

## Ombudsman's Determination

Applicant	Mr Y
Scheme	Sun Life Financial of Canada Personal Pension Plan ( <b>the Plan</b> )
Respondent	Sun Life Financial of Canada ( <b>Sun Life</b> )

## Outcome

1. I do not uphold Mr Y's complaint and no further action is required by Sun Life

## Complaint summary

2. Mr Y complained that Sun Life, the former Plan provider, failed to carry out sufficient due diligence checks when transferring his benefits to the Tennyson Close 1957 Limited Scheme (**the Scheme**).

## Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. Mr Y is represented by Owl and Fox law (**the Solicitor**) in connection with his complaint.
5. On 14 February 2013, The Pensions Regulator (**TPR**) launched a new awareness campaign regarding pension liberation schemes. Part of this campaign involved issuing cautionary documentation informing members about the potential risks of pensions scams. This comprised of:
  - a two-page warning note, which TPR wanted administrators and pension providers to include with the information they provided to members who requested a transfer;
  - an information leaflet (the **Scorpion Leaflet**), which contained a number of warnings directed at potential members who were thinking of transferring; and
  - a "fraud action pack" for pension professionals.

6. Page 8 of the fraud action pack provided a number of warning signs/red flags that pension providers should be on the lookout for:

- the receiving scheme is not registered, or is only newly registered, with HM Revenue and Customs (**HMRC**);
- the member is attempting to access their pension before age 55;
- the member is pressuring the Trustee or administrator to carry out the transfer quickly;
- the member was approached unsolicited;
- the member being informed that there is a legal loophole; and
- the receiving scheme was previously unknown but is now involved in more than one transfer request.

If any of these red flags were present, then it was recommended that direct contact should be made with the member to query the receiving scheme and how they came to know of it.

7. The Scorpion Leaflet included examples of real-life pension scams and explained that the warning signs of a potential scam could be:

- receiving an unsolicited call about a free pension review;
- the promise of accessing a pension before age 55, through the provision of an advanced loan payment, or cash bonus, upon the completion of the transfer;
- the promise of a unique investment opportunity in overseas property, which would make it harder to trace the transfer; and
- the use of a courier service to pressure members into signing transfer documents quickly.

8. In August 2014, Mr Y has said that he received an unsolicited call from Moneywise Financial Advisers Ltd (**Moneywise**) who acted as an introducer for the Scheme. Moneywise proposed an opportunity for Mr Y to transfer his Plan benefits into the Scheme, allowing him a greater control over the investment of his pension benefits. At the time, Moneywise was regulated by the Financial Conduct Authority (**FCA**) to provide advice regarding the transfer of pensions benefits.

9. On 11 August 2014, Moneywise telephoned Sun Life, on behalf of Mr Y, and asked for full details of his Plan benefits. Sun Life told Moneywise that, until it received a letter of authority (**LOA**), signed by Mr Y, it was unable to provide any information.

10. On the same day, Moneywise provided a LOA, signed by Mr Y, and requested full details of Mr Y's Plan benefits. However, Sun Life was unable to accept the LOA as it did not contain the Plan's reference number or Mr Y's client reference number.

11. On 14 August 2014, Moneywise sent Sun Life an amended LOA.
12. On 20 August 2014, Sun Life sent Moneywise an information pack for Mr Y's Plan benefits.
13. After August 2014, Sun Life did not receive any further communications from Moneywise.
14. In September 2014, Mr Y was advised, possibly by Moneywise, to setup a limited company, which he did on 18 September 2014, under the name of Tennyson Close 1957 Limited (**the Company**). He was then told he could transfer his pension benefits into the Scheme (a Small Self-Administered Scheme) (**SSAS**). The Company would then act as the sponsoring employer for the Scheme, of which Mr Y was the sole member and Trustee.
15. On 9 October 2014, Cantwell Grove Limited (**Cantwell**), the Scheme's Administrator, wrote to Sun Life and said that Mr Y wished to transfer his Plan benefits into the Scheme. It also said that:-
  - It was aware of, and supported, TPR's recommendations to perform a greater level of due diligence in response to the increase in pension liberation scams.
  - Between August and September 2013, it had its business model vetted by HMRC, subsequently receiving confirmation that it was operating legitimately.
  - It understood, and supported, the importance of the Scorpion Leaflet and said:

"We can confirm that the [Scorpion Leaflet] 'Predators Stalk Your Pension' has been explained and sent to [Mr Y] by us. You will also see that the enclosed confirmation letter from the member confirms both an understanding of the pension liberation issue, and also that this transaction is in no way connected to pensions liberation."
16. Cantwell provided: copies of transfer declaration forms, signed by Mr Y, to proceed with the transfer; a confirmation letter from Mr Y agreeing to the transfer (**the Member Letter**); a signed transfer in form for the Scheme; a copy of the Scheme's Trustee Deed and Rules; confirmation of the Scheme's registration details with HMRC, under the Pension Scheme Tax Reference Number (**PSTR**) 00816819RZ, newly registered as of 30 September 2014; and a Scheme Q&A document (see Appendix 1).
17. The Member Letter included the following statements from Mr Y:

"From guidance I have received in connection with this decision I appreciate that there has recently been a significant rise in cases of "pensions liberation" fraud. As a result there is increased concern and scrutiny around transfer requests being made, to ensure members fully understand the implications of making a transfer.

I therefore wish to confirm that the transfer request is being made in order that I can take advantage of investment opportunities available under the Scheme, none of which are in any way connected to pensions liberation. I have received detailed information about the Scheme, how it operates, who administers it and the risks associated with taking a transfer out of my existing pension arrangement.

In making this transfer I am not seeking to access my pension benefits before age 55 and I am aware of the potentially significant tax liabilities that would arise were I to attempt to do so. Indeed the trust deed and rules of the Scheme do not permit benefits to be taken prior to age 55, except in circumstances of ill health which meet HMRC requirements. I also confirm that I have not been offered any cash or other incentive by any person as part of my decision to transfer my pension to the Scheme.”

18. On 15 October 2014, Sun Life sent Mr Y a high-risk declaration form (**the Risk Form**) as part of its enhanced due diligence checks, as recommended by its technical team.
19. In October 2014, Mr Y also contacted Legal & General (**L&G**), the provider of a separate personal pension, to begin the process of transferring his L&G benefits to the Scheme. In response, L&G sent Mr Y the transfer value of his benefits and provided him with a copy of the Scorpion Leaflet.
20. On 19 November 2014, Mr Y completed a member declaration form to allow the L&G transfer to go ahead (**the L&G Form**). In signing the L&G Form Mr Y agreed that he had read and understood the Scorpion Leaflet.
21. On 20 November 2014, Mr Y returned the signed and completed Risk Form to Sun Life. In signing the Risk Form Mr Y agreed that:

“[He was] aware that any investment in overseas property is unlikely to be covered by UK financial services compensation scheme,

[He was] aware that any insurance broker default only covers the fund if the investment brokers collapse and is unlikely to cover my pension fund if the investment itself loses money.”
22. On 21 November 2014, L&G transferred £20,345.98 to the Scheme.
23. On 24 November 2014, Sun Life transferred £36,105.36 to the Scheme.
24. Upon receipt of the transfers from L&G and Sun Life, Cantwell invested the majority of the funds in The Resort Group PLC (**TRG**).
25. In August 2015, Mr Y claimed a pension commencement lump sum from the Scheme and received a payment of £13,833.84.
26. Between 2015 and 2019, Mr Y received quarterly statements from TRG. The statements made it clear that, after the removal of management charges and fees,

the returns were minimal. Mr Y is unable to withdraw his investment with TRG unless another individual purchases the unit in which his funds are invested.

27. In 2016, the FCA issued Moneywise with a suspension notice revoking its authorisation to provide advice on regulated pension products and services. This was because of concerns raised about advice provided to individuals by Moneywise in relation to the investment of their pension benefits.

28. On 19 November 2019, the Solicitor submitted a formal complaint to Sun Life on behalf of Mr Y. The Solicitor said:-

- In 2014, Mr Y received an unsolicited call about transferring his Plan benefits into the Scheme.
- Sun Life should have been reasonably aware that its members were financially unsophisticated. Nor were its members able to determine whether advice received was from a regulated or unregulated source.
- Sun Life had failed to carry out sufficient due diligence on Mr Y's transfer request, which had exposed him to an unsuitable pension arrangement.
- The Pensions Ombudsman's (**TPO**) Determination PO-12763<sup>1</sup> provided that regulated bodies, such as Sun Life, had a duty of care to protect the interests of its members.
- Mr Y had suffered a financial loss of his Plan benefits through no fault of his own. If Sun Life had undertaken sufficient due diligence, and engaged verbally with Mr Y about the transfer, it would likely have determined that the Scheme was not suitable for Mr Y.
- In February 2013, TPR issued guidance and information about the serious nature of pensions scams. So, it would have been aware of the potential risks associated with allowing Mr Y to transfer to the Scheme.

29. On 20 December 2019, Sun Life responded to the Solicitor. It did not uphold the complaint and explained that:-

- On receipt of every transfer out request, it referred to a transfer scheme reference checklist (**the Checklist**). The Checklist contained details for every valid scheme Sun Life had previously dealt with. As the Scheme was set up for the sole purpose of the transfer, it was not included on the Checklist. Subsequently, the matter was referred to Sun Life's internal technical team.
- The technical team reviewed all of the information provided by Cantwell. As the Scheme was registered with HMRC, and a copy of the Scheme's trust deed and rules was provided, the transfer could proceed. However, Mr Y was required to complete the Risk Form before a transfer payment was made. See Appendix 2 for

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<sup>1</sup> <https://www.pensions-ombudsman.org.uk/decision/2018/po-12763/police-pension-scheme-po-12763>

a summary of the additional due diligence checks conducted by Sun Life prior to the transfer.

- TPR's updated guidance in February 2013 was not statutory, so, there was no regulatory requirement to provide a copy of the Scorpion Leaflet with every transfer value. Cantwell's letter of 9 October 2014 also said that it had provided Mr Y with a copy of the Scorpion Leaflet and explained its significance and the risks associated with a transfer and pensions liberation.
- Mr Y provided the Member Letter, in addition to the signed Risk Form, confirming that he fully understood the risks associated with a transfer regarding pensions liberation fraud. It was Mr Y's decision to proceed with the transfer and Sun Life was not in a position to offer advice on the matter.

## Adjudicator's Opinion

30. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by Sun Life. The Adjudicator's findings are summarised below:-

- Mr Y's case was not comparable with that of a previous determination, PO-12763, as the circumstances surrounding each case differed. In PO-12763, the transfer was carried out 18 months after TPR issued its updated guidance. The Ombudsman found that the respondent failed to issue the Scorpion Leaflet and carry out sufficient due diligence checks, despite multiple warning signs.
- At the time of Mr Y's transfer the guidance in place at the time was TPR's awareness campaign as of 14 February 2013. If one or more warning signs were identified then it was recommended that the ceding scheme's Trustee/administrator should contact the member directly about the transfer and the receiving scheme.
- The Adjudicator reviewed the transfer checks carried out by Sun Life, see Appendix 2, and noted the following:
  - The Scheme's sponsoring employer was Mr Y's Company and the address for Mr Y and the Company were the same. So, the Company was geographically close to Mr Y, and he shared a connection with both the Company, as the owner, and the Scheme as the Trustee.
  - The Scheme was only registered with HMRC on 30 September 2014. However, the Scheme was only established as a SSAS for the sole purpose of a transfer and Mr Y was the only member. So, the date the Scheme was registered with HMRC was unlikely to have been a cause for concern given the nature of the transfer and the receiving scheme.
  - While Cantwell was not registered with the FCA, it was registered with both HMRC and The Association of Member-Directed Pension Schemes (**AMPS**).

Further, Mr Y and Cantwell had taken investment advice from Sequence Financial Management Limited (**Sequence Financial**), a financial advisory firm, who, at the time, were regulated by the FCA to provide financial advice. However, Sequence Financial is no longer regulated by the FCA.

- Sun Life's technical team reviewed the transfer request as the Scheme was not listed on the Checklist. It was explained to Mr Y that, in order to proceed with the transfer, he needed to complete the Risk Form, which highlighted the risks surrounding overseas investments.
  - Mr Y was age 57 at the time of the transfer, so he was not trying to access his pension benefits any earlier than he was eligible to.
  - A copy of the Scheme's trust deed and rules was provided alongside the completed transfer declaration forms.
- While Sun Life did not provide Mr Y with a copy of the Scorpion Leaflet, Cantwell said that it provided Mr Y with a copy of the Scorpion Leaflet and talked him through the risks associated with a transfer. Mr Y was also in the process of transferring a separate L&G pension into the Scheme. L&G provided Mr Y with a copy of the Scorpion Leaflet in October 2014, and he completed an L&G form confirming he had read and understood the Scorpion Leaflet. Further, Mr Y provided Sun Life with the Member Letter making clear that he was not offered an incentive to proceed with the transfer and that he understood the risks of the transfer.
  - The Adjudicator agreed that it was reasonable for Sun Life to assume that Mr Y was sufficiently aware of any risks or scams. Additionally, the Adjudicator believed that as Mr Y had said he understood the Scorpion Leaflet, he likely would have been aware that receiving a cold call about a transfer was a warning sign of fraud. Despite being reasonably aware of the risks, Mr Y did not inform Sun Life that he had in fact received a cold call. Sun Life is only able to act on the information available to it at the time. So, it was reasonable for Sun Life to believe that Mr Y had not been approached unsolicited as there was nothing to indicate that he was.
  - Mr Y had a statutory right to a transfer as a benefit crystallisation event had not occurred, and he was no longer paying into the Plan. So, the extent to which Sun Life could delay or refuse a transfer to a Scheme that met HMRC's requirements was limited.
  - The Adjudicator concluded that the due diligence checks carried out by Sun Life were reasonable, for the time, and there was no indication that the Scheme was high-risk, a scam or that it was unsuitable for Mr Y.
31. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y has provided his further comments which do not change the outcome. I note the additional points raised by Mr Y but I agree with the Adjudicator's Opinion that the complaint should not be upheld.

32. Mr Y said that, in 2011, he was registered as visually impaired, and, at the time of the transfer, he was adjusting to life while being visually impaired. He has said that an unregulated adviser from Moneywise, came to his house to help him complete any necessary transfer forms, which he duly signed and returned to Sun Life.

### **Ombudsman's decision**

33. Mr Y has inferred that, because he is registered as visually impaired, it is possible that he was misled into signing transfer forms that he otherwise may not have if he was in a position to read the contents of the forms more adequately.

34. I appreciate the position Mr Y found himself in at the time of the transfer, however, if his inference is that he was provided with misleading information about the contents of what he was signing, this amounts to fraud. Fraudulent activity of this particular nature is beyond the scope of my jurisdiction, and I am unable to investigate the matter any further. If Mr Y believes that he is the victim of this type of fraud, he should contact the police to report the matter.

35. I have considerable sympathy for Mr Y, who appears to have been the victim of a pension liberation scam and is not able to access his funds. However, this matter cannot be viewed with the benefit of hindsight, and it is the circumstances at the time of the transfer which are of importance to my determination.

36. The complaint that was accepted for investigation by my office is regarding the level of due diligence undertaken by Sun Life at the time of the transfer. The transfer guidance in force, at the time, was TPR's awareness campaign of 14 February 2013. That is, if more than one warning sign is identified, it was recommended that Sun Life directly contact Mr Y about the receiving scheme.

37. I have reviewed the checks undertaken by Sun Life (set out in Appendix 2). It appears that, at the time of the transfer, two FCA regulated entities were involved in the transfer, Moneywise and Sequence Financial. While I note that both of these firms are now no longer authorised by the FCA, at the time of the transfer both firms were authorised to advise on pension and investment products so there would have been no apparent red flags for Sun Life to consider.

38. Ideally, it would have been better if Sun Life had provided Mr Y directly, with a copy of the Scorpion Leaflet. However, it would appear that it would have been very unlikely to have made any difference given that Mr Y was provided with the Scorpion Leaflet by L&G, in October 2014, as part of a separate transfer from L&G, one month before Sun Life completed its transfer. In addition, Cantwell explained to Sun Life that it had provided, and gone through, the Scorpion Leaflet with Mr Y prior to the transfer.

39. I find that before the transfer from the Plan was completed, it is likely that Mr Y had access to, and was provided with, the Scorpion Leaflet in addition to the Member Letter. I agree that it was reasonable for Sun Life to believe that Mr Y was suitably aware of the risks of pensions scams, and that he would have contacted Sun Life if



he had any concerns, given what he had stated in various correspondence. Also, Mr Y was aware, from the information he had received in addition to the Scorpion Leaflet sent by L&G, that receiving a cold call about the Scheme was a warning sign, he still did not make Sun Life aware of this. Normally, I would expect the question to be asked by the transferring scheme. Again, I do not find that it would have made any difference in this case as Mr Y was aware of this before the transfer.

40. It is clear that Sun Life did have some reservations about the transfer, mainly because the Scheme was newly established and not on the Checklist. So, it issued the Risk Form to explain the implications of an overseas transfer.
41. Sun Life also has no remit to comment on the suitability of the investments that Mr Y could, and did, make through the SSAS, or whether they were appropriate for him. Sun Life was only able to make Mr Y aware of the potential implications of an overseas investment which I note that it did. I find that the provision of the Risk Form, and the information contained therein, provided sufficient information for Mr Y to consider his choice of overseas investment. By signing and returning the Risk Form, Mr Y confirmed that he understood the risks and wished to proceed regardless. Sun Life cannot be held responsible for the decision that Mr Y made.
42. In any event, despite the checks carried out by Sun Life, it had a statutory and contractual duty to transfer Mr Y's funds. It was required to act upon this duty when it received Mr Y's transfer forms, unless there were any indications of why the transfer should not go ahead, such as those indicating pension liberation fraud. In Mr Y's case, there was little to no indication at that time that TRG was a pensions liberation vehicle.
43. It is regrettable that Sun Life's decision to proceed with the transfer has not transpired to be in Mr Y's best interests. But Sun Life has fulfilled its due diligence obligations with the information it held at the time.
44. In conclusion, I do not find that Sun Life failed in its due diligence obligations in respect of the transfer.
45. I do not uphold Mr Y's complaint.

Anthony Arter CBE  
Deputy Pensions Ombudsman  
19 February 2023

## Appendix 1

### “Key Scheme Details Q&A

1. **Who is the Scheme’s sponsoring employer?**

The Scheme’s sponsoring employer is Tennyson Close 1957 Limited.

2. **What is the name of the receiving scheme?**

Tennyson Close 1957 Limited SSAS

3. **What is the structure of the receiving scheme?**

An occupational, [SSAS].

4. **Who is the pension scheme administrator?**

The Scheme administrator is [Cantwell].

5. **What is the administrator’s HMRC ID reference number?**

The HMRC ID reference number is A0126431.

6. **What is the administrator’s information Commissioner’s Office (ICO) registration number?**

The administrator’s ICO registration number is ZA009320.

7. **[Cantwell] is a full member of the Association of Member-Directed Pension Schemes (AMPS)**

AMPS Membership number: AMPS302.

8. **Is the receiving scheme registered with the Pensions Regulator?**

The Scheme is not registered with the regulator on Exchange as it is a single member scheme.

9. **What is the scheme’s PSTR number as issued by HMRC?**

The scheme’s PSTR number is 00816819RZ.

10. **Who is the Scheme’s proposed investment provider(s)?**

As per the requirement under section 36 of the Pension Act 1995, the trustee of the Scheme is taking and considering appropriate advice on whether the proposed investment(s) are satisfactory for the aims of the scheme.

The appropriate advice is being taken from Sequence Financial Management Limited (an Independent Financial Adviser, FCA Register number 528196), and under consideration are the following investments:-

CAS-46108-G9D1

A discretionary fund management service provided by the Parmenion Investment Management (a trading name of Parmenion Capital Partners LLP, FCA Register number 462085). Please see enclosed 'Parmenion Due Diligence' document for information.

A commercial property investment provided by the Resort Group PLC ([www.theresortgroupplc.com](http://www.theresortgroupplc.com)). Please see enclosed a 'Key Features' document for information."

## Appendix 2

### Sun Life due diligence checks

“CHECKS IN PLACE/CARRIED OUT AT THE TIME OF THE TRANSFER–  
October /November 2014

**PSTR** – letter on file from HMRC confirming [the Scheme] SSAS was registered on 30 September 2014. The PSTR is 00816819RZ. This was provided with the transfer request.

**Companies House** – Having checked our records at the time of the transfer, I cannot see any evidence that any checks were made on Companies House. On the Lamda Final Transfer payment checklist, we have ticked yes for ‘is the scheme a known scheme’ – therefore suggests Companies House / FCA were not checked. I have checked, [the Company] is on Companies House and the company number is 09224528. The Company was incorporated on 18 September 2014. [Cantwell] is on Companies House and their company number is 08573429. They were incorporated on 18 June 2013.

**Trustee** – the client, [Mr Y] was named as the trustee of the [Scheme]. He is also named as the director of [the Company]. A copy of the trust deed was included with the transfer request.

**Connection with the sponsoring employer** – the client, [Mr Y]’s address at the time of the transfer was [Mr Y’s address] (This is a members club/pub – could not print details regarding this for the file as access was denied on internet). The sponsoring employer was [the Company], in which the receiving scheme was [the Scheme], which is an occupational, [SSAS]. Therefore the client, [Mr Y] did have a connection to the sponsoring employer and was geographically close as he was residing at the sponsored employers address. Details regarding the sponsoring employer/SSAS were provided with the transfer request.

**FCA register checks** – The transfer was received from [Cantwell], who are not registered with the FCA. They were registered and a full member of the Association of Member-directed pension schemes (AMPS). Their AMPS membership number is AMPS302. As part of the transfer request received from [Cantwell] they confirmed the appropriate advice for the transfer was being taken from Sequence Financial Management Limited (An IFA, FCA register 528196). Also a discretionary fund management service was provided by Parmenion Investment Management (a trading name of Parmenion Capital Partners LLP, FCA register number 462085). These details were provided with the transfer request.

**Clients Age** – At the time of the transfer [Mr Y] was 57 years old, so he was above the minimum pension age of 55, which came into force on 6 April 2010. The pension benefits under SSAS rules are available from 55 onwards.

**Internal checks** – As per all transfer requests that we received, the receiving scheme is checked against a spreadsheet called [the Checklist] which is compiled and kept up to date by [the technical team]. As [the Scheme] was not recorded on the [checklist] it was agreed that the client would need to complete and return a [Risk Form] before the transfer could proceed.

**Client information** – Within the transfer request [Cantwell] confirmed that the [Scorpion Leaflet] has been explained and sent to [Mr Y]. In addition, [Mr Y] provided [the Member Letter] confirming he was fully aware of the issues relating to pensions liberation. As part of [the Member Letter] he stated that “I therefore wish to confirm that the transfer request is being made in order that I can take advantage of investment opportunities available under the Scheme, none of which are in any way connected with pension liberation”. This was enclosed with the transfer request.”