by a home visit from an agent of an unregulated firm, First Review Pension Services ('FRPS'). On 27 January 2015, FRPS wrote to Capita, enclosing Ms C's letter of authority. It requested information on Ms C's pension and discharge forms to allow a transfer. FRPS was not authorised to give financial advice.

Ms C held a SIPP with Zurich, administered by Capita. Ms C says she was attracted by the prospect of a better return on her pension, and she was promised very good results from the investment into TRG, such as a guaranteed return of 4 to 5%. Ms C trusted the adviser that came to her home as she had no experience of investments.

On 3 March 2015, a company was incorporated with Ms C as director. I'll refer to this company as 'A Ltd'. On 12 March 2015, Ms C signed documents to open a SSAS with Cantwell Grove Limited ('Cantwell Grove'). A Ltd was recorded with Capita as the SSAS's sponsoring employer.

Cantwell Grove wrote to Capita on 13 April 2015, enclosing Ms C's signed authority to transfer her personal pension to the SSAS. The request included a letter in which Ms C confirmed the transfer request was not connected to pension liberation and only made to *"take advantage of investment opportunities available under the Scheme"*.

Ms C's SIPP was transferred out on 20 August 2015. The transfer value was around £56,000. She was 50 years old at the time of the transfer.

As I understand it, the investment in the fractional share of a hotel complex with TRG initially brought *some* returns. However, these seem to derive from 'special discount' payments, rather than rental income. The funds are now illiquid, which means that Ms C is unable to access any pension benefits in retirement.

In September 2019, Ms C complained to Capita. Briefly, her argument is that Capita ought to have spotted, and told her about, a number of warning signs in relation to the transfer, including (but not limited to) the following: the SSAS was newly registered; there wasn't a genuine employment link to the sponsoring employer; the transfer followed high pressure sales techniques; the catalyst for the transfer was an unsolicited call; and Ms C had been advised by an unregulated business.

Capita didn't uphold the complaint. It said it sent Ms C the required 'Scorpion leaflet' in April 2015 after the initial transfer request, as well as a 'Supplementary Transfer Form' which again asked particular questions to warn of pension scam risks, and another Scorpion leaflet in August 2015 before the transfer was carried out. As Ms C filled and returned the form, it's satisfied it followed the correct process and carried out sufficient due diligence.

Our investigator did not uphold the complaint. But as Ms C's representatives didn't agree with his conclusions, he was unable to resolve the dispute informally, so the matter has been passed to me to decide.

My Provisional Decision

In advance of this decision, I issued a provisional decision to the parties in which I said that I thought Ms C's complaint should not be upheld. Capita accepted the provisional decision with no further comments, but Ms C's representatives rejected it on her behalf and made additional comments.

What I've decided – and why

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

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

In my provisional decision I said:

"The relevant rules and guidance

Personal pension providers are regulated by the Financial Conduct Authority (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 Serious Fraud Office, 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 that 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 SSAS's 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

When the Scorpion guidance was launched in 2013, it included two standard documents that scheme administrators could use to warn their members about some of the potential dangers of transferring: a short 'insert' intended to be sent to members when requesting a transfer, and a longer booklet intended to be used for members looking for more information on the subject.

The March 2015 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, i.e. for the shorter insert (which had been refreshed in March 2015) to be sent when someone requested a transfer, and the longer version (which had also been refreshed) made available when members sought further information on the matter.

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 many 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 a 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.*
- 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, SIPP, SSASs and 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.

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 a member's interest.

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?

Ms C told her representatives she'd been cold called by, likely, FRPS and offered a free pension review. The call was followed by a meeting at Ms C's home with an adviser from FRPS, who recommended Ms C to transfer and invest her pension fund in overseas hotel property. Ms C was led to believe that the recommendation would generate a good level of returns.

I haven't seen any evidence Ms C held any other pensions or assets at the time. Ms C told her representatives that she relied on the advice she was given by someone she believed was a professional and knowledgeable agent. She was told that the suggested TRG investment was safe and she was putting in place an investment strategy which would mean

she'd be better off in retirement, even with guaranteed returns of 4 to 5%. So she proceeded with the proposal.

Ms C trusted the person she was dealing with as she didn't know much about pensions. She was told the investment would make a good amount of money and she knew her pension money was going into an overseas property.

Her representatives and Ms C have said that the TRG investment now can't be sold and, given that the hotel was never built and TRG is in financial difficulty, it's likely to be of nil value. The vast majority of her transferred pension is still tied up in the TRG investment and only a small portion is held in cash.

Ms C said in her complaint that she had no contact at all from Capita and did not receive a Scorpion leaflet. She also said her attention wasn't drawn to the risks of the transfer and investment in any way and she doesn't recall receiving any paperwork or warnings from Capita. She stated that her only contact regarding the transfer was with FRPS who liaised with Capita directly to facilitate the transfer and investment.

There's contemporaneous documentary evidence to show that FRPS was involved, and I think what was said during the meeting was likely to have amounted to advice or a personal recommendation for Ms C to transfer out of her personal pension to a SSAS to invest in TRG. I say that because I can't see Ms C would've been prepared to enter into that sort of – rather complex – pension arrangement, or even known that it was available to her, unless she'd been told it would be a good idea and she'd be better off as a result.

An adviser from another firm, Broadwood Assets Limited ('Broadwood'), was also involved in the process. Again, that firm wasn't regulated to give financial advice. The nature of its involvement was that of a trustee adviser: although Ms C was a (member) trustee of the SSAS, any advice she received in her capacity as a trustee isn't the same as advice she was given to transfer away from Capita. The latter would have to be regulated advice – that is such as should only be given by a regulated adviser. Under section 36 of the Pensions Act 1995, a trustee of an occupational pension scheme (such as a SSAS) is required to take and consider 'appropriate advice' on whether the proposed investment(s) are satisfactory for the aims of the scheme. Advice under section 36 isn't regulated and as it was limited to that, Broadwood didn't need to be regulated.

I've seen the letter from Broadwood to Ms C, stating that the TRG investment was 'appropriate' for the SSAS, but it clearly separates this advice from a personal recommendation for Ms C outside of her role as trustee and clarifies that she would need to seek independent financial advice for this. Whilst it does state that an overseas investment bears high risk, I can see that Ms C only signed the declaration confirming she read and understood the letter on 14 August 2015. However, this was much later than when she first requested the transfer through the FRPS agent. So I think the more significant influence on Ms C and what led Ms C to transfer and invest in TRG was, as I've said, from FRPS.

What did Capita do, and was it enough?

The Scorpion inserts

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.

Ms C stated that she did not receive any paperwork or warnings from Capita. However, the documentation provided both by Ms C's representatives as well as Capita shows copies of

two letters sent by Capita to Ms C's address – one on 20 April 2015 after the initial transfer request, and one on 6 August 2015 after the discharge forms had been received.

The April 2015 letter to Ms C asked her to fill out a Supplementary Transfer Form and it enclosed a Scorpion leaflet. This is evidenced by the 'member declaration' at the end of the form which says in its first paragraph: "I confirm I have read and understood the Pensions Regulator leaflet on pension scams entitled 'A lifetime's savings lost in a moment'." The declaration went on to state that the member acknowledged and agreed that, amongst other things, where the scheme administrator believed that the receiving scheme does not have the characteristics of a genuine occupational pension scheme or the member or Zurich may incur tax charges, claims or losses, Zurich reserves the right to decline the transfer and will share information with HMRC, Action Fraud, TPO or the Financial Conduct Authority (FCA). Ms C signed this declaration on 21 April 2015.

The Supplementary Transfer Form itself included questions about the sponsoring employer, the employment type and remuneration, and pension contributions. But more importantly, it contained questions about the potential for a pension scam or liberation.

The paragraph said:

"Pension scam/liberation checklist for members

Transfers to pension scam or liberation schemes may be fraudulent and are often encouraged by cash payments, promises of early release of pension savings, loans or unrealistic promises of high investment returns.

You may be liable for significant tax charges if such a transfer goes ahead and your pension savings may be at risk or lost altogether.

Please refer to the Pension Regulators [sic] Pension Scams leaflet enclosed with this form and report any concerns to Action Fraud. [...]"

The other column of the same page then had a checklist with the following questions:

"Please tick any of the statements below that apply to the transfer. If any do apply, please consider carefully whether your pension savings are at risk:

- **You were contacted about making a transfer by telephone call, text, email or through a website.***
- **Your adviser/agent is not authorised by the Financial Conduct Authority (check the financial services register at www.fca.org) or the adviser/agent is based overseas.***
- **You have been offered any form of incentive to proceed with the transfer or to speed up the transfer – this would include cash payments/loans/commission rebates/thank you payments etc.***
- **You have been invited to join an occupational pension scheme sponsored by a company that you do not work for.***
- **You have been offered a guaranteed or high return investment (often in overseas land/forestry/green or eco investments).***
- **You have been offered access to your pension before age 55 or more than***

25% as a lump sum before or after 55, or informed of a 'loophole' to avoid normal pension tax rules.

- You have not received scheme documentation such as key features documents, member booklet, scheme rules or investment information.
- A courier has collected transfer forms directly from you or you have been encouraged to act promptly without referring to the provider of your existing policy or a regulated adviser authorised by the Financial Conduct Authority.
- **You are paying a fee in respect of the transfer or charges are being deducted from the transfer. [...]** [emphasis added]

The statements emphasised in bold all applied to Ms C's situation, but on the form she only ticked, "You were contacted about making a transfer by telephone call, text, email or through a website.", and "You are paying a fee in respect of the transfer or charges are being deducted from the transfer."

The form clearly warns of the risks of such transfers as well as stating that members should check whether their adviser is FCA regulated. It's unclear why Ms C only ticked the two mentioned points and not the other applicable parts. This may have been deliberate, or if this was down to a limited understanding of what the transfer entailed, then Ms C had the opportunity to query any issues she wasn't sure about, including being pointed to where she could look up whether FRPS was regulated. Her representatives also said she was promised guaranteed returns and was impressed by the prospect of high investment outcomes, so she would have been aware of this, and it's likely she knew the investment was in overseas property.

Whilst Ms C has stated in her complaint that she didn't receive any warnings or the Scorpion leaflet, the letter containing the above form and the leaflet were addressed to her home address. The fact that she filled and signed the form and declaration including the warnings shows that she had sight of these and would have been able to go through the checklist herself and raise concerns.

Capita also provided us with a copy of the letter and Scorpion leaflet sent to Ms C in August 2015 and this included the updated, longer, more informative version of the leaflet from March 2015. I'm therefore satisfied that Ms C did receive the warnings on the above form and the Scorpion leaflets from Capita.

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 Ms C's transfer in that light. But I don't think it would make a difference to the outcome of the complaint if I had considered Capita's actions using the 2015 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.

The initial triage process should have led to Capita asking Ms C further questions about the transfer as per Section 6.2.2 ("Initial analysis – member questions"). As seen on the above quoted form, Capita did have a process in place to ask the member questions relating to the transfer. I won't repeat the list of suggested questions in the PSIG Code in full. Suffice to say, at least two of them would have been answered with "yes":

- *Did receiving scheme/adviser or sales agents/representatives for the receiving scheme make the first contact (e.g. a cold call)?*
- *Have you been promised a specific/guaranteed rate of return?*
- *Have you been informed of an overseas investment opportunity?*

Indeed, on the form Ms C confirmed she had been contacted “by telephone call, text, email or through a website”. 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 Ms C 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 communicated to Ms C 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 only been registered with HMRC in March 2015, shortly before Cantwell Grove had sent it the transfer request in April 2015. The Supplementary Transfer Form also gave the information that A Ltd was the sponsoring employer, Ms C was a director, that the company wasn’t trading, and that she didn’t receive any remuneration for her post. If Capita had asked her whether she was employed by A Ltd and how it’d come to be set up, I think she would have told Capita that she’d been directed to establish the company to facilitate the transfer of her pension, that she had no real employment link to it, and that she was employed elsewhere. Those discoveries should have caused Capita concern about the lack of a genuine employment link between Ms C and A Ltd.

To add to that, investigations under Part (c) of the Code should have been concerning to Capita. The Code repeatedly references cold calling and unsolicited approaches as being warning signs of a scam. Capita had asked Ms C about how she'd become aware of the proposed scheme, and she ticked the statement to say she was contacted by call, text, email or through a website. A representative of FRPS visited her 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 consider how best to proceed.

Capita could have identified the investment was of a type the PSIG Code determined as being linked to high fraud risk. As set out above, I'm satisfied FRPS gave advice to Ms C. From the initial letter of authority and information/quotation request FRPS sent to Capita/Zurich in January 2015, it would have been clear that FRPS had been in touch with Ms C and Capita would have been aware (or could have found out) it was an unregulated firm. Given that Ms C also confirmed on her transfer form that she had been cold called (or contacted by text, email or through a website), this should have prompted Capita to carry out further due diligence and find out more about FRPS's involvement in the 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.

My view is that Capita should therefore have been concerned by FRPS' 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 Ms C accordingly, meant it didn't meet its obligations under PRIN and COBS 2.1.1R.

With those obligations in mind, it would have been appropriate for Capita to have informed Ms C that the person she had been advised by was unregulated and could put her pension at risk. Capita should have said only authorised financial advisers are allowed to give advice on personal pension transfers, so she risked falling victim to illegal activity and losing regulatory protections. It would also have been appropriate for Capita to have informed Ms C 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 Ms C's transfer without discussing them with her.

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

However, what I need to consider is whether receiving further warnings from Capita would have changed Ms C's mind about proceeding with the transfer

A number of the warning signs that I've found Capita should have informed her of were mentioned first in an earlier Scorpion leaflet sent to Ms C in April 2015 with the transfer form, and again set out even further and clearer in the longer version of the updated Scorpion leaflet, provided to her when Capita had received the discharge forms in August 2015. 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 Ms C 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.**" [original emphasis]

After already having been asked corresponding questions on the Supplementary Transfer Form (see above), Ms C would have known she had been cold called and offered a free review of her pension, she understood the proposed investment to be in a single property overseas, and she had been promised high or even guaranteed returns. So the contents of the leaflets as well as the checklist on the form should have resonated strongly with Ms C and put her on notice that there were warning signs of a scam in her transfer. By the time Ms C received the longer leaflet, she would have known that all of these warning signs were present in her transfer. But that didn't deter her from transferring and she only ticked a few of the applicable checkboxes on the transfer form, rather than reviewing the whole exercise in light of the clear alerts the form provided, as well as again later when the longer leaflet gave further warnings.

Ms C said in her complaint that her attention wasn't drawn to the Scorpion leaflet in any way by Capita and that she doesn't recall receiving the leaflet. The August 2015 letter stated in its second paragraph:

"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 Ms C's attention.

The warnings given in the Scorpion leaflet as well as those on the transfer form did not dissuade Ms C from proceeding with the transfer. Consequently, taking everything I've said above into account, it's my view that had Capita informed Ms C of the warning signs it should have identified in relation to her transfer, I don't think that would have led her to decide not to transfer. Ms C was informed and warned of the scam risks on three occasions and still decided to go ahead, signing that she understood those risks and warning signs.

So overall, even though I don't think Capita met its due diligence obligations under the PSIG Code and COBS 2.1.1R, I'm not persuaded further action on the back of such due diligence would have prevented the transfer and Ms C's pension losses. I'm therefore unable to uphold her complaint."

Responses to my Provisional Decision

Capita had no further comments on my provisional decision, however Ms C's representatives got back to us with the following points.

Firstly, they provided a factual clarification that the hotel Ms C had invested in had in fact been built and completed, but as it's not possible to sell the fractional shares on the open market, the investment is illiquid. This seems to be the case, so I appreciate the clarification. However, this doesn't change or influence the outcome of the decision so no further discussion on this is needed.

Ms C's representatives agreed that Capita's due diligence on Ms C's transfer wasn't sufficient but accepted that the two Scorpion leaflets had been sent. They also confirmed they too were unsure why Ms C had only ticked some of the applicable boxes on the Supplementary Transfer Form, but stated that this was a sign Ms C's awareness of scam warnings was deficient, rather than evidence showing that she would have gone ahead nevertheless.

However, I think the more important part to this is not whether or not Ms C ticked the applicable boxes, but the clear warning the Supplementary Transfer Form gave to Ms C, pointing out the risk of pension scams, the usual signs of these such as cash payments or *"unrealistic promises of high returns"*, and it directed her to the pension scams Scorpion leaflet. It went on to the checklist, stating: *"Please tick any of the statements below that apply to the transfer. If any do apply, please consider carefully whether your pension savings are at risk"*. The fact that Ms C only ticked two of the applicable statements is less relevant here than the evidence that she had in fact read the form and warnings and she signed to declare she had also read the Scorpion leaflet, again warning her of the scam risk. Many of the scam warning signs were applicable to her situation, but she still went ahead with the transfer – even after also receiving the longer, more informative leaflet in August 2015.

Another point Ms C's representatives made is that Capita didn't point out to her that FRPS wasn't regulated and that FRPS advising her on the transfer may mean a criminal breach of FSMA. And, if Capita had done so, why Ms C would have ignored such a warning, as there's no evidence of her being a reckless person.

It is true that if Capita had done more due diligence and communicated with Ms C that her adviser wasn't regulated, this would have been a stark warning. However, Ms C had already received several warnings by way of two separate Scorpion leaflets and the Supplementary Transfer Form, two of which included the prompt to check whether her adviser was regulated and that if they are not, this may mean a risk of being scammed. The Supplementary Transfer Form also included this as a question to tick, underlining the importance of authorisation. As explained above, even if Ms C did not tick this box, Capita did raise this point with her in its form as well as pointing her to the Scorpion leaflets. The scenarios set out in these applied to her situation, but she still decided to go ahead with the transfer. She had also received several and repeated warnings about being cold called, being offered overseas investments with promised high or guaranteed returns, being made a company director for a scheme to be set up, as well as a lack of diversification in her pension investments. So I'm not persuaded that a further warning from Capita about FRPS' lack of authorisation would have been the deciding factor to change her mind, after she had been prompted to check her adviser and the FCA register twice before.

This isn't a judgement on whether Ms C was reckless or not. It's a reflection of the contemporaneous evidence that shows Ms C ignored, on several occasions, pertinent warnings and information on how to protect herself. In that light, it doesn't seem plausible to me that Ms C would have responded in a different way had Capita done all it should.

So in conclusion, whilst I agree that Capita should have done more thorough due diligence, I remain of the opinion that further communication to Ms C would not have prevented the transfer. I'm therefore unable to uphold her complaint.

My final decision

My decision is that I don't uphold Ms C's complaint about Capita Life & Pensions Regulated Services Limited and I don't make an award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 6 February 2025.

Lea Hurlin
Ombudsman