

## **The complaint**

Mr D has complained, with the help of a professional third party, about the transfer of his personal pension to a Qualifying Recognised Overseas Pension Scheme (QROPS) in Malta in March 2014. The QROPS was subsequently used to invest with Blackmore Global PCC, a company incorporated in the Isle of Man.

Whilst Mr D's pension was initially provided by a different firm ReAssure Limited is now responsible for answering complaints about Mr D's pension. So, for ease of reading, I'll largely just refer to ReAssure throughout my decision.

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.

Mr D also transferred pension benefits he held with another business, which I'll call Firm C, to the QROPS at around the same time. That transfer is the subject of a separate complaint with our service. But as some of the circumstances are relevant to Mr D's complaint about ReAssure, I'll refer to them below.

## **What happened**

Firstly, I'd note that the available documentary evidence in respect of the transfer of Mr D's ReAssure pension is limited. ReAssure has explained that it no longer holds a lot of the documents due to a fire at its storage facility. But it also stated that given when the transfer took place, due to data retention procedures the information it held by the time the complaint was made would likely always have been limited.

From the limited available information I understand ReAssure received a request, on 28 February 2014, from Harbour Pensions Limited ('Harbour') to transfer Mr D's pension benefits to the Harbour Retirement Scheme ('HRS'). Harbour was authorised by the Maltese Financial Services Authority to act as a retirement scheme administrator. And the HRS was a QROPS based in Malta and was added to HMRC's recognised list in April 2013.

A similar request had been made to Firm C at around the same time. The information provided to Firm C as part of the application included a letter of authority, certified identity documents, Firm C's transfer forms - completed and signed by Mr D - HMRC forms and a confirmation letter from HMRC recording when the HRS was entered onto its recognised list. I think it is likely that the information sent to ReAssure as part of the request to transfer that pension was largely the same.

On 4 March 2014, ReAssure sent HRS a payment for the value of Mr D's pension held with it. The amount transferred was £8,084.92. Mr D was 62 at the time.

Firm C transferred the pension benefits Mr D held with it to the HRS on 6 March 2014.

The funds in Mr D's QROPS were then invested with Blackmore Global PCC. Information given to Mr D said that this fund invested in a broad range of asset classes and provided a medium to long term investment vehicle with a balanced risk approach.

Mr D complained to ReAssure in 2020. Briefly, his representative said ReAssure ought to have spotted, and told him about, a number of warning signs in relation to the transfer and if it had done so, Mr D wouldn't have gone ahead. His representative said they understood Blackmore Global PCC operated an unregulated collective investment scheme. And, although they didn't have access to a current valuation, they believed the investment was now likely illiquid and worthless.

ReAssure didn't uphold the complaint. It said, although the available evidence was limited, it wouldn't have proceeded without confirming that the HRS was recognised by HMRC and would also have required a receiving scheme declaration to be completed by the HRS, which would've included confirmation it was a recognised scheme. ReAssure also said it would have sent Mr D the Pension Regulator's ('TPR') Scorpion leaflet (so called due to the imagery it contained) and noted the declaration he would've been required to complete at the time included an acknowledgment he'd read and understood this information. So, ReAssure didn't think it had done anything wrong.

The complaint was subsequently referred to the Financial Ombudsman Service.

In April 2021, The Isle of Man Financial Services Authority published information about Blackmore Global PCC saying it thought it might be operating outside of the parameters under which it was established, and it was considering its next steps. I understand a winding up order was obtained and liquidators were appointed in August 2022.

The complaint was considered by two separate Investigators, both of whom didn't think it should be upheld. As agreement could not be reached, the complaint has been passed to me to decide.

### **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, my view largely echoes that our Investigator explained in December 2024, so their view and my decision are correspondingly similar. 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. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

### **The relevant rules and guidance**

Personal pension providers are regulated by the Financial Conduct Authority ('FCA'). Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority ('FSA'). As such ReAssure was subject to the FSA/FCA Handbook, and under that to the Principles for Businesses ('PRIN') and to the Conduct of Business Sourcebook ('COBS'). There have never been any specific FSA/FCA rules governing pension transfer requests, but the following have particular relevance here:

- Principle 2 – A firm must conduct its business with due skill, care and diligence;

- Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;
- Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and
- COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

An overseas pension scheme is defined in HMRC regulations as being one which is subject to specified regulatory and taxation restrictions in the country of establishment. To become a QROPS it must also be:

- Recognised, meaning in short that it meets specified tests applied by HMRC, including on minimum retirement age and the application of tax relief.
- Qualifying, meaning it must notify HMRC that it is a recognised overseas pension scheme; provide appropriate evidence of this; undertake to adhere to HMRC's requirements; and not be otherwise excluded by HMRC from being a QROPS.

Overseas schemes that have notified HMRC that they qualify to be a QROPS are included in a published list on HMRC's website.

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, which is either registered with HMRC for tax purposes or is a QROPS. And indeed they may also have a right to transfer under the terms of the contract.

This right came to be exploited, with people encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren't entitled to – for instance, because they were below minimum retirement age. At various points, regulators issued bulletins warning of the dangers of taking such action. But it was only from 14 February 2013 that transferring schemes had guidance to follow that was aimed at tackling pension liberation – the "Scorpion" guidance.

The Scorpion guidance was launched by TPR. It was described as a cross-government initiative by Action Fraud, The City of London Police, HMRC, the Pensions Advisory Service ('TPAS'), TPR, the SFO, and the FSA/FCA, all of which endorsed the guidance, allowing their names and logos to appear in Scorpion materials. The guidance comprised the following:

- An insert to be included in transfer packs (the 'Scorpion insert'). The insert warns readers about the dangers of agreeing to cash in a pension early 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 liberation. Guidance provided by TPR on its website at the time said this longer leaflet was intended to be sent to members who had queries about pension liberation fraud.
- An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "look out for" various warning signs of liberation. 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 transferring

schemes still had concerns, they were encouraged to write to members to warn them of the potential tax consequences of their actions; to consider delaying the transfer; to seek legal advice; and to direct the member to TPAS, TPR or Action Fraud.

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 legal 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 those requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance's specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

In those circumstances, I consider firms which received pension transfer requests needed to pay regard to the contents of the Scorpion guidance as a matter of good industry practice. It means February 2013 marks an inflection point in terms of what was expected of personal pension providers dealing with transfer requests as a matter of fulfilling their duties under the regulator's Principles and COBS 2.1.1R.

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

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

With that in mind, I take the view that personal pension providers dealing with transfer requests needed to heed the following:

1. When TPR launched the Scorpion guidance in February 2013, its press release said the Scorpion insert should be provided in the information sent to members requesting a transfer. It said on its website that it wanted the inclusion of the Scorpion insert in transfer packs to "become best practice". The Scorpion insert provided an important safeguard for transferring members, allowing them to consider *for themselves* the liberation 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.

2. 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.
3. The Scorpion guidance asked firms to look out for the tell-tale signs of pension liberation scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The action pack 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.
4. These were additional requirements over and above what a ceding scheme would always have needed to when processing a QROPS transfer. Those requirements included checking whether the QROPS was on HMRC's published list, and ensuring the necessary HMRC forms were completed.
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 and offered a free pension review. His representatives have said he believes it was a business called Aspinall Chase that did so. He says he was told his pension was frozen and not performing as well as it could. Mr D says he was told a transfer to an alternative pension providing better returns could be arranged. He says a meeting subsequently took place at his house and he was advised to transfer to the QROPS. He says he doesn't recall what investments were discussed and he wasn't told how returns would be generated.

Mr D says he doesn't remember any risks being discussed with him but he thought the adviser he spoke to was trustworthy and he was unaware that Aspinall Chase were not regulated by the FCA. Mr D says because he trusted the adviser he agreed to proceed and was then introduced to an adviser from a business called St James International ('SJI'), who completed the relevant forms. Mr D doesn't recall receiving the Scorpion insert or any contact from ReAssure.

Mr D doesn't appear to have had any prior connection with the QROPS. And he hasn't indicated he intended to move overseas – either to Malta, where the QROPS was registered, or anywhere else. And I think it is unlikely he'd have sought to transfer his benefits to the

QROPS on his own. So, on balance, I think it was the discussion he had with the business he spoke to that led to the transfer.

Mr D has said that he was persuaded to transfer by the offer of improved pension returns. And I don't have any reason to doubt this in the circumstances. And I think what Mr D has said he was told, that his existing pension was frozen or underperforming, and that he'd get better returns by transferring, represented advice to transfer.

I can see, in respect of the transfer from Firm C, that it replied to a request for information from Aspal Chase in January 2014. Aspal Chase was not authorised or regulated by the FCA. I've also seen a copy of an application form to join the HRS which Mr D signed. This form was directed to Harbour and was completed before either of the requests to transfer were made. This application doesn't appear to have been provided to ReAssure at any stage. This noted that SJI was Mr D's adviser. And I've seen a recommendation letter from SJI to Mr D, advising him to transfer his pension benefits to the HRS and invest with Blackmore Global PCC. This recommendation appears to have been made before he applied to join the HRS.

SJI was a business registered in Czechia. It is unclear if it was authorised by the financial regulator in Czechia but it wasn't shown on the FCA's register as authorised in the UK with passporting rights. I've seen a covering letter that appears to have accompanied the application form which was sent to Harbour, from a business called Worldwide Broker ('WB'). This letter said SJI had fully assessed Mr D's circumstances and attitude to risk in order to make the recommendation. And WB's letter said its role was providing "*regulated oversight of pension transfers undertaken by SJI*". WB appears to have been registered in the Netherlands. Again I've been unable to find any evidence that WB was regulated in the Netherlands and it was also not shown on the FCA registered as authorised with passporting rights in the UK. But I can't see that WB had any direct contact with Mr D. Overall therefore, I think what Mr D has said about him dealing with Aspal Chase and SJI appears plausible and credible.

Mr D's representatives have said that the investment made through his QROPS, is illiquid and worthless. I haven't seen a recent statement for Mr D's pension to support this, and I'd note the HRS still appears on HMRC's recognised list. But based on the announcements and information available about Blackmore Global PCC, I think the representative is correct that the investment has likely run into trouble.

#### What did ReAssure do and was it enough?

##### *The Scorpion insert:*

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

ReAssure has said one of the declarations in the transfer forms it would've needed Mr D to sign acknowledged that he'd read an understood TPR's Scorpion leaflet, which ReAssure had shared with him. And it has provided a template copy of the forms to confirm this. So, it says the Scorpion insert would have been provided as part of its transfer process.

Mr D has said he didn't receive any warnings from ReAssure.

Given the content of the declaration that ReAssure has referred to, I think it is more likely than not that it would've normally sent the Scorpion information when using those transfer forms. I'm conscious though that the forms we've been provided are versions from 2017 and

2019. So, I can't say with certainty that the transfer application Mr D would've been required to complete in 2014 looked like this and contained the same declaration. ReAssure has explained why it no longer holds information but as there isn't any evidence of any correspondence that was sent, I can't reasonably say on balance that it did share the Scorpion information with Mr D.

I've also seen no evidence that Firm C provided Mr D with this information during his application to transfer lodged with that business.

#### *Due diligence:*

When the Scorpion guidance was first published in February 2013 the campaign referred to pension liberation fraud. TPR talked about this being a transfer to a fund that allowed members to gain access to pension funds in an unauthorised manner. Unauthorised payments weren't just confined to a scenario where someone was offered a loan or cash incentive to transfer before age 55. But these scenarios were the focus of the literature at the time.

The front page of the 2013 Scorpion insert has the following message: *"Companies are singling out savers like you and claiming that they can help you cash in your pension early. If you agree to this you could face a tax bill of more than half your pension savings."* So, it singled out early access to a pension, and cash incentives and enticements to do this as the area of concern. It goes on to say: *"Pension loans or cash incentives are being used alongside misleading information to entice savers as the number of pension scams increases. This activity is known as 'pension liberation fraud' and it's on the increase in the UK. In rare cases – such as terminal illness – it is possible to access funds before age 55 from your current pension scheme. But for the majority, promises of early cash will be bogus and are likely to result in serious tax consequences."* So again, the emphasis is on the promise of 'early cash' and 'early access' to pension benefits before pension age and the associated tax consequences that could follow.

The 2013 Scorpion action pack for businesses was titled 'Pension Liberation Fraud'. And the case studies in the 2013 action pack are about people wanting to use their pension in order to access cash before age 55, the repercussions of which were tax charges and the loss of some pension monies to high administration fees. The warning signs that were highlighted followed suit: *"accessing a pension before age 55", "legal loopholes", "cash bonus", "targeting poor credit histories", "loans to members"*. The action pack for businesses listed some warning signs that firms should be on the look out for. And suggested if any of these applied, businesses could use a more detailed checklist, included in the action pack, to help structure due diligence.

So, transferring schemes were being directed to the threat posed by people wanting to take cash from their pensions in an unauthorised manner – pension liberation – which was seen as being most likely when someone was under the age of 55. And, in light of the Scorpion guidance, ReAssure ought to have been on the look-out for the tell-tale signs of pension liberation when it received Mr D's request to transfer. But it also had to take a proportionate approach and balance any caution and due diligence with the fact that consumers were entitled to request a transfer.

Again, there isn't a great deal of evidence about what happened at the time. ReAssure says it would've checked that the receiving scheme was on HMRC's QROPS list. I think on balance it likely did so. This step ensured that the transfer payment both qualified as an authorised payment for tax purposes and also satisfied Mr D's statutory right, and potentially other legal rights, to transfer. And I've seen evidence the HRS was on HMRC's list at the time, and indeed it still is today.

ReAssure has said that it would've also required the completion of relevant transfer forms. But based on what it's said, and the timeframe in which the transfer was completed after the application was received, that appears to be the extent of the due diligence it would've done. In the specific circumstances of Mr D's transfer though, I think that was likely fair and proportionate.

Mr D was 62 at the time the application to transfer was made. So, there was no threat of him accessing his benefits from the pension before age 55.

The application to transfer was received in February 2014. The receiving scheme had been registered with HMRC in April 2013, almost a year previously. So, it wasn't a newly established scheme. And in my view was less likely to have been a vehicle for liberation, otherwise its likely HMRC would've taken steps to remove it from its recognised list. There is also nothing to indicate that the receiving scheme was previously unknown to ReAssure. And in any event, I think it could've taken reassurance from the HRS being on the QROPS list.

Mr D hasn't said that he was pressured to go ahead or that he was informed about a 'legal loophole'. And again, due to his age, he wasn't transferring to access benefits before age 55.

Mr D has said he was cold called, which was on the list of potential warning signs. But none of the documents which Harbour submitted as part of the application to Firm C referred to how his decision to consider transferring to the HRS first came about. And again, I think it is likely similar information was provided to ReAssure when the transfer application was made to it. And none of the transfer form templates that ReAssure has provided asked about how contact was established either. Again, these are versions from 2017 and 2019, so I don't know that they would've asked similar questions in 2014. But on balance I think it is unlikely that the transfer forms in use at the time would've asked about how Mr D had been contacted. So, I don't think ReAssure would've had reason at the time to think that Mr D had been cold called.

As a result, I don't think any of the warning signs that the action pack for businesses said to look out for in the first instance would likely have been evident to ReAssure.

I've thought about whether there was anything else about the transfer or in the information ReAssure likely received that ought to have given it reason for concern. It is true that one of the case study examples used in the Scorpion action pack, mentioned 'transfers overseas'. This wasn't though included in a bulleted list of *'things to look out for'*, each represented by an exclamation mark graphic. But I think businesses should have considered things in the round (including, for example, the case studies in the action pack) to decide if there was a material risk of liberation presenting itself in a transfer request. Page 8 of the action pack used the same exclamation mark graphic (denoting a 'warning sign') in the example of an individual who transferred to a pension scheme which, after paying her a cash incentive, invested the rest of the funds overseas. The warning sign was shown as:

#### ***"Transfers overseas***

*One technique that pension fraudsters use is to send a large portion of the pension transfer overseas. This makes the funds harder to trace and retrieve when the arrangement is closed down."*

Clearly where an UK occupational scheme transfers funds overseas, that was being highlighted by TPR as a potential warning sign of pension liberation activity. Many such schemes that I'm aware of have employed that strategy. However it doesn't seem to me that TPR was referring here to the type of transfer Mr D was making, to a QROPS.



The reference to a 'portion' of the funds being transferred overseas makes clear, in my view, that it's referring to a UK pension scheme – *i.e.* the entire transfer from the ceding scheme isn't directly to an overseas arrangement. The case study goes on to indicate beyond doubt that it was a UK occupational scheme, as it says the scheme was subsequently closed down after both HMRC and TPR took action. Also, the case study follows someone who transferred in order to take cash from her pension, not someone who transferred with the intention of investing in a specific way.

So, in my view, QROPS weren't evidently the focus of TPR's concerns at the time the 2013 action pack was issued. There was always a possibility that some consumers might suffer losses from making inappropriate investments as a result of transferring to a QROPS. But that might also happen where they transferred to some UK schemes, such as SIPP's. So, it doesn't to my mind mean it would have been a proportionate response to place all QROPS transfers under suspicion as soon as the February 2013 Scorpion campaign gave ceding schemes a new role to carry out due diligence. And so, I don't think Mr D requesting to transfer to the HRS was reason for ReAssure to be concerned.

Firm C was asked for information by Aspinall Chase, an unregulated business. And on balance, I think it's likely the same business initially approached ReAssure for a transfer pack. But non-regulated businesses were not prevented from asking for information. And I have no reason to doubt Mr D had provided authority for ReAssure to release information to Aspinall Chase.

When Harbour submitted the application to transfer to Firm C, it included certified identity documents. These were certified by someone representing SJI – another unregulated business. I think it is likely that the same certified documents were included in the application to transfer Mr D's ReAssure pension – as on balance I think ReAssure would've required these before proceeding. I haven't seen anything to suggest though that ReAssure would've had reason at the time to believe that SJI's involvement went beyond certifying documents for the receiving scheme. Or that this meant there was a greater risk of pension liberation – the thing it had been asked to look out for.

Taking all of this into account, I think ReAssure would've as a minimum been aware of Mr D's age and the HRS being recognised by HMRC for almost a year at the time the application to transfer was received. I don't think it is likely ReAssure would've had knowledge of any of the warning signs of pension liberation the Scorpion guidance highlighted. So, I think ReAssure could've reasonably used its judgement about whether pension liberation was a risk. And I think, based on the information it had, and the need to take a proportionate approach to due diligence, it would've been reasonable for it to deem that the risk of pension liberation in respect of Mr D's transfer was low. And so, I think it was fair for it to decide that further due diligence was not required – as appears to have happened here.

As I've said, I don't think I can reasonably conclude, based on the available information, that ReAssure did send Mr D the Scorpion insert. And I think it should have. But I'm satisfied this likely wouldn't have resulted in him stopping the transfer. The insert, in the same way as the action pack and indeed the Scorpion guidance as a whole at the time, was focussed on the threat posed by liberation – and the consequences of taking cash from a pension before the age of 55 in particular. But this wasn't something Mr D was doing or a reason for transferring. He was transferring for different reasons and so I don't think the contents of the leaflet would have dissuaded him from transferring. As a result, I don't require ReAssure to take any action.

**My final decision**

For the reasons given above, 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 11 March 2025.

Ben Stoker  
**Ombudsman**