

## The complaint

Mr W has complained about a transfer of his HSBC group personal pension to an occupational scheme in 2013. Mr W's occupational scheme was used to invest in a loan note that now appears to have little value. ReAssure Limited has accepted responsibility for dealing with Mr W's complaint so, for ease, I will mainly be referring to ReAssure.

Mr W says ReAssure failed in its responsibilities when dealing with his 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 required of transferring schemes at the time. Mr W says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if ReAssure had acted as it should have done.

## What happened

On 26 April 2013, ReAssure received Mr W's pension transfer documents. These were sent in by Dorrixo Alliance (UK) Ltd., which was working on behalf of the trustees of the WGF Ventures Retirement Benefit Scheme ("the WGF Scheme") – the occupational scheme Mr W was looking to transfer to. In its covering letter Dorrixo said the WGF Scheme was a defined contribution occupational pension scheme which was registered with HMRC. It provided its Pension Scheme Tax Reference (PSTR) number and said the scheme was not contracted out. Included in the transfer papers were:

- bank account details of the account that the transfer was to be paid into;
- confirmation that the WGF Scheme had been registered with HMRC in December 2012 (so approximately four months before the transfer request was received) and the name of the scheme's trustees – Chalcedon Trustees Ltd;
- ReAssure's transfer papers, which had been signed by Mr W on 26 March 2013.

Mr W's pension was transferred on 8 May 2013. He was 59. His transfer value was a little under £27,000.

On 23 October 2013, Mr W was sent a welcome letter from Dolphin Capital GmbH which thanked him for investing in a Dolphin Capital loan note. The letter provided further details on the investment. A loan note certificate, which had a date of issue of 11 October 2013, was also enclosed. Dolphin Capital, now known as the German Property Group (GPG), is a German property venture which has gone into liquidation. Mr W invested £16,000 in the loan note which was intended to be paid back in 2018 with compounded interest of 13.8% p.a. It looks like Mr W wanted to accept an offer to reinvest in the loan note in early 2018.

On 1 November 2017, The Pensions Regulator ("TPR") appointed an independent trustee to a number of Chalcedon schemes, including the WGF Scheme, because of concerns that the schemes had been used for pension liberation, the process by which pensions are accessed in an unauthorised way (before minimum retirement age, for instance) which can leave victims with little or no pension savings and liable to pay charges to HMRC. The independent trustee wrote to members, and issued a statement on its website, in January 2018 with

further information. It asked members to complete a questionnaire to help it understand how the Chalcedon schemes worked and the reasons why people transferred to them.

In February 2018 Mr W completed the independent trustee questionnaire. In brief, Mr W's answers show his reason for transferring was for better investment returns rather than a desire to liberate his pension, which Mr W recognised as being unnecessary given he was over 55 at the time. He said he made the decision to transfer by himself, although his initial interest in transferring was prompted by a colleague who had done something similar previously. The questionnaire also pointed to his satisfaction at that point with the transfer and the Dolphin loan note, which had apparently kept to its repayment schedule.

The independent trustee issued another update in April 2020, which didn't mention pension liberation but went into further detail on the investments made by the WGF Scheme, including the Dolphin loan notes. The independent trustee said the investments made by the WGF Scheme were "wholly unsuitable" for an occupational scheme. With regards to the Dolphin Capital loan notes, it noted that some repayments had been made, but it had concerns about further repayments given the liquidation of GPG. The announcement went on to discuss the potential for members to complain against the scheme that allowed the transfer in the first place. Further updates followed, the most recent being in July 2023.

In August 2020, Mr W (with the help of a claims management company) complained to ReAssure. Briefly, his argument is that ReAssure failed to adequately warn him about the potential risks of transferring. In particular, he says ReAssure didn't follow the "Scorpion" guidance launched by The Pensions Regulator (TPR) on 14 February 2013. The guidance was launched in response to the increasing threat of pension liberation. Mr W says he wouldn't have transferred, and therefore wouldn't have put his pension at risk, if ReAssure had acted as it should have done.

ReAssure didn't uphold Mr W's complaint. It said the transfer was processed by HSBC and because it didn't have all HSBC's records, it couldn't determine what checks had been done. ReAssure suggested Mr W complain to the other parties involved in the transaction. Mr W referred his complaint to us.

I issued a provisional decision in which I said:

*Although the event complained of happened more than six years before Mr W complained to ReAssure, I've no reason to conclude Mr W complained more than three years after he was aware (or ought reasonably to have been aware) of having cause for complaint. I'm therefore satisfied Mr W did complain in time and that this is a complaint I can consider.*

#### 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.*
- *On 10 June 2011 and 6 July 2011, the Financial Services Authority (FSA) warned consumers about the dangers of "pension unlocking". It referred to cold-calling and websites promoting transfers to schemes that invest money overseas to avoid paying UK tax and/or result in cash being drawn from the pension ahead of retirement, including as a loan. Particular concerns related to the tax implications of these*

*transactions, the fees charged and potential investment losses from scam activity. The FSA said it was working closely with HMRC and TPR to find out more information and encouraged affected consumers to contact FSA, HMRC or TPR helplines.*

- *TPR announced in December 2011 that it was working with HMRC and the FSA and had closed some schemes.*
- *In February 2012, TPR published a warning, and factsheet, about pension liberation. The FSA supported this campaign. It was designed to raise public awareness about pension liberation, and remind scheme trustees of their duties to members, rather than introduce any specific new steps for transferring schemes to follow. The warnings highlighted in the campaign related to websites and cold callers that encouraged people to transfer in order to receive cash or access a loan.*
- *TPR launched its Scorpion campaign on 14 February 2013. The aim of the campaign was to raise awareness of pension liberation activity and to provide guidance to scheme administrators on dealing with transfer requests in order to help prevent liberation activity happening. The FSA endorsed the guidance. I cover the Scorpion campaign in more detail below.*
- *Personal pension providers are not regulated by TPR. They're regulated by the Financial Conduct Authority (FCA). Prior to April 2013, they were regulated by the FCA's predecessor, the FSA. As such, they're subject to the 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.*

*For context, it's worth noting the Scorpion guidance was updated in July 2014 to include the threat of scams in general. And in August 2014 the FCA started to voice concerns about scams involving the use of unregulated and/or illiquid investments in small self-administered schemes ("SSASs") and self-invested personal pensions ("SIPPs"). Both the updated Scorpion guidance and the FCA's consumer bulletin came after Mr W's transfer but I highlight them here to illustrate the point that at the time of Mr W's transfer, guidance for ceding schemes was focussed on pension liberation with the threat posed by high risk investments outside of liberation schemes not yet a widespread concern.*

### *The Scorpion campaign*

#### *Overview*

*The 2013 Scorpion campaign comprised the following:*

- *A Pensions Advisory Service insert (the ‘Scorpion insert’). The insert warns readers about the dangers of agreeing to cash in a pension early and identifies the following warning signs: being approached out of the blue by phone or text; pushy advisers or ‘introducers’ who offer upfront cash incentives; companies offering loans, saving advances or cash back from a pension; and not being informed about the tax consequences of transferring. It concludes by recommending actions that can be taken to avoid becoming a victim of such activity. These include talking to an adviser not associated with the transaction and recognising any financial advisers should be registered with the FCA. TPR said at the time it wanted to see the use of the Scorpion insert in transfer packs become best practice.*
- *A longer leaflet issued by the Pensions Advisory Service (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.*

*The status of the Scorpion guidance*

*When it was launched in February 2013, the Scorpion guidance was described as a cross-government initiative by Action Fraud, The City of London Police, HMRC, TPAS, TPR, the SFO, and the FSA/FCA, all of which endorsed the guidance, allowing their names and logos to appear in the action pack and Scorpion insert.*

*So far as TPR itself was concerned, it issued the guidance under the powers at s.12 of the Pension Act 2004, which provides:*

*12 Provision of information, education and assistance*

- (1) The [TPR] may provide such information, education and assistance as it considers appropriate to those involved in—*
- (a) the administration of work-based pension schemes, or*
  - (b) advising the trustees or managers in relation to such schemes as to their operation.*

*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. Likewise, by and large, the contents of the action pack are framed in a way that is consistent with its stated purpose,*

*namely as points to note or suggested actions a firm might take. For example, rather than telling firms they are expected to spot the warning signs of pension liberation fraud, the action pack lists “some of the things to look out for”; and, rather than say that the presence of a warning sign requires the firm to run through the check list, it states: “If any of these statements apply, then you can use the check list ...”*

*The language arguably strays into the imperative under the heading “Next steps if you have concerns”, stating “Contact the member to establish their understanding of, for example, the type of scheme they’ll be transferring to.” But this appears to be reversed later in a passage which states: “Trustees may wish to contact members direct where they have concerns about a proposed transfer.” So, the tenor of the document is essentially a set of prompts and suggestions, not requirements.*

*It would seem inconsistent to view the Scorpion guidance as representing a binding rule or legal duty on personal pension providers regulated by the FSA/FCA when such a duty didn’t extend to those bodies that came under the regulator that drafted the guidance, the TPR. Furthermore, 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 all the above that the contents of the action pack were essentially informational and advisory in nature and that deviating from the action pack 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 February 2013 Scorpion guidance was an important moment in so far it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing transfer requests. The campaign and guidance were 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.*

*Taking all this into account, I think it’s fair and reasonable to conclude providers should have recognised that the environment had changed, and more was now expected of transferring schemes. 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.*

*Therefore, whilst I don’t think personal pension providers had to follow all aspects of the Scorpion guidance in every transfer request, 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. I look at what this means in practice in the next section.*

*What did personal pension providers like ReAssure need to do?*

*TPR said it wanted to see the use of the Scorpion insert in transfer packs become best practice. Sending the insert to customers asking to transfer their pensions was 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. I therefore think it reasonable for the Scorpion insert to have been sent by pension providers to transferring customers as a matter of course with transfer packs.*

*The contents of the Scorpion insert were directed towards consumers themselves and contained warnings about dishonest intermediaries who might be trying to lure them into pension liberation. It would have defeated the purpose of the insert if, instead of sending it to their customer, pension firms sent the insert to the customer's representative in the hope that that intermediary would then share the insert with their client. I therefore consider it fair and reasonable to say the insert had to be sent direct to the transferring member even if a copy had also been sent to, say, an unregulated introducer.*

*Furthermore, under the Scorpion action pack, firms were told to look out for the tell-tale signs of pension liberation and undertake further due diligence and take appropriate action where their client might be at risk. The action pack points to the liberation 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 isn't an inflexible requirement, it does represent a reasonable benchmark for the level of care expected of a transferring scheme and identifies specific steps that would be appropriate for them to take, if the circumstances demanded.*

*It is also important to note that the obligations of regulated firms to customers who were transferring 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 liberation – 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 signs of a scam if they came (or should have come) to a firm's attention would almost certainly breach the regulator's Principles and COBS 2.1.1R.*

*Before I go on to consider whether ReAssure met its obligations, I set out my findings on how Mr W came to request the transfer.*

### *Mr W's recollections*

*In Mr W's complaint submissions, he said he heard from a colleague about the Dolphin Capital venture who offered to put him in touch with a "broker" to take things forward. Mr W says he was then contacted by telephone by someone and, following that contact, he transferred to the WGF Scheme and invested in the Dolphin loan note. He says he never met anyone in person.*

*Mr W provided further detail on the transfer when he completed a questionnaire for the independent trustee in February 2018. Mr W's answers to the questionnaire were (in summary) as follows:*

- He transferred because he wanted to make a specific investment (the Dolphin investment) which he thought would make higher returns than elsewhere. This followed discussion with a colleague.*
- He wasn't offered an incentive or cash payment.*
- The investment wasn't described as low, medium or high risk. Nevertheless, he understood the risk he was taking on.*

- *His attitude to risk wasn't assessed by anyone.*
- *He was aware that the loan note had a five-year term and he was under the impression that it was performing in line with expectations and would return the promised monies on maturity (which, at that point, was just a few months away).*
- *He thought he would have to pay charges for transferring but he couldn't remember how much these were and he was confident that the investment returns would more than make up for what he did have to pay.*
- *When asked about whether his previous provider had asked him about pension liberation or scams and/or provided him with the Scorpion warning leaflets, he answered "yes". But he didn't think liberation/scam warnings were relevant to him because he was already over the age of 55 and therefore able to access 25% of his pension tax-free – which he says he wanted to do in order to fund a buy-to-let property purchase. He went on to specifically say he received the Scorpion leaflets.*

*Whilst Mr W completed the questionnaire nearly five years after the transfer, I'm satisfied his answers are an accurate reflection of the transfer process and his thinking at the time of the transfer. I say this because Mr W's answers don't suggest his recollections of the transfer had faded particularly; his answers are reasonably expansive and internally consistent. And where Mr W can't remember something, he says so – which gives further credence to the answers he does give. His answers also don't strike me as being the answers of someone trying to put a particular "spin" on events either, and it's not clear to me what Mr W would have gained from being dishonest anyway. So my opinion is that Mr W's answers to the questionnaire are a good indication of how the transfer came about and Mr W's thinking back in 2013.*

*With the above in mind, it seems clear that Mr W was attracted to the investment opportunity in large part because of the recommendation of a colleague. He understood that the investment had a five-year term that was due to run until October 2018 and that he was confident – until at least February 2018 – in the investment's performance. Mr W doesn't appear to have liberated his pension or thought doing so was relevant to his situation.*

*Mr W's answers also point to the investment decision as being very much his own (albeit one that he had become interested in following discussions with a colleague). He says the following:*

*"I chose the investment myself due to the track record, potential returns and after discussion with a colleague who had also invested."*

*"I looked at a couple of options but decided that where I invested was a secure investment for my pension."*

*"I considered my options and decided myself."*

*"I was happy to choose myself what to invest in and understood the risks from the information I saw."*

*"Did you receive financial advice when joining the scheme? No I just wanted to see if I could obtain higher returns elsewhere."*

*Furthermore, Mr W's answers don't refer to any discussions with anyone other than his colleague. That said, Mr W's complaint letter to ReAssure refers to him being contacted by a "broker" after he had expressed interest in the investment, so I remain open to the possibility*

*that someone helped him with the transfer process. But I don't think there's persuasive evidence to conclude that Mr W was given advice by anyone.*

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

##### *The Scorpion insert*

*Whilst ReAssure hasn't been able to provide much from the time to show what it did when dealing with Mr W's transfer request, it's clear from the questionnaire Mr W completed for the independent trustee that he had received Scorpion warning materials. I don't know if this means the Scorpion insert or the longer Scorpion booklet was sent to Mr W but, either way, I'm satisfied that ReAssure did enough.*

##### *Due diligence*

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

*ReAssure received Mr W's transfer papers on 26 April 2013. This was over nine weeks after the launch of the Scorpion guidance, which should have given ReAssure time to understand the warning signs and next steps outlined in the action pack and implement changes to its processes. So I think the guidance in the action pack is relevant to Mr W's case.*

*Given the information ReAssure had at the time, there was one immediately apparent feature of Mr W's transfer that was a potential warning sign of liberation activity. This was that the WGF Scheme had been registered not long (around four months) before the transfer request was received. As this was highlighted by TPR in the Scorpion action pack as a possible warning sign, ReAssure should have followed up on this to find out if other signs of liberation were present. I think it would have been fair and reasonable – and good practice – for ReAssure to look into the proposed transfer and the most reasonable way of going about that would have been to turn to the check list in the action pack to structure its due diligence into Mr W's transfer.*

*In the questionnaire Mr W completed for the independent trustee, he answered "yes" to the question of whether his previous scheme had asked questions "and/or" sent the Scorpion warning leaflets. The question is a little ambiguous. Nevertheless, Mr W went on to expand about receiving the scorpion leaflets but didn't say anything specific about being asked questions about the transfer. Therefore, whilst I'm satisfied Mr W did receive the Scorpion insert (or the longer booklet), it's less certain whether he was asked any due diligence questions. Given the lack of any corroborating evidence of contact between the parties, I think it likely that Mr W wasn't asked any due diligence questions and that the Scorpion action pack wasn't followed with any sort of rigour.*

*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 Companies House and 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 employer, is that employer geographically distant from the transferring member and 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?*

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?*

*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 liberation was a realistic threat. That applies here. Given the warning sign about the recently registered receiving scheme, and the relatively limited other information it had about the transfer, I think ReAssure should have addressed all three parts of the check list and contacted Mr W as part of its due diligence.*

*Had it done so, I think it likely that ReAssure would have built up the following information about the transfer – all of which were signs of potential pension liberation under the Scorpion guidance:*

- *Mr W was transferring to a recently established scheme.*
- *The sponsoring employer of the WGF Scheme was incorporated in November 2012, which also wasn't long before the transfer request was made. Any probing on this would also have revealed that the sponsoring employer was geographically distant from Mr W and was unlikely to have been employing him.*
- *Mr W was transferring to improve investment returns and had a specific investment in mind – the Dolphin loan note. Any probing on this would have revealed this to be an overseas investment.*

*Against this, ReAssure would also have known, and established, the following which would have indicated liberation wasn't a concern:*

- *Mr W was 59 at the time of transfer so didn't need to transfer in order to access his pension. Any probing on this would likely have revealed Mr W understood this.*
- *Mr W's reason for transferring was to improve investment returns. He wasn't expecting a cash payment following the transfer.*
- *The initial interest in the investment had come from a colleague rather than an unsolicited approach.*

- *Mr W was likely to have dealt with unregulated parties during the course of the transfer but those parties hadn't advised him.*
- *Mr W had received a Scorpion leaflet and didn't consider the threat of liberation as being pertinent to his situation.*

*So whilst ReAssure would have (had it conducted further due diligence) found there to be some liberation warning signs, I think it would have ultimately concluded that the liberation threat was minimal given Mr W's age and reasons for transferring. So even if it had done all it should have done, I'm satisfied ReAssure wouldn't have considered there to be reason to provide any further warnings to Mr W.*

*Mr W argues that some of the circumstances behind the transfer were unusual enough in themselves that ReAssure should have done more to warn him about what he was intending to do, even if the liberation threat would have appeared minimal. Specifically, Mr W argues that ReAssure should have warned him about the unusual nature of the receiving scheme (established not long before the transfer), sponsoring employer (recently incorporated and geographically distant from Mr W) and his intended investments ("objectively high risk" and unsuitable according to Mr W).*

*But I think those arguments misread what should, reasonably, have been expected of transferring schemes at that time. Investigations into the receiving scheme, sponsoring employer and intended investments were a means to an end: to establish the risk of liberation. Once that threat was discounted then I think it reasonable for ceding schemes to consider the scam threat as being minimal and process the transfer as normal.*

*I also see no persuasive reason why a ceding scheme needed to share with its members the liberation warnings signs it found – but discounted – during its due diligence process or its reasons why it might have thought at some point liberation was a possibility. As I've said previously, a firm 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 statutory rights. Expecting a firm to share its due diligence "workings" in this way would cut across this (and could potentially be viewed as a self-serving tactic to hold on to a customer).*

*That's not to say a ceding scheme could turn a blind eye to other signs of a scam if they presented themselves. But ReAssure's role wasn't to assess a transferring member's intended investment choices. Inappropriate investments in themselves weren't considered a significant scam risk at that time – it wasn't until after Mr W's transfer that the Scorpion guidance was updated to include the wider risk of scams that didn't just involve liberation and the FCA started to warn consumers about this. I'm also not aware of any industry intelligence ReAssure should have been aware of that would have listed this particular investment as a fraud risk. And there's nothing that Mr W would likely have said that would have made ReAssure think he was being coerced into transferring or being advised by someone unauthorised to do so. Quite the opposite – Mr W was keen to transfer and considered the decision as being his own. So, in the circumstances, I don't think ReAssure would have considered there to have been a wider scam risk for it to be concerned about.*

*Given what ReAssure should reasonably have known, and found out, about the transfer at the time (if it had followed good practice in the Scorpion action pack) and given the context in which it was operating (where industry awareness and concern around pension scams largely focussed on pension liberation), I don't think it would be fair to expect ReAssure to have warned Mr W about the transfer or his proposed investment beyond what it did when it sent Mr W the Scorpion warning materials.*

*I recognise the mere act of contacting a transferring member and asking questions about their transfer can prompt a change of heart. Questions to Mr W about how he came to hear about the transfer would, for instance, shine a light on the fact that he was about to make a significant financial decision following little more than a “tip-off” from a colleague. Having second thoughts wouldn’t be an outlandish response to such a line of questioning. Mr W was denied the opportunity to reflect on his decision in this way.*

*In considering this, I think it’s worth going back to two points I’ve made previously. One, any due diligence questions would have been asked with the intention of establishing the liberation risk Mr W was facing not to sow seeds of doubt in his mind about transferring. And, two, Mr W discounted the liberation threat when he reviewed the Scorpion insert so any follow-up questions about the same subject wouldn’t have had particular resonance for him. In the circumstances, and taking into consideration Mr W’s confidence in the investment, I don’t consider it likely that the mere act of asking questions in line with the Scorpion action pack would have changed Mr W’s mind.*

*It follows from the above that I don’t intend to uphold Mr W’s complaint.*

Mr W disagreed with my findings. I address his comments below. ReAssure didn’t have anything 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.

Mr W disagreed with my provisional decision on a number of fronts. I’ve reviewed everything he has said but, for ease, I will group his points as follows:

#### **1. The sending of the Scorpion insert**

In my provisional decision I concluded that Mr W was, likely, sent the Scorpion insert. I came to this conclusion because Mr W had said so when responding to the independent trustee’s questionnaire in 2018. I quote the question the independent trustee asked, and Mr W’s answer, in full here:

*“When you asked for a transfer did your previous provider ask questions relating to pensions liberation or scams and/or provide you with leaflets about the Pension Regulator’s Scorpion campaign?”*

*Yes. But I was over 55 at the time and was entitled to my 25% tax free sum which I wanted to take advantage of to assist with a deposit towards a buy to let property I subsequently purchased. I also wanted to invest the rest and the investment offered me the chance of higher returns. I did receive leaflets but was happy to proceed with the transfer as I did not believe that I was scammed. I fully expect the returns due to me in October this year 2018 and expect to receive the funds to be paid to me. I assume that as you are now the trustees there will be no problems with this.” [my emphasis]*

Mr W says it isn’t fair to place so much weight on the questionnaire which was completed five years after the transfer and at a point when he still had confidence in the investment. He also thinks I have overlooked his more recent recollections (in his letter of complaint and thereafter) in which he says *doesn’t* recall the Scorpion insert being sent. And he points to the documentation provided by ReAssure which he says ran to 165 pages and covered the period from 2001 to the completion of his transfer. In Mr W’s view this is comprehensive and the most likely explanation for the lack of evidence to show the Scorpion insert was sent is

because it wasn't sent rather than because the evidence is missing. Mr W also says the fact that ReAssure didn't explicitly say it sent the Scorpion insert is telling.

For the avoidance of doubt, I have considered everything Mr W has said. But my view was – and remains – that it is reasonable to rely on what Mr W said in the independent trustee questionnaire. I don't doubt Mr W had confidence in the investment at that time – the quote above confirms as much. But I don't see why his confidence in the investment would have made him give a factually incorrect answer to a relatively straightforward question about receiving the Scorpion leaflet. And I can't see a plausible reason why Mr W would have been dishonest in this way (and, of course, if he had been dishonest it would call into question everything he has subsequently said).

Mr W has commented at various points about the five-year gap between the transfer and the completion of the questionnaire; the inference being that his recollections in the questionnaire can't be relied upon so long after the event in question. However, that would seem to weaken his other argument that I should accept at face value his recollections of the event as described in 2020 which was approximately *seven* years after the event. Nevertheless, I have considered whether Mr W might have misremembered events when he completed the questionnaire. But his answer is too expansive and detailed for that to be likely in my view. And, as I said in my provisional decision, when Mr W did struggle to recall events, he said so – which suggests to me his recollections of receiving the Scorpion insert hadn't faded.

In short, I think the most plausible explanation for Mr W saying he received the Scorpion insert is because he did actually receive it. Mr W's later recollections to the contrary and his arguments about the evidence provided by ReAssure don't persuade me otherwise.

## 2. Investment structure and performance

In my provisional decision I said when Mr W was completing the 2018 questionnaire for the independent trustee, his investment had “apparently kept to its repayment schedule”. Mr W says this is incorrect. He points out that there hadn't been a repayment schedule and no income had actually been paid to him at that point (or any other point). His annual statements reflected the interest his investment was supposedly accumulating but that interest (and principal) never actually made it into Mr W's pension. For this reason, Mr W retained confidence in the investment and the answers he gave to the questionnaire were – in his view – tainted as a result.

On the returns produced by the investment, Mr W and I were, and remain, in agreement. I never said funds had been paid to Mr W, just that the investment *appeared* to be performing in line with expectations and Mr W therefore had confidence in the investment right up to 2018. Where I do disagree with Mr W is the implications of this. For the reasons given above, I don't believe the apparent performance of the investment could, reasonably, have caused Mr W to give factually incorrect answers to a series of straightforward questions.

## 3. How Mr W was introduced to the investment

In my provisional decision I said that Mr W had become interested in the Dolphin investment after hearing about it from a colleague, who offered to put Mr W in touch with a broker. I remained open to the possibility that Mr W did speak to that broker. But, based on the answers Mr W gave to the independent trustee questionnaire, I concluded there wasn't persuasive evidence that Mr W had been given advice by anyone. In response, Mr W has named the broker and said he was “assisted and advised by an unregulated agent”.

My thoughts on this haven't changed. Yes, Mr W may well have been in contact with a

broker. But his answers to the questionnaire don't indicate to me he was advised by anyone:

*"I chose the investment myself due to the track record, potential returns and after discussion with a colleague who had also invested."*

*"I looked at a couple of options but decided that where I invested was a secure investment for my pension."*

*"I considered my options and decided myself."*

*"I was happy to choose myself what to invest in and understood the risks from the information I saw."*

*"Did you receive financial advice when joining the scheme? No I just wanted to see if I could obtain higher returns elsewhere."*

Mr W's framing of the issue is helpful in this respect. He says that the unregulated broker didn't just provide information to him. He says the broker passed comment and made a "value judgment" on that information. But I don't think the comments above support that conclusion. There's little to show "value judgments" were made or that Mr W was swayed by anyone else when he decided to transfer.

I recognise Mr W's reservations about referring to the questionnaire. But, again, it's unclear to me why Mr W would have put down incorrect statements to questions posed to him by the independent trustee. There doesn't appear to have been anything to gain from doing so. And if he couldn't remember something he said so, which suggests his recollections on how he came to transfer were clear. And his statements – which are numerous – are all consistent. With all this in mind, I see no persuasive reason to change my conclusions on this. I remain satisfied that Mr W didn't receive financial advice and he would have told ReAssure as much had he been asked about this at the time.

#### 4. ReAssure's due diligence

In my provisional decision, I found that ReAssure should have followed the steps outlined in the Scorpion action pack to structure its due diligence on Mr W's transfer. I didn't think there was persuasive evidence to show that it had done so with any sort of rigour. If it had followed the guidance, I thought ReAssure would have established that there were some of the warning signs of pension liberation identified by the action pack. But I thought it would nevertheless have concluded that the liberation threat was minimal given Mr W would have explained that he wasn't transferring in order to receive a payment that could have been considered as being unauthorised.

I went on to say that ReAssure wouldn't, therefore, have needed to do anything else. If it had done its due diligence, it would have found liberation wasn't a likely threat and it could, therefore, have allowed the transfer to proceed without further action. Mr W disagrees with this. He says it is incorrect to say the Scorpion guidance required businesses to only look out for "early release pension liberation". He says if that was the case, providers would have been told they could ignore the guidance if a transferring member was over the age of 55. And he argues that some of the evidence ReAssure should have unearthed ought to have caused it concern even if the threat of "early release pension liberation" was minimal. In Mr W's view, a recently registered receiving scheme, a newly incorporated sponsoring employer, a lack of employment link to that employer, an unregulated overseas investment promising unrealistic returns and the provision of regulated financial advice by an unauthorised person, all point to a scam that ReAssure ought to have been alive to.

I've already addressed why I don't think Mr W was given financial advice and why it would have been unlikely for Mr W to have said anything to the contrary had he been asked by ReAssure. But I accept (as I did in my provisional decision) that ReAssure ought to have picked up on many of the other factors Mr W has pointed to. But my view on what this means for the outcome of the complaint still differs to Mr W's.

It's true that unauthorised releases of cash from, or via, a pension arrangement aren't limited to just payments made to transferring members under the age of 55. But that doesn't mean a business's due diligence had to be as wide-ranging as Mr W argues. To make this point I think it's helpful to refer to the February 2013 Scorpion guidance (which is the relevant one for Mr W's complaint) and the Scorpion guidance that was issued in July 2014:

- 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."* Whereas the front page of the 2014 Scorpion insert says the following: *"A lifetime's savings lost in a moment...Pension Scams. Don't get stung."*
- The 2013 Scorpion insert 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."* The 2014 Scorpion insert also warns about taking cash from a pension before the age of 55. But it also warns about the dangers of *"one-off investment opportunities"* and the potential to lose an entire pension pot. Tax isn't mentioned at all.
- The 2013 Scorpion action pack is titled 'Pension Liberation Fraud'; the 2014 action pack is titled 'Pension Scams'.
- The case studies in the 2013 Scorpion action pack are solely about people wanting to use their pension in order to access cash, 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". In contrast, the 2014 action pack included a case study about someone transferring in order to benefit from a "unique investment opportunity" – an overseas property development – which subsequently failed causing the consumer to lose his entire pension.

It's also important to note that in August 2014 the FCA started to voice concerns about people being encouraged to transfer their pensions in order to invest in unusual assets such as overseas property, forestry and biofuels. The FCA highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.

The above shows that at the time of Mr W's transfer, transferring schemes were being directed to the threat posed by people wanting to take cash from their pensions in an unauthorised manner which was seen as being most likely when someone was under the age of 55. The potential for people to lose money, and suffer tax charges, from suspect investments was commented upon but only in so far as it was seen as being part and parcel of someone taking an unauthorised payment from their pension, rather than being something to look for in isolation. That particular concern came more into focus later on.

Mr W's reference to the TPR press release that accompanied the launch of the 2013 Scorpion guidance helps illustrate the point. He points to the following statement from the

press release:

*“The remainder of their funds are likely to be invested in highly dubious and risky, unregulated investment structures, often based overseas. The amount that has been ‘liberated’ from pension schemes in this way is known to be in the hundreds of millions of pounds, with thousands of members affected.”*

Mr W’s point is that accessing pensions early wasn’t the only concern of the guidance – unregulated, overseas, investments were also a concern. But the context within which the above quote is framed is important here. On reading the press release as a whole, it’s clear that attention isn’t being drawn to overseas investments in order for ceding schemes to view them as a scam threat in their own right and to act accordingly. Rather, overseas investments are presented as a possible feature of scams involving the early access of pension funds – and it is the early access of pension funds that is presented as the threat ceding schemes are told to be guarding against. The point is mirrored in the 2013 Scorpion action pack and insert which say:

*“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.”*

*“Ask for a statement showing how your pension will be paid at retirement, and question who will look after your money until then”*

The portrait of a scam as sketched out in the 2013 guidance isn’t therefore one where the transferring member is motivated by a specific investment of the type Mr W invested in. Instead, the investment is a means to misappropriate transferred funds which were transferred for other reasons – namely to access pension savings in an unauthorised way. The investment is framed as being more of an afterthought in the member’s mind. As explained above, it was only in 2014 that the emphasis broadened and schemes were directed towards members wanting to transfer because they had become interested in a particular investment opportunity. So my view was – and remains – that the presence of unregulated investments wouldn’t have been a reason, in itself, for a firm to consider a scam was in progress.

Mr W points to a broader issue which is that had ReAssure done more thorough due diligence, it would have found some elements of the transfer that would, at first glance, have looked unusual and not in keeping with the usual circumstances behind a transfer to an occupational scheme. In particular, Mr W points to the lack of connection between him and the receiving scheme’s sponsoring employer. In Mr W’s view, this should have remained a concern – even after the risk of him receiving an unauthorised payment had been discounted – and should have been brought to his attention. In Mr W’s view, this would have prompted him to reconsider his actions.

However, I come back to what Mr W has said about the transaction. He considered the decision to transfer as being very much his own and would, most likely, have said as much at the time had he been asked. And the catalyst for his decision was a colleague and not an unsolicited introduction. Again, I see no reason why he would have said anything different had he been asked. So Mr W wouldn’t have given the impression that he was being led through a process by another party acting in a potentially unlawful way – which would be the usual pattern for someone falling victim to a scam. It’s an important point that goes to the heart of this case: Mr W’s actions would have appeared (and indeed were) self-directed and a business could, reasonably, have taken comfort from that – especially when one considers the threat of pension liberation would also have appeared minimal. I’m satisfied ReAssure wouldn’t, reasonably, have thought a scam was in progress.

With all the above in mind, and taking into account the need to process the transfer in a timely manner, I don't think it would be fair and reasonable to expect ReAssure to have given Mr W any warnings or directions beyond those sent to Mr W in the Scorpion warning materials.

I'm also satisfied Mr W wouldn't have stopped his transfer even if ReAssure had done more thorough due diligence in line with the Scorpion action pack. The end result of any such due diligence wouldn't have resulted in any warnings being given to Mr W. And, as I said in my provisional decision, I don't think the mere act of contacting Mr W and asking questions about his transfer would have prompted a change of heart. Any due diligence questions would have been asked with the intention of establishing the liberation risk Mr W was facing – a risk Mr W didn't think applied to him and one he had already been warned about when he was sent the Scorpion insert.

## 5. Conclusion

Having reviewed the case once again, and having taken on board comments in response to my provisional findings, I see no reason to reach a different decision on Mr W's complaint. Therefore, for the reasons outlined above and in my provisional decision, I don't uphold the complaint.

### **My final decision**

For the reasons given above, and in my provisional decision, I do 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 19 March 2024.

Christian Wood  
**Ombudsman**