DRN-3190487

The complaint

Mr D has complained, with the help of a professional third party, about the transfer of his ReAssure Limited ('ReAssure') personal pension to a small self-administered scheme ("SSAS") in August 2014. Mr D's SSAS was subsequently used to invest in an overseas property development with The Resort Group ('TRG'). The investment now appears to have little value and Mr D says he has lost out financially as a result.

Mr D says ReAssure 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, and undertaken greater due diligence on the transfer, in line with the guidance he says was required of transferring schemes at the time. Mr D says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if ReAssure had acted as it should have done.

What happened

On 16 June 2014 ReAssure wrote to a business called First Review Pension Services ('FRPS') thanking it for its recent enquiry about transferring Mr D's pension plan. The letter provided a transfer quotation and explained what documents ReAssure would need to proceed with the transfer. FRPS was not authorised or regulated by the Financial Conduct Authority ('FCA').

In July 2014, a company, which I'll refer to as R Ltd, was incorporated with Mr D as director.

On 7 July 2014 Moneywise Financial Advisors wrote to Mr D. The details in the subsequent documents confirm this was Moneywise Financial Advisors Limited ('MFAL') which was authorised and regulated by the FCA at the time. This letter said MFAL understood Mr D was considering appropriate investments for his recently established SSAS. And went on to say Mr D had appointed MFAL to provide him advice under section 36 of the Pensions Act 1995 in relation to whether the proposed investment was satisfactory for the aims of the scheme.

Although MFAL's letters referred to the SSAS as having been already established, it appears the application form for the SSAS was not signed by Mr D until 9 July 2014. This named MFAL as the trustee adviser but was signed as a witness by a member of staff from FRPS.

I understand a SSAS was then set up with R Ltd as the SSAS's principal employer and Rowanmoor Group Plc as the administrator. I also understand Rowanmoor Trustees Limited was appointed as the independent trustee and to act as the signatory to the trustee bank account.

On 20 August 2014 a transfer request was sent to ReAssure via the Origo Options system. Origo is an electronic platform which allows the transfer of pensions and investments which can make transfers more efficient and reduce transfer times. The transfer creation date was given as 20 August 2014. The request listed Rowanmoor Group Plc as the receiving provider and MFAL as the adviser firm.

Mr D's pension was transferred by ReAssure on the same day - 20 August 2014. His transfer value was £60,451.89. He was 58 years old at the time of the transfer.

Approximately £35,000 was then invested in TRG. The remaining funds after the deduction of Rowanmoor's charges, around £23,500, was then moved to the SSAS bank account and in October 2014 tax-free cash of £14,619 was paid to Mr D.

I understand that the investment has not provided the returns expected, what returns there were have now ceased and there is little market for re-sale of the investment.

In July 2018, Mr D made a claim to the Financial Services Compensation Scheme ('FSCS') about MFAL, which was by then in default. The claim was described as including 'advice to transfer an existing personal pension'. In the summary of claim Mr D said that the investment made in TRG *"initially derived from a cold call, from this, a face to face meeting was arranged with a financial adviser from Moneywise Financial Advisors Limited regarding my pension arrangements. The adviser recommended me to move my only pension savings into a SSAS and invest…"* Mr D also said that the transfer took place *"Upon the recommendation given to me from Moneywise Financial Advisors Limited".* The claim went on to talk about the unsuitability of TRG as an investment for him in his circumstances. There was a question asking Mr D to select statements that described the advice he was complaining about. In answer he selected both 'advice to transfer an existing personal pension' and 'advice to invest in an unsuitable product (e.g. SIPP, SSAS, Executive Pension)'. And there was a question that asked if Mr D had received advice from another firm about the pension product he was claiming for, or the investments or funds held within the pension to, which he answered 'no'.

The FSCS compensated Mr D for *"the loss of pension benefits when you transferred to the SSAS*" and paid him total compensation of £50,000 (part in October 2019 and part around July 2020).

I've seen confirmation that the FSCS reassigned rights to complain to ReAssure about the transfer to Mr D, after these were passed to it when it upheld the claim against MFAL. Although this appears to have happened in 2022.

In the meantime, in March 2020, Mr D complained to ReAssure. Briefly, he said ReAssure ought to have spotted, and told him about, a number of warning signs in relation to the transfer. These included but were not limited to: the receiving scheme and sponsoring employer being newly registered, the sponsoring employer not being Mr D's genuine employer, Rowanmoor not being regulated by the FCA, Mr D had been cold called and the proposed investment being unregulated, high risk and involved investment abroad. His representative said there was not a regulated financial adviser involved and that FRPS had recommended the transfer and investment in TRG, on this basis this would provide returns that would exceed those the ReAssure pension could offer. Mr D said if ReAssure had properly informed him of the warning signs and the risks, he wouldn't have transferred.

In response to the complaint ReAssure said it needed further information to investigate – including whether a complaint had been made to Rowanmoor.

Mr D referred his complaint to our service. ReAssure subsequently said the transfer request came via Origo with no paperwork being required. So, it would expect that Mr D's financial adviser had completed the relevant due diligence. It said it couldn't find evidence that it had sent Mr D the Pension Regulator's ('TPR') Scorpion leaflet. But that didn't mean one hadn't been sent. And it said it assumed that Mr D was warned of the risks by his financial adviser. But it said *"even if that wasn't the case he may still have elected to transfer his benefits and disregarded the warnings provided"*.

I issued a provisional decision in September 2024 explaining that I didn't intend to uphold Mr D's complaint. Below are extracts from my provisional findings, explaining why.

The relevant rules and guidance

Before I explain my reasoning, it will be useful to set out the environment ReAssure was operating in at the time with regards to pension transfer requests, as well as any rules and guidance that were in place. Specifically, it's worth noting the following:

- *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 a member may also have a right to transfer under the terms of the contract). This 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.*

- *On 10 June 2011, the Financial Services Authority (FSA) issued a warning about the dangers of "pension unlocking" and specifically referred to consumers transferring to access cash from their pension before age 55. (As background to this, the normal minimum pension age had increased to 55 in April 2010.) The FSA said that receiving occupational pension schemes were facilitating this. It encouraged consumers to take independent advice. The announcement acknowledges that some advisers promoting these schemes were FSA authorised.*

- *At around the same time, TPR published information on its website about pension liberation, designed to raise public awareness and remind scheme operators to be vigilant of transfer requests. The warnings highlighted that websites and cold callers were encouraging people to transfer in order to receive cash or access a loan.*

- *TPR launched its Scorpion campaign on 14 February 2013. The aim of the campaign was to raise awareness of pension liberation activity and to provide guidance to scheme administrators on dealing with transfer requests in order to help prevent liberation activity happening. The FSA, and the Financial Conduct Authority (FCA) which had succeeded the FSA, endorsed the guidance. The guidance was subsequently updated, including in July 2014. I cover the Scorpion campaign in more detail below.*

- *In late April 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.*

- *ReAssure was subject to the 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:*

    - *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 Scorpion guidance

The Scorpion campaign was launched on 14 February 2013, and was initially focused just on pension liberation – namely, the access to pension funds in an unauthorised manner (such as before normal minimum pension age). 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.

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.*

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 statutory 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.

<u>What did personal pension providers need to do?</u>

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. In deciding how to apply the guidance, they needed to consider the guidance as a whole, including the various warning signs to which it drew attention, the case studies that highlighted different types of scam, and the checklist and various suggested actions ceding schemes might take. 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:

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 – what does the evidence suggest happened?

Mr D says he was cold called by FRPS and offered a pension review with a view to increasing his returns. ReAssure wrote to FRPS acknowledging its enquiry asking for information about a potential transfer of benefits. So, on balance, it does appear likely that FRPS was the party that initially contacted Mr D.

Mr D's representatives have said, after receiving information from ReAssure, there were further conversations about his pension with FRPS. And they have said that FRPS recommended that Mr D transfer his pension away from ReAssure to the SSAS. FRPS was not regulated by the FCA to provide advice. But Mr D agreed to go ahead and apply for the SSAS based on its advice. They have said no regulated adviser gave Mr D advice on the transfer.

They have said that following the transfer, "as initially recommended by the unregulated introducer Mr D had been approached by, and acting on advice given by Moneywise Financial Advisors Limited…" he went ahead with the investment in TRG.

So, Mr D and his representative have argued that MFAL's involvement was limited to just providing advice to Mr D as trustee of the SSAS on the investment. And that it was not involved in the advice to transfer and set up the SSAS – as they have said no regulated business was involved in that and MFAL were regulated by the FCA.

The letter MFAL sent to Mr D did say it had not advised Mr D about the establishment of his SSAS and that it was independent of all firms Mr D had contact with in establishing the SSAS. And it went on to explain MFAL's opinion on the investment was provided to Mr D in his capacity as trustee of the SSAS, not in his personal capacity. And I note that Mr D signed a letter of authority giving FRPS permission to submit an application to establish the SSAS to Rowanmoor Group Plc.

However, MFAL's letter to Mr D prefaced the information contained within about the TRG investment by saying that it was contacting him because he'd recently established a SSAS. But the letter was dated 7 July 2014. And the SSAS had not been established by that time. The application for the SSAS was only completed two days after this letter. So, I don't think the contents of this letter rule out MFAL having further involvement. Because, although it said MFAL hadn't advised on the setting up of the SSAS, that action hadn't yet happened. So, it could have advised on this after that letter was sent.

The Origo summary named MFAL as the adviser firm. Rowanmoor didn't qualify this or suggest that the advice provided was restricted to only being in relation to the investment. And I understand this was an option open to Rowanmoor.

And, when Mr D made a claim to the FSCS, he said that it was MFAL that advised him to transfer to the SSAS. He said that the transfer came about because of a cold call – which is consistent with what he has said about FRPS having contacted him. But he told the FSCS that this resulted in a meeting being arranged with MFAL. And that the adviser from MFAL recommended he move his pension arrangements to a SSAS. The summary of what the FSCS claim related to also referred to it being about advice to transfer an existing personal pension and invest in an unsuitable SSAS. And Mr D also said, in that claim, that he received no advice from another firm about the pension product he was claiming for.

So, the information that Mr D gave to the FSCS is not consistent with what his representative said when complaining to ReAssure or that it has told our service. This is because the FSCS claim makes it clear that Mr D considered MFAL, a business that was regulated by the FCA, gave him advice to transfer his pension and that no other business did – which would include FRPS.

Mr D has been consistent in saying that he was cold called. And I think that is likely the case. I think it was FRPS that made this call. And I think it remained involved in the transfer process as it seems to have certified documents as part of the SSAS application which happened several weeks after it initially wrote to Royal London. I also haven't seen anything about his circumstances or what he's said that leads me to think he'd likely have embarked on such a complicated arrangement on his own – setting up a new company, opening a SSAS, transferring his existing pension and investing overseas. And I think it was likely the promise of better returns that led him to transfer. But I can't reasonably say that promise or any recommendation to transfer was made by FRPS, given the information I've set out above. I think on balance, as Mr D told the FSCS, it is likely that FRPS introduced him to MFAL. And that it was MFAL that gave him the advice to transfer.

I do think what Mr D has said about the TRG investment now having little value is likely to be correct. From what we know about investments through TRG from other complaints we've seen, I think there is unlikely to be any real market for re-sale of the investment unit and that it is largely illiquid. And I note the FSCS assigned it a nil value when it assessed the claim against MFAL.

<u>What did ReAssure do and was it enough?</u>

The Scorpion insert:

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

The letter ReAssure sent to FRPS in June 2014, in response to the request for the transfer pack, doesn't refer to the Scorpion leaflet being included. But in any event, as that letter wasn't sent directly to Mr D, I don't think it being mentioned would be enough to say he'd likely seen it, as this would've relied on FRPS passing a copy to him.

I also haven't seen any evidence to suggest that ReAssure wrote to Mr D separately at the same time in order to provide the Scorpion insert or the warnings it contained in a different format.

So, based on what I've seen, I don't think ReAssure did send Mr D the relevant Scorpion warnings. As I've said above, I think it would've been good practice to send this information at the same time as transfer packs. So, I don't think ReAssure has done everything it should have. I would just add that, at the time of the request for the transfer pack, it would have been the February 2013 version of the Scorpion insert that ReAssure ought to have shared, as the guidance and literature wasn't updated until 24 July 2014.

ReAssure said it assumed that Mr D's adviser had made him aware of the risks involved. And given what I've already explained and that the Origo report said MFAL, an FCA regulated business, had provided advice I don't think this assumption would've been unreasonable. But ReAssure didn't know MFAL was the adviser at the time the transfer pack was requested, so I still think it should've shared the warnings with Mr D.

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.

From what I can see, ReAssure didn't undertake any further due diligence. The information indicates it received the Origo request on 20 August 2014 and had approved the transfer on the same day. There is no record of any checks having been made.

The Origo request contained limited information. This meant the majority of the warning signs the Scorpion guidance highlighted would not have been obvious to ReAssure. And in the lack of any warning signs, proceeding with the transfer without further due diligence may have been fair. ReAssure did though still need to check that the SSAS was validly registered.

The Origo request gave a Pension Scheme Tax Reference ('PSTR') for the receiving scheme. But I think ReAssure still ought to have checked that this scheme was validly registered with HMRC and that the PSTR was correct. In the course of doing so, ReAssure would have identified the date on which the SSAS was registered, and found that this was recent. Or, if it didn't check this, I think it should have assumed the SSAS was recently registered, as being single-member schemes that is the case with the majority of SSAS transfers. And a scheme being newly registered was a warning sign that the February 2013 Scorpion action pack for businesses highlighted – which I think ReAssure still ought to have had in mind even though the guidance had been recently updated at the point of transfer.

However, the same source that gave ReAssure the PSTR – the Origo online printout – disclosed that there was a regulated financial adviser MFAL involved with the transfer. I think it would have been reasonable, particularly given Rowanmoor hadn't qualified MFAL's involvement, for ReAssure to have taken this information at face value and concluded MFAL was advising on the transfer (which again is what Mr D told the FSCS happened).

The Scorpion action pack said that if any of the warning signs were present then ReAssure could use the checklist to follow up on it to find out if other signs of liberation or scams were present. As I noted above, the language wasn't instructive – as it was a matter for the ceding scheme to weigh up the potential risk of the transfer being involved in pension liberation or a scam. And in the particular circumstances of this case, even if ReAssure had done more than the information suggests and considered the scheme having been newly registered, I think that weighing up exercise would reasonably have led it to decide not to undertake further due diligence in view of the declared role of a regulated financial adviser in the transfer.

I say this as two of the key warning signs mentioned in the Scorpion action pack were accessing a pension pot before age 55 and a consumer taking advice from an unregulated financial adviser. Here, Mr D was 58 at the time of the transfer – which ReAssure knew. So, the risk of accessing his pension before age 55 wasn't present. And based on the information ReAssure had about MFAL's involvement the risk of Mr D falling victim to a scam was significantly reduced. And if something did go wrong, Mr D had regulatory protections.

And even if ReAssure had done more, I don't think, primarily due to MFAL's involvement, it would have considered there to be reason to provide any warnings to Mr D, over and above those that it should have provided in the Scorpion insert.

I'm aware that Mr D's representatives believe ReAssure was also required to check Mr D's employment status, as a matter of course, to ensure that he had a statutory right to transfer. And, as he was unemployed, ReAssure would have found he did not have a statutory right and so, should not have proceeded. I've outlined the obligations businesses had above. I

won't repeat them here other than to say I'm not aware of any rule or guidance that included an obligation for ceding schemes to check, as a matter of course, whether the transferring member was earning. If the information received as part of the transfer request indicated that the member was not employed, I might've expected ReAssure to ask further questions about that. But there was nothing in the transfer request that I think would reasonably have led ReAssure to think Mr D was not employed or earning. So, I think it was reasonable for it to believe he had a statutory right to transfer.

Would ReAssure acting differently have made a difference?

For the reasons I've explained above, I think the only material failing by ReAssure in this case was not to send the Scorpion insert to Mr D at the time the transfer pack was requested.

Mr D's representatives have said that he did not see this leaflet and that it would have led him to make further enquiries and ultimately not going ahead with the transfer. I'm conscious though that this is based on a significant degree of hindsight. In addition, as I've already highlighted, there were some significant discrepancies in Mr D's recollections at the time of the complaint to the FSCS and when he subsequently complained about ReAssure – in particular around which party advised him. This did all happen around ten years ago, and I'm conscious that memories can and do often fade. Mr D's representatives have said he was presented a vast amount of paperwork to sign and was left copies of the documents he did sign. The Scorpion leaflet did not require a signature though. So, it is possible that this was presented to him along with the documents he signed, but a copy not left with him.

Assuming though Mr D did not see the Scorpion insert, I'm not sure I can reasonably conclude that him having seen it would reasonably have led him to act differently. I've taken into account that although the transfer pack was requested in June 2014 the transfer actually took place after the focus of the Scorpion campaign broadened into scams more widely. But TPR's guidance didn't suggest that businesses, in this case ReAssure, needed to send the updated version where transfers were ongoing. So, if ReAssure had done what it should, I think the 2013 version is what Mr D would have seen.

The focus of the 2013 leaflet was pension liberation and in particular early access to pensions. For example the front cover of the Scorpion insert said "Companies are singling out savers like you and claiming that they can help you cash in your pension early." And the leaflet went on to explain that "for the majority, promises of early cash will be bogus and are likely to result in serious tax consequences." As I've said, I do think Mr D was likely cold called, which was one of the things the leaflet said to watch out for. But he wasn't accessing his pension before age 55, as he was 58 at the time. And so, I think it is plausible that if ReAssure had sent this to him and he'd read it, he might have thought this did not apply to him.

Taking all of this into account, I don't think the failing made by ReAssure in this case has caused Mr D to be in a materially different position that he otherwise would have been. So, I can't fairly hold ReAssure responsible for the losses he has said he's incurred.

Responses to my provisional decision

I gave both parties an opportunity to make further comments or send further information before I reached my final decision.

ReAssure said it agreed with my provisional decision and didn't have any further comments for me to consider.

Mr D's representative said that he didn't agree with my decision. They said they disagreed that ReAssure didn't need, as a matter of course, to check if Mr D was employed and if a statutory right to transfer existed. And they said my opinion was not consistent with that the Pensions Ombudsman had expressed in other decisions.

The representative said I'd set out discrepancies in the complaint made to the FSCS and subsequently to ReAssure. But it said these were different because more information became available and there was no basis to conclude here that FRPS was only acting as an introducer, noting we'd seen a number of complaints where this wasn't the case, involving similar parties.

They didn't think it was fair for ReAssure to have concluded that MFAL provided advice, given FRPS had contacted it. And they repeated that they felt there were other warnings signs present which ReAssure ought to have identified.

Lastly, they disagreed that ReAssure's failing was limited to not sending the Scorpion leaflet with the transfer pack. The representative repeated that further warning signs should have been identified, that an updated Scorpion leaflet from July 2014 ought also to have been provided and said they felt my decision was not consistent with one made by another Ombudsman from our Service.

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, while I know this will come as a disappointment to Mr D, I'm not inclined to depart from my provisional findings.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. I should also make it clear that I've reached my decision based on the specific circumstances in Mr D's individual complaint. These are different to those in complaints and transfer requests made by other consumers to other ceding schemes. I'd expect a transferring scheme to assess each transfer request on its own individual facts. And that may well result in different outcomes based on what looks to be similar circumstances.

Mr D's representatives have again said that ReAssure was required as a matter of course to check if Mr D was employed or earning and thus that a statutory right to transfer existed. They have referred to conclusions reached by the Pension Ombudsman, in complaints that they believe to be similar to Mr D's, which they say support that ReAssure had to check this.

I'm not bound by decisions made by the Pension's Ombudsman. And I disagree with the representative that the cases are as similar as they suggest as there appear to be fundamental differences. In both of the cases that the Pension Ombudsman was considering, which the representative has referenced, the consumer was transferring to new multi-member occupational pension schemes where there were more evident concerns about the potential lack of employment link or employment at all - such as geographical separation or the ceding scheme already having evidence that the consumer was unemployed. Those issues are not present to the same extent here.

I explained in my provisional findings that I was not aware of any rule or guidance that included an obligation for ceding schemes to check, as a matter of course, whether the transferring member was earning. And I've not been provided any further evidence of a regulatory obligation of ReAssure to do this.

There was nothing in the transfer request that I think would reasonably have led ReAssure to think Mr D was not employed or earning or that ought to have made it suspicious of this. So, I think it was reasonable for it to believe he had a statutory right to transfer and don't think there are grounds on which to have expected it to ask further questions about this.

The representative has said that the discrepancies between the complaint presented to the FSCS and to ReAssure are due to more information becoming available – that FRPS was involved. While more information may have become available, the foundational piece of information is Mr D's testimony about which party advised him. And this is contradictory.

The Origo report named MFAL as the adviser, with no qualification to this. And Mr D said that MFAL advised him when he complained to the FSCS. While information does show that FRPS was involved – it sending a letter of authority to ReAssure – there isn't evidence beyond the now amended testimony that it was the adviser. And while I acknowledge that we have seen other complaints where FRPS did go beyond acting as an introducer, we've also seen complaints where its role was limited to that. So, I don't agree with the representative that it is unreasonable to conclude that MFAL was the adviser here, or that FRPS's role was limited because I think on balance the information supports this.

On the same subject, I remain of the opinion it was reasonable for ReAssure to believe that MFAL was the adviser. This is what the Origo report said. And I don't think the original letter of authority coming from a different, unregulated business, meant that ReAssure ought to have doubted what the Origo report said.

Turning to what I think ReAssure did wrong, I'm aware of the decision one of my Ombudsman colleagues issued which the representative has referred to suggesting an inconsistent approach. The circumstances of that complaint were different though, including that it didn't involve an Origo request, and the Ombudsman concluded that a regulated business hadn't given advice. And I've considered Mr D's complaint based on its particular circumstances.

His representatives have said that the requirements of ReAssure were not limited to issuing a Scorpion leaflet. But I didn't say in my provisional findings that they were. It had to carry out proportionate due diligence based on the information available to it. For the reasons I explained in my provisional decision, I think it was reasonable for ReAssure to consider the Origo report confirming MFAL, a regulated adviser, had advised Mr D and that he was beyond the age of 55 meant the risk of him falling victim to a scam and not having regulatory protection was significantly reduced. And so, in the particular circumstances of this complaint, although the SSAS was newly registered, I think ReAssure's decision to proceed without any further checks, and not to provide the updated Scorpion warnings (which it wasn't required to do as a matter of course), was reasonable. That's not to say, if it hadn't done more checks, other potential warning signs might not have been discovered. But rather, I think, based on the limited information it had, it was reasonable for ReAssure to proceed, given the reassurance some of that information provided.

I remain of the view that ReAssure should have sent Mr D a copy of the Scorpion leaflet when sending the transfer pack to FRPS. But, for the reasons I've explained, I think it is unlikely, based on the content of the Scorpion leaflet at that time, that this would have led Mr D to act differently. So, for all of the reasons I've explained, I don't think ReAssure needs to do anything further here.

My final decision

For the reasons I've explained, I don't uphold Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 4 November 2024.

Ben Stoker
Ombudsman