DRN-4977836

The complaint

Miss D has complained about a transfer of her ReAssure Limited personal pension to a small self-administered scheme (SSAS[1]) in July 2014. Miss D's SSAS funds were subsequently used to invest in an overseas commercial property development and a discretionary fund management service. The overseas commercial property investment now appears to have little value. Miss D says she has lost out financially as a result.

At the time of the events complained about Miss D's pension was provided by a different firm. ReAssure acquired some of that firm's business in 2020 and is now responsible for responding to the complaint. For ease of reading I will only refer to ReAssure within this provisional decision.

Miss D says ReAssure failed in its responsibilities when dealing with the transfer request. She says it should have done more to warn her of the potential dangers of transferring, and undertaken greater due diligence on it, in line with the guidance she says was required of transferring schemes at the time. Miss D says she wouldn't have transferred, and therefore wouldn't have put her pension savings at risk, if ReAssure had acted as it should have done.

Provisional decision

On 5 August 2024 I issued a provisional decision. For ease I've reproduced the relevant extracts of that below.

"*What happened*

In 2013 Miss D received an unsolicited call from a firm she believes was called Wise Review Limited offering a free pension review. Later a representative of another firm visited her. Miss D believes that firm was First Review Pension Service (FRPS[2]). She said she was given advice to invest in a hotel development abroad run by The Resort Group (TRG) and also a discretionary fund management service, operated by a firm now called Parmenion Capital Partners LLP. Miss D said she was told to expect a return in excess of 10%. She said this sounded like a realistic opportunity to significantly increase her pension savings.

In December 2013 a company was incorporated with Miss D as director. The company was named after where she lived and her year of birth. I'll refer to this company as R. Miss D also signed documents to open a SSAS with Cantwell Grove Limited as administrator. R was recorded as the SSAS' principal employer.

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[1] A SSAS is a type of occupational pension in which the members are also trustees. So they take responsibility for operating the scheme. It's an arrangement typically intended to meet the needs of people who are self-employed or company directors, so it was an unusual arrangement for someone in Miss D's circumstances (who was neither). SSASs are not regulated in the same way as personal pensions, with far fewer protections. They can hold a wider range of investments and assets. As an occupational pension, a SSAS must be sponsored by an employer company. Normally (and logically) that would be a company employing the scheme members or providing them with an income, although this wasn't a requirement.

[2] I've seen nothing with FRPS' name or business stamp on any of the documents presented to me.

Cantwell Grove sent papers requesting the transfer of the funds Miss D held in her ReAssure personal pension to R's SSAS in February 2014. Cantwell Grove also provided ReAssure with:

- *A signed form dated 3 February 2014 allowing ReAssure to transfer Miss D's pension funds to her SSAS.*
- *Confirmation that it had warned Miss D about pension liberation and given her a copy of a leaflet (referred to as the "Scorpion leaflet" because of the imagery it contains) produced by The Pensions Regulator (TPR) which warned about pension liberation*[3]*.*
- *A letter from Miss D (the February letter) which said Cantwell Grove had explained pension liberation to her along with the risks of transferring her pension. She said she hadn't been offered any cash incentive to transfer nor was she trying to access her retirement benefits before the age of 55.*
- *A letter from HMRC confirming the SSAS was a registered scheme.*
- *The scheme trust deed.*
- *A Q&A document which said, amongst other things, that as required under s.36 of the Pensions Act 1995, the trustee (i.e. Miss D) was taking appropriate advice about whether the proposed investments were satisfactory for the scheme's aims, from a Financial Conduct Authority (FCA) authorised firm called Sequence Financial Management Limited (Sequence)*[4]*.*
- *The Q&A document said Miss D was considering investing in a discretionary fund management service provided by Parmenion as well as commercial property offered by TRG.*

On 5 March 2014 Miss D phoned ReAssure and asked it to put the transfer process on hold. She called it again on 3 April confirming she wanted the transfer to proceed. 11 days later, on 15 April ReAssure sent her a "member discharge and declaration" form (the declaration). It asked Ms D to confirm she had read the letter ReAssure sent to her on 15 April which "outlined the concerns" it had with her transfer request. ReAssure asked her to sign a statement saying she wished to proceed with the transfer and to confirm (amongst other things):

- *She had read TPR's leaflet about pension liberation which ReAssure had sent to her.*
- *She had "read and understood the Important Information about Pension Transfers and how this may impact" on her.*
- *She understood that if the receiving scheme is designed to allow access to pension benefits before age 55 there was a serious risk of significant tax charges and fees.*
- *She would not hold ReAssure responsible nor seek any compensation or payment of any kind for any tax charges, fees or losses of any kind because of the transfer.*
- *The declaration was true and correct.*

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[3] At that time pension liberation referred to schemes offering methods of accessing pension funds in an unauthorised way (before the minimum retirement age of 55, for instance). It can have serious consequences, including punitive tax charges and exposing pension savings to scams.

[4] I've seen no other evidence of Sequence providing Miss D with any advice at all.

The form also asked Ms D whether she had or had not taken financial advice. Ms D annotated it to say she had taken financial advice.

Ms D signed and dated the declaration on 22 April 2014. But ReAssure didn't receive it until 10 June 2014.

In the meantime, on 8 May 2014, a firm called Broadwood Assets Limited wrote to Miss D in her capacity as sole trustee and member of her SSAS. It said it was providing appropriate advice under s.36 of the Pensions Act 1995. It said the scope of its advice was limited to this and it hadn't advised her on the establishment of her SSAS. It added that the nature of its advice wasn't regulated under the terms of the Financial Services and Markets Act 2000 (FSMA). Neither was Broadwood Assets regulated or authorised by the FCA to give financial advice.

The letter said the TRG investment was a "credible and substantive" arrangement that didn't facilitate pension liberation and was suitable to be held in a SSAS. But it also warned Miss D that the investment was risky, "highly illiquid" and not suitable for a cautious investor. It added that if Miss D preferred advice on the suitability of the investment for her personally, she should seek regulated financial advice from an independent financial adviser. It also recommended she should take independent financial advice regarding the SSAS' cash holdings.

ReAssure transferred Miss D's pension fund of £63,383 to her SSAS on 13 June 2014. She was 49 years old at that time. On 24 July 2014 Miss D then invested £35,000 from her SSAS in TRG's overseas development. Some months later she invested £26,071 with Parmenion.

I understand the TRG investment did initially provide some returns, but these were lower than expected and – from my understanding of events – these payments would have dried up around 2019. The investments are now considered illiquid and incapable of sale on the open market. I don't have current figures for Ms D's Parmenion investments but as of 2019 they were valued at £32,303.

In December 2020 Miss D complained to ReAssure. Briefly, her argument is that ReAssure ought to have spotted, and told her about, a number of warning signs in relation to the transfer, including (but not limited to) the following:

- *The SSAS was newly registered.*
- *The sponsoring employer was newly registered and was dormant having been set up solely to allow "pension holdings".*
- *The catalyst for the transfer was an unsolicited call offering a free pension review.*
- *The majority of her investment was overseas and high risk.*

ReAssure didn't uphold the complaint. It said Miss D had signed to confirm she'd read TPR's leaflet which ReAssure had sent to her. She also confirmed that she would not take any action against ReAssure in relation to any losses.

Miss D brought her complaint to the Financial Ombudsman Service. One of our Investigators looked into it. In short she said that Miss D's own letter to ReAssure said she was aware of pension liberation issues and she hadn't seen anything else which would have given ReAssure cause for concern. So she didn't recommend upholding the complaint.

Miss D didn't agree with the Investigator's complaint assessment. So, the matter was passed to me to decide.

What I've provisionally 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.

When doing so I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The relevant rules and guidance

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

- *Principle 2 – A firm must conduct its business with due skill, care and diligence;*
- *Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;*
- *Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and*
- *COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.*

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

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

- *An insert to be included in transfer packs (the Scorpion insert). The insert warns readers about the dangers of agreeing to cash in a pension early and identifies a number of warning signs to look out for.*
- *A longer leaflet issued by TPAS which gives more information, including example scenarios, about pension liberation. Guidance provided by TPR on its website at the*

time said this longer leaflet was intended to be sent to members who had queries about pension liberation fraud.

- *An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "look out for" various warning signs of liberation. If any of the warning signs applied, the action pack provided a checklist that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where transferring schemes still had concerns, they were encouraged to write to members to warn them of the potential tax consequences of their actions; to consider delaying the transfer; to seek legal advice; and to direct the member to TPAS, TPR or Action Fraud.*

TPR issued the guidance under the powers at s.12 of the Pension Act 2004. So, 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. Therefore, 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 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 its specific purpose was to inform and help ceding firms, like ReAssure, 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 a turning 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. And where the recommendations in the guidance applied, without a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations. With that in mind, I take the view that personal

pension providers dealing with transfer requests needed to heed the following:

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

2. *When TPR launched the Scorpion guidance in February 2013, its press release said the Scorpion insert should be provided in the information sent to members requesting a transfer. It said on its website that it wanted the inclusion of the Scorpion insert in transfer packs to "become best practice". The Scorpion insert provided an important safeguard for transferring members, allowing them to consider for themselves the liberation threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. So, all things considered, I think ceding schemes should have sent the Scorpion insert as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the 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 pension liberation scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The action pack points to the warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. So, 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.*

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

Miss D said she received a cold call offering a free pension review. A representative from a firm, who Miss D believes was FRPS, then visited her. However, I can't find any other reference to FRPS documented anywhere on the papers relevant to the time of the transfer.

What is clear is that in October 2013 Miss D signed a letter of authority (LOA) giving ReAssure permission to share her pension details and transfer documents with Wise Review and Sorensen Financial Services (SFS). Wise Review's covering letter described itself as an "Introducer Appointed Representative to a number of financial businesses". Its LOA said it was an appointed introducer to SFS which was acting on Miss D's behalf.

At that time SFS was FCA authorised. But it's FCA registration doesn't list Wise Review as one of its appointed representatives. However, another firm called We Review was listed. I'm

aware that We Review and Wise Review operated from the same address and shared a controlling director. Both firms entered administration in 2014 and appointed the same administrator from 28 March 2014. The Administrator's statements referred to them as being part of the same group. The Administrator described Wise Review as being an "introducer of pension transfer leads to various pension providers and intermediaries". And a similar statement in respect of We Review said it was "an appointed representative of a particular pension provider" (which the FCA register confirms was SFS at the time) and that it received leads and conducted financial reviews for consumers for Wise Review.

So, on balance, it seems likely it was Wise Review which first contacted Miss D. And after it received her pension information from ReAssure, it referred her to We Review to conduct the pension review. And given the timing, that is that Miss D incorporated company R in 2013, long before Wise Review or We Review went into administration, I think it was more likely than not that it was a representative from We Review and not FRPS that visited Miss D and recommended the transfer. And at that time, We Review would have been acting on behalf of a regulated entity in SFS. However, the documents Cantwell Grove sent to ReAssure requesting the transfer in February 2014 didn't refer to Wise Review, We Review or SFS, instead it only referred to Miss D taking advice from a firm called Sequence in respect of Miss D's role as a SSAS trustee. But, I've seen no other evidence of any involvement from Sequence at all. So I'm satisfied that, at that time it was We Review, which was an appointed representative for SFS that made the initial recommendation for Miss D to transfer.

Miss D said the representative recommended the TRG investment telling her to expect returns in the range of 10% to 12% each year. She thought this sounded like a realistic opportunity to significantly increase her pension savings.

Miss D said the adviser didn't make it clear that he wasn't FCA authorised. But as I've explained above We Review was an appointed representative of an authorised firm. So the adviser was in effect acting in an authorised capacity. And I think it was We Review's adviser who made the investment recommendation and took Miss D through the required steps to set up the TRG investment. In order to achieve that she needed to set up her own company and establish a SSAS. Doing all of that, setting up her own limited company, establishing a SSAS, transferring her existing pension and investing in an overseas property development – were complex and unusual arrangements for someone such as Miss D. She wasn't a sophisticated investor. I can't see she'd have done all that or even known that sort of arrangement was available to her, unless she'd been told it would be a good idea and she'd end up better off. So I'm satisfied that action was recommended to her.

Cantwell Grove then submitted papers to effect the transfer. Miss D signed a letter as part of the application, saying:

- *She was aware of the rise in pension liberation.*
- *She had decided she wanted to transfer in order to take advantage of the investment opportunities this provided, which were not in any way connected with pension liberation.*
- *She had received detailed information about the scheme, how it operated, who administers it and the risks associated with transferring out of her existing pension arrangement.*

- *She was also aware of the risks of pension liberation but she wasn't planning to access her pension before age 55 and was aware of the tax liabilities if she tried to do so.*
- *She had not been offered cash or any other incentive to complete the transfer.*
- *She asked ReAssure to proceed with it as soon as possible.*

The letter would appear to be from a template, rather than drafted by Miss D herself. But she has undoubtedly signed it herself and its message is clear that Miss D was aware of the risk of pension liberation. But that wasn't what she was doing. Instead she wanted to transfer because of the advantageous opportunities doing so offered.

ReAssure said, in its response to Miss D's complaint that a "disclaimer form was being sent" to Miss D on 4 March 2014. Although it hasn't provided evidence in support of that or evidence to show if it sent the Scorpion insert/leaflet or any other information to Miss D at that time. But Miss D called ReAssure the next day and asked it to put the transfer on hold. However, there's no record of why Miss D gave that instruction in the papers I've seen.

Miss D called ReAssure again in April 2014 and told it she wanted the transfer to proceed. ReAssure then sent her the declaration asking her to confirm several things before proceeding with the transfer. The declaration's opening statement said that Miss D had read the letter ReAssure had sent to her on 15 April 2014 which outlined its concerns about her transfer. But the letter of 15 April which I've seen doesn't raise any concerns about the transfer; it simply says that Miss D needed to complete the declaration before the transfer could go ahead. So it's not clear if ReAssure believed it had sent other information to her. The declaration confirmed that Miss D had read and understood the Scorpion leaflet. She also confirmed that she'd read and understood the "Important Information about Pension Transfers" but it's not clear what that refers to. Miss D signed the declaration on 22 April 2014.

However, in the meantime both Wise Review and We Review had gone into administration. From other cases I've seen, I'm aware that FRPS picked up some of their ongoing clients after the administration process began. So it seems likely that, at the time both those firms entered administration FRPS took-over seeing Miss D's transfer process to its conclusion.

FRPS was not FCA authorised but I haven't been shown any evidence that ReAssure was aware of its involvement.

ReAssure received Ms D's completed declaration form in June 2014 and effected the transfer to her SSAS shortly after.

<u>What did ReAssure do and was it enough?</u>

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

Reassure received Miss D's LOA allowing it to give pension information and transfer documents to Wise Review in October 2013. But there's no evidence it sent Miss D the Scorpion information at that time, which I think – for the reasons given above – was an oversight. I note that Miss D signed the declaration which said she had read and understood the Scorpion information (although it didn't refer to it by that name and simply called it TPR's leaflet). So it's not clear whether ReAssure ever did, itself, send Miss D the Scorpion leaflet. And if it didn't I think it should have done.

However, Cantwell Grove said it had given Miss D the Scorpion leaflet. Generally, I don't think it would be reasonable for ReAssure to rely on a third party's comment that it had passed on information that could prevent its customer from being scammed out of their pension. But, as I explain below, I think it's more likely than not that Cantwell Grove did give her a copy of the leaflet.

I accept that Miss D might not recall receiving the Scorpion information. But the events took place many years before she complained. So it may well have slipped her mind in the interim. And it's worth noting that Miss D said in her initial complaint that she had no direct contact from ReAssure and received no paperwork from it. But she had at least two phone conversations with ReAssure in March and April 2014. She also clearly received ReAssure's letter of 15 April enclosing the declaration. She completed that and returned it. So, it's plain that, as is to be expected, her recollection of events which took place a number of years earlier, isn't as accurate as she may like to think it is.

Further, Miss D signed a letter to say she was aware of the issues around pension liberation and had received "guidance and information" concerning that. Her letter doesn't expand on what the guidance was. But it said she understood the risks of liberation and was not seeking to release pension funds before age 55. She also said she was not receiving any form of cash incentive. So she refers to issues the Scorpion insert discusses regarding pension liberation. In addition she separately also signed the declaration to say that she'd read and understood the leaflet.

So, the evidence indicates Miss D was aware of the sort of warnings the insert contained. And while I think ReAssure should have had a record of sending Miss D the Scorpion insert itself, I don't think it would have made a material difference to her choices if it had. That's because Ms D's signed evidence in both the February letter and also the declaration suggest she was already aware of the risks that the Scorpion insert was intended to warn her about. But she had decided to proceed with the transfer while in possession of that information.

It's fairly plain that Miss D's February letter is a template, so she didn't draft it herself. Similarly, the declaration is prepopulated with information Miss D needed to confirm in order for the transfer to go ahead. But, the letter is only short and its meaning is quite clearly set out. So I don't think Miss D would have signed it if she didn't understand it. Similarly the declaration is easy to follow, and asks Miss D to confirm the information she is giving is "true and correct", which she was plainly content to do. In those circumstances, unless Miss D was happy to clearly lie when completing pension transfer information, I think it's likely she had received and read the Scorpion leaflet.

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 appropriate action if it was apparent their customer might be at risk. But the published version of the TPR's action pack at the time gave a list of warning signs and said providers should be "looking out for pension liberation fraud" (the heading under which this information was listed). So the guidance concentrated on pension liberation – that is the unauthorised release of pension funds. And the transfer here took place before TPR broadened the scope of its guidance to cover scams more generally.

With that in mind, I think the information ReAssure had available to it when considering the transfer would have reasonably reassured it that Miss D was not at risk of a pension liberation scam.

While ReAssure could have made further enquiries using the action pack's checklist, I don't think it was under an obligation to do so. That's because Miss D had confirmed in her February letter that the SSAS did not allow unauthorised payments which would incur significant tax charges. And the information gave when signing the declaration supported that. Also Cantwell Grove had sent ReAssure a copy of the SSAS trust deed which confirmed it didn't allow unauthorised access to funds. So, Miss D wouldn't have been able to access her pension before age 55 or in some other unauthorised manner associated with pension liberation.

Miss D said the scope of the Scorpion guidance went beyond early pension release and referred to scams more generally. She said that, otherwise, it would have simply said that if a consumer was already over the age of 55, and therefore not trying to access their pension funds early, then the guidance didn't apply or pension providers didn't need to consider it. And as it didn't say that, then the guidance was intended to cover other pension 'scam' type situations. But, pension liberation isn't restricted to accessing funds before age 55 and can take other forms, for example by making unauthorised loans or incentive payments from a pension.

Further, the wording of the guidance is focused on pension liberation. In fact, at that time, the action pack only uses the word scam once. It says:

"As you may be aware, '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."

So, in that context the guidance links the word scam as being a type of pension liberation fraud, rather than in a broader context.

Similarly, Miss D said TPR's press release announcing the guidance in February 2013 said there was a significant concern about pension monies going into unregulated investments. She said this was also described as liberation. But I don't think that's a fair interpretation of the press release. That's because:

- *It's opening paragraph refers to a crackdown on "predators" claiming to be able to release pension funds "before the law allows", in other words liberation.*
- *The second paragraph explains methods introducers or advisers use to promise to release pension cash "before the age of 55".*
- *The third paragraph explains that such advisers will not inform consumers of the adverse tax charges and fees that might erode their pensions. This paragraph does refer to risky, overseas and unregulated investments but it does so in the context of funds already "liberated", that is accessed in an unauthorised manner.*
- *Its fifth paragraph refers to warning signs for pension providers to look out for and gives the example of funds being passed to consumers before age 55.*
- *It contains a quote from a government minister who also refers to pension funds being intended for retirement and so should not be released before age 55.*

So I think both the press release and Scorpion guidance itself are heavily weighted towards looking out for signs of pension liberation – that is the unauthorised access of funds, particularly before age 55.

Miss D has also argued that ReAssure should have checked her employment status so as to ensure she had a statutory right to transfer. I'll explain that in order to have that right to transfer to an occupational pension, which a SSAS is, she had to be earning. She said the outcome of those checks would have caused ReAssure concerns because of a lack of an employment link to the SSAS' sponsoring employer. But I think she's mistaken. As far as I'm aware there was no obligation on ceding schemes to check, as a matter of course, whether the transferring member was earning. Miss D has referred to a Pensions Ombudsman decision in which she said that a provider needed to check that an individual was earning. But in that case the ceding scheme involved had clear evidence that the member concerned was unemployed and in receipt of benefits. That was not the case for Miss D and ReAssure had no reason to think she wasn't earning either. Indeed Miss D has confirmed she was employed at the time of the transfer application.

Also Miss D was entitled to establish an employer to create a SSAS. And the evidence indicates that, on balance, she was advised by an appointed representative of an authorised firm, SFS, in order to do so. But, even if that wasn't the case, and it was – for example – an unregulated adviser from FRPS who made the transfer recommendation, I don't think that would make a difference. That's because, as I've already said I don't think there was any evidence before ReAssure that would have given it sufficient cause for concern to undertake further due diligence. So, I see no reason why ReAssure would, or should, have probed this issue any further.

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. And Miss D had signed a letter to say she was aware of pension liberation and the purpose of the transfer was not in any way connected with it. So the evidence before ReAssure indicated that Miss D was not at risk of pension liberation. It follows that I see no persuasive reason why ReAssure shouldn't have accepted Miss D's signed endorsement that she understood the risks of pension liberation, which is what the Scorpion guidance focused on at that time.

Summary

I have great sympathy for the position Miss D finds herself in. It's likely she's lost a significant amount of her pension savings by investing in high-risk investments which were unlikely to produce the returns she was promised. But the TPR guidance at that time focused on the risk of consumers falling victim to a pension liberation scam. And for the reasons given above, I think there was enough information for ReAssure to reasonably conclude that Miss D wasn't at risk of pension liberation. So, I don't think it would be fair or reasonable in the specific circumstances of this case to conclude that ReAssure ought to have delayed the transfer process to conduct further checks simply to safeguard against the risk of pension liberation. That's because I think it had already received enough evidence to reasonably conclude it could discount that threat."

Developments

Ms D, via her representatives, didn't agree with my provisional decision. Amongst other things she said:

- I had made a factually incorrect assumption that an FCA regulated firm had advised Miss D when in fact it was FRPS which provided her with advice. The representatives provided evidence to support that.

- My provisional findings were not consistent with industry knowledge at the time. She referred to another pension provider's, Royal London's, response to a High Court judgment in respect of a different consumer. Miss D believes that her circumstances are similar to those of the other consumer in the court case. She said Royal London's action in that instance was in line with what was considered good industry practice at the time.
- My provisional decision runs contrary to the 2013 Pensions Regulators Guidance and other publications on the interpretation of "pension liberation". She said my interpretation of pension liberation was too narrow; liberation went beyond early release of pension funds and also encompassed investment in unregulated scam type investments.
- My findings were not consistent with other decisions issued by Financial Ombudsman Service colleagues.
- Providers like ReAssure should have been looking out for warning signs of a wide range of scams from February 2013 onwards and not just for signs of early release pension liberation.
- There were a large number of warning signs of a potential scam that ReAssure should have picked up on and investigated further; including that the SSAS and its sponsoring employer were recently set up and registered.

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.

In bringing this complaint, responding to our Investigator's assessment of it and replying to my provisional decision Miss D has – via her representatives – made many detailed points. I've considered everything she's said and all the supporting materials she's referred to. However, our rules don't require me to address or respond to each and every point raised. We're an alternative to the court not a substitute for it. As such my role is to decide how a complaint should be resolved with minimal formality. And I aim to present my conclusions in as clear and as concise a manner as I can. In doing so I focus on the key issues and the reasons that are crucial to my decision making. So, if there's something I haven't mentioned, whether in my provisional decision or in this final determination, it isn't because I've ignored it, I haven't. It's because I'm satisfied I don't need to comment on it to be able to reach what I think is the fair and reasonable outcome.

Who gave Miss D advice to transfer her ReAssure pension to her Cantwell Grove SSAS?

For the reasons given in my provisional decision I concluded that it was more likely than not that an adviser acting for SFS had most likely given Miss D advice to transfer. I pointed out that there was no documents on the file that I'd seen which included FRPS' name or business stamp at the time of the transfer. I've carefully considered the file of evidence that was before me again, and I can confirm that my comments in the provisional decision were entirely accurate. That is I had not been presented with any documents showing FRPS' name or business stamp from the time of the transfer.

Miss D's representatives have now shown me documents they obtained from Cantwell Grove's file where FRPS verified Miss D's identity in January 2014. The representatives said

they had previously presented these documents to the Financial Ombudsman Service and said I should "*see pages 173-174*".

However, prior to their response to my provisional decision, the representatives did not present anything to us with "*pages 173 -174*" on them. In fact the representatives' entire submission to us, including their letter of complaint and Miss D's complaint form, is in an unpaginated bundle of a total of 78 pages. So I can only assume that the representatives chose not to send us all the information it held. Had it done so I wouldn't have said that I had not seen anything with FRPS' name or business stamp on it.

That said I accept the documents the representatives have recently shown me are evidence of FRPS' involvement from an early stage. And, as I'm aware that Wise Review principally acted as an introducer to other firms, I agree that it's more likely than not that Wise Review introduced Miss D to FRPS. So it's also more likely than not that it was FRPS which recommended that Miss D should transfer her pension funds to the Cantwell Grove SSAS.

However, it's notable that when referring to my provisional assumption that it was SFS which had most likely given Miss D advice I added:

"*But, even if that wasn't the case, and it was – for example – an unregulated adviser from FRPS who made the transfer recommendation, I don't think that would make a difference. That's because, as I've already said I don't think there was any evidence before ReAssure that would have given it sufficient cause for concern to undertake further due diligence.*"

It follows that simply because I agree that it was FRPS and not SFS which had advised Miss D doesn't alter my provisional findings.

Miss D's other *comments on my provisional findings*

Miss D, via her representatives, said my definition of pension liberation (in footer number 3 above) was too narrow and that TPR's guidance was far broader. I'll comment first that my footer was a brief summary of my interpretation of the Scorpion guidance as it was presented at the time. It was not intended to be a definitive interpretation. However, when read in context with the rest of the narrative in my provisional decision I'm satisfied I interpreted the guidance as it came across in the documents and, as I described in my provisional decision, the press release TPR issued at that time.

So, as I said in my provisional decision, I think both the press release and Scorpion guidance of the time are heavily weighted towards looking out for signs of unauthorised access of pension funds, particularly before age 55. And Miss D has not provided any evidence that persuades me to alter my conclusions on that.

Miss D added that she didn't understand the point I was making when I said that pension liberation didn't only refer to accessing a pension fund before the age of 55. She said that accessing a pension fund by means of a loan or an incentive payment was another way of accessing it before age 55. But that's not right. If a consumer was being persuaded to access their funds in a manner that wasn't authorised by the authorities like HMRC, then that would constitute pension liberation regardless of the age they took that action.

Miss D also said that I had "*gone to great lengths to explain why you think the Pensions Regulator wasn't interested in protecting consumers against pension scams at this point*". But at no point did I comment on what TPR was or wasn't interested in. I simply explained what was plain from reading the guidance that was available to ceding schemes at the time. That is that it focused on the risk of unauthorised access to funds. And I set out the relevant wording I had seen that led me to that conclusion. Miss D hasn't provided any evidence

beyond her comments why that was wrong. That is she has not pointed to any additional wording within the guidance, save for one reference to a scam and another to investing in risky, unregulated or overseas investments (which I referred to in my provisional decision). However, as I said previously the above references were in the context of funds already liberated.

I further explained that when TPR reissued the Scorpion guidance in July 2014 the focus had moved to scams more broadly. Miss D has said this was wrong and that the July 2014 guidance didn't change significantly. But I think there was a notable shift in the emphasis on what ceding scheme should be on the look out for. For example while the 2014 insert again warns about accessing funds early, its front page says: "*A lifetime's savings lost in a moment … Pension Scams. Don't get stung*" without any emphasis on the tax consequences of early pension release that was present in the earlier version. The updated insert also warns about the dangers of "*one-off investment opportunities*" and the potential to lose an entire pension pot. Those were not prominent features of the 2013 publication.

Similarly, the 2013 action pack for businesses was titled "*Pension Liberation Fraud*" whereas the 2014 action pack is titled "*Pension Scams*". And the case studies in the 2013 action pack are solely about people wanting to use their pension in order to access cash before age 55, and the effects of doing so including punitive tax charges and high administration fees. Also the warning signs it highlighted included: "*accessing a pension before age 55*", "*legal loopholes*", "*cash bonus*", "*targeting poor credit histories*", and "*loans to members*". So, again, the emphasis was on accessing funds in an unauthorised manner. In contrast, the 2014 action pack included a case study about someone transferring in order to benefit from a "*unique investment opportunity*" which ultimately caused the consumer to lose his entire pension.

So at the time ReAssure was considering Miss D's transfer request, it was required to look out for the threat of pension liberation, that is unauthorised access to pension funds as I described in my provisional decision, rather than unregulated or high risk investment opportunities more generally. And while it did refer to unregulated and high risk investments the 2013 guidance did so only in the context of people investing in such schemes in order to access their pension funds in an unauthorised way. But the July 2014 Scorpion guidance broadened the issue of the warning signs for providers like ReAssure to look out for and incorporated scam type investments more generally.

Given the above, I'm satisfied that it was reasonable for ReAssure to have relied on the emphasis and focus of the February 2013 guidance, applicable at the time of Miss D's transfer, when considering her request and deciding whether further due diligence was required. And as I've said above, ReAssure had to take a proportionate approach and balance any caution and due diligence with the fact that consumers were entitled to request a transfer. And I don't think delaying all transfer requests, such as Miss D's, in order to carry out extensive due diligence in every case would've been proportionate. Rather I think it was fair that ReAssure made a judgement call based on the information available to it. And as I've explained, I think it was reasonable, based on the evidence given to it, for ReAssure to consider the risk of this transfer to be low.

That isn't to say that the risk did not exist or that there weren't other warning signs that ReAssure could have become aware of if it had asked further questions. But for the reasons given previously I think, having had sight of the letter Miss D signed, it was reasonable for ReAssure, in the context of taking a proportionate response, to decide that it didn't have good reason to delay the transfer and ask additional questions.

I will also add that I did not conclude, as Miss D has now argued, that she was not the victim of a pension liberation scam. Instead my conclusion was that it wouldn't have been fair to expect ReAssure to delay the transfer to conduct further checks when it had already received enough evidence to reasonably conclude it could discount the threat of pension liberation.

Miss D has also argued that my provisional decision is inconsistent with how Royal London approached a similar transfer request. In that instance Royal London refused the transfer on the grounds that the consumer did not have a statutory right to transfer. The consumer complained to the Pensions Ombudsman. He upheld Royal London's decision but the High Court[5] overturned that decision on appeal and said the consumer concerned did have a statutory right to transfer.

Miss D essentially said that, as the circumstances are very similar, ReAssure should have identified the same warning signs which Royal London did and refused or delayed the transfer. However, I was aware of the Royal London case when coming to my provisional decision. And I did so based on the individual circumstances of Miss D's complaint. Significantly, a change in facts can result in a difference in outcome to a complaint.

The facts in the two cases are different. For example, while Miss D says that the transfer request came at "*exactly the same time*" as the Royal London case that's not right. In Miss D's case Cantwell Grove submitted the transfer request in February 2014 and ReAssure completed it in June 2014. But, in the other case, according to the Pensions Ombudsman, Royal London received the transfer request on 23 July 2014. That is one day before TPR issued its updated version of the Scorpion guidance which, as I've said above, broadened the scope of issues for pension providers to look out for. And crucially it wasn't until September 2014, two months after the reissued guidance, that Royal London issued its decision to refuse the transfer request. And by that time I would have expected pension providers like Royal London and ReAssure to have analysed and implemented the updated guidance.

I will also say that the fact that one pension provider took certain action on an individual transfer request doesn't of itself establish good industry practice. So, the fact that ReAssure took a different approach to Royal London, at a different time and with different circumstances, doesn't necessarily mean ReAssure has acted unfairly or has fallen short of what it should have done. And, given the specific facts of Miss D's transfer, I'm satisfied – for the reasons given previously – that ReAssure didn't need to undertake the detailed due diligence Miss D has suggested. I'll repeat that given the evidence before it, I think it was reasonable for ReAssure to consider the threat of pension liberation – that is unauthorised access to funds – to be low.

Miss D has repeated her argument that ReAssure was required to check that she was earning and she said that was reinforced by the Pensions Ombudsman decision referred to in my provisional decision. But I reject that argument for the reasons already given. I'll repeat that as far as I'm aware there is no obligation on ceding schemes to check on a consumer's employment status in every case where a transfer to an occupational pension scheme is involved. Instead, my interpretation of the Pensions Ombudsman's decisions is that, only where there is cause for doubt that the consumer concerned might not be earning, is a ceding scheme required to make the necessary checks. Nothing in Miss D's recent submission has persuaded me that is not the case.

[5] Hughes v The Royal London Mutual Insurance Society Ltd [2016] EWHC 319 (Ch)

Similarly, Miss D has said that my provisional decision was inconsistent with two other decisions issued by my colleagues. But once again the facts of those two cases are not the same as for Miss D. In particular in one of those cases the consumer concerned had not submitted a letter saying that they were aware of the risks of pension liberation but were not attempting to access their funds in an unauthorised way. And in the other case the ceding scheme only completed the transfer in September 2014, some months after TPR issued its updated guidance. So, in both instances the circumstances are different to Miss D's.

Miss D said that it was unreasonable for ReAssure to have relied on her letter saying that she was not liberating her pension. She said it was a common part of the 'scam' for consumers to be led to sign a similar letter, without being taken through it. She added that the letter was pre-printed and it should have been obvious to ReAssure that it wasn't a genuine letter drafted by her and detailing her personal pension plans.

I acknowledged in my provisional decision that the letter was templated. But I said that didn't indicate that Miss D didn't understand it. And I think a reasonable person in Miss D's position would, even with very little financial or investment experience, take the time to familiarise themselves with the documents they'd signed and agreed to.

As I said in my provisional decision a firm had advised her to set up a limited company, establish a SSAS and transfer her pension savings. I think those actions would have been unfamiliar to Miss D. In those circumstances I think most reasonable people would try to ensure they knew what they were signing.

There was no evidence before ReAssure that Miss D was in any way vulnerable or unable to understand what she was signing. So, regardless that the letter was templated, I think it was fair for ReAssure to believe Miss D had read and understood the letter she had signed. And I don't think ReAssure would, reasonably, have considered the nature of the paperwork indicated a scam was in progress. So, I still don't think there was a persuasive reason why ReAssure shouldn't have taken Miss D's signed declarations at face value.

Miss D's also argued that her February letter didn't provide a declaration that she was aware of warning signs but was prepared to take the risk. And she said that if the relevant regulators considered it appropriate for ceding schemes to rely on a letter of this type then its guidance would have said so. But as I've said previously, at the time, the guidance was highlighting the risks of unauthorised access to pension funds and it was essentially informational and advisory in nature. It clearly didn't attempt, nor would it be practicable for it to try, to cover every possible eventuality, such as the possibility that consumers would submit letters of this nature or what to do if they did.

So I don't believe it's reasonable to conclude that the fact that the guidance didn't refer to how ceding scheme should respond to this situation explicitly means that they were acting outside of the guidance by accepting the information such letters contained.

Further, as well as the February letter Miss D had signed the declaration. In that she also confirmed she'd read and understood the Scorpion leaflet about pension liberation. So she had, more than once, and independently of the information sent with the Cantwell Grove transfer pack, confirmed that she was aware of the threats concerned with pension liberation. As I've said above, I think it was reasonable for providers like ReAssure to take a proportionate approach. In Miss D's circumstances I don't think it needed to take any further action.

Miss D has also repeated that there were a number of warning signs that ReAssure should have been alive to, such as – amongst others – her SSAS being recently registered, the

transfer coming as a result of a cold call offering a free pension review, and her SSAS being sponsored by a dormant company. But, as I've already said, Miss D had submitted a letter to tell ReAssure she was aware of the risks of pension liberation, had carefully considered the reasons to transfer and was not doing so for any reasons of pension liberation. So, for the reasons already given I don't think ReAssure had good cause to probe Miss D's circumstances further. This meant that the fact that the receiving scheme was recently registered didn't prompt the sort of enquiries that might otherwise have led to Miss D confirming to ReAssure that she was cold called, for example. And I remain of the opinion that it was reasonable for ReAssure to conclude that the risk of pension liberation, the thing TPR warned businesses about, was low.

It follows that I don't think it would be fair or reasonable in these circumstances to suggest that ReAssure ought to have delayed the transfer process to conduct further checks simply to further safeguard against an outcome that it should have already reasonably discounted.

My final decision

For the reasons given above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 25 September 2024.

Joe Scott
Ombudsman