DRN-3237972

The complaint

Mr W complains that ReAssure Limited didn't take sufficient steps to ensure he fully understood the risks in transferring out of his personal pension in order to make an unregulated investment within a Small Self-Administered Scheme (SSAS) in October 2014. He also says ReAssure should have refused to make the transfer.

What happened

Mr W says that he was cold-called by an agent from a SSAS introducer selling an opportunity in the Unity Bay hotel development in Turkey. He was 49 years old at the time and earning about £25,000pa. When he showed interest, an agent visited his home to discuss the opportunity further and complete documentation.

On 15 April 2014 he signed an application form for a SSAS (a type of occupational pension) bearing the name of a newly-established management company in Merseyside which employed him. Mr W signed this form both as the trustee member of the SSAS and as sole director of that employer. The application also named the following other entities:

- A registered chartered accountant, with an address also in Merseyside, who was the contact name for Mr W's employer and had verified Mr W's identity to the SSAS provider. Companies House records show he had set up the company on the date of the SSAS application and made Mr W the sole director.

- A SSAS introducer, based nearer Mr W in the East Midlands, *'who will provide advice on the scheme to the member trustee'* and would receive an arrangement fee of £995 and an ongoing fee of £250pa. At the time (and as recently as 2018) that introducer's website promoted alternative investments including hotel developments.

- The SSAS provider would act both as administrator and independent trustee of the SSAS, and as such would be sole signatory to the SSAS bank account. In other words, Mr W would have to give any investment instructions to the SSAS provider for it, as independent trustee, to enact.

Mr W or his employer wouldn't make their own contributions into the SSAS, but he was to transfer his ReAssure personal pension worth about £64,000 into it. He specified that he wanted to invest the transfer proceeds into Unity Bay.

On 12 June the SSAS provider requested the transfer from ReAssure. It doesn't appear it provided all of the above documents – only the page of the application form which related to the ReAssure transfer request. ReAssure replied on 17 June with the transfer payment release form it needed to be completed. The letter says it also enclosed a *'Transfer warning insert for occupational and pension products'*. It added that once Mr W signed that form, ReAssure was required to make the transfer within six months.

This insert was the Pensions Regulator (TPR)'s two-page factsheet entitled *'Predators stalk your pension'* (the so-called 'Scorpion insert'). This warned customers that some companies falsely claimed that they could help them cash their pension in early, which could cause substantial tax charges (this was known as pension liberation). Loans, saving advances or

cash back incentives were being offered, and such companies used cold-calling and pushy introducers. It added that if in doubt, customers should speak to an adviser who is registered with the Financial Conduct Authority.

On receiving ReAssure's reply, the SSAS provider wrote to the introducer under cover of a letter saying: *'I would be grateful if you could arrange execution in the usual way and forward to ReAssure together with a copy of the receiving Scheme's HMRC registration certificate.'* (It's clear from the wider correspondence that a number of other individuals were setting up their own limited companies and SSASs through the introducer in order to make a variety of investments.)

Mr W subsequently signed the release form about two weeks later on 1 July 2014. There isn't any evidence that the Scorpion insert had been passed on to him by the SSAS provider or introducer. The introducer returned his completed release form to ReAssure, enclosing an HMRC certificate of registration for Mr W's specific SSAS dated 2 May 2014.

On 24 July TPR relaunched its Scorpion website to alert transferring schemes not just to pension liberation but also (according to the accompanying press release) the risk of customers *'…being scammed into moving their retirement savings into unregulated high-risk or bogus investments that could result in them losing their entire pension pot'*.

The new website read: '*We're asking all trustees to include our pension scams scorpion leaflet in their annual benefit statements and when issuing transfer packs to members. If you currently issue annual statements and transfer packs via third parties, you should consider if they should now be sent direct to members.'*

ReAssure then wrote to Mr W directly on 29 July for identify verification purposes. Mr W had his passport and bank statement verified by an FCA-regulated director and adviser of a different regulated firm ("Firm M", which I'm aware was on occasion involved in pension transfers or switches). He returned these to ReAssure.

At the same time ReAssure also wrote to the SSAS provider about the *'enhanced due diligence'* it was carrying out. It asked to see the Trust Deed and Rules for Mr W's SSAS, which the SSAS provider provided a week later (dated 23 May 2014). ReAssure updated the SSAS provider on 21 August that it was still carrying out due diligence checks because of extra procedures it had introduced. Mr W phoned ReAssure once on 5 September, to be given the same answer; as did the SSAS provider on 12 September.

By the time Mr W phoned ReAssure again on 21 October, the transfer had been authorised. ReAssure transferred two payments totalling £64,453 to the SSAS provider and an investment of £55,225 was made into Unity Bay on 27 November 2014.

With the assistance of a claims management company (CMC), Mr W complained to ReAssure in January 2019 on the following basis:

- ReAssure should have refused the transfer into an unregulated, high risk investment and didn't take sufficient steps to ensure he fully understood the risks.
- Alternatively, ReAssure should have *'raised concerns about the recommended investment strategy being proposed'.*
- If he had been made aware the companies involved weren't regulated and he had no protection if the investment failed, he wouldn't have transferred into a high risk investment, as he considered himself a low risk client.
- His existing pension had been invested in *'moderate risk managed funds'* but was *'relatively safe'*. While he does hold other personal pensions, he has no further assets to replace the loss of these funds.
- ReAssure had breached COBS 2.1.1R (client's best interests) and COBS 9.2.1R (suitability of recommendations) in the regulator's handbook.

In response, ReAssure was satisfied that it had taken instructions from the genuine policyholder and provided the necessary Scorpion insert to the party that had requested the transfer on Mr W's behalf. It had no direct contact with (or awareness of) the introducer, and didn't know Mr W had been cold-called. It said, *'We also took comfort in the fact that* [SSAS provider] *are an FCA regulated company and we had no evidence it had been set up to facilitate pension liberation'*.

Our investigator made a phone call to Mr W, which I've listened to. Mr W explained that the introducer told him in a meeting lasting 1-2 hours that he'd be able to access his investment after seven years and reinvest elsewhere. He was aware of the political problems that have since affected Turkey but said that his investment was moved from one hotel to another without his permission, and the fees were depleting what remained of his pot. He had researched the introducer further since investing, and realised they were *'not the nicest of people'.*

The investigator didn't uphold Mr W's complaint, in summary because:

- Mr W appeared to have given a valid instruction to transfer his ReAssure pension (in pursuance of statutory and/or contractual rights).
- Although transfers of money overseas are *sometimes* features of pension scams, the focus of the TPR guidance at the time Mr W's transfer was initiated was on offers of immediate cash sums from pensions (which constituted pensions liberation).
- It was clear from Mr W's recollections that he thought he was making a genuine investment; albeit one overseas.
- ReAssure wasn't advising Mr W, so COBS 9 didn't apply. It wouldn't typically be aware of what investments he would make within his SSAS, as it could reasonably expect the SSAS provider (and independent trustee) – a longstanding company in the industry - to have oversight of those investments.
- Mr W relied on advice from an introducer he didn't realise was unregulated, but it didn't appear ReAssure was aware of their involvement.
- Some potential warning signs highlighted by the Scorpion guidance were apparent in this case, but they were insignificant.
- The SSAS and sponsoring employer had been established in April 2014, only a few months earlier. But Mr W wasn't joining a pension scheme that had been established by someone else for multiple people – he had set up his own company in order to establish a scheme for himself.
- All of these points would have featured in ReAssure's risk assessment as to whether it was necessary to carry out further checks.

Essentially, the investigator thought the outcome turned on whether Mr W would have acted differently, had the Scorpion insert been sent directly to him – because it wasn't consistent with the purpose of this warning for it to be sent to a third party. But given the apparent belief Mr W had at the time that he was dealing with legitimate companies, and that he wasn't receiving any incentives, the investigator wasn't persuaded that Mr W would have acted differently had he seen the insert. In the investigator's view Mr W would have remained confident he was making an investment which could produce attractive returns.

The CMC on behalf of Mr W didn't accept the investigator's findings. In addition to some points about the Pensions Ombudsman (which I've already addressed in a provisional decision) it said:

- As ReAssure had failed to follow the TPR guidance, it was at a loss to understand why the complaint wasn't being upheld.
- Mr W denied that the SSAS was set up with the assistance of his accountant.
- ReAssure staff had no training on SSASs and their role in pension scams.

- *'When the transfer took place did ReAssure have any contact over phone, letter or email with regard to the transfer out and to discuss the extra due diligence per letter from ReAssure to* [SSAS provider] *dated 21 August 2014?'*

Following this, the investigator became aware that the SSAS provider did separately write out to customers about the investments being made within its SSAS. He asked it for a copy of Mr W's letter which has now been shared with the CMC. Mr W's letter is dated 20 November 2014 and says, amongst other things:

> *'…we do not endorse or recommend the services of any particular investment company, nor can we advise on the suitability of and risks attached to the proposed investment. In addition we cannot advise on the complexities of the legal process of acquiring property in an overseas territory or in relation to the contractual documentation. Nor are we able to advise on the developer's title to the land.*
> *As with all complex Investments we would strongly recommend that before proceeding you take appropriate legal and other professional advice in the matter…You should also ensure that before proceeding you have seen and read the purchase contract and associated documentation…'*

The SSAS provider refers to Mr W already having a 'financial adviser' in the letter. It goes on:

> *'We wish to make it clear that* [SSAS provider] *has not instructed local lawyers to investigate and report on the title of the underlying property title to be transferred to the company nor the strength of the covenant of the developer or company itself. If you do not instruct us to do so on behalf of your pension scheme then it may not be possible to ascertain whether a valid title can be obtained by the company or whether appropriate planning permission or other local consents have been obtained…*
> *You should note that as this investment is not regulated by the Financial Conduct Authority, most of the protections afforded under the UK financial services regulatory system do not apply to this investment and that compensation under the Financial Services Compensation Scheme may not be available.'*

Mr W signed the SSAS provider's letter the following day to confirm receipt and that he would not be appointing further legal advisers. The letter gives the number of the plot of land Mr W was investing in – which I note was established as a specific UK limited company (by the same accountant) in June 2014. The company remained dormant until it was struck off and dissolved in March 2020.

The investigator told the CMC that the further evidence from the SSAS provider – which didn't deter Mr W from proceeding at the time – suggested he would have been similarly undeterred had ReAssure sent him the Scorpion insert directly. He noted that Mr W's original complaint letter also suggested the SSAS provider shouldn't have allowed the transfer to proceed – and highlighted that Mr W might wish to consider raising his concerns with the SSAS provider and/or the introducer.

The CMC responded that the SSAS provider's letter should have been sent to Mr W when the SSAS was first set up. It added that in 2014 there were FCA warnings regarding moving pensions into SSASs, and these were ignored by ReAssure, as was the status of the introducer as a 'failed financial adviser'. (The introducer had been an appointed representative of a regulated firm – it appears for mortgage broking – until 2011.)

Summary of my provisional decision of 24 December 2021

As agreement couldn't be reached, this case was passed to me for a decision. The relevant findings from my provisional decision are as follows:

The principles and rules of ReAssure's regulator

Personal pension providers, like ReAssure, are regulated by the Financial Conduct Authority (FCA). Prior to April 2013, they were regulated by the FCA's predecessor, the FSA. There has never been any specific FSA/FCA rules on the checks transferring providers need to make before someone can transfer from a personal pension.

The FSA Handbook set out Principles and Rules that firms must adhere to. Firms must always apply the principles, even when specific rules and guidance from the FSA/FCA in a particular area are absent or evolving – as was the case with pension liberation. The most relevant principles (in the PRIN section of the rulebook) to this case were:

- Principle 2 – A firm must conduct its business with due skill, care and diligence.
- Principle 3 – A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems
- Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly.

As Mr W's CMC has mentioned, a firm must also act honestly, fairly and professionally in accordance with the best interests of its client, which is known as the client's best interests rule at COBS 2.1.1R in the handbook.

Industry guidance on liberation and scams

TPR's own guidance (the 'Scorpion' campaign) was rolled out in February 2013 and this was long before Mr W transferred. It wasn't guidance issued by FSA/FCA itself - so it wasn't set out specifically by reference to firms' PRIN or COBS obligations. But I consider it was clearly relevant, from that date, to firms following the above principles and rules. It was also endorsed by the FSA. So in my view it represented a step-change in how all businesses were expected to approach pension transfers after that point.

The initial focus of the campaign was to prevent pensions liberation fraud – where consumers were promised lump sums up front in order to transfer pensions. Many of the well-publicised liberation cases at that time – where TPR had intervened in the management of the receiving scheme – were recently-established multi-member occupational schemes with no obvious employment link to the members.

Those well-publicised cases didn't necessarily have all the same features of Mr W's situation – he transferred to a single-member SSAS for a company he had directly (but recently) been involved in establishing, and which was run by a long-established provider. But I recognise that raising awareness of pensions liberation might have had the effect of alerting customers to potential scams in general. And in around July 2014 – whilst ReAssure was still carrying out its due diligence in this case – TPR re-focused its campaign material more widely on to pension scams. I've noted that its press release on 24 July 2014 TPR actually made reference to a similar type of investment and sales process to Mr W's:

'Pension scams may sound legitimate but there is a high risk that once members release their funds in this way, their money will be moved into dubious investment arrangements, often overseas and unregulated. Home visits from 'introducers', offers of 'free pension reviews', claims about 'legal loopholes' and unusual investments like overseas property, storage units or biofuels are all used to fool members into thinking they're being offered a legitimate pension transfer.'

It can be seen therefore that TPR was aware that some overseas hotel investments, for example, could be caught up in scams. But unregulated investments are also inherently risky. So I should be clear here that I'm not in a position to establish whether Mr W's investment in Turkey itself was fraudulent. Certainly there are indications here that if an unregulated third party had strayed into making recommendations on Mr W's (regulated) personal pension, that third party is likely to have been acting in breach of the FCA's rules –

and putting Mr W's pension at risk in the process. But that is as much as it's possible to say on the evidence I've seen here.

Crucially, we also know more about what was going on at the time, including from the full SSAS application form and other documents the SSAS provider received, than ReAssure would have seen. It's notable that unless ReAssure had a particular reason to ask Mr W for more information – which I'll consider later in this decision – it wouldn't necessarily know he was intending to invest in an overseas hotel development, or that an unregulated adviser had promoted this to him.

To deal with the CMC's point about the role of SSASs in scams, The FCA also had a consumer section of its own website dedicated to investment and other scams, which I can see from August 2014 did mention SSASs (alongside SIPPs) as being at risk. This was of course at around the same time as TPR's own campaign widened from pension liberation to scams in general. And it was while Mr W's transfer request was going through – but only it seems because the transfer was delayed for several months due to *'enhanced due diligence'* that ReAssure itself then said it was carrying out.

In terms of TPR's own guidance, it wasn't actually until after Mr W transferred – in March 2015 – that TPR said scam models were changing and many scammers were now directing customers to transfer into single member occupational schemes (i.e. SSASs) in an attempt to escape scrutiny. So in my view there was a clearer indication to transferring schemes by March 2015 that what might seem to be a genuine scheme associated with the consumer's own company, might not be all as it seemed.

My overall view is that SSASs weren't as specific a focus of industry concerns in mid-2014 as the CMC suggests. But at the same time, that still meant *any* receiving occupational scheme (including a SSAS) could potentially be a concern. So I've considered the actions ReAssure took in this light.

TPR's action pack

The FSA had also endorsed the action pack set out for transferring schemes. It was appropriate for FSA/FCA regulated firms like ReAssure to have taken the steps in this guidance into account, when considering how they should comply with their regulator's principles and rules. I also think these steps represented good industry practice for transferring personal pension schemes to follow. The action pack highlighted to pension providers a number of warning signs often present in liberation or scams, including:

- Being cold-called
- Money being transferred overseas: '*This makes the funds harder to trace and retrieve when the arrangement is closed down'*
- Promises of incentives
- Members inadequately informed about the investments to be made
- Pressure being applied for the transfer to complete quickly

The action pack said transferring schemes should 'look out for' these issues, as well as receiving occupational schemes that were newly registered or were suddenly involved in multiple transfer requests. It also provided a checklist that could be used '***if*** *you have concerns*' [my emphasis]. TPR further said that identifying one of the discrepancies on its checklist individually didn't necessarily indicate a problem – however '*if several features are present there may be cause for concern'.*

ReAssure had reacted to this action pack by strengthening its due diligence processes. I have asked ReAssure if it can provide further information on what steps it would have taken, and disappointingly it hasn't been able to locate a definitive process guide from the time. But

I see no reason to doubt that it did carry out enhanced due diligence, given that it made a number of references to this at the time, and its actions (including requesting the Trust Deed and Rules for Mr W's SSAS) demonstrate this.

As can be seen in the quote above, the action pack left some ambiguity as to whether transferring schemes were expected to conduct exhaustive enquiries of the customer in *every* case, or – and within reason – being reactive to warning signs as they presented themselves. It's fair to say there was a balancing act between holding up every transfer and exercising reasonable judgement on which transfers appeared most at risk.

In my view some of that ambiguity was resolved by the fact that TPR was encouraging a separate factsheet (the Scorpion insert, which highlighted some of these issues) to be sent to the customer at the same time as a transfer quotation. It set the expectation back in February 2013 that the use of the insert in transfer packs for members should become best practice.

ReAssure appears to have updated its mailing processes at some subsequent point. But given the very possibility third parties might be involved in an attempt to liberate the customer's pension, it would be somewhat self-defeating – as a matter of process – for ReAssure to send the insert to a third party who had requested the transfer. It may not have been the only provider doing this, as TPR took the extra step of warning businesses in July 2014 that they should consider mailing customers directly.

I accept that there's no evidence Mr W's SSAS provider was involved in liberation, and this was the risk the Scorpion insert at the time of Mr W's request (June 2014) was referring to. But given its existing COBS and PRIN obligations to Mr W, I think if ReAssure had adapted its systems to send the insert, it clearly should have done so in a way that made sure the insert went to Mr W directly. That would then at least have given him the opportunity to query anything he was concerned about. And that in my view would then have been enough – in combination with ReAssure's own due diligence checks – to meet those obligations.

So firstly I'll consider what would have arisen from ReAssure's own checks into Mr W's SSAS.

Status of the receiving scheme

Both a new employer and scheme were established a matter of months before Mr W's transfer request. At face value therefore these were potential warning signs, even at the time of the original Scorpion campaign focusing on the risks of liberation. However as I've explained above at the time of Mr W's transfer and without the benefit of hindsight, I don't think it's reasonable to take the CMC's view that a SSAS would have been viewed as more suspicious than, say, a multi-member scheme. In some ways I consider the transfer in this particular case might actually have been viewed as less suspicious.

One concern with transfers to multi-member schemes was where the sponsoring employer was located geographically distant from the member. In this case Mr W, living in the East Midlands, had apparently chosen to establish a limited company and register it in Merseyside, about a hundred miles away. Whilst Mr W's occupation wasn't known to ReAssure, had it asked it's fair to say this is one that is often pursued on a self-employed or contract basis. Some workers also set up their own companies and they are entitled, as it appears in this case, to do so via an accountant's address.

Mr W says that the company wasn't set up by *his* accountant. I don't think the investigator meant to suggest a long-standing relationship, but Mr W would have signed a number of forms for both his new limited company and the SSAS, naming a particular accountant who the introducer had presumably brought on board. The point the investigator was making was

that this accountant was a member of a professional body which would have lent further credibility to the arrangements Mr W was entering into – whether ReAssure had asked further, or its enquiries had prompted Mr W himself to think more about what he was doing.

Before single-member SSASs became recognised the following year as a new focus of pension scam activity, I think ReAssure would – if anything – have considered Mr W's transfer to be at lower risk of being a scam. And as it takes time for accounts to be filed it would have no way of telling, so early on, that Mr W's company would remain dormant and never trade.

That doesn't of course mean that ReAssure should have been closed off to all possibilities of Mr W being the victim of a scam. The guidance also highlighted that multiple requests to transfer to the same scheme was a potential warning sign, and it was common for providers to maintain lists of schemes where concerns had already been raised on other transfers. So I note that in its response to the complaint ReAssure confirms its processes hadn't flagged this type of SSAS as being of particular concern at that time.

I have no reason to doubt that was the case, as it's also clear that ReAssure took some comfort in the SSAS provider's standing in the industry. As the investigator explained, only the part of its group of companies which provided SIPPs was actually regulated by the FCA. The other trustee company and SSAS provider were separate entities, and those didn't need to be regulated by the FCA in order to carry on SSAS business. It's not clear to me whether ReAssure appreciated this difference at the time, and it means that ReAssure shouldn't have expected that Mr W's transfer was protected by FCA regulation.

However I think there is an overarching point here that ReAssure knew the SSAS provider was an established company offering not only SSASs but SIPPs (which were FCA regulated). What ReAssure was effectively placing weight on was that the SSAS provider's operation was long established – and was unlikely to have become so, if it had a history of making unsuccessful or, for that matter, fraudulent investments.

I think it's also important to note from ReAssure's point of view that a wholly-owned subsidiary of the SSAS provider acted as independent trustee to Mr W's SSAS. Although this was no longer a statutory requirement, it had been in the past – in effect to reduce the risk of fraudulent activity. So a SSAS provider that had ensured it would continue to act as independent trustee would in my view have added further credibility to this arrangement.

The Pensions Act 2004 had introduced a specific duty on trustees to know and understand the key provisions of trust law and pensions legislation. Under trust law, trustees have fiduciary responsibilities which share some similarities with the principles applying to FCA-regulated firms – such as to act prudently, responsibly and honestly and in the best interest of all beneficiaries of the SSAS, in this case Mr W and potentially his dependants.

The Pensions Act 1995 also continued to apply and this set out criteria trustees needed to apply when selecting investments within an occupational pension scheme, including that these were adequately diversified and advice had been sought from an appropriately qualified person. Whilst this responsibility applied as much to Mr W as a lay-trustee as it did to the independent trustee, where a trustee is acting in a professional capacity the expectations of them are commensurate with the further expertise they profess to hold.

I'm not saying that ReAssure would have been expected to be familiar with all of the rules and regulations that trustees of occupational pension schemes should follow, and use this as a basis to avoid carrying out any due diligence at all. Clearly the very fact that pension liberation and scams were being perpetrated by the trustees of some occupational schemes, meant that not all trustees were taking their responsibilities seriously. There are examples of TPR taking action against some such trustees at the time. However those were typically

cases of individuals who had recently begun acting as trustees, and established fraudulent schemes that were admitting multiple members from across the country with no connection to each other. Those wouldn't have appeared to be features of Mr W's case at the time.

So what I'm saying here is that ReAssure was entitled to take into account that the SSAS provider's operations had involved it performing an independent trustee role since July 2006 – some eight years before Mr W's transfer - following a management buyout of the SSAS business from an even longer-established and well-known provider. It was highly regarded in the industry by 2014, having won several *Moneyfacts* and *Pensions Management* awards along the way, for example. And if ReAssure concluded from this that Mr W was highly unlikely to become the victim of pension liberation or a scam, I think that conclusion would have been reasonably justified in light of the expectations I've set out above.

ReAssure was always expected to check that the receiving scheme was registered with HMRC, and I can see that it did this. But it went further than this and obtained a copy of the Trust Deed and Rules. These documents were prepared by an established law firm and also signed by Mr W personally in his capacity as director of the sponsoring employer, so that would make it apparent to ReAssure that enquiries into the employer itself were likely to become somewhat cyclical. They confirmed the scheme was able to accept a transfer and had the necessary minimum pension age and restrictions on investment necessary for the trustees to operate it without causing unauthorised payments to be made.

The ease with which these documents were provided to ReAssure would not have created much suspicion that pursuing any further enquiries – which I'm not convinced the TPR guidance required ReAssure to make – would have uncovered any further issues. Mr W appeared to be very much involved in the arrangements to set up his new company and scheme. I agree with the investigator that he would likely have been able to answer any further questions to ReAssure's satisfaction, if necessary with the involvement of the introducer or accountant who (whether Mr W fully understood this or not) seems to have been brought on board.

Was the frequency of the communication ReAssure received cause for alarm?

The wider evidence our investigator has been able to obtain shows that the SSAS provider contacted ReAssure about eight times. After excluding those contacts being made to obtain policy information, or respond to questions ReAssure itself asked, about half of them were 'chasers'. It seems to me the SSAS provider recognised there was little point in excessively chasing, and its contact with ReAssure appears to be professional and typical of a transfer of this nature.

The introducer made no contact that I can establish with ReAssure itself – it appears it may even have sent Mr W's forms back without any form of covering letter. In my experience an unregulated introducer would not want to be seen to be involved in the regulated activity of arranging a transfer from a personal pension. So I don't agree with the CMC that ReAssure ought to have formed judgements based on the introducer's allegedly unsuccessful career as a financial adviser. If anything, I think ReAssure might have thought that the different, regulated financial advice business who carried out Mr W's identify verification (Firm M) was involved – and that is unlikely to have caused suspicion.

Mr W's CMC has asked what phone contact took place with Mr W. ReAssure records that Mr W called it three times to chase matters – once for some paperwork, and twice for the outstanding payment (those two calls were a month apart). That was in part to be expected because of the enhanced checks ReAssure was carrying out. Due to the time which has passed I'm not surprised that recordings aren't available. I don't consider these calls constituted Mr W being unusually impatient to transfer, or a warning sign of a scam: there's nothing to suggest Mr W raised concerns in those calls.

Providing ReAssure had sent the Scorpion insert to Mr W as it should have done, I'm not persuaded it would necessarily have needed to initiate enquiries itself by phone. The TPR guidance at that time left these matters to the provider to best decide, and it wouldn't have been inconsistent with ReAssure's obligations under the FCA Principles and Rules to adopt a risk-based approach. Given the written enquiries ReAssure *did* make, outlined above, I can't fairly say it should have done more. So I'll now address its failure with the insert.

Failure to provide TPR insert directly to Mr W

What I have to consider is whether ReAssure's failure to provide this insert made any difference. In other words, did it cause the loss Mr W has complained about? Having considered all the evidence on this, including Mr W's phone conversation with our investigator and the letter he received from the SSAS provider, I've reached a very similar view to the investigator.

Much of the two-page insert focuses on a warning about offers to cash in a pension 'early' and the tax bill that could result. Mr W's recollections of what he was told when the representative visited his home don't suggest he thought he was cashing in his pension early, but rather that he was making an ongoing investment. It also doesn't appear that Mr W was offered cash incentives in order to invest, so the warnings about tax consequences don't appear to be particularly relevant here.

Notably a warning about money being transferred overseas, although mentioned in the campaign itself, doesn't feature in the insert – and this *alone* wouldn't necessarily be a reliable indication of a scam. However the insert does mention cold-calling by 'pushy' introducers. It suggests doing research on the company's background and finding out how the proposal can provide a pension at retirement. Finally, it suggests speaking to an adviser who is registered with the FCA and not associated with the proposal.

As Mr W was cold-called and encouraged to invest by an adviser who wasn't regulated, I've given this careful thought. But I've also borne in mind that before the first opportunity ReAssure had to send this insert, Mr W had already set up his own company and SSAS structure with the assistance of the adviser and accountant. (That seems to be why, by the time of its 24 July 2014 press release, TPR had started suggesting that the insert should be sent out with annual statements, so that it might reach customers *before* they spoke to introducers.)

Mr W may not have known to ask the specific question about how his pension would be paid at retirement, as he didn't receive the insert. But his recollections indicate he was told that the funds would mature after seven years, by which time he would be 56 - in other words he wouldn't be able to access them before that point. That doesn't appear to have concerned Mr W greatly, so I think it's reasonable to assume that he was expecting to be able to draw a pension (or invest elsewhere, if he wanted to do so) after this investment matured.

I've also considered what Mr W might have done differently on seeing the warning in the insert about getting independent, unregulated advice. Closely linked to this is the fact he's said in his complaint that he'd never have invested had he known the hotel development itself wasn't regulated. Yet the SSAS provider's letter dated 20 November 2014 does say that there would be no regulatory protection if his investment failed. It also suggested that Mr W take independent legal advice, however he then ticked a box deciding not to do so.

I understand the CMC considers this was too late to influence Mr W's decision, but the letter reads as if the SSAS provider hadn't yet placed the investment. According to details provided by the CMC, the investment was placed one week later. The groundwork for the investment had of course already been laid, but it is also largely true to say that of the point

at which Mr W should have received the Scorpion insert. So I don't think Mr W's CMC can argue this both ways: if the warning about the investment being unregulated came too late as Mr W was already committed to making the investment, the same argument could be made in respect of the Scorpion insert which ReAssure wasn't in any position to send earlier.

ReAssure wasn't of course to know that despite acting as independent trustee, with the responsibilities that might ordinarily suggest, the SSAS provider issued this form of disclaimer to Mr W. But I think the disclaimer can also be read several ways. Whilst it lets Mr W know the things the SIPP provider hasn't checked, it also implies that it has to some extent conducted enquiries into Mr W's investment in order to identify the issues it thought he should know about.

There don't already seem to have been any significant doubts in Mr W's mind, according to his testimony. So I can see why he might not have been deterred from continuing with his investment - as despite the disclaimer the SSAS provider issued, the arrangements would overall have seemed reputable to him. And I can't therefore safely conclude that he would have reacted in a fundamentally different way to the warning about getting regulated advice in the Scorpion insert.

The insert does also suggest Mr W carried out his own research. Whilst I appreciate that his subsequent research into the introducer revealed that they were 'not the nicest of people', I can't safely say such an opinion prevailed at the time of his investment – as it may well be coloured by other people's experiences of making investments at a similar time to Mr W. Whereas the remarks I made earlier about the SSAS provider's experience in the industry are also things Mr W would likely have known, or been able to establish through further research at the time – and I think that would have given him further confidence.

Reassure wasn't able to advise Mr W on the suitability of his proposed investments

Property investments are often mis-labelled (by unregulated parties) as lower risk than they actually are – particularly in a case like this where there are added currency and counterparty risks. They can sometimes be seen by investors as a tangible asset which adds to their popularity. A regulated adviser should be in a position to correct any misimpression as to the risks – and given that the introducer involved here wasn't regulated, I accept it's likely these risks were underplayed. But I can't say that it was ReAssure's role to correct that. Firstly it didn't know what underlying investment Mr W was making, and I'm not satisfied it had any obligation to find out given that the transfer wouldn't have looked suspicious, as I've said above. Secondly, it wasn't advising Mr W on the investment and didn't have any obligations to him under COBS 9.2.1R.

Mr W was making an investment which the SSAS provider, at least, highlighted would put his capital at risk – and in a way that there would be no protection for him if things went wrong. So on balance I think it's likely Mr W had already concluded that he was prepared to take some risk with what he's said wasn't his only pension. Had Mr W been concerned about the risks (including the lack of regulation and the legal aspects of purchasing property overseas), I would have expected him to react differently to the SSAS provider's letter. It might have been too late to return his funds to ReAssure. But he would have been able to avoid suffering the losses in the hotel development and potentially make a different investment more suitable for his needs.

'Blocking' the transfer

I agree with the investigator that the FCA's principles and rules meant ReAssure had to pay due regard to Mr W's interests and treat him fairly. But at the time Mr W transferred and given the due diligence ReAssure has shown it carried out into the receiving scheme, I'm satisfied it could have met these obligations by sending the Scorpion insert directly to Mr W.

And taking into account everything I've considered above, if Mr W had received this insert I'm not then persuaded that he would have acted differently as a result. If Mr W did want to make the transfer then ReAssure would still need to treat him fairly, by processing the transfer for him.

ReAssure also had no power to block Mr W's transfer as the CMC has suggested. It had a legal obligation under section 99 of the Pension Schemes Act 1993 to make a transfer within six months of application where was a statutory right, as it appears there was in this case. It spent about four of those six months carrying out due diligence and I've no reason to say that it would have been fair or reasonable for it to delay the transfer further.

The remedy of an error (in this case, ReAssure not sending the Scorpion insert directly to Mr W) is to put Mr W back into the position he'd have been in, had the error not occurred. As I haven't been persuaded that the lack of Scorpion insert changed Mr W's decision to transfer his pension and invest in Unity Bay, it follows that I don't think ReAssure caused the loss he suffered. So it wouldn't be fair to require ReAssure to compensate Mr W.

Responses to the provisional decision

Mr W's CMC said that it was disappointed in the provisional decision as it feels ReAssure should have done additional due diligence by asking Mr W about his change in occupation on the paperwork from being a manual worker to becoming a director. Also, ReAssure should have obtained further details on the new pension scheme.

The CMC said that ReAssure failed to realise that it had discretion as to whether or not to make the transfer, and it could have noticed several "red flags" from the Scorpion guidance – including that Mr W was only 49 years old. So additional checks for possible pension liberation should have been considered.

ReAssure said it agreed with the provisional decision and had nothing further to add.

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.

The further points Mr W's CMC made haven't changed my provisional decision.

I already mentioned that Mr W's occupation, involving manual work, was one that was sometimes pursued on a sole trader basis. It's not clear that ReAssure actually knew what Mr W's specific line of work was, but even if it had done, my point here was that sole traders often (on advice, such as from an accountant) structure themselves as limited companies instead – particularly in recent times when the tax treatment was thought to be particularly favourable.

That would mean Mr W becoming a director of his own company, and I think this would have been viewed as being less suspicious than (say) if Mr W had joined a pension scheme for a different employer to which he had little clear connection at all. Even though Mr W's company had recently been established, I don't consider at that point in the development of the TPR guidance it had this particular type of arrangement in mind. Whereas I think a later version of the guidance, after March 2015, was clearer in indicating that scams had moved on to this model. So, given both the stage that the TPR guidance was in its development at the time, and the status of the receiving SSAS provider in the industry, I consider ReAssure acted proportionately here in respect of the risk of scams.

The CMC hasn't said what further details ReAssure should have obtained on the new pension scheme – I've noted that it had already asked for and scrutinised the trust deed and rules. The CMC hasn't explained what in these documents was a cause for alarm – bearing in mind that the scheme was evidently for Mr W's own company – and I haven't found such a cause for alarm.

It's correct that the member being under the age of 55 was a potential warning sign for pensions liberation. But that doesn't mean liberation was actually taking place, which evidently was not the case here: Mr W has confirmed he didn't receive an incentive for transferring, and whilst the investment may not have been as successful as hoped I'm not aware of any investigation that would suggest the investment monies were misappropriated in a way that would actually constitute liberation.

The CMC is mistaken that ReAssure was able to apply discretion where a statutory right to transfer existed under legislation – in this case the Pensions Act 1993. The statutory right was introduced precisely because some pension plans didn't provide for a transfer option in the contract (or transfers were entirely at the provider's discretion).

Where the statutory conditions for the right to transfer were fulfilled – as I've said appears to be the case here (and the CMC has not argued otherwise) – any attempt to block the transfer would righty have been open to challenge by Mr W, or those representing his interests at the time.

So, ReAssure would have needed a valid reason, backed up by evidence, to consider refusing this transfer and overcome the potential challenge that might result. And from what I've seen in this case I don't consider ReAssure had that evidence. Instead, the more likely way events might have reached a different outcome is by Mr W having an opportunity to reflect on whether he was satisfied the arrangements being made weren't a potential scam.

That's why I agreed in the provisional decision that Mr W should have been sent the Scorpion insert. And although I can never totally rule out the *possibility* he might have changed his mind, for the reasons I explained in that decision I didn't find that the most likely outcome on the balance of probabilities. The points his CMC has made have not persuaded me to change that view.

My final decision

I do not uphold Mr W's complaint and make no award. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 17 February 2022.

Gideon Moore
Ombudsman