The complaint

Mr D has complained about a transfer of his Zurich self invested personal pension (SIPP) to a small self-administered scheme (SSAS) in August 2015. Mr D's SSAS was subsequently used to invest in the Llana Beach Hotel, a resort development in Cape Verde offered by The Resort Group (TRG). The investment now appears to have little value. Mr D says he's lost out financially as a result.

Mr D says Capita Life & Pensions Regulated Services Limited (Capita), who was the SIPP administrator at the time, failed in its responsibilities when dealing with the transfer request. He says Capita 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 D says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Capita had acted as it should've done.

What happened

I issued a (second) provisional decision on 1 November 2024. I've repeated here what I said about what had happened and my provisional findings.

'*From what I've seen, on 23 March 2015 Mr D signed a letter of authority (LOA) for Zurich to provide information to Capital Facts Limited (CFL). CFL emailed Zurich on the same date asking for information on all policies held by Mr D. Capita wrote and emailed CFL on 2 April 2015 with some information and discharge forms for completion by Mr D and a receiving scheme warranty for the receiving scheme to complete. Capita said further information would follow under separate cover, including a transfer value. Capita said it was enclosing 'an awareness campaign leaflet that was published recently by The Pensions Regulator [TPR] regarding pension scam activity'. I think that would've been the Scorpion insert or booklet which I've mentioned further below. Capita also wrote to Mr D on 2 April 2015 saying his LOA had been received and Capita's records had been updated to show that CFL could receive information about his plan. On 16 April 2015 Zurich wrote to CFL acknowledging receipt of Mr D's authorisation and enclosing information.*

In April 2015 a limited company, which I'll call D Limited, was incorporated with Mr D as the sole director. There's a letter to Rowanmoor Group plc (Rowanmoor) from DLW Company Formation Services Limited (DLW) dated 5 May 2015 confirming that D Limited had been registered with Companies House and giving the date and some details about the company.

Also on 5 May 2015 Mr D signed application forms to open a SSAS with Rowanmoor. There was a section which dealt with the trustee adviser and details of a Mr B of Strategic Alternatives Limited (SAL) had been written in. The proposed investment was shown as TRG, Cape Verde. Mr D also signed an authorisation form. It said he authorised First Review Pension Services Limited (FRPS) to submit his application form for the SSAS to Rowanmoor. And he authorised FRPS and Rowanmoor to correspond and release information to each other relating to the SSAS. Mr D also signed Zurich's transfer discharge forms on 5 May 2015. And a property information release form authorising information to be released to TRG as to progress of any transfers and the availability of funds for the *purchase.*

The SSAS was established by an interim trust deed dated 14 May 2015.

Rowanmoor wrote to Capita on 21 May 2015 enclosing Mr D's signed authority to transfer his Zurich SIPP. On 29 May 2015 Capita replied, saying, amongst other things, that to proceed with the transfer Capita required its transfer discharge form and receiving scheme warranty (to be completed by Mr D and the receiving scheme respectively). Capita enclosed a further copy of TPR's 'awareness campaign leaflet'.

On 9 June 2015 Rowanmoor wrote to Mr D saying it understood he wanted to invest in fractional ownership of a property in Cape Verde at the Llana Beach Hotel. Rowanmoor said they could inform him as to the eligibility of the investment but not its suitability or the risks attached. And, as with all complex investments, it strongly recommended that, before proceeding, Mr D take appropriate legal and other professional advice. He should also be aware that the scheme trustees had a statutory obligation to take investment advice.

Rowanmoor also said that the investment wasn't regulated by the FCA and most of the protections afforded under the UK financial services regulatory system didn't apply and compensation under the Financial Services Compensation Scheme (FSCS) might not be available. To meet on going charges, a minimum of £3,000 in cash or other readily realisable assets should be held in the SSAS.

A declaration for Mr D to sign and return was enclosed to confirm, amongst other things, that he'd read the letter of 19 May 2015 (although from what I've seen the letter was dated 9 June 2015) and the purchase contract, whether he'd appointed legal advisers and if so give their details and that he'd taken investment advice in accordance with the requirements of the Pensions Act 1995.

On 3 August 2015 Rowanmoor wrote to Zurich enclosing the signed discharge and warranty forms and a copy of the SSAS's HMRC registration certificate and giving account details for the transfer payment.

Capital wrote to Rowanmoor on 12 August 2015 confirming safe receipt of the discharge forms. Capita said it was processing the transfer of benefits to Rowanmoor. On the same date Capita wrote direct to Mr D. Capita confirmed safe receipt of the discharge forms and said it was processing the transfer of benefits to the receiving scheme. Capita enclosed an awareness campaign leaflet published recently by the TPR regarding pension liberation and scam activity for Mr D's attention and said further details could be obtained from the Pension Advisory Service (TPAS) with a link to their website given.

Capita wrote to Rowanmoor on 26 August 2015 confirming that the transfer of Mr D's SIPP had been completed and a cash payment of £49,826.91 had been made. I've seen an email from Rowanmoor on 27 August 2015 to TRG which said two investments in TRG had been authorised, one on behalf of Mr D. Rowanmoor said it would be 'around £500 light on [Rowanmoor's] minimum cash buffer' (which I assume was the £3,000 I've referred to above) but it had been agreed to allow it 'just this once'. On 28 August 2015 £45,250 was transferred to TRG for the purchase of a fractional share of a plot at the Llana Beach Hotel. Rowanmoor wrote to Mr D on 14 September 2015 saying that the transfer values from Zurich had been received, in total £49,826.91, which had been credited to the SSAS (although, as I've said, by then the investment in TRG had been made).

Initially the investment in TRG provided some returns but eventually these dried up and in April 2020, Mr D, through his representative, complained to Capita. His argument was 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: unregulated introducers and advisers had been involved (including CFL who'd only been incorporated in April 2014); the SSAS was newly registered; the sponsoring employer was a newly set up company and not Mr D's genuine employer; the catalyst for the transfer was an unsolicited call; Mr D had been told he could expect high returns; and the investment was unregulated, illiquid and high risk – although the proposed investment may not have been apparent on the paperwork Capita received, it should've been identified if Capita had contacted Mr D.*

As no final response from Capita had been received by 25 August 2020 the complaint was referred to this service. Zurich wrote to Mr D on 22 December 2020 apologising that no response had been issued. Zurich said the transfer had been processed by Capita, the SIPP administrator on whose behalf Zurich had investigated the complaint. Zurich said Capita had undertaken due diligence before processing any transfer by checking on Companies House that the trustees of the receiving scheme were a registered company and that the company registration number and registered address matched the transfer request; that the receiving scheme was a HMRC registered scheme and noting the Pension Scheme Tax Reference (PSTR) number; and that the signature on any instruction from the customer matched the signature held on file. Capita wasn't obliged to look into the suitability of the chosen investment or check if a customer had taken financial advice. Under the policy terms and conditions customers had a right to request the transfer of their SIPP assets to another provider. Zurich set out how the transfer had been processed. Zurich said a letter had been sent on 12 August 2015 to Mr D, confirming safe receipt of the transfer discharge forms, and enclosing a copy of TPR's leaflet.

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

As I've noted above, this is a further provisional decision. That's because the findings I reached in my earlier provisional decision were on the basis that Mr D hadn't seen the Scorpion insert or booklet. But, in response to my provisional decision, Capita provided a copy of the letter it had sent to Mr D on 12 August 2015 with enclosed Scorpion leaflet. So I've considered things again and afresh.

<u>What I've provisionally decided – and why</u>

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

<u>The relevant rules and guidance</u>

Personal pension providers and administrators 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, 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>

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, which is 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 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.

<u>The PSIG Code of Good Practice</u>

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 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.

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

I've set out above what happened from the documentation I've seen which, in the main, has been provided by Mr D's representative. Although we've requested Zurich's and Capita's business files these haven't been provided.

As to what Mr D recalls, when his complaint was made to Capita, he said he'd been cold called by CFL or FRPS and offered a free pension review. His details were then forwarded to SAL who were unregulated. There was then a meeting with an adviser from SAL at Mr D's home. The adviser encouraged Mr D to transfer and invest his pension fund in TRG. Mr D was led to believe that the recommendation would generate a good level of returns. The *adviser suggested the investment was in demand and so TRG would always want to buy the property back from Mr D at an increased value. So Mr D thought it wouldn't be difficult to disinvest and sell his property share at any point in the future. He was told the investment was safe and secure – the adviser reassured Mr D that the investment couldn't fail as it was "going into bricks and mortar".*

At the time Mr D was working as a test engineer, earning approximately £35,000 pa. He owned three properties all with outstanding interest-only mortgages of around £320,000 in total. He had very limited savings and no other pensions or other assets at the time. He considered himself to be a low risk inexperienced investor. He relied on the advice he was given by someone he believed was a professional and knowledgeable financial adviser. He understood what had been suggested to him was safe and a strategy which would mean he'd be better off in retirement. So he proceeded with the proposal.

Our investigator also spoke to Mr D about what had happened. Mr D said he'd been cold called by a firm he thought was called the Pension Review Centre, although later on during the call, and having checked his paperwork, he said it had been FRPS. He hadn't been looking to do anything with his pension although he'd been meaning to check to see how it was doing.

Mr D said FRPS sent a consultant, whose name Mr D recalled and who I'll refer to as Mr H, to see him. He didn't recall Mr B from SAL (whose name appeared on the Rowanmoor paperwork) but SAL did ring a bell with him. Mr D had an initial meeting with Mr H when everything was discussed and Mr H then came back a week later when it was all completed. But there were then several visits to get Mr D's signature which had been missed off various documents. A courier came with paperwork for Mr D to sign which the courier waited for and then took away with him. Mr D said he'd got fed up with that. He'd thought it was all going to be easy and it got to the point where he said, if there was anything else he needed to sign, he'd call it all off. Thinking about it now, Mr D said he'd felt a bit under pressure to sign – he was told he needed to do it to get his pension working for him. He trusted the person he was dealing with as he wasn't knowledgeable about pensions.

He said he hadn't been given any guarantees, aside from being assured the investment would make a good amount of money and wasn't long term. He knew his money was going into an overseas property but understood that was a good thing to do. He hadn't been promised any incentives, loans, cashback, commission or advances or bonuses. He'd just get the rental income (although he hadn't received any payments for some time and even before Covid had impacted) and the profit when the property was sold, usually back to the developer. He understood it was necessary for people to invest so that the resort could be built but it was logical that the hotel would want to buy it back. He'd bought 'off plan' and usually such properties are worth more as soon as they are built. He didn't have any doubts at the time – it all sounded plausible, he was reassured about any concerns and it didn't sound suspect or high risk.

But when he'd looked into it, having become aware of media reports about TRG, he found the value of his investment had fallen substantially. He'd spoken to TRG and was told to offer it to other investors but no one wanted to buy it and TRG didn't want to sell it. He wasn't told it was high risk – if he'd have known that he wouldn't have gone ahead – he isn't a gambler and he doesn't like losing hard earned money. The income from TRG didn't even cover Rowanmoor's administration fees, let alone increase his pension fund. He also said he'd ended up as a director of a company which he wasn't happy about.

Prior to speaking with Mr D the investigator had emailed him a copy of the Scorpion insert. Mr D said he'd seen it before but only as his current representative had sent him a copy. He hadn't received one at the time of the transfer. He found it difficult to say exactly what impact *it would've had on him and without hindsight. But he said the insert did stand out with the distinctive image on the front and he'd like to think it would've 'woken him up'. There was reference to overseas transfers, as well as early access – Mr D was in his mid 40s at the time. He thought the insert would've made him think about things a bit more and get a second opinion. And, if he'd gone to a reputable financial adviser, they'd have told him not to do it. He stressed that if he'd have known it was high risk he wouldn't have gone ahead with it, given his age and that he wasn't just starting to contribute to a pension and he'd built up a fund of around £50,000.*

As to who he'd have approached for a second opinion, he didn't have an IFA or pensions adviser at the time. He did have an adviser in connection with a stocks & shares ISA who was unable to help him with what had happened. Mr D also mentioned that he was now a member of a company pension scheme. He said what had happened had been on his mind for several years and he now regretted having been 'sucked in' as he put it.

What happened and, in particular, exactly who did what, isn't entirely clear. I think to some extent, given the time that's elapsed, that's understandable. My impression is what Mr D told our investigator is Mr D's honest recollection of events even if it's not consistent in all respects with what was said when his complaint was made.

I accept that Mr D was cold called about his pension. When his complaint was made to Capita, the suggestion was that the unsolicited call was from CFL or FRPS. Neither was regulated by the FCA and both have since been dissolved. There's documentary evidence showing CFL's involvement at an early stage – CFL's letter dated 23 March 2015 enclosing Mr D's signed LOA. That would suggest it was CFL who'd cold called him. But it might've been that someone from another firm – FRPS – called Mr D initially and then instructed CFL to get the information which was then passed back to FRPS to decide whether to take things further. So the LOA doesn't necessarily mean it was someone from CFL who visited Mr D.

When he spoke to our investigator Mr D said it had been someone from FRPS – Mr H – who'd visited him. That's contrary to what was said when Mr D's complaint was made – that someone from SAL (the name of which company Mr D recalled but not the adviser – Mr B) came to see him. There's contemporaneous documentary evidence to show that FRPS was involved – the form of authority Mr D signed on 5 May 2015. I think that supports what Mr D has said about having met with someone from FRPS. I've dealt with what I've seen about SAL's involvement – Mr B and SAL were mentioned on the SSAS application form – further below.

Mr D says he had an initial meeting with Mr H (from FRPS) to discuss everything, followed by a further meeting a week later to complete all the paperwork. As to what was likely said during the meetings, Mr D says he was encouraged to transfer so that he could invest in TRG – it would provide good returns and he'd be able to sell his investment at an increased value and so he'd be better off when he came to retire. I think what was said during the meetings was likely to have amounted to advice or a personal recommendation that Mr D transfer to a SSAS to invest in TRG. I say that because I can't see Mr D would've been prepared to enter into that sort of pension arrangement – or even known that it was available to him – unless he'd been told it would be a good idea and he'd be better off as a result – essentially that course of action had been recommended to him. Setting up his own limited company, establishing a SSAS, transferring his existing pension and investing in an overseas property development – were complex and unusual arrangements for someone such as Mr D who didn't work through D Limited and was employed elsewhere.

I note Mr D did have some investment experience – he's mentioned a stocks and shares ISA and he had several properties which, I assume, included buy to lets. And his existing pension with Zurich was a SIPP which would be regarded as a somewhat more complex *pension and one which allows a wider range of investments than simply holding insured funds with a provider. But the fund value was relatively modest and was all invested in the provider's Defensive Equity & Bond ZP Fund. So I don't think the fact that he had a SIPP means Mr D should've been regarded as having any particular pensions expertise. I also note that at the time the SSAS was established – which entailed setting up D Limited – Mr D was already a director of another company. In 2013 (he resigned in 2017) he'd become a director of a small leisure orientated charity. But I don't think that appointment is of any direct relevance.*

As I've said, an adviser, Mr B, from another firm – SAL – has also been mentioned. Again that firm wasn't regulated and has since been dissolved. The nature of business is shown as other service activities not elsewhere classified but its previous name was WBB Overseas Investments Limited which might shed some light as to the sort of business it was. Mr B and SAL were shown on the SSAS application form (which Capita wouldn't have seen) as the trustee adviser. Although Mr D was a (member) trustee any advice he received in his capacity as a trustee isn't the same as any advice he was given to transfer away from Zurich. The latter would 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 (which a SSAS is) 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 so if SAL's role was limited to that, SAL didn't need to be regulated. I haven't seen any written section 36 advice that Mr D received. But I haven't seen anything to suggest that SAL did anything – whether pursuant to section 36 or otherwise. I don't think anything turns on this, as my focus is on what led Mr D to transfer and invest in TRG and which, as I've said, was based on what FRPS had told him.

DLW has also been mentioned in the paperwork (although not by Mr D). It wasn't authorised to provide regulated financial advice. DLW's full name suggests that it undertook the administration involved in setting up D Limited. I haven't seen anything to suggest DLW did more than that. But it's relevant to note that both of DLW's directors had links with TRG. And one was also a director of CFL and FRPS. That would suggest that DLW facilitated the incorporation of D Limited so that the SSAS could be set up which would enable Mr D's transfer to be made and so secure further funds for investment in TRG. And that was a common aim of the other companies involved – CFL and FRPS.

There's also the question of whether Mr D saw the Scorpion insert. He says he didn't see it at the time. I've seen that on 2 April 2015 Capita sent either the insert or the booklet to CFL with the information CFL had requested. Capita also sent the insert or the booklet to Rowanmoor on 29 May 2015. From what I've seen I think that was the booklet. That's because a copy of the booklet – 'Scamproof your savings' – appears in the copy documentation I've seen immediately after the letter dated 29 May 2015 and which suggests it was the enclosure actually sent.

Capita also says it sent a copy to Mr D on 12 August 2015 acknowledging safe receipt of his transfer forms. I've now seen a copy of that letter. It refers to a recently published awareness campaign leaflet being enclosed which Capita says was the longer, March 2015 booklet – so a further copy of the 'Scamproof your savings' booklet which had been sent to Rowanmoor on 29 May 2015. As Capita appears to have sent the longer booklet to Rowanmoor earlier, it seems Capita was using that booklet so I'd accept that it was the longer booklet which was enclosed with Capita's letter of 12 August 2015 to Mr D.

<u>*What did Capita 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. The Scorpion guidance gave ceding schemes an important role to play in protecting members who were considering transferring.

Here I've seen that Capita sent the Scorpion insert or leaflet to CFL on 2 April 2015. And what appears to have been the longer booklet was sent to Rowanmoor on 29 May 2015. Sending the insert or leaflet to a third party wasn't in itself good enough. But I've now seen a copy of Capita's letter of 12 August 2015 to Mr D acknowledging safe receipt of his transfer forms and enclosing a copy of an 'awareness campaign leaflet' and which, as I've said above, would've been the March 2015 longer Scorpion booklet. Capita's letter appears to have been correctly addressed to Mr D's home address. The vast majority of correctly addressed post does reach its intended destination so I don't see any real reason to assume Mr D didn't receive the letter and enclosure even if he can't now recall.

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 D'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.

As I've said above, the PSIG Code, there was an initial triage process. Here Rowanmoor was the receiving scheme. At the time of the transfer Rowanmoor was a long established SSAS provider and had some repute in the industry. Rowanmoor Trustees Limited also had legal and fiduciary duties as a professional trustee. There's an argument, therefore, that Capita could've taken comfort from this. I disagree. The Scorpion guidance gave ceding schemes an important role to play in protecting customers wanting to transfer a pension. It would defeat the purpose of the Scorpion guidance for a ceding scheme to have delegated that role to a different business – especially one that had a vested interest in the transfer proceeding. An important aspect in this is the fact that there is little regulatory oversight of single member SSASs like this; they don't have to be registered with TPR. In the absence of that oversight, Capita was assuming, in effect, that Rowanmoor would want to maintain its standing in the industry and the trustee subsidiary would comply with its legal and fiduciary duties. In the context of guarding against pension scams – and an environment where providers and trustees clearly didn't always act as they should have done – I don't consider this to have been a prudent assumption.

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

Capita did undertake some due diligence. It checked Companies House to ensure that the SSAS trustees were a registered company and that their company registration number and registered address matched the transfer request. So I assume Capita would've searched against Rowanmoor Trustees Limited and D Limited. Capita also checked that the SSAS was a HMRC registered scheme and had a PSTR number. And Capita checked that Mr D's signature on any instruction matched the signature held on file.

But against the background I've set out above, the initial triage process should've led to

Capita asking Mr D further questions about the transfer as per Section 6.2.2 ("Initial analysis – member questions"). I won't repeat the list of suggested questions in full. Suffice to say, at least three of them would've been answered "yes":

• Did the 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?

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 one 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've addressed all four sections of the SSAS due diligence process and contacted Mr D to help with that.

<u>What should Capita have found out?</u>

Capita would've already known from the information it had and the limited due diligence it did undertake that the SSAS was newly registered and the sponsoring employer was also newly incorporated. I don't think we've seen the definitive trust deed and rules, just the interim deed dated 14 May 2015. And I'm not sure exactly when the SSAS was registered with HMRC – although HMRC's confirmation letter giving the PSTR number has been mentioned, I don't think we've seen a copy. But given the date of the interim deed it would've been very shortly before the transfer request was sent by Rowanmoor on 21 May 2015. And Capita knew that D Limited was newly incorporated. If Capita had asked Mr D about how D Limited had come to be set up, I think he'd have said that it had been to facilitate the SSAS, that he had no real employment link to D Limited and that he was employed elsewhere.

And, if Mr D had been asked about how he'd come to want to transfer, I think, at the time, he'd have recalled signing the LOA in favour of CFL and so he'd have told Capita that he'd been cold called and given authority for CFL to obtain information about his SIPP. Capita could've very quickly and easily checked the FCA's register and would've seen that CFL wasn't a regulated firm. The same is true if Mr D had said he'd been cold called by FRPS, which wasn't a regulated firm either. I've noted above the observation in the PSIG Code that a strong first signal of a scam would be a LOA from an unauthorised firm asking for pension information. That was the case here – CFL emailed Zurich on 23 March 2015 enclosing a

LOA signed by Mr D and asking for information about his SIPP. That would've led Capita to ask further questions, such as if Mr D had received any advice from CFL/FRPS. Based on what Mr D has told us, he'd have said FRPS had visited him at home and discussed with him transferring away from Zurich to a SSAS so that he could invest in TRG – an overseas property development. Mr D would've said that he'd been told the returns would be higher and that he'd be better off if he transferred – essentially that he'd been advised 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.

My view is that Capita should therefore have been concerned by the involvement of unregulated entities because it pointed to a criminal breach of FSMA. On the balance of probabilities, I'm satisfied such a breach occurred here.

<u>*What should Capita have told Mr D – and would it have made a difference?*</u>

Had it done more thorough due diligence, there would have been a number of warnings Capita could've given to Mr D in relation to a possible scam threat as identified by the PSIG Code (and the Scorpion action pack). Capita should also have been aware of the close parallels between Mr D'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 egregious oversight was Capita's failure to uncover the threat posed by a non-regulated adviser. Its failure to do so, and failure to warn Mr D 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 D that the firm he'd been advised by was unregulated and could put his pension at risk. Capita should've said only authorised financial advisers are allowed to give advice on personal pension transfers, so he risked falling victim to illegal activity and losing regulatory protections.

It's impossible to say with certainty now what would've happened and what Mr D might've done differently if Capita had given him that warning. But, in reaching my conclusions about that, I take into account all the information Mr D had. When I considered his complaint previously I didn't think he'd been given any warnings by Capita. But I've now seen he was sent the longer March 2015 Scorpion booklet – 'Scamproof your savings'. I know Mr D doesn't recall getting that booklet. But, as I've said, I don't see any reason why he wouldn't have received it. So I think it's probably the case that he was sent it, even if he doesn't now remember seeing it. I don't think he's being other than honest when he says he doesn't recall it which, to some extent, I think is understandable, given the transfer was now over nine years ago. But I have to consider what likely happened at the time.

Assuming Mr D got the booklet there are two possibilities: either he didn't read it at all or he did read it but he decided to continue with the transfer anyway. I think Mr D ought to have read the booklet – it had been sent direct to him by Capita in connection with the transfer and so it was presumably important. And it wasn't part of a large number of documents given to Mr D by any other party involved and which were just put in front of him to sign. If Mr D simply ignored Capita's letter, it that might suggest he was always going to proceed with the transfer and he wouldn't have been swayed by anything Capita had said to him or any warnings Capita gave him, including those in the Scorpion booklet.

It's difficult to say one way or another but on balance I think Mr D would probably have read the booklet. I think most people, acting reasonably, would be likely to read information sent direct to them (rather than via a representative or other party involved in the transfer). So I'm going to assume Mr D did read the booklet. It was sent at a relatively late stage – his transfer request was received in May 2015 and it wasn't until August 2015 that Capita wrote to him with the booklet. And, in the same letter, Capita said it was processing the transfer to the receiving scheme. So the leaflet wasn't presented as something Mr D needed to consider before confirming if he wanted to go ahead.

But, that said, most of the warning signs highlighted in the booklet did feature in his case – a cold call; an offer of a free pension review; an overseas transfer of funds (in the sense that TRG investment was overseas); paperwork delivered to his door by a courier which required immediate signature; and a proposal to put all his money in a single investment. Although a return over 8% wasn't promised, Mr D was told the investment would perform well. The case study in the booklet also had similar features to Mr D's situation: a cold call, an investment in an overseas hotel complex, convincing marketing materials, a courier and becoming a company director. The booklet also pointed to specific steps the reader could take which included checking the status of any advisers. With all that in mind, I'm satisfied Mr D wouldn't have heeded further warnings from Capita of the type I've described previously. That strikes me as being a more plausible scenario than Mr D stopping the transfer given the contemporaneous evidence of what he did do when presented with warnings that were highly relevant to his situation.

When our investigator showed him a copy of the insert and asked Mr D what he thought he'd have done if he'd seen it at the time, Mr D was to some extent uncertain and didn't categorically say he wouldn't have gone ahead. I think he was being honest when he said he was unsure what he would've done. I agree it's very tempting to approach the issue with the benefit of hindsight and knowing now that the transfer has probably resulted in the loss of his pension fund. I think Mr D was trying very hard not to take into account what he now knows. But although he didn't categorically say he wouldn't have gone ahead if he'd seen the insert, he did say he thought it would've prompted him to seek a second opinion.. So even Mr D acknowledges that the Scorpion booklet was impactful and relevant to his situation. The fact that he evidently did ignore it is, therefore, another reason why I think other, similarly potent, warnings from his ceding scheme wouldn't have made a difference here.

My original findings were on the basis that Capita should've done more to protect Mr D – in particular, Capita should've made sure he got the Scorpion insert. I've now seen that Capita did send Mr D the longer version of the Scorpion booklet. Even if in some respects Capita's due diligence was lacking, I think the fact that Mr D was sent the Scorpion booklet changes things for the reasons I've explained above.

I know this revised provisional decision will come as a disappointment to Mr D. But based on what I've now seen I don't think his complaint should be upheld.'

Responses to my provisional decision

Capita didn't want to add anything in response to my provisional decision. Mr D, through his representative, made detailed comments, which I've summarised:

- The only additional evidence provided to change my decision was a copy of a letter Capita sent to Mr D on 12 August 2015. It was (and had earlier been) accepted this had been sent with the longer Scorpion booklet enclosed.
- Mr D agreed that Capita's due diligence was insufficient – it hadn't contacted him and

had failed to uncover scam warning signs – most importantly that he was relying on advice from non regulated firms. I'd concluded that the Scorpion booklet was effectively equivalent to Capita giving Mr D that specific warning, despite the detailed provisions in the guidance and PSIG Code – the regulators didn't think sending the Scorpion booklet was sufficient where scam warning signs were identifiable.

- In Mr D's case, the warning would've been entirely different to simply sending the Scorpion booklet. It would've been bespoke and specific and so come across as a warning he should heed. It would've been preceded by Capita having already made specific contact with him to ask him questions about his transfer, demonstrating that Capita was taking a personal interest in his transfer. Capita/Zurich was a 'household name' and so he'd have heeded any specific and non generic warnings given.
- Capita's letter of 12 August 2015 said it was in the process of making the transfer. It wasn't presented as an opportunity for Mr D to review the booklet and come back to Capita to confirm whether or not he wanted to go ahead. Rather the impression was that Capita had no concerns about the transfer. A warning about relying on the advice of unregulated firms, if done correctly, should've been structured as an opportunity for Mr D to reconsider.
- Equating receipt of the Scorpion booklet with the warning that Capita should've given put a requirement on Mr D (a consumer not familiar with FCA regulation procedures and information sources) to identify, from the booklet, a concern about the lack of FCA regulation with an advisory firm, consider from which firms he was receiving advice, find information about that firm's regulatory status (perhaps on an email or letter from them) and then access the FCA's register to check the position. And have an awareness of FSMA to realise that the factual situation meant a criminal breach was occurring. That was a high expectation for a consumer, compared with the focused and succinct warning on exactly that point Mr D would've received from Capita, had it carried out is obligations properly.
- There were more than the two possible outcomes I'd outlined – either that Mr D didn't read the Scorpion booklet or he did read it and continued with the transfer anyway. It was entirely plausible he received and read the booklet but, not unreasonably, he didn't pick up on the relevance of the warnings to his particular transfer. He should've been asked what he'd have done if Capita had given him a specific warning about a criminal breach of FSMA. A consumer would've had to be very intent on proceeding to ignore such a targeted and specific warning – there's no evidence Mr D was that type of person.
- Causation arguments made in response to the investigator's view hadn't been addressed. What had been said was set out again. In summary, had there been adequate due diligence and communication, Mr D would've either backed out of the transfer or taken independent advice from a FCA regulated adviser and followed that advice. A reasonable person, being informed by a reputable pension provider such as Capita that a due diligence exercise had been carried out and numerous scam warning signs identified, would've done that. As that hadn't happened, there's no direct evidence as to how Mr D would've reacted. But, in the absence of him having ignored similarly clear and stark warnings (that is, evidence he was an insistent client), there was no justification for concluding he'd have behaved in any way differently to a notional reasonable person.
- When the investigator had spoken to him, Mr D had answered honestly and said he'd have sought a second opinion. There was little point in asking Mr D if his evidence was going to be ignored. He'd previously used a (named) advisory firm when he'd transferred to Capita in 2011/2012. And he'd sought advice from that firm again in 2017 when he wasn't receiving any returns from his SSAS and he was looking into

transferring away. So he did have a regulated adviser he could've turned to for a second opinion had Capita raised concerns. That adviser would've recommended he didn't transfer and so the scam pension transfer would've been avoided.

- As an alternative, where the ceding scheme had failed in its duties and a consumer hadn't reacted to some (albeit inadequate) warnings, a finding of contributory negligence could be made.

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've considered very carefully the points made on behalf of Mr D but I haven't been persuaded to alter the findings I reached in my (second) provisional decision. I've set out above in full what I said in that provisional decision and it forms part of this decision.

I acknowledge that Mr D will be disappointed, given that in my earlier provisional decision I upheld his complaint. But sometimes a single piece of evidence will make a difference to the outcome. And, although Mr D's representative has said that it had earlier been accepted that Mr D had received Capita's letter of 12 August 2015 and enclosure – the longer March 2015 Scorpion booklet – Mr D did tell our investigator he hadn't seen it at the time. So my conclusions (and where Capita hadn't produced a copy of the letter) were on that basis. But then, having had sight of a copy of the letter, my view was, for the reasons I explained, that Mr D did receive it and the enclosure.

I went on to say there were two possibilities: either he didn't read it at all or he did read it but he decided to continue with the transfer anyway. Although Mr D's representative says that there were more options, I think what's been said about what Mr D would've done is just a development of the second possibility – that he'd read the Scorpion booklet but, despite doing so, he went ahead anyway. From what's been said, it seems Mr D did read the booklet (which was the finding I'd reached in my provisional decision) but, and in the absence of a more specific warning – that FRPS wasn't regulated and was acting unlawfully in advising him – he didn't check out FRPS' regulatory status. And, had he known FRPS was unregulated, he'd have sought a second opinion from a regulated adviser he'd had previous (and subsequent) dealings with.

Against that background, I've considered very carefully the points made on Mr D's behalf. I don't agree my findings mean that the detailed provisions in the Scorpion guidance and PSIG Code can be ignored and all firms had to do was send the longer Scorpion booklet. On the contrary, I've said that wasn't enough and Capita's due diligence was lacking. Further, I recognised, if Capita had told Mr D that his adviser wasn't regulated, that would've been a stark warning.

But a finding that ReAssure was at fault isn't enough. I have to go on to consider what the impact would've been – that is what Mr D would've likely done if ReAssure had acted as it should've and so whether ReAssure's failings caused Mr D's losses. As things actually happened differently, there's no direct evidence so I reach my conclusions on the balance of probabilities – that is what I consider is more likely to have happened, taking into account all the available evidence (which may be incomplete, inconclusive or contradictory) and the wider circumstances. Mr D now wishes he hadn't gone ahead with the transfer. But I'd emphasise that I'm not looking at what would've happened with the benefit of hindsight. I need to consider what Mr D would've likely done at the time.

My findings are based on what a reasonable person in Mr D's position would've done. I don't agree his evidence has been ignored. I've taken it into account. But it isn't the only consideration. I think what he actually did, having received the Scorpion booklet, is also relevant and does shed light on what he'd likely have done, had Capita given him further warnings and even if those would've been more specific.

As I said in my provisional decision, most of the highlighted warning signs in the Scorpion booklet did feature in what had happened to Mr D. The booklet said, underneath the pictorial headed '*How to spot the warning signs*', that, once the transfer had gone through, it would be too late and the consumer would probably lose all their pension savings. The booklet prompted the consumer to check that any adviser was registered by the FCA at www.fca.org.uk/register, adding that, before signing anything, to call TPAS, whose telephone number was given, for information and guidance about pension scams. The booklet was written for consumers and was clear and easy to understand. Mr D would've seen that the regulatory status of any adviser was important and something he should check out.

I don't agree with what's been said about the process Mr D would've had to go through to do that being onerous. He knew it had been FRPS who'd come to see him at home and had advised him and so, regardless of any other firm's involvement and what he might have understood about FRPS' regulatory status, he'd have just needed to check the FCA's register. Accessing the FCA's register wasn't difficult. If Mr D had searched against FRPS, there'd have been no matches so he'd have known FRPS wasn't regulated.

But, as things happened and in the absence of a more specific warning, it seems Mr D didn't check out FRPS' regulatory status. However, I don't see that he'd have needed to be aware of exactly what FRPS' position might be – that FRPS was acting in breach of FSMA – and the consequences of that – that FRPS was acting unlawfully. The Scorpion booklet made the point that, to protect himself, it was important to deal with a FCA regulated adviser. If Mr D had acted on the warnings in the booklet, he'd have seen that FRPS wasn't regulated which was what the Scorpion booklet warned against. And he'd then have been able to seek a second opinion, from a regulated adviser.

Capita's letter and enclosure was sent direct to Mr D. Capita's letter could've been couched differently but the fact is that the booklet was enclosed. It came from Mr D's existing and presumably trusted provider/administrator and, as Mr D acknowledges, major players in the pensions industry. Further, Mr D did read it. As I've said, the booklet was clear and Mr D had the opportunity to consider it on his own, away from the influence of FRPS' representative who might have said the booklet wasn't relevant or tried to undermine the warnings given or rushed Mr D into proceeding. I don't agree that Capita just processed the transfer – the fact that Capita did send Mr D the booklet meant it did take an interest in what Mr D was doing and trying to make sure (and even if Capita should've done more) that he had relevant information, including contact details for independent organisations he could consult about the proposed transfer, to assist him in making a decision.

I've considered contributory negligence but there's clear contemporaneous evidence which shows Mr D ignored clear and pertinent warnings as to how he could protect his pension. I'm not persuaded he'd have acted differently had Capita given him further warnings, even if those would've been more focused than the warnings given in the Scorpion booklet. So, although I agree Capita should've done more thorough due diligence, I'm still of the opinion that further communication with Mr D wouldn't have prevented the transfer. So I don't think it would be fair to say that Capita should be responsible for Mr D's losses albeit subject to a deduction for contributory negligence. I'm therefore unable to uphold his 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 D to accept or reject my decision before 14 February 2025.

Lesley Stead
Ombudsman