DRN-4890836

Financial Ombudsman Service

The complaint

Mrs R has complained about the transfer of her The Sun Life Mutual Insurance Society Limited (Sun Life) personal pension to a small self-administered scheme ("SSAS") in December 2014. Mrs R's SSAS was subsequently used to invest in a commercial overseas property investment called The Resort Group (TRG). The investment now appears to have little value. Mrs R says she has lost out financially as a result.

Mrs R says Sun Life failed in its responsibilities when dealing with the transfer request. She says that it should have done more to warn her of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance she says was required of transferring schemes at the time. Mrs R says she wouldn't have transferred, and therefore wouldn't have put her pension savings at risk, if Sun Life had acted as it should have done.

What happened

I issued my provisional decision on 20 June 2024 which set out the background to this complaint and my provisional findings. I've included this below and it forms part of this decision:

'On 25 May 2014, Mrs R signed a letter of authority allowing Consumer Money Matters to obtain details, and transfer documents, in relation to her pension. Mrs R says this followed an unsolicited approach. On 11 August Sun Life wrote back to Consumer Money Matters to provide them with the requested information.

Mrs R says she was in fact advised by Choices Wealth a firm not regulated to provide advice and with links to The Resort Group (TRG). We know from our knowledge of similar situations that the purpose of the transfer to the SSAS was to allow investment in TRG. Mrs R says she was attracted by the prospect of a realistic chance of increasing her pension savings. And she says she was told the investment had the backing of the government.
On 1 September 2014, a company was incorporated with Mrs R as director. I'll refer to this company as R LTD. On 7 September, Mrs R signed the trust deeds to open a SSAS with Cantwell Grove. R LTD was recorded as the SSAS's principal employer.

On 21 October 2014 Mrs R's transfer papers were sent to Sun Life. These were sent in by Cantwell Grove. Included in the transfer papers were: the completed transfer paperwork signed by Mrs R, a copy of the scheme's trust and deeds, a copy of the HMRC registration, a Key Scheme details Q&A which included the proposed investment in TRG, that advice would be given by an FCA registered firm, and confirmation from Cantwell Grove that it had warned Mrs R about pension liberation and provided her with a copy of a leaflet (referred to as the "Scorpion leaflet") produced by The Pensions Regulator (TPR) which warned about pension liberation. It also included a signed letter from Mrs R saying:

- *Cantwell Grove had explained pension liberation to her and the risks of transferring her pension*
- *Confirmation from Mrs R that she hadn't been offered any cash incentive to transfer nor was she trying to access her retirement benefits before the age of 55*

- *Confirmation from Mrs R that she'd understood the warning about pension liberation.*

Sun Life also required that Mrs R fill in an additional information and declaration form about the transfer, she confirmed:

- *She had not been offered any incentives to transfer*
- *She was not under 55*
- *She hadn't been told she could take a quarter of the transfer value in cash*
- *The transfer had not been recommended by a financial adviser*
- *She had not received a cold call or unsolicited messages which led to her transfer request*
- *And she signed to agree she had read and understood the Scorpion leaflet available on Sun Life's website (an address was given and paper copy offered on request).*
- *I note in this bundle of forms sent in by Cantwell Grove, one of the Sun Life forms (it is not*
  clear what the form was specifically asking as I can only see the second page where the signatures are present) is witnessed by a person identifying themselves as an introducer (who it is known worked for Choices Wealth).

On 28 October Sun Life wrote to HMRC to check that the R LTD SSAS was registered, whether there was any indication of liberation and any other concerns. It received a response from HMRC on 25 November 2014 to say it was registered and it didn't believe there was significant risk of liberation with this scheme.

On 28 October 2014, Broadwood Assets wrote to Mrs R advising her on the suitability of investing in TRG. This letter made it clear that Broadwood Assets was not a regulated financial adviser, and it wasn't advising her in her personal capacity but rather advising her in her role as trustee of the SSAS. It went on to say the TRG investment was a legitimate, credible and substantive arrangement that didn't facilitate pension liberation and was suitable to be held in a SSAS. But it also warned Mrs R that the investment was risky and suitable only for more adventurous investors, pointing out that if she preferred advice on the suitability of the investment for her personally, she should seek regulated financial advice from an independent financial adviser.

Mrs R's pension was transferred on 23 December 2014. Her transfer value was around £66,000. She was 55 years old at the time of the transfer.
Mrs R invested about £44,000 of that money into TRG after taking tax free cash. She now has no access to this capital, and she cannot sell it either. It is likely to have nil value.

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

Sun Life didn't uphold the complaint. It said none of the information it had about the transfer at the time gave it cause for concern. And it appeared to them that regulated parties were acting on behalf of Mrs R and she had signed forms to say she was aware of the risk of liberation, had read the scorpion insert and hadn't received an unsolicited approach.
Our investigator was unable to resolve the dispute informally, so the matter was passed to me to decide.

What I've provisionally decided – and why

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

The relevant rules and guidance

Personal pension providers are regulated by the 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 formal 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. 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 SIPPs and SSASs 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 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 deciding on the appropriate actions to take when dealing with a transfer request, a ceding scheme needed to be mindful of the material in the Scorpion guidance in its entirety rather than treating the guidance as a series of discrete steps to be worked through in isolation. 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 Mrs R's recollections

Mrs R says she was cold called offering her a free pension review. She says this led to a meeting which she says was with Choices Wealth (evidence supports this) who were an unregulated adviser. She says she was told the investment in TRG would increase her pension savings. Unfortunately in reality this didn't occur and her investment in TRG has nil value.

Whilst Consumer Money Matters initially requested the information and they were a regulated firm but only if introducing for specific firms, there is no evidence of their further involvement or that they introduced the business within their regulated channels. So I am satisfied Mrs R set up the SSAS and transferred due to the involvement of an unregulated firm, Choices Wealth. And another unregulated firm was responsible for the advice to invest

in TRG, Broadwood Assets.

Cantwell Grove said It provided Mrs R with a copy of the Scorpion leaflet – specifically the 'Predators Stalk Your Pension' leaflet. This leaflet focuses on Pension Liberation. So I think she was likely only aware of the risks of pension liberation in terms of releasing funds from her pension before age 55. And I think the information given by Cantwell Grove would've put her mind at ease about the risk of liberation here – especially as she'd already reached age 55 by this time.

However, Sun Life also sent Mrs R a declaration to sign to say she had read the Scorpion leaflet and directions on how to view this on their website. The copy it has provided us with is the February 2013 longer copy. This actually has more information relevant to Mrs R's situation than some of the later leaflet versions. However, the information is still packaged within the context of taking your pension early and liberation. And the relevant information in terms of overseas investments and unregulated advisers is further down the booklet as part of examples.

What did Sun Life do and was it enough?

The Scorpion insert:

For the reasons given above, my view is that personal pension providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information.

Mrs R did see a copy of, most likely, the shorter Scorpion insert that warned against Liberation fraud from Cantwell Grove. And Mrs R declared she had read the copy on Sun Life's website that did have information relevant to her situation. So I think what Sun Life did here was enough.

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. Sun Life didn't undertake any further due diligence other than contacting HMRC to check the scheme's registration. And given that the transfer paperwork was received in October 2014, I think Sun Life should've been working from the updated action pack to carry out its due diligence. Given the information Sun Life had at the time, two features of Mrs R's transfer would have been potential warning signs of a scam: Mrs R's SSAS was recently registered and the proposed investment was unusual and overseas. Sun Life should therefore have followed up on it to find out if other signs of a scam were present.

Given these warning signs, 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 sign that should have been apparent when dealing with Mrs R'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 Mrs R as part of its due diligence.

Sun Life didn't follow the action pack through as it should've done, and had it done so I think it ought to have contacted Mrs R. It knew at this time Mrs R was intending to invest in an overseas property investment. And Mrs R said she was transferring to the SSAS without receiving advice, which given the situation and her circumstances was highly unusual. This pointed strongly to the involvement of an unregulated adviser.

Having done this I think Sun Life would have found out in relation to point one of the action pack that the scheme was newly registered by an employer who doesn't employ Mrs R. For part two that the investment was overseas. And for part three that Mrs R was advised by a non-regulated adviser and it had started through unsolicited contact.

I appreciate that Mrs R had indicated to Sun Life that she wasn't receiving advice in this transaction and that she hadn't been called out of the blue. However, given the other circumstances it would've been aware of or should've been aware of, I don't think these details should have been relied upon by Sun Life. I think this points to Mrs R being, for want of a better phrase, under the spell of the introducer. And Sun Life ought to have noticed that the introducer had witnessed the transfer documentation and put their occupation as introducer. Had Sun Life followed the action pack, it would've become apparent that Mrs R was being advised by an unregulated adviser.

We know from other cases that others in the same circumstances as Mrs R, transferring to Cantwell Grove to invest in TRG, filled in the forms in the exact same way. Alongside this, Mrs R said she wasn't in receipt of any advice (and this is part of the pattern we've seen referred to above). This should have looked unusual to Sun Life. Why would these

individuals transfer to invest in TRG without another party's involvement? So it's reasonable in my view that Sun Life should have contacted Mrs R to find out more about what lay behind her reasons for transferring. Had they done so with specific warnings that relate to Mrs R's circumstances I think Mrs R would've co-operated.

I think it's likely had Sun Life asked Mrs R at the time who was involved, she would've told them of the involvement of Choices Wealth who were unregulated. I say this because I can see from the paperwork that someone witnessed the signing of various forms and referred to themselves as an 'introducer'. I think it was this person that advised Mrs R to transfer to the SSAS. We know from other cases that it was the introducer working for firms such as Consumer Money Matters and Choices Wealth that carried out this role. The evidence here shows Consumer Money Matters requested the information but Mrs R recalls it being Choices Wealth who actually met with her and drove the transfer process. From what we know of other cases this is not unusual and therefore I am persuaded by Mrs R's testimony that it was Choices Wealth Limited who advised her here.

As the check list recommends, in order to establish whether its member has been advised by a non-regulated adviser, the ceding firm should "check whether advisers are approved by the FCA at www.fca.gov.uk/register". In other words, they should consult the FCA's online register of authorised firms. Sun Life should have taken that step, which is not difficult, and it would quickly have discovered that Mrs R's adviser was indeed unauthorised.
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 investment advice in the United Kingdom.

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

What should Sun Life have told Mrs R – and would it have made a difference?

Had it done more thorough due diligence, there would have been a number of warnings Sun Life could have given to Mrs R in relation to a possible scam threat as identified by the action pack. The most egregious oversight was Sun Life's failure to uncover the threat posed by a non-regulated adviser. Its failure to do so, and failure to warn Mrs R 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 Sun Life to have informed Mrs R that the person advising her were unregulated and could put her pension at risk. Sun Life should have said only authorised financial advisers are allowed to give advice on personal pension transfers, so she risked falling victim to illegal activity and losing regulatory protections.

I'm satisfied any messages along these lines would have changed Mrs R's mind about the transfer. The messages would have followed conversations with Mrs R so would have seemed to her (and indeed would have been) specific to her individual circumstances and would have been given in the context of Sun Life raising concerns about the risk of losing pension monies as a result of untrustworthy advice. This would have made Mrs R aware that there were serious risks in using an unregulated adviser. I think the gravity of any messages along these lines would prompt most reasonable people to rethink their actions. I've seen no persuasive reason why Mrs R would have been any different.

I think direct relevant warnings from Sun Life to Mrs R would've acted to disrupt her

confidence in what she was being told by the introducer. The paperwork and her testimony paint a picture of the introducer being very much the puppet master here.

I appreciate Sun Life did require Mrs R to sign a declaration which touched on matters to do with liberation and some relevant to her - and she didn't provide the correct information. But its likely in my view that this could've been filled in under the influence of the introducer. It also wasn't sent to Mrs R directly and so it's very possible that when it was passed to her by Choices Wealth, she was also given instructions on how to complete it and with what answers. In addition, looking at the transfer paperwork, it appears the handwriting for parts that Mrs R needed to fill in are suspiciously similar to that of sections that the witness filled in (which was the introducer working for Choices Wealth). For example the dates for signature, whilst different for the witnessing person (another obvious issue) have been almost certainly been filled in by the same person. And this handwriting also appears elsewhere on the forms at least for the dates of signature. I think it would be highly unusual for Mrs R to have completed the date section for the introducer's witness statement. Unless under instruction. But I think it would make more sense if this had already been completed for her. I have my doubts that Mrs R filled in this information independently and with time to take it in. Which is why, in part, I have placed more weight on the lack of direct contact from Sun Life with Mrs R and the likely difference this would've made to her. Had Sun Life acted as it should, and contacted Mrs R and given her relevant warnings, I don't think Mrs R would have proceeded with the transfer out of her personal pension or suffered the investment losses that followed. I therefore uphold Mrs R's complaint.'

Sun Life responded to the provisional decision to say it accepted it and had no further comments. Mrs R also accepted it with no further comments regarding the merits of the case.

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.

Having done so, I seem no reason to depart from the conclusions reached in my provisional decision as set out above – which form part of this decision.

For the reasons explained above, I'm upholding this complaint.

Putting things right

Fair compensation

My aim is that Mrs R should be put as closely as possible into the position she would probably now be in if Sun Life had treated her fairly.

The R LTD SSAS only seems to have been used in order for Mrs R to make an investment that I don't think she would have made from the proceeds of this pension transfer, but for Sun Life's actions. So I think that Mrs R would have remained in her pension plan with Sun Life and wouldn't have transferred to the R LTD SSAS.

To compensate Mrs R fairly, Sun Life must subtract the actual value of the R LTD SSAS from the notional value if the funds had remained with Sun Life. If the notional value is greater than the actual value, there is a loss.

Actual value

This means the R LTD SSAS value at the date of my Final Decision. To arrive at this value, any amount in the R LTD SSAS bank account is to be included, but any overdue administration charges yet to be applied to the R LTD SSAS should be deducted. Mrs R may be asked to give Sun Life her authority to enable it to obtain this information to assist in assessing her loss, in which case I expect her to provide it promptly.

My aim is to return Mrs R to the position she would have been in but for the actions of Sun Life. This is complicated where an investment is illiquid (meaning it cannot be readily sold on the open market), as its value can't be determined. On the basis of the evidence I have, that is likely to be the case with the following investment(s): The Resort Group. This is because it essentially has a nil value and likely will remain an unsaleable asset. Therefore as part of calculating compensation:

- Sun Life should seek to agree an amount with the R LTD SSAS as a commercial value for the illiquid investment(s) above, then pay the sum agreed to the R LTD SSAS plus any costs, and take ownership of those investment(s). The actual value used in the calculations should include anything Sun Life has paid to the R LTD SSAS for illiquid investment(s).

- Alternatively, if it is unable to buy them from the R LTD SSAS, Sun Life must give the illiquid investment(s) a nil value as part of determining the actual value. In return Sun Life may ask Mrs R to provide an undertaking, to account to it for the net proceeds she may receive from those investments in future on withdrawing them from the R LTD SSAS. Sun Life will need to meet any costs in drawing up the undertaking. If Sun Life asks Mrs R to provide this undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

- It's also fair that Mrs R should not be disadvantaged while she is unable to close down the R LTD SSAS. So to provide certainty to all parties, if these illiquid investment(s) remain in the scheme, I think it's fair that Sun Life must pay an upfront sum to Mrs R equivalent to five years' worth of future administration fees at the current tariff for the R LTD SSAS, to allow a reasonable period of time for the R LTD SSAS to be closed.

Notional value

This is the value of Mrs R's funds had she remained invested with Sun Life up to the date of my Final Decision.

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

Payment of compensation

I don't think it's appropriate for further compensation to be paid into the R LTD SSAS given Mrs R's dissatisfaction with the outcome of the investment it facilitated.

Sun Life should reinstate Mrs R's original pension plan as if its value on the date of my Final Decision was equal to the amount of any loss established from the steps above (and it performs thereafter in line with the funds Mrs R was invested in).

Sun Life shouldn't reinstate Mrs R's original plan if it would cause a breach of any HMRC pension protections or allowances – but my understanding is that it might be possible for it to

reinstate a pension it formerly administered in order to rectify an administrative error that led to the transfer taking place. It is for Sun Life to determine whether this is possible, but if Sun Life doesn't consider this is possible, it should explain why.

If Sun Life is unable to reinstate Mrs R's pension and it is open to new business, it should set up a **new** pension plan with a value equal to the amount of any loss on the date of my Final Decision. The new plan should have features, costs and investment choices that are as close as possible to Mrs R's original pension.

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

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

To make this reduction, it's reasonable to assume that Mrs R is likely to be a basic rate taxpayer in retirement. So, if the loss represents further 'uncrystallised' funds from which Mrs R was yet to take her 25% tax-free cash, then only the remaining 75% portion would be taxed at 20%. This results in an overall reduction of 15%, which should be applied to the compensation amount if it's paid direct to her in cash.

Alternatively, if the loss represents further 'crystallised' funds from which Mrs R had already taken her 25% tax-free cash, the full 20% reduction should be applied to the compensation amount if it's paid direct to her in cash.

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

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

This interest is not required if Sun Life is reinstating Mrs R's plan for the amount of the loss – as the reinstated sum should, by definition, mirror the performance after the date of my Final Decision of the funds in which Mrs R was invested.

Details of the calculation must be provided to Mrs R in a clear, simple format.

My final decision

For the reasons explained I uphold this complaint and direct Sun Life Assurance Company of Canada (U.K.) Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs R to accept or reject my decision before 1 August 2024.

Simon Hollingshead
Ombudsman