DRN-3417827

The complaint

Mr W has complained about the actions of ReAssure Limited ("ReAssure") when it transferred his personal pension to a Qualifying Recognised Overseas Pension Scheme ("QROPS") in 2015. The QROPS subsequently invested in an asset that is unlikely to realise any value meaning Mr W has suffered a significant financial loss.

Mr W says ReAssure failed in its responsibilities when dealing with his transfer request. He says that ReAssure 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 W says he wouldn't have transferred, and wouldn't have suffered financial losses, if ReAssure had acted as it should have done.

What happened

On 9 October 2014, Harbour Pensions Limited wrote to ReAssure requesting it transfer Mr W's pension to the Harbour Retirement Scheme ("the Harbour Scheme"), a QROPS based in Malta. Included in the transfer request were various forms completed by Mr W and the receiving scheme's administrators – Harbour Pensions Limited – along with a letter from HMRC, dated 9 April 2013, which said it had accepted the Harbour Scheme as a QROPS.

Mr W had previously been sent an advice report written by Servatus, a Dublin-based firm. It recommended (amongst other things) that Mr W use a Harbour Pensions QROPS to invest up to 50% of his pension in a Dolphin loan note.

On 27 October, ReAssure wrote to HMRC to check whether the Harbour Scheme was on its QROPS list because it hadn't been able to find it on that list.

On 28 November, ReAssure wrote to the Harbour Scheme to confirm the scheme was on the QROPS list and to request the return of further documents. It wrote to Mr W on the same day outlining its requirements to allow a transfer to the Harbour Scheme and to recommend Mr W seek financial advice and how to go about finding an adviser. Harbour Pensions Limited sent further documents to ReAssure on 16 January 2015.

On 26 January, ReAssure wrote to Harbour Pensions Limited advising that a payment in respect of Mr W's transfer value had been paid. The transfer value was approximately £45,000. ReAssure also wrote to Mr W confirming the transfer value had been paid.

Mr W had already transferred just under £17,000 from a different personal pension provider to the Harbour Scheme. The combined transfer value was then used to invest, approximately 50/50, in a Dolphin Capital Loan Note and in an investment account managed by WH Ireland Limited. Dolphin Capital (now known as the German Property Group) is a German property venture which has gone into liquidation.

Mr W was, and remains, resident in the UK. He was 49 at the time of the transfer.

In April 2020, Mr W (with the help of a claims management company) complained to

ReAssure. Briefly, his argument is that ReAssure ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including (but not limited to) the following: the catalyst for the transfer was an unsolicited call; there was an overseas adviser; a QROPS is a complex arrangement and not necessary for his situation, especially as he wasn't intending to move abroad; and he was transferring in order to invest in high risk, unregulated, assets.

ReAssure didn't think it had done anything wrong. It said, in brief, that it had conducted adequate checks and that Mr W's adviser, Servatus, would be a more appropriate business to complain to.

Mr W referred his complaint to us. Our investigator didn't uphold his complaint. Mr W asked for an ombudsman to make a decision.

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 relevant rules and guidance

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

- The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme if certain conditions are satisfied. A member may also have a right to transfer under the terms of their pension. This came to be exploited, with people encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren't entitled to – for instance, because they were below minimum retirement age. This came to be known as "pension liberation".

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

- In late April 2014 the FCA started to voice concerns about the different types of pension arrangements that were being used to facilitate pensions scams. In an announcement to consumers entitled "Protect Your Pension Pot" the increase in the use of SIPPs and SSASs in pensions scams was highlighted, as was an increase in the use of unregulated and/or illiquid investments. The FCA further published its own factsheet for consumers in late August 2014. It highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.

- ReAssure was subject to the FCA Handbook and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA/FCA rules governing pension transfer requests, but the following have particular relevance:

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

  - Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;

  - Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and

  - COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

- Also relevant here is that 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.

<u>The Scorpion guidance</u>

The Scorpion campaign was launched on 14 February 2013, and was initially focused just on pension liberation – namely, the access to pension funds in an unauthorised manner (such as before normal minimum pension age). However, it's the update to that guidance on 24 July 2014 that's most relevant to this complaint. It widened the focus from pension liberation specifically, to pension scams – which it said were on the increase.

The materials in the Scorpion campaign comprised:

- An insert to be included in transfer packs (the 'Scorpion insert'). The insert warns readers about the dangers of pension scams and identifies a number of warning signs to look out for.

- A longer booklet issued by TPAS which gives more information, including example scenarios, about pension scams. Guidance provided by TPR said this longer leaflet was intended to be used in ongoing communications with members so that they could become aware of the scam risks they were facing.

- An "action pack" for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "watch out for" various warning signs of a scam. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where a transferring scheme still had concerns, they were encouraged (amongst other things) to contact the member to establish whether they understood the type of scheme they were transferring to and – where a member insisted on transferring – directing the member to Action Fraud or TPAS.

TPR issued the guidance under the powers at s.12 of the Pension Act 2004. Thus, for the bodies regulated by TPR, the status of the guidance was that it provided them with information, education and/or assistance, as opposed to creating any new binding rule or legal duty. Correspondingly, the communications about the launch of the guidance were predominantly expressed in terms that made its non-obligatory status clear. So, the tenor of the guidance is essentially a set of prompts and suggestions, not requirements.

The FSA's endorsement of the Scorpion guidance was relatively informal: it didn't take the form of Handbook Guidance, because it was not issued under s.139A of the Financial Services and Markets Act (FSMA), which enabled the FSA to issue guidance provided it underwent a consultation process first. Nor did it constitute "confirmed industry guidance", as can be seen by consulting the list of all such FSA/FCA guidance on its website.

I take from the above that the contents of the Scorpion guidance was essentially informational and advisory in nature and that deviating from it doesn't necessarily mean a firm has broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's statutory rights.

That said, the launch of the Scorpion guidance was an important moment in so far as 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.

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

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. In deciding how to apply the guidance, they needed to consider the guidance as a whole, including the various warning signs to which it drew attention, the case studies that highlighted different types of scam, and the checklist and various suggested actions ceding schemes might take. And where the recommendations in the guidance applied, absent a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations:

1. As a first step, a ceding scheme needed to check whether the receiving scheme was validly registered.

2. The Scorpion insert provided an important safeguard for transferring members, allowing them to consider *for themselves* the scam threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. So, all things considered, I think the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party.

3. I also think it would be fair and reasonable for personal pension providers – operating with the regulator's Principles and COBS 2.1.1R in mind – to ensure the warnings contained in the Scorpion insert were provided in some form to a member before a transfer even if the transfer process *didn't* involve the sending of transfer packs.

4. The Scorpion guidance asked firms to look out for the tell-tale signs of scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The guidance points to the warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. Therefore, whilst using the action pack wasn't an inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.

5. The considerations of regulated firms didn't start and end with the Scorpion guidance. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn't involve anything specifically referred to in the Scorpion guidance – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's principles and COBS 2.1.1R.

These were additional requirements over and above what a ceding scheme would always have needed to do 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.

<u>The circumstances surrounding the transfer: what does the evidence suggest happened?</u>

Mr W says he was cold called and offered a pension review, which he agreed to. He says his details were then forwarded on to Servatus, an EEA authorised firm based in Dublin.

The above aligns with the documentary evidence which includes an advice report written by Servatus, which was sent to Mr W's home address on 6 August 2014. The report references an earlier meeting between Mr W and a firm called Portia – which was most likely the firm that cold called Mr W and initiated the process. Portia may even have done some sort of review of Mr W's pension arrangements. But it's clear from the documentary evidence that it was Servatus that advised Mr W and provided a recommendation about his retirement planning. That recommendation was, in brief, to use a Harbour Pensions QROPS to invest up to 50% of Mr W's pension in a Dolphin loan note. The report said Mr W had a shortfall in his pension provision which he could address through contributing more or by achieving higher returns. The report said the Dolphin investment would help achieve the latter. Mr W signed the report on 27 August to confirm he was satisfied with its recommendations.

Mr W agreed to pay Servatus for its advice. The Harbour Scheme application form (which Mr W signed) included a section headed "professional adviser & fees", in which an initial fee of 0.5%, to be taken from the Harbour Scheme, has been entered along with the adviser's details. The 0.5% "Servatus adviser fee" was mentioned in the Servatus report. And I can see 0.5% was taken from his new pension shortly after the transfer.

At the time of the transfer, Mr W was 49 years old. He lived in the UK and didn't intend to live overseas. He had one other pension (which he also transferred to the Harbour Scheme). Otherwise, he had no other long-term savings.

What did ReAssure do and was it enough?

Due diligence:

ReAssure checked that HMRC had accepted the Harbour Scheme as a QROPS. I note too that the Harbour Scheme was on HMRC's published list and had been since 2013 (and continued to be so long after Mr W's transfer). These steps ensured that the transfer payment both qualified as an authorised payment for tax purposes and also satisfied Mr W's statutory right, and potentially other legal rights, to transfer.

In light of the Scorpion guidance, I think firms also ought to have been on the look-out for the tell-tale signs of a pension scam and would have needed to undertake further due diligence, and take appropriate action, if it was apparent their customer might be at risk.

Given the information ReAssure had at the time, one feature of Mr W's transfer would have been a potential warning sign of a scam – there was a transfer of money overseas. ReAssure should therefore have followed up on that to find out if other signs of a scam were present. I think it would have been fair and reasonable – and good practice – for ReAssure to have turned to the check list in the Scorpion action pack to do this.

The check list provided a series of questions to help transferring schemes assess the potential threat by finding out more about the receiving scheme and how the consumer came to make the transfer request. Some items on the check list could have been addressed by checking online resources such as HMRC. Others would have required contacting the consumer. The check list is divided into three parts (which I've numbered for ease of reading and not because I think the check list was designed to be followed in a particular order):

1. The nature/status of the receiving scheme

   Sample questions: Is the receiving scheme newly registered with HMRC, is it sponsored by a newly registered or dormant employer, an employer that doesn't employ the transferring member or is geographically distant from them, or is the receiving scheme connected to an unregulated investment company?

2. Description/promotion of the scheme

   Sample questions: Do descriptions, promotional materials or adverts of the receiving scheme include the words 'loan', 'savings advance', 'cash incentive', 'bonus', 'loophole' or 'preference shares' or allude to overseas investments or unusual, creative or new investment techniques?

3. The scheme member

   Sample questions: Has the transferring member been advised by an 'introducer', been advised by a non-regulated adviser or taken no advice? Has the member decided to transfer after receiving cold calls, unsolicited emails or text messages about their pension? Have they applied pressure to transfer as quickly as possible or been told they can access their pension before age 55?

Opposite each question, or group of questions, the check list identified actions that should help the transferring scheme establish the facts.

I don't think it would always have been necessary to follow the check list in its entirety. And I don't think an answer to any one single question on the check list would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the check list to establish whether a scam was a realistic threat. Given the warning sign that should have been apparent when dealing with Mr W's transfer request, and the relatively limited information it had about the transfer, I think in this case ReAssure should have addressed all three parts of the check list and contacted Mr W as part of its due diligence.

There were a number of parallels between Mr W's transfer and the warning signs identified by the check list, including the unsolicited contact that prompted Mr W's initial interest in transferring and the investment that lay behind his decision to transfer which was overseas and could, potentially, be described as being "unusual" or "creative". Mr W was also transferring to a QROPS even though he was resident in the UK and didn't appear to be contemplating a move overseas. Whilst the action pack didn't specifically address such a scenario, it's reasonable to say this should have appeared unusual to ReAssure.

However, in aggregate, I'm satisfied ReAssure wouldn't have thought Mr W was likely falling victim to a scam. I say this because investigations into who had advised him would have revealed the presence of Servatus, which was an advisory firm regulated by the Central Bank of Ireland. Importantly, Servatus was also shown on the FCA's register as authorised in the UK with passporting rights. This means that for UK purposes Servatus was an authorised person under s.31(1)(b) of the Financial Services and Markets Act (FSMA) 2000 and Schedule 3 to that Act.

The presence of Servatus as an authorised person advising Mr W would have indicated to ReAssure that the transfer was unlikely to be a scam and that Mr W would enjoy some regulatory protections in the event it turned out to be one. This wouldn't have been via the UK's complaints and investor protection institutions, the Financial Ombudsman Service or the Financial Services Compensation Scheme. But The Republic of Ireland also has a complaints system, financial services and pensions ombudsman and a statutory investor compensation scheme, which EU countries are required to have under the EU's Investor Compensation Directive.

Furthermore, as a firm that was regulated (albeit by a home-state regulator in another EU jurisdiction) the regulatory protections included the fact that Servatus would have been held to a high standard, mandated throughout the EU, by its own regulator. And as an authorised firm, Servatus would have had to follow the applicable European regulatory standards and conduct its practice in accordance with those standards. Its operations would have been under some oversight by its regulator to ensure it was acting in the best interest of its client. It therefore would have had to meet certain required standards in all of its dealings and be subject to regulation and to investor recourse under the Irish system. So in light of this it isn't unreasonable that, had it checked up on its regulatory standing, ReAssure could have been reassured that Servatus was regulated to EU standards that were accepted for the purpose of authorisation under UK law.

As outlined previously, firms needed 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 rights. I'm satisfied that the fact that Mr W was being advised by a properly authorised adviser would reasonably have given ReAssure comfort the transfer was unlikely to be a scam. With that in mind, there wouldn't have been a need, and it wouldn't have been proportionate, for ReAssure to have given Mr W any specific warnings beyond the warnings contained in the Scorpion insert (which I discuss below).

In coming to that conclusion, I have considered whether the act of contacting Mr W and asking questions about his transfer – which ReAssure should have done – would have prompted him to change his mind. Those questions would, for instance, have reminded Mr W of the fact that a significant financial decision had been set in train by a cold call and that he was moving his pension outside of his country of residence – both of which may have seemed less judicious on questioning and therefore potential prompts, in themselves, for further thought. But, like ReAssure, I'm satisfied Mr W would, ultimately, have taken comfort from the fact that he had been advised by a regulated adviser.

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. I've seen nothing to indicate ReAssure did this.

It's unclear from the documentary evidence which version of the Scorpion insert ReAssure ought to have sent. It's possible that it would have been the 2013 version given a request for transfer documents was received from Servatus by Mr W's other pension provider before the Scorpion guidance was updated. A similar request to ReAssure isn't on Mr W's casefile. But given that other request was just before the guidance was updated, I consider it likely that ReAssure wouldn't have responded until after the guidance had been updated meaning it is the July 2014 insert, which covered more than just liberation, that's relevant here.

The July 2014 Scorpion insert highlighted the following warning signs for someone to be on the lookout for:

- claims that a pension pot can be accessed before age 55;
- being approached out of the blue over the phone, via text message or in person door-to-door;
- being enticed by upfront cash; and
- being offered a free 'pension review' or being lured by 'one off' investment opportunities.

It went on to say that if someone thought they were being targeted by scammers, they should not be rushed or pressured into a decision and that they should call TPR before signing anything – or Action Fraud if an offer had already been accepted.

Some of the warnings and actions listed didn't apply to Mr W. But some did: he was approached unsolicited and he was offered a pension review. The advice report written by Servatus didn't pitch the Dolphin investment as a one-off opportunity but the overall tenor of the insert was to be cautious about "too good to be true" claims about various investments. So this also had parallels with Mr W's situation. And this version of the Scorpion insert warned about scams in general rather than the narrower warning about pension liberation. So that too may have put Mr W more on guard than he otherwise would have been.

However, on balance, I don't think messages along the lines of the above would have been enough for Mr W to change his mind. It strikes me as doubtful that he would have just aborted the transfer without further research. And if he had conducted further research I think Mr W, like ReAssure, would have taken comfort from the fact that a regulated adviser had advised him.

I've considered whether being asked due diligence questions by ReAssure would likely have primed Mr W to have been more receptive to the messages contained in the Scorpion insert and prompted him to "join the dots" about the risks he was taking (or, depending on when it was sent, primed him to have been more concerned when asked those due diligence questions). In other words, I've considered the likely *cumulative* impact of everything

ReAssure should have done and not just the impact a due diligence process, and the Scorpion insert, would have had in isolation. But I return to what I said before which is that Mr W was being advised by a regulated adviser so I'm satisfied he would, ultimately, have taken comfort from that.

I've also considered everything Mr W has said about his character at the time which, to summarise, was cautious and prudent and why that, along with his relatively limited long-term savings, meant he wouldn't have proceeded with the transfer had he been warned about doing so. To support that argument, Mr W has provided evidence of a fact find conducted in 2000 which recorded him as being "cautious", the most risk averse of three categories, and his choice of funds prior to the transfer which were mainstream.

I don't disagree with the characterisation of Mr W as being relatively cautious. I note here that on his Harbour Scheme application form, Mr W was recorded as "medium risk" – the middle of five ratings. And Servatus recorded him as being in "Risk Group 4". This looks to have been on a scale of 1-7, which would be in keeping with the description given to Mr W which was someone "*prepared to take a small to medium degree of risk with their financial decisions, more likely medium*." Whilst that would seem slightly less risk averse than in 2000, I think the point stands – Mr W *wasn't* a high-risk investor.

My disagreement is with what this would have meant for Mr W had he been sent the July 2014 Scorpion insert. I don't think Mr W would have had any misgivings as a result of the insert because he would have been under the impression (or would have found out) that he had been advised by a regulated firm. To use Mr W's word (albeit in a slightly different context), I think this would have "neutralised" the fact that the insert had referenced cold calls, free pension reviews and one-off investment opportunities.

Mr W has argued he would have gone back to ReAssure which would have sent him the longer version of the Scorpion warning materials. I don't think this is a likely scenario. I think Mr W would have been more likely to have gone back to the person who he was paying to advise him – Servatus. And, as before, Mr W wouldn't likely have found cause for concern there. But even if he had gone back to ReAssure, and been sent the longer Scorpion booklet, that chain of events doesn't change things because that document concludes with what action someone should take should they think they've been targeted by scammers, one of which is to check their adviser was on the FCA register. That leads us to the same place: Mr W wouldn't have considered Servatus was untrustworthy.

Ultimately, ReAssure would have been entitled to take comfort from the presence of a regulated adviser. It wouldn't have been its job to question the advice that adviser gave. Likewise, Mr W wouldn't have had cause to be concerned about his adviser.

It follows that I don't uphold Mr W's complaint.

My final decision

For the reasons given above, my final decision is to not uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 17 February 2025.

Christian Wood
Ombudsman