

## The complaint

Miss E complains that ReAssure Limited (“ReAssure”) failed to carry out sufficient due diligence activities when she asked to transfer some pension savings to a Small Self-Administered Pension Scheme (“SSAS”) in September 2014.

## What happened

Miss E has been assisted in making her complaint by a firm of solicitors. But, in this decision, I will largely refer to all communication as having been with, and from, Miss E herself.

Miss E held pension savings with ReAssure. She says that she was cold called by a firm offering her a free pension review. She agreed to that review and provided her authority for ReAssure to release information to the firm. Following that review Miss E says that she was told her pension savings with ReAssure were not performing well. She says she was told she could achieve better returns by transferring her pension savings to a new scheme, and investing her monies in one or more of the investment opportunities the firm suggested.

Miss E found that advice attractive and agreed to proceed. She completed the paperwork the firm provided that created a new company that would employ Miss E, and set up a SSAS to provide her with pension benefits after it received the transfer from ReAssure. ReAssure received a request for the transfer of Miss E’s pension savings on 1 September 2014. It completed the request later that month.

Miss E says that during the entire transfer process there was no effective communication from ReAssure to her. In particular she says that ReAssure should have warned her that her transfer request might be as a result of a scam, and warned her about the risks she was facing. Miss E says that those warnings would have resulted in her cancelling the transfer activity.

I issued a provisional decision on this complaint in February 2022. In that decision I explained why I didn’t think the complaint should be upheld. Both parties have received a copy of the provisional decision but for completeness, and so those findings form part of this decision, I include some extracts from it below. In my decision I said;

*In deciding this complaint I’ve taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Miss E (and her representative) and by ReAssure. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.*

### The Pension Regulator’s (TPR) scorpion guidance

*The scorpion guidance was issued on 14 February 2013 and updated the following year, in July 2014. Several bodies including the FSA (the Financial Services Authority which was succeeded by the Financial Conduct Authority, the FCA, shortly*

afterwards) were part of this initiative so it's a relevant consideration for personal pension providers like ReAssure which come under FSA/FCA regulation, rather than TPR regulation.

Briefly, the scorpion campaign involved an 'action pack' that highlighted the warning signs present in a number of transfer examples, specifically: being cold-called, money being transferred overseas, incentives to transfer, inadequate information about investments and pressure to complete a transfer quickly. It suggested 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. The 2014 update replaced many of the 2013 warnings about pension liberation, with similar warnings about "scams".

If any of the warning signs applied, the action pack provided a checklist schemes could use which suggested asking the member for copies of promotional materials, emails or letters about the scheme and for further details about how they became aware of the receiving scheme and how it had been described to them. If those enquiries established the member had been advised, it went on to suggest checking whether the adviser had been registered with the FCA. Where transferring schemes had concerns, they were encouraged to consider delaying the transfer and to seek legal advice.

The scorpion campaign also included:

- An insert to issue to members when a transfer pack was requested. The insert warns about offers to cash-in pensions early, cash incentives, cold calling, being put under pressure to transfer and the potential tax consequences of accessing pensions early.
- A longer leaflet which gives more information, including 'real life' examples, about pension liberation. This was to be used in order to help raise awareness about pension liberation amongst pension scheme members.

In addition to endorsing this guidance, ReAssure's regulator, the FCA, had since its inception set out Principles and Rules for ReAssure to follow – including COBS 2.1.1R (the client's best interests rule) which Miss E's representative has highlighted. So I think it was also appropriate for ReAssure to have regard for this TPR guidance in meeting its existing regulatory obligations. In light of this I'll consider what (if any) warning signs ReAssure ought reasonably to have noticed in Miss E's request to transfer to the SSAS.

#### Status of the receiving scheme

Every SSAS is specific to its members, and consideration will often be given to transfers from a member's existing pensions when a scheme is first set up. So it may not necessarily have been surprising that a transfer request was being received to a scheme Miss E had recently established as trustee, for what appears to be a new employer she had incorporated as a director.

At the time, the actions being taken by TPR against suspected pension liberation schemes tended to involve larger multi-member schemes operated by unscrupulous trustees which were hurriedly set up and admitted members from all over the UK, with no connection to each other, over a short space of time. That wasn't strictly the form of arrangement Miss E was entering into, which might have appeared a lot more like a decision she entered into to form a pension scheme for her own company. It

*wasn't until a further March 2015 update to the action pack that TPR specifically highlighted that the focus of liberation or scam activity had now moved to single-member schemes.*

*And the SSAS administrator itself appears to have been in existence for a number of years at the time of the transfer. So I don't consider it should have been regarded as a recently established operator in the market. And ReAssure has pointed out that the administrator was a member of the Origo scheme. It says that scheme also undertook due diligence activities on its members before they were allowed to use the scheme.*

*The transfer request provided ReAssure with little information about the ultimate investments Miss E intended. If ReAssure had suspected the investments Miss E was making might be a scam there were several options open to it under TPR's guidance. It's important to say here that this applies whether or not that suspicion was correct, so I'm making no judgement here about the status of Miss E's investments. Part of the problem is that investment scams are often outwardly indistinguishable from what might simply be a risky investment proposal that could lose all the investor's money.*

*The options ReAssure had were to investigate whether there were grounds to delay or refuse to transfer to the SSAS altogether; or and particularly if not, to engage further with Miss E by providing risk warnings and check she understood the implications of what she was doing.*

*Did ReAssure have a basis on which to delay or refuse the transfer?*

*ReAssure has explained that the rules of its personal pension meant a customer had a right to transfer their pension plan to any scheme capable (and willing) to accept a recognised transfer under Section 169 of the Finance Act 2004. The HMRC registration of the scheme meant it fulfilled those criteria. Although ReAssure didn't make any further enquiries of HMRC here, it says that Origo would have completed those checks.*

*A statutory right to transfer to a SSAS would also exist given that the sponsoring employer of the SSAS was Miss E's own company of which she was acting as a director. To ensure that it would have been necessary for ReAssure to inspect the SSAS trust deed and rules. It doesn't appear this was something that ReAssure did. But from my understanding it appears that check would have shown that Miss E was entitled to secure transfer credits as a member of that SSAS using her ReAssure personal pension, given she was clearly holding office as a director of that employer at the time.*

*I have considered whether the new employer Miss E had set up was genuine and therefore whether the transfer was a valid exercise of her statutory rights. But it's likely in my view that any attempt by ReAssure to question this with Miss E would have been met by the sort of complaint letter from her about it delaying the transfer, that the wider evidence suggests customers were being asked to sign in advance. I'm also aware that when another provider attempted to delay a transfer, another similar SSAS administrator provided a copy of the confirmation it had received at the conclusion of an enquiry by HMRC into its operations – and argued that the transfer should proceed.*

*It appears that the scheme was validly registered with HMRC, and there would have been nothing to suggest that it was being used for pension liberation. The case law*

*subsequently established in Hughes v Royal London [2016] EWHC 319 (Ch) indicates that as Miss E already had earnings from her main occupation, a lack of further earnings from the sponsoring employer, which she was a director of in this case, wouldn't have invalidated her statutory right to transfer.*

*I'm not saying that ReAssure should have anticipated the outcome of a court case that hadn't yet happened – if it had suspicions at the time, it should have communicated what those suspicions were, as I'll explain later below. But I think it's important to recognise what it's now been established the law actually meant for this sort of transfer.*

*Having considered all of this I think ReAssure's prospects were limited, for delaying or blocking Miss E's transfer out of a suspicion that the sponsoring employer wasn't genuine - and could ultimately have been unsuccessful. But more importantly than this, I don't consider I could reasonably expect ReAssure to go to these lengths in the particular circumstances of this case given the apparent outcome of similar enquiries with HMRC in the past.*

*In the case of an actual investment scam, it might be expected that engaging further with the member about the potential risks they were taking might lead to the member reconsidering whether they wanted to transfer in any event – and therefore was a more constructive way for ReAssure to proceed in the particular circumstances of this case. So I've next considered the possibility that Miss E might have changed her mind about transferring if ReAssure had got directly in touch with her to explain its concerns.*

#### *Risk warnings*

*At a time when the TPR guidance was less prescriptive than it, and other industry codes, now are on the degree of contact a transferring scheme should have with the customer, a key method of passing on these risk warnings was to issue the scorpion leaflet. Since February 2013 TPR had been saying on its website that it would like to see the use of this insert in transfer packs for members becoming best practice.*

*ReAssure seems to have taken the view that this wasn't a necessary step given that the transfer was being completed via the Origo system. However I don't think that was sufficient – it was ReAssure that needed to satisfy itself that there were no warning signs prevalent on this transfer and that Miss E had been sufficiently informed about the risks. I don't think it was sufficient here for ReAssure to rely on the checks that had been made by a third party.*

*So in my view ReAssure should have sent the scorpion leaflet to Miss E, to ensure at the very least that it could demonstrate it followed the TPR guidance. I understand that Miss E had been provided with a copy of the leaflet (or something similar) by the SSAS administrator. So it is entirely possible that she may not have read it when ReAssure provided it a second time. There isn't a requirement in the guidance to check she had read and understood the leaflet, but in my view Miss E's having received the leaflet from the administrator, and drawing some comfort from that, provides better evidence that she was already mindful of these issues, than if there had been no information provided here at all. I don't consider it's fair or reasonable for me to give no weight at all to what Miss E has said about the leaflet she received from the administrator of the SSAS.*

*The Action Pack suggested the following steps for ReAssure to take if it had any concerns about the transfer:*

- *'Contact the member to establish whether they understand the type of scheme they'll be transferring to and send them the pension scams booklet available at [www.pension-scams.com](http://www.pension-scams.com)*
- *Speak to the member at risk – over the phone, via email or letter. It could help you establish answers to more of the questions in the checklist, where you've been unable to answer them with the information you have available*
- *Direct the member to Action Fraud if you think it is a scam, or The Pensions Advisory Service (TPAS) to discuss the potential consequences of the transfer, including tax repercussions, if any part of the arrangement is deemed as unauthorised*
- *If the member insists on proceeding with their transfer request, and your concerns remain, then you should alert Action Fraud yourself. There could still be time to protect this member, or others who follow in their footsteps.'*

*ReAssure's own comments suggest that it failed to make any direct contact with Miss E when it received her transfer request. But I don't think I need to consider here whether or not that was a reasonable approach. Even if I thought there were some warning signs present that might have put ReAssure on notice it needed to do more in line with the recommendations in the Action Pack, as I will now go on to explain, I'm not persuaded that any further contact from ReAssure would have made a difference to Miss E's decision to transfer.*

*If ReAssure had gone further, would it have made a difference?*

*The Action Pack does suggest getting in touch with the member but that is the only expectation – it doesn't specify how that contact should be made, and certainly not that the contact must be by telephone. This is left to the discretion of the provider and I know some providers have tried engaging over the phone. However it is not without its difficulties, including the risk of it being wrongly perceived as a self-interested attempt to retain Miss E's business. Given that the staff involved in processing payments out of the transferring scheme are neither qualified nor authorised to provide financial advice, in reality such a conversation would also need to be heavily scripted – and might not end up being a lot more effective than a letter. So I couldn't fairly fault ReAssure had it decided that it was best to engage with Miss E by letter.*

*The main risk in Miss E's transfer was not one of liberation, but the potential for the subsequent investment to be either a scam or wholly unsuitable for her. However even if ReAssure had been alerted to the possibility of a scam (when it discovered the nature of the proposed investments), that doesn't mean it was straightforward for ReAssure to tell Miss E directly that it thought they were unsuitable (or even likely to be unsuitable) for her. It would have been forming such a view based on insufficient information about Miss E's personal circumstances – and of course it was not qualified to formally provide such advice. If it had attempted to directly caution Miss E against making the investments it wasn't in a position to advise what she should invest in, which is a natural question to follow.*

*Miss E had already taken some significant steps here, not least the setting up of a limited company and the taking on of director duties for that company. There had been a lot of activity leading up to the transfer request with numerous points where someone less committed to changing their pension arrangements could easily have pulled out. Obviously, Miss E didn't do so which, to my mind, shows she had more than just a passing interest in the proposals.*

*So in that context, I don't think a statement from her old pension provider about regulated financial advice being a good idea would have prompted Miss E to take independent advice or to pull out of the transfer. I think she would only have done so if she had doubts about her investment and was prepared to unwind the steps she had already taken. Taking everything into consideration, including listening to a call between Miss E and our investigator, I don't think this was likely.*

*I'm not satisfied that flagging up any of the other messages in the scorpion guidance – for example the availability of TPAS to discuss any concerns – would have fundamentally altered Miss E's decision to proceed in this case. I'm drawn to the regrettable conclusion that Miss E was already satisfied enough with the advice she was getting – whether that was from the SSAS administrator or another regulated firm that appeared to have been involved in the discussions – to have been willing to make the declarations she made at the time. I cannot reasonably say she would have been deterred from going ahead in spite of any steps ReAssure might have taken to alert her in line with what I've set out above.*

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. ReAssure hasn't provided us with anything further. Miss E's representative has provided us with its comments on her behalf. Although I am only summarising that response I want to confirm to Miss E, and her representative, that I have carefully read, and considered, the entire response.

The representative says that Miss E's transfer was large, and the size of the amount being transferred should have put ReAssure on notice that she might be the target of a scam. It says that ReAssure should have noticed that no parties in the transaction were regulated – it isn't enough that they were long standing or registered with HMRC. ReAssure should have warned Miss E that she was transferring her money from a regulated, to an unregulated, environment.

The representative says that ReAssure should have been aware of the inherent risk in a SSAS arrangement, and the expertise that is needed to run the scheme. It says ReAssure should have raised with Miss E whether she had that expertise. But the representative accepts that Miss E did have the right to make the transfer and it is unlikely that ReAssure could have blocked it entirely.

The representative highlights that ReAssure failed to do what it was required to, both in terms of sending the scorpion leaflet, and raising any concerns with Miss E directly. It says that had Miss E received the scorpion leaflet from ReAssure she would have viewed it entirely differently from when she received it from the SSAS administrator.

The representative says that it is not true that setting up a limited company and associated SSAS was a significant step. It says that the work would have all been done by the advising firm, and Miss E would have simply needed to sign the provided documents. So those steps do not show any degree of commitment by Miss E that wouldn't have been over-ridden by any warning from ReAssure.

In summary Miss E has said that she had no experience of dealing with pensions and so was reliant on ReAssure to warn her if anything was amiss. She says that if she had been warned she should take regulated advice, she would have taken that warning seriously. She says that the firm providing the scorpion leaflet to her seemed to be a sign of legitimacy – why would a scammer warn her of a scam? These pension savings were her only provision for her retirement – their loss has far reaching consequences.

## **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 carefully thought about everything Miss E and her representative have said, I'm sorry to tell her that I haven't changed my mind on the outcome of the complaint. But I would like to comment further on some of the points that have been raised.

There is no doubt that ReAssure failed to provide the information it needed to when Miss E asked for the transfer – it didn't send her the scorpion leaflet. But as I have said earlier, that leaflet was provided to Miss E by the administrator of the new scheme. I accept that might have been an attempt, as Miss E says, to persuade her that everything was above board. But I don't think that ReAssure also providing the leaflet would have negated the confidence Miss E says she derived from receiving the leaflet from the administrator. So I'm still not persuaded that it is more likely that ReAssure sending the leaflet would have caused Miss E to cancel her transfer request.

In many cases the transfer of pension benefits to a SSAS is not a scam, or liberation attempt. There are good and genuine reasons why that sort of transfer might be made. And in itself, I don't think the transfer to the SSAS by Miss E was a scam. The SSAS might not have been the most suitable product for Miss E and the investment itself may well have been flawed, but ReAssure's responsibilities did not extend to assessing the suitability of the transfer for Miss E. It was not advising her.

By the time ReAssure received the transfer request, Miss E would have been some way into the process – the actual transfer of her pension savings would have been one of the final stages. I am not persuaded that, at such a late stage, she would have been concerned that the choice she was making was not in her best interests. I appreciate that, with the benefit of hindsight, Miss E now feels that any warnings or even delays by ReAssure to the transfer might have led her to reconsider. But I haven't seen any evidence to persuade me that was likely to be the case at the time. Miss E appeared to be content with the choices she had made, and I don't think that ReAssure was in any position to dissuade her.

So having taken into account all the evidence, including what Miss E has told us, I don't believe it has been demonstrated as more likely that Miss E would not have transferred had ReAssure contacted her (assuming that it should have done so). Miss E may well have lost out as a result of the transfer because of the actions of third parties and that is very unfortunate. But in these specific circumstances I don't believe ReAssure has caused, or is responsible for, that loss.

## **My final decision**

For the reasons given above, and in my provisional decision, I don't uphold the complaint or make any award against ReAssure Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 28 April 2022.

Paul Reilly  
**Ombudsman**