

## **The complaint**

Mr S has complained about the transfer of two personal pension plans he held with Sun Life Assurance Company of Canada (UK) Limited (“Sun Life”), to a small self-administered scheme (“SSAS”). A SSAS is a type of occupational pension, in which the members are also trustees and therefore take responsibility for operating the scheme.

The transfer comprised of two Sun Life pension policies with a total value of £31,505. This included £3,919 (the first policy) and £27,586 (second policy) and both transfers went ahead in October 2014. After transferring, Mr S’s SSAS was subsequently used to invest in The Resort Group (“TRG”), an overseas commercial property scheme which has since run into trouble. Mr S says he has lost out financially as a result.

Mr S says that Sun Life failed in its responsibilities when dealing with the transfer request. He says that it should have done more to warn him of the potential dangers of transferring away from his personal pension and into a SSAS, and that it should have undertaken greater due diligence on the transfer, in line with the guidance he says was required of transferring schemes at the time. Mr S says he wouldn’t have transferred, and therefore wouldn’t have put his pension savings at risk, if Sun Life had acted as it should have done.

## **What happened**

Mr S says that in 2014 he received an unsolicited approach via a ‘cold’ telephone call from a firm called Capital Facts Limited (“Capital Facts”). Mr S says that as a result of the call, he authorised Capital Facts to approach Sun Life and collect details of his existing pension policies with it. It seems that at the same time Mr S also authorised Capital Facts to collect information about another pension he had with a separate pension provider I’ll call firm “F”. However, this pension was never transferred and I’ll be referring to why later.

Mr S says a face-to-face meeting was then arranged for him to discuss his Sun Life pension arrangements going forward, with a firm called First Review Pension Services Limited (FRPS). Neither Capital Facts or FRPS were authorised by the regulator to provide financial advice and both firms have since been dissolved.

A representative from FRPS then met with Mr S and told him he could increase his pension returns by transferring away from his Sun Life scheme and investing in overseas property.

Sun Life confirms that it received the above ‘letter of authority’ from Capital Facts. The letter of authority had been signed by Mr S giving permission to seek full details of his pension held on the Sun Life platform and Sun Life supplied those details back to Capital Facts on 21 July 2014.

As an occupational pension, a SSAS must be sponsored by an employer company. And so on 12 August 2014, a limited company was incorporated, with Mr S shown as the sole director. I’ll refer to this company as “Mr S Ltd”. Then, on 10 September 2014, Mr S signed various documents to open a SSAS with Cantwell Grove Limited (“Cantwell Grove”), a provider of SSAS administration and trustee services. The SSAS was registered with HMRC on 2 September 2014 and Mr S Ltd was recorded as the SSAS’s principal employer.

On 12 September 2014, Sun Life received a transfer request for Mr S's existing Sun Life pension policies to the new SSAS. However, because Sun Life required the use of an updated set of forms this request was re-submitted on 22 September 2014. On this documentation, the provider of the SSAS was Cantwell Grove. Various details about Mr S were included (such as his date of birth and national insurance number) and the receiving scheme (such as details of the bank account the transfer was to be paid into). Ultimately the transfer of £31,505 took place on 15 October 2014 by which time Mr S was 53 years old.

On 20 October 2014, £28,130 was invested in TRG from Mr S's SSAS. A small remaining portion of the transferred funds were held back in cash within the SSAS. These investments were unregulated and high risk. They have proven to be illiquid and are now incapable of sale on the open market.

In March 2020, Mr S complained to Sun Life. Briefly, his argument is that it ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including (but not limited to) the following: the SSAS was newly registered; there wasn't a genuine employment link to the sponsoring employer; Mr S was an inexperienced investor and was advised to invest in overseas funds which he had little understanding of and were inappropriate for his attitude to risk; and, the catalyst for the transfer was the unsolicited approach and the involvement of an unregulated business.

Sun Life didn't uphold his complaint. It says that in the end, the information it had about the transfer didn't provide enough concern to stop it, particularly as Mr S had signed a declaration to say he had not received any financial incentive to proceed with the transfer, he hadn't been cold called and wasn't placed under any pressure to speed up or hurry along the process of transferring. It said he had also read and understood the '*Predators Stalk Your Pension*' document - a document warning of the associated risks of pension liberation fraud.

Mr S wasn't satisfied with this, so the complaint was referred to the Financial Ombudsman Service. One of our investigators looked into it and said they didn't think we should uphold the complaint, but Mr S still disagreed. As the dispute couldn't be resolved informally the matter has been passed to me to make a decision.

### **What I've decided – and why**

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

I've read with great care everything that's been said by both parties and also what our investigator said in their 'view'. And having done all this, I'm not upholding Mr S's complaint.

### 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 Sun Life 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 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.

The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme if certain conditions are satisfied (and they may also have a right to transfer under the terms of the contract). This right came to be exploited, with people encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren’t entitled to – for instance, because they were below minimum retirement age. At various points, regulators issued bulletins warning of the dangers of taking such action. But it was only from 14 February 2013 that transferring schemes had guidance to follow that was aimed at tackling pension liberation – the “Scorpion” guidance.

The Scorpion guidance was launched by The Pensions Regulator (TPR). It 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 guidance was updated on 24 July 2014 (which was before Mr S’s transfer). It widened the focus from pension liberation specifically, to pension scams – which it said were on the increase. I cover the Scorpion campaign in more detail below.

In a similar vein, in August 2014, the FCA 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 highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.

### The Scorpion guidance

The materials in the Scorpion campaign comprised:

- An insert to be included in transfer packs (the ‘Scorpion insert’). The insert warns readers about the dangers of pension scams and identifies a number of warning signs to look out for.
- A longer booklet issued by TPAS which gives more information, including example scenarios, about pension scams. Guidance provided by TPR said this longer leaflet was intended to be used in ongoing communications with members so that they could become aware of the scam risks they were facing.
- An ‘action pack’ for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should “watch out for” various warning signs of a scam. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where a transferring scheme still had concerns, they were encouraged (amongst other things) to contact the member to establish whether they understood the type of scheme they were transferring

to and – where a member insisted on transferring – directing the member to Action Fraud or TPAS.

In addition to widening the focus beyond just pension liberation scams, the July 2014 action pack had a different set of warning signs that could potentially prompt a transferring scheme to conduct further due diligence. I don't consider these warning signs necessarily superseded the warning signs that had been highlighted previously. I consider them to have been *additive*, giving schemes further prompts for action.

TPR issued the guidance under the powers at s.12 of the Pension Act 2004. Thus, for the bodies regulated by TPR, the status of the guidance was that it provided them with information, education and/or assistance, as opposed to creating any new binding rule or legal duty. Correspondingly, the communications about the launch of the guidance were predominantly expressed in terms that made its non-obligatory status clear. So, the tenor of the guidance is essentially a set of prompts and suggestions, not requirements.

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.

I take from the above that the contents of the Scorpion guidance was essentially informational and advisory in nature and that deviating from it doesn't necessarily mean a firm has 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 rights.

That said, the launch of the Scorpion guidance 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 transfer 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.

#### What did personal pension providers need to do?

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. And where the recommendations in the guidance applied, absent a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations. With that in mind, I take the view that personal pension providers dealing with transfer requests needed to heed the following:

1. As a first step, a ceding scheme needed to check whether the receiving scheme was validly registered.

2. The Scorpion insert provided an important safeguard for transferring members, allowing them to consider *for themselves* the scam threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. So, all things considered, I think the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party.
3. I also think it would be fair and reasonable for personal pension providers – operating with the regulator's Principles and COBS 2.1.1R in mind – to ensure the warnings contained in the Scorpion insert were provided in some form to a member before a transfer even if the transfer process *didn't* involve the sending of transfer packs.
4. The Scorpion guidance asked firms to look out for the tell-tale signs of scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The guidance points to the warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. Therefore, whilst using the action pack wasn't an inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.
5. The considerations of regulated firms didn't start and end with the Scorpion guidance. 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 the Scorpion guidance – 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 and Mr S's recollections

A central theme in Mr S's complaint is that he was inexperienced in pension and investment matters. I think the evidence supports this, showing as it does that Mr S worked in the charity sector, lived in rented accommodation, and earned a modest salary; he had no other savings or current investments outside a pension wrapper. I've therefore considered this context when reviewing Mr S's complaint.

Mr S says he was first 'cold called' by Capital Facts after which there was a face-to-face meeting with FRPS. He was told by the FRPS representative at the meeting that he should invest in an overseas commercial property development. He was also told that if he transferred, the new investment being recommended to him was approved by the Government and that this type of investment would produce guaranteed returns well in excess of those he might expect with his existing scheme. During the meeting, the representative from FRPS recommended that Mr S should transfer away from his existing personal pension(s) with Sun Life and invest with TRG.

So, I think it's fair to say that Mr S was enticed by the prospect of better investment returns rather than by the concept of liberating his pension i.e. accessing his pension earlier than the age of 55. Mr S was told by FRPS of the various steps that would be required to invest in the overseas property development; he'd need to set up a new company to be a sponsoring

employer and register it with HMRC. He'd then need to create the SSAS in order to transfer his existing funds across. Those funds would then be used to invest in the overseas property project – a beach development in Cape Verde.

In my view the evidence showing that FRPS acted as the 'adviser' to Mr S throughout the whole process and provided him with advice to transfer his personal pension, is persuasive. But as I'll explain later, Mr S subsequently contradicted these recollections when he ticked some boxes on a Sun Life form to say he *hadn't* been advised and *hadn't* been cold called.

Nevertheless, his recollections now are of personally dealing with the representative of FRPS during the face-to-face meeting. In support of this, I've seen documentary evidence of the FRPS representative directly witnessing (and signing his name to witness) various identification documents which I believe Mr S would have been required to produce to eventually open a SSAS and an associated SSAS banking account. The signature was accompanied by an FRPS 'stamp' showing FRPS's address and telephone number. The FRPS representative's name was also printed on, and his mobile telephone details written on, the document. In my view, Sun Life wouldn't have been privy to any of these documents when considering whether or not to allow Mr S's transfer to go ahead. But they are compelling evidence of FRPS's involvement and are supportive of Mr S's testimony.

I also think the idea of opening a SSAS and using personal pension funds to invest in these areas is also highly likely to have come from external factors – and these factors were most likely 'advice' and a recommendation from FRPS. Mr S himself did not appear to have the knowledge or experience to make these types of investment decisions on his own. I haven't seen anything about his circumstances, or anything from what he has told us, that makes me think it's likely he would have decided, without advice, to embark on such a complicated and esoteric arrangement, which involved transferring out of his existing pension, setting up a new company, opening a SSAS and then investing in TRG. Therefore, in my view, this transfer was all brought about by the recommendations from FRPS.

As for the involvement of any other companies, I've seen no evidence that Capital Facts did anything other than make the initial call which set up the face-to-face meeting with FRPS – and then ask for permission to collect Mr S's existing pension details from Sun Life. There's also no compelling evidence that Capital Facts was the firm advising Mr S; he himself doesn't recall dealing with it as such and whilst I accept that it sought details of his existing pension, this doesn't mean it advised Mr S to transfer. I think its involvement merely links Capital Facts in working together with other firms to gain the trust of potential investors like Mr S; I've seen a number of very similar cases where this is the case. However, in any event Capital Facts was also unregulated.

I also note the existence of two other companies which are described in the papers I've seen. The two companies are called Broadwood Assets Limited ("Broadwood") and Central Markets Investment Management Limited ("CMIM"), so I should therefore explain their roles too. I think it's clear that their part was limited to a role set out in S.36 of the Pensions Act 1995. This requires the Trustees of a SSAS to appoint certain professional advisers to carry out specific tasks in relation to the scheme. This is a role independent of advising Mr S as an individual, and the evidence I've seen makes this clear. Having said that, it appears (from a letter of 10 September 2014) that CMIM was going to perform this role, but on 6 October 2014, evidence shows that Broadwood took over this role. A letter Broadwood wrote to the SSAS Trustee says it wasn't able to give financial advice to Mr S on a personal basis, and once again it didn't possess the permissions from the regulator to do so. So, neither firm was involved in personally advising Mr S on the transfer of his pension and any involvement they did have was limited to the S.36 role I've described above.

Finally, for good order, I've also considered the involvement of Cantwell Grove. However, there's no evidence Cantwell Grove's involvement extended beyond being a provider of SSAS administration only and its involvement came towards the end of this process.

In my view, all these things show that Mr S most likely received a personal recommendation to transfer his existing Sun Life pension into a SSAS and that the recommendation came from FRPS. Advice of that nature was (and remains) regulated by the Financial Services and Markets Act 2000 (FSMA). Only someone authorised to do so by the Financial Conduct Authority (FCA) is permitted to give regulated financial advice unless they have a specific exemption under FSMA.

### What did Sun Life do and was it enough?

#### *The Scorpion campaign*

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.

Beginning with the provision of the most up to date Scorpion documentation available at that time, I accept there were shortcomings in Sun Life's approach; it failed to do what it ought to have done in this area.

I say this because the evidence from Sun Life itself shows that at best, Mr S probably was offered only the earlier version of the Scorpion leaflet – "*Predators stalk your pension*" (which was issued in February 2013 and focussed mainly on pension liberation) - rather than a later version which focussed on additional and wider pension scamming concerns. The fact that Mr S likely saw this earlier edition was set out in Sun Life's final response letter about the complaint – and the description suggests it was the February 2013 leaflet. But overall, the information is inconclusive here as to whether Mr S was ever actually given a hard copy of this earlier version by Sun Life itself. However, he signed his name on 22 September 2014 to say that he had – "*read and understood the 'Predators stalk your pension leaflet' available at [web page]. Please contact us if you would like a paper copy*". Cantwell Grove also said he'd read this information.

The shortcomings here on Sun Life's part were that Mr S would have had to ask for a paper copy and there's no evidence he did. He was also just directed to a website where he would have to navigate or search further from. And because this was important information, just including a link to the homepage in small print wasn't reasonable in the circumstances. In any event, even if I accept he used the link to access and then search for the actual Scorpion information itself, Sun Life still failed to provide the updated and latest scamming guidance because the link was most likely to the 'old' information, rather than the most up to date 2014 version which highlighted wider pension scamming concerns. So, to be clear, Sun Life was at fault for not providing easy access to the most recent warnings issued via the Scorpion campaign.

For what it's worth, I've noted elsewhere that Mr S was probably given a hard copy of the Scorpion campaign information by the firm which eventually denied his (other) transfer request – firm "F". But given the dates it was sent to him, this too would have probably been the older version. In this context, there's insufficient evidence for me to conclude that what Mr S read about the Scorpion campaign would have necessarily in itself changed his mind about investing in TRG at that time. This is because I think the Scorpion information (as above) was the earlier version, so what he was seeing at the time were concerns about pension liberation – and he wasn't doing that.

When asking for his pension to be transferred, on or around 10 September 2014, Mr S sent in a signed letter which broadly sought to confirm to Sun Life that he was well aware of the liberation threat, that it didn't relate to him, and that he was still keen to proceed with transferring having considered any implications. The letter was, in my view, clearly a templated document that had been prepared *for* Mr S rather than *by* him. If looked at through a certain lens, I can understand why this letter might have provided Sun Life with some comfort, showing as it did that Mr S was at least alive to the risks of pension liberation. But it didn't show that Mr S was aware of wider pension scams, so Sun Life still ought to have carried out due diligence of the transfer request in full, including focussing on the broader pension scam warnings, over and above just the pension liberation ones. These had been raised in July and August 2014.

### *Due diligence*

In light of the Scorpion guidance, I think firms ought to have been on the look-out for the tell-tale signs of a pension scam and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk.

Mr S's transfer had a couple of potential warning signs of a scam. His SSAS was recently registered and the documents provided in the transfer requests mentioned TRG, with a link to its website which would have shown these were overseas, unregulated investments. Sun Life should therefore have followed up on this to find out if other signs of a scam were present. Given this warning sign I think it would have been fair and reasonable – and good practice – for Sun Life to have looked into the proposed transfer and the most reasonable way of going about that would have been to turn to the check list in the action pack to structure its due diligence into the transfer.

The check list provided a series of questions to help transferring schemes assess the potential threat by finding out more about the receiving scheme and how the consumer came to make the transfer request. Some items on the check list could have been addressed by checking online resources such as Companies House and HMRC. Others would have required contacting the consumer. The check list is divided into three parts (which I've numbered for ease of reading and not because I think the check list was designed to be followed in a particular order):

1. The nature/status of the receiving scheme

Sample questions: Is the receiving scheme newly registered with HMRC, is it sponsored by a newly registered or dormant employer, an employer that doesn't employ the transferring member or is geographically distant from them, or is the receiving scheme connected to an unregulated investment company?

2. Description/promotion of the scheme

Sample questions: Do descriptions, promotional materials or adverts of the receiving scheme include the words 'loan', 'savings advance', 'cash incentive', 'bonus', 'loophole' or 'preference shares' or allude to overseas investments or unusual, creative or new investment techniques?

3. The scheme member

Sample questions: Has the transferring member been advised by an 'introducer', been advised by a non-regulated adviser or taken no advice? Has the member decided to transfer after receiving cold calls, unsolicited emails or text messages



about their pension? Have they applied pressure to transfer as quickly as possible or been told they can access their pension before age 55?

Opposite each question, or group of questions, the check list identified actions that should help the transferring scheme establish the facts.

I don't think it would always have been necessary to follow the check list in its entirety. And I don't think an answer to any one single question on the check list would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the check list to establish whether a scam was a realistic threat. Given the warning signs that should have been apparent when dealing with Mr S's transfer request, and the relatively limited information it had about the transfer, I think in this case Sun Life should have addressed all three parts of the check list and contacted Mr S as part of its due diligence.

I do think Sun Life did undertake further due diligence steps. For example, it said it had checked the funds were being transferred to an HMRC approved scheme and confirmed the registration certificate with HMRC. It also said the Trust Deeds and Scheme Rules were sent through to its legal team (the Deed was found to be executed in accordance with the Companies Act 2006). Sun Life also told Mr S it was not authorised to provide advice on the suitability of the transfer or to make any comment on the recommended investment strategy being proposed and it pointed out that independent financial advice should be sought if Mr S was unsure about the risks of the investment he was transferring to.

These were only very basic checks, which in my view, would have been unlikely on their own to expose whether Mr S was being scammed. However, Sun Life also provided Mr S with an *Additional information and declaration* form ahead of the transfer being allowed which contained a series of questions about how the transfer request had come about. With this knowledge, I've considered whether Sun Life did enough.

Whilst I've found Mr S's testimony about the first contact and the face-to-face meeting with FRPS to be corroborated by documentary evidence, I recognise there are also significant inconsistencies in his case and which could have given Sun Life a false impression of the rationale and circumstances behind his transfer request.

Sun Life's defence of the complaint is based largely on that it did undertake due diligence (as above) and that by the time the transfer was due to go ahead, it had received significant reassurances from Mr S and that it had sufficient information to clearly show Mr S wasn't a likely victim of either pension liberation or some other type of pension scam.

Sun Life had asked Mr S to complete its *Additional information and declaration* form ahead of the transfer being allowed; he answered the points on 22 September 2014. He was asked if he had used an adviser during the transfer request, to which he answered with "no" and the field to complete adviser details was left blank. He was also asked whether he'd been cold called or had otherwise received unsolicited approaches to transfer away from his existing scheme, to which he also answered "no". To questions if he'd been enticed with a cash incentive or had otherwise been hurried along to complete the transfer, again Mr S answered "no".

I've made the assumption that if this information was being asked for on the form, then it was relevant and important. I think it's reasonable to say that Sun Life would have wanted to conduct more checks with the advising firm if one had been brought to its attention. It might have also gone on to check whether any adviser was regulated by the FCA. But Mr S's answers were clearly inconsistent with what his recollections are now and probably even inconsistent with what actually happened. Although I've accepted Mr S was probably

'advised' by FRPS, the information he supplied to Sun Life about this was different and I think it significantly affects his complaint.

I can accept that coming near to the end of the due diligence process (and close to the eventual transfer date) that Mr S might have become weary of all the form-filling and bureaucracy that these situations can sometimes generate. But these were important questions and which I think Mr S would, or certainly should, have recognised as being broadly for *his* benefit and protection; it was important to answer them correctly. I also don't think they were complex questions. So, even if I accept that Mr S wasn't someone who found financial affairs easy to navigate, these questions were set out prominently on the form and they all had easy to understand "yes / no" options.

I've considered whether, having received these answers back from Mr S, Sun Life would have been reasonably assured that he wasn't at risk of a scam. I think the incorrect information Mr S gave Sun Life effectively 'threw it off the scent' of any potential scamming activity that might have otherwise been picked up.

I do think Sun Life did ask relevant questions in their questionnaire to find out more about how the transfer had come about and it was entitled to rely on Mr S's answers. I still remain of the view that the updated warnings in the Scorpion guidance should have been provided, particularly as Mr S said he hadn't received advice and as I've previously pointed out above, the letter he used to accompany his transfer application was quite obviously prepared *for* him, rather than *by* him. So, warnings to seek regulated advice and be on the lookout himself for pension scams should have been repeated.

*Would sending further warnings have changed anything?*

I've read very carefully, everything that Mr S's representative has said in response to our investigator's view that we shouldn't uphold his complaint. This focusses on what Sun Life didn't do.

I do accept Sun Life should have provided an updated Scorpion warning and it was clearly wrong not to do so. But I'm afraid that with all the other information I have, I don't think this omission would have changed what Mr S did; the evidence I've seen is that he was determined to transfer and would have done so even in the face of more warnings.

I say this because I mentioned earlier the existence of another pension – with firm "F". The evidence is persuasive that Mr S's intention for the funds he held with "F" was to also invest with TRG. However, we now know firm "F" ultimately refused Mr S's transfer request and it wrote to him on 9 October 2014, still 6 days ahead of his Sun Life transfer, to tell him this. In my view, the fact that Mr S didn't try to stop the transfer or contact Sun Life shows he was determined to invest with TRG even where risks were apparent.

Whilst I think the approach "F" was taking in denying the pension transfer related largely to liberation fears, I think the wording it provided to Mr S was wide enough - and also concerning enough, by reasonable standards – to generate additional apprehensions about whether this type of transfer really was in Mr S's interests. I think any reasonable reading of "F's" letter should have caused Mr S to take responsibility for his own assets and therefore take further steps to ensure the Sun Life transfer was still the right thing to do. The letter about the "F" pension said, *"Following our due diligence checks we have been unable to verify that this scheme has the necessary characteristics of a genuine occupational pension scheme.... As such I can confirm we are not prepared to authorise the transfer as requested"*. This letter also explained the risk of 40% tax charges on unauthorised withdrawals and I think the evidence is clear enough that "F" at this point also included a further leaflet ("recently issued") for Mr S, which I think was likely the newer Scorpion

guidance. So, I think here that Mr S likely received the Scorpion information which contained the much broader pension scam warnings, albeit from Firm "F" rather than Sun Life.

Taking all these warnings together, I think they comprised of obvious and specific threats to his pension savings which should have been very concerning to Mr S. I think the wording in the refusal letter from "F" alone would have prompted most people to fear something was quite obviously 'wrong'. As I've said, Mr S wasn't an experienced investor and probably only knew the basics about pensions. Therefore, if reading through the whole contents of this letter, I think there was enough for him to reasonably think something wasn't right here, even if he wasn't sure exactly what. There's no evidence Mr S followed up on this refusal to transfer the "F" pension, or that he contacted Sun Life to discuss his ongoing transfer to the same SSAS.

Overall, I think these things show Mr S had a powerful desire to transfer to the SSAS even in the face of concerning warnings. The evidence shows he placed more weight on what he was being told by the firms 'advising' him and was prepared to tell Sun Life he hadn't been cold called or advised by someone, when the evidence (and his testimony now) clearly shows otherwise.

He was also prepared to disregard the letter from "F" which was taking the serious step of stopping his other transfer, though it was something he'd asked for. In fact, it seems Mr S still attempted to pursue the firm "F" transfer for many months even after it had been refused. I've noted, for example, that "F" wrote to Mr S again in February 2015 evidently responding to the first transfer refusal, setting out once again its fears about potential tax implications. It also sent him a 'recent' publication from the Pensions Regulator, which I've assumed to be about more up to date pension scamming concerns. But despite these series of warnings, there were more attempts by Mr S to transfer his firm "F" scheme to the SSAS, in 2016. Once again, this was declined by "F" which wrote to him in October 2016 and this time the letter included further specific warnings, not only about scamming in general, but about the actual parties involved (FRPS and TRG). Mr S was told that because of these concerns "F" was suspending all such transfers with these firms' involvement as a matter of course. As this had now been going on for almost two years, this ought to have caused yet more obvious concerns about FRPS, Cantwell Grove and the overseas investment in TRG. But still, after this Mr S wanted to go ahead with transferring and said he'd complain to the regulator unless allowed to do so.

I think this all shows that Mr S likely was being reassured by the parties involved and was giving their opinions far more weight than anything else. Given the warnings he received in 2014, 2015 and 2016 and the way he chose to discount them gives a revealing insight to how he would have likely acted if he had received more and / or better warnings from Sun Life back in 2014.

In my view, he would have gone ahead with the transfer in any event.

### Summary

The evidence I've seen in this case is of Mr S being heavily focussed on the investment opportunities he perceived TRG was offering. He wanted to grow his pension and was willing to take risks in the process.

I accept that Sun Life's processes should have provided Mr S with the correct, updated Scorpion guidance which contained warnings and examples about wider pension scamming concerns.

However, I've also considered whether this would have actually made any difference to what Mr S went on to do – and I don't think he would have acted differently.

The answers which Sun Life received to important questions about the nature of Mr S's transfer were misleading. In addition to this, Mr S's other pension provider – firm "F" – refused to transfer his funds. It wrote to him in clear terms about this. Mr S wasn't a pensions expert or financially experienced, so in my view it would have been reasonable to interpret this refusal and some of the rationale in the letter, as a serious cause for concern – what it was telling Mr S was that something clearly wasn't right with this transfer. In the light of this other transfer being refused, I think it's reasonable to say that most people would have acted by immediately revisiting the Sun Life request. As Mr S didn't do this, I think this shows he was determined to press ahead even in the face of these concerns. In 2015 and 2016 Mr S was given more information by firm "F" which included specific reference to their being concerns about FRPS and TRG. But again, in spite of this, the evidence shows Mr S still wanted to transfer.

In summary then, I accept Sun Life didn't do everything right. But in my view, even if it had, Mr S would more likely than not still have transferred and be in the same position he is in now. So, it wouldn't be fair or reasonable to hold Sun Life responsible for any financial losses he suffered.

I'm very sorry to disappoint Mr S.

### **My final decision**

I do not uphold this complaint.

I do not require Sun Life Assurance Company of Canada (UK) Limited to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 August 2024.

Michael Campbell  
**Ombudsman**