DRN-4984793

Financial Ombudsman Service

The complaint

Mr D has complained, via a Claims Management Company ('CMC'), about a transfer of his ReAssure Limited ('ReAssure') personal pension to a small self-administered scheme ('SSAS') in September 2015. Mr D's SSAS was subsequently used to invest in Llana Beach Resort, an overseas commercial property development in Cape Verde. The investment now appears to have little value. Mr D says he has lost out financially as a result.

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

What happened

Mr D's personal pension was initially held with Legal & General Assurance Society, but the responsibility for it has since been transferred to ReAssure. For ease I shall only refer to ReAssure throughout this decision.

On 5 February 2015, Mr D signed a letter of authority allowing Capital Facts Limited ('Capital Facts') to obtain details, and transfer documents, in relation to his pension. Mr D says this followed an unsolicited approach. On 10 February 2015, Capital Facts wrote to ReAssure, enclosing Mr D's letter of authority. It requested information on Mr D's pension and discharge forms to allow a transfer. ReAssure sent Capital Facts the requested information on 27 February 2015. Capital Facts wasn't authorised by the Financial Conduct Authority ('FCA').

Mr D says he was attracted by the prospect of getting a significantly higher investment return than what he was currently receiving. He's said he was told the investment would produce returns that were greater than those in his ReAssure pension. He's said at the time he had no knowledge of investments or pensions, and he trusted the advice and information he was given.

In March 2015, a company was incorporated with Mr D as Director. I'll refer to this company as 'Business B.' On 10 April 2015, Mr D signed documents to open a SSAS with Cantwell Grove Limited ('Cantwell Grove'). Business B was recorded as the SSAS's principal employer.

On 14 August 2015, Mr D's transfer papers were sent to ReAssure by Cantwell Grove by post. Included in the transfer papers were: a discharge form completed with the details of the SSAS and signed by Mr D, a letter from HMRC confirming that the SSAS had been registered on 20 July 2015, and a 'Key Scheme Details Q&A' document from Cantwell Grove that stated, amongst other things, that the proposed investments to be made in the SSAS included a commercial property provided by The Resort Group PLC ('TRG'). Also included was a letter addressed to ReAssure that was signed by Mr D. The letter confirmed that he was aware of the issues relating to pensions liberation, he wanted to transfer to take advantage of investment opportunities, he wasn't attempting to liberate his pension, and he had not been offered any cash or other incentive to transfer.

On 16 September 2015, Mr D signed a 'Member Discharge and Declaration' that ReAssure had sent to him, confirming that he wanted to proceed with the transfer. I'll comment on the contents of this Declaration later in this decision.

Mr D's pension was transferred on 22 September 2015. His transfer value was around £19,700.

Another pension Mr D had with a different provider – Scottish Widows Limited ('Scottish Widows') – was transferred to the SSAS. Cantwell Grove sent an initial transfer request to Scottish Widows on 14 August 2015 that included the same documents (albeit addressed to Scottish Widows) as those in their transfer request to ReAssure. Scottish Widows wrote to Mr D on 20 August 2015, with reference to its responsibility to look out for warning signs of pension scams and The Pensions Regulator's ('TPR') website about that, to request further information about his link to Business B. Mr D responded to Scottish Widows on 11 September 2015.

On 13 October 2015, Scottish Widows wrote to Mr D and Cantwell Grove explaining that it considered Mr D had no statutory or contractual right to transfer, and that it wouldn't exercise its discretion to complete the transfer because of concerns it had about it. On 25 November 2015, Mr D sent a letter to Scottish Widows formally demanding it to make the transfer, which Scottish Widows refused.

Then on 13 May 2016, Mr D sent a letter to Scottish Widows that argued he had a statutory right to transfer and raised a complaint about its administration of his transfer request. And on 6 June 2016, Cantwell Grove submitted a new transfer request to Scottish Widows. On 16 June 2016, Scottish Widows wrote to Cantwell Grove and Mr D requesting further information about the transfer, and in its letter to Mr D it included warnings about potential pension scams. I'll comment on Scottish Widows' letters to Mr D and the information he provided to it in more detail later in this decision.

By 1 July 2016, Scottish Widows had received the information it had requested, and on 14 July 2016, it transferred Mr D's pension to the SSAS. His transfer value was around £22,700. Mr D was 48 years old at the time. Mr D made a later complaint to Scottish Widows about its decision to make the transfer. That complaint was referred to this Service and not upheld.

Mr D went on to invest £39,300 from his SSAS in a fractional share of a unit at the Llana Beach Resort. It seems the SSAS received income payments in connection with the investment over the years until 2019 when those payments stopped. The investment did not perform as expected and it now has little to no value. There are legal difficulties with the title to the property and there's no market for the investment, so it has no realisable value.

In August 2021, Mr D complained to ReAssure via his CMC. Briefly, his argument is that ReAssure ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including (but not limited to) the following: the SSAS was newly registered, there wasn't a genuine employment link to the sponsoring employer, the catalyst for the transfer was an unsolicited call, he had only been advised by an unregulated business that wasn't independent from the proposed investment, and that investment was in unregulated, overseas, high risk, non-diversified assets and promised unrealistically high returns.

ReAssure didn't uphold the complaint. It said it conducted the required due diligence and it raised concerns it had about the transfer with Mr D. But he exercised his right to transfer having signed a declaration confirming he was aware of its concerns.

Our Investigator was unable to resolve the dispute informally, so the matter was passed to me to decide.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Before setting out the reasons for my decision, I'd like to confirm I've carefully considered everything that has been submitted to us in this case, although, for clarity, I haven't responded to every point that has been made. I've focussed my reasoning on what I consider to be the main points. I hope neither party will take this as a discourtesy.

<u>The relevant rules and guidance</u>

Personal pension providers are regulated by the 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 how personal pension providers deal with 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.

In February 2013, TPR issued its Scorpion guidance to help tackle the increasing problem of pension liberation, the process by which unauthorised payments are made from a pension (such as accessing a pension below minimum retirement age). In brief, the guidance provided a due diligence framework for ceding schemes dealing with pension transfer requests and some consumer-facing warning materials designed to allow members to decide for themselves the risks they were running when considering a transfer.

The Scorpion guidance was described as a cross-government initiative by Action Fraud, The City of London Police, HMRC, the Pensions Advisory Service, TPR, the Serious Fraud Office, and the FSA/FCA, all of which endorsed the guidance, allowing their names and logos to appear in Scorpion materials.

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 2000, 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. So the content of the Scorpion guidance was essentially informational and advisory in nature. Deviating from it doesn't therefore mean a firm has necessarily 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 right to transfer.

That said, the launch of the Scorpion guidance in 2013 was an important moment in so far as it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing those requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance's specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

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

The Scorpion guidance was updated in July 2014. It widened the focus from pension liberation specifically, to pension scams more generally – which included situations where someone transferred in order to benefit from *"too good to be true"* investment opportunities such as overseas property developments. An example of this was given in one of the action pack's case studies.

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

There was a further update to the Scorpion guidance in March 2015, which is relevant for this complaint. This guidance referenced the potential dangers posed by "pension freedoms" (which was about to give people greater flexibility in relation to taking pension benefits) and explained that pension scams were evolving. In particular, it highlighted that single member occupational schemes were being used by scammers. At the same time, a broader piece of guidance was initiated by an industry working group covering both TPR and FCA regulated firms: the Pension Scams Industry Group ('PSIG') Code of Good Practice. The intention of the PSIG Code was to help firms achieve the aims of the Scorpion campaign in a streamlined way which balanced the need to process transfers promptly with the need to identify those customers at material risk of scams.

The March 2015 Scorpion guidance

The March 2015 update to the Scorpion guidance asked schemes to ensure they provided their members with *"regular, clear"* information on how to spot a scam. It recommended giving members that information in annual pension statements and whenever they requested a transfer pack. It said to include the pensions scam *"leaflet"* in member communications.

In the absence of more explicit direction, I take the view that the member-facing Scorpion warning materials were to be used in much the same way as previously, which is for the shorter insert (which had been refreshed in March 2015) to be sent when someone requested a transfer pack and the longer version (which had also been refreshed) made available when members sought further information on the subject.

When a transfer request was made, transferring schemes were also asked to use a three-part checklist to find out more about a receiving scheme and why their member was looking to transfer.

The PSIG Code of Good Practice

The PSIG Code was voluntary. But, in its own words, it set a standard for dealing with transfer requests from UK registered pension schemes. It was *"welcomed"* by the FCA and the Association of British Insurers (amongst others). And several FCA regulated pension providers were part of the PSIG and co-authored the Code. So much of the observations I've made about the status of the Scorpion guidance would, by extension, apply to the PSIG Code. In other words, personal pension providers didn't necessarily have to follow it in its entirety in every transfer request and failure to do so wouldn't necessarily be a breach of the regulator's Principles or COBS. Nevertheless, the Code sets an additional benchmark of good industry practice in addition to the Scorpion guidance.

In brief, the PSIG Code asked schemes to send the Scorpion *"materials"* in transfer packs and statements, and make them available on websites where applicable. The PSIG Code goes on to say those materials should be sent to scheme members directly, rather than just to their advisers.

Like the Scorpion guidance, the PSIG Code also outlined a due diligence process for ceding schemes to follow. However, whilst there is considerable overlap between the Scorpion guidance and the PSIG Code, there are several differences worth highlighting here, such as:

- The PSIG Code includes an observation that: "*A strong first signal of* [a scam] *would be a letter of authority requesting a company not authorised by FCA to obtain the required pension information; e.g. a transfer value, etc.*" This is a departure from the Scorpion guidance (including the 2015 guidance) which was silent on whether anything could be read into the entity seeking information on a person's pension.

- The Code makes explicit reference to the need for scheme administrators to keep up to date with the latest pension scams and to use that knowledge to inform due diligence processes. Attention is drawn to FCA alerts in this area. (I noted the contents of some of those alerts earlier in my decision.)

- Under the PSIG Code, an 'initial analysis' stage allows transferring schemes to fast-track a transfer request without the need for further detailed due diligence, providing certain conditions are met. No such triage process exists in the 2015 Scorpion guidance – following the three-part due diligence checklist was expected whenever a transfer was requested.

- The PSIG Code splits its later due diligence process by receiving scheme type: larger occupational pension schemes, SIPPs, SSASs and QROPS. The 2015 Scorpion guidance doesn't distinguish between receiving scheme in this way – there's just the one due diligence checklist which is largely (apart from a few questions) the same whatever the destination scheme.

TPR began referring to the Code as soon as it was published, in the March 2015 version of the Scorpion action pack. Likewise, the PSIG Code referenced the Scorpion guidance and indicated staff dealing with scheme members needed to be aware of the Scorpion materials.

Therefore, in order to act in the consumer's best interests and to play an active part in trying to protect customers from scams, I think it's fair and reasonable to expect ceding schemes to have paid due regard to both the Scorpion guidance and the PSIG Code when processing transfer requests. Where one differed from the other, they needed to consider carefully how to assess a transfer request taking into account the interests of the transferring member. Typically, I'd consider the Code to have been a reasonable starting point for most ceding schemes because it provided more detailed guidance on how to go about further due diligence, including steps to potentially fast-track some transfers which – where appropriate – would be in the interests of both parties.

The considerations of regulated firms didn't start and end with the Scorpion guidance and the PSIG Code. 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 either the Scorpion guidance or the Code – 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>

Mr D has said events began with a cold call offering him a free pension review. He said he was told his existing pension was performing poorly and there were some great alternatives to offer him. He said in his complaint that he thought the call was from First Review Pension Services ('FRPS'). Although his CMC told us later that the initial call was from Capital Facts, and that they subsequently referred Mr D to FRPS. Mr D said he thought it would be a good idea to explore those alternatives and he agreed to meet an *"adviser"* from FRPS. Mr D said a meeting followed at his home where he was given *"very positive information and projections"* about an investment in a hotel complex in Cape Verde. He said he trusted the information and advice he was given by FRPS, which was that the investment would produce returns that were greater than the returns on his ReAssure pension.

Mr D's CMC has provided a copy of the letter of authority Mr D signed in favour of Capital Facts, and the request for information and transfer forms Capital Facts sent to ReAssure. I note Mr D told Scottish Widows, in relation to the separate transfer of his pension with them, that he *"initially received a call from* [FRPS] [with] *respect of a pension review* (sic)." He also told our Investigator on that case that he received a cold call from FRPS. I think it's likely Mr D recalled it was FRPS that initially called him, based on the fact he went on to meet them. That is evidenced by a letter from Cantwell Grove to Scottish Widows dated 25 August 2015 which, amongst other things, referred to an enclosed "*"SSAS Guide" provided to the Member by* [FRPS]," and a copy of Mr D's identity documents that were certified by FRPS.

At that time, one of the Directors of Capital Facts was also a Director of FRPS, so I think it's plausible that the two entities worked together in this matter. Consequently, I accept Mr D received an unsolicited call about a pension review. But I've found it was Capital Facts that called him and then obtained information from ReAssure about his pension before passing that information to FRPS. That's based on the contemporaneous documents I've seen and the established connection between Capital Facts and FRPS.

It appears Mr D had previously given some thought to doing something with his pensions. In his 11 September 2015 response to Scottish Widows, he said he was interested in reviewing his pension when he was contacted. And he told our Investigator that he had two *"frozen"* pensions that he wanted to invest to generate an income from when he retires, and that he'd previously looked into his pensions but hadn't taken steps to do anything with them. The reasons Mr D gave for wanting to transfer follow on from that and what he's said he was told by FRPS. So, I consider Mr D's motivation for transferring was to get a better return on his pension than what he thought he was getting.

Mr D's recollections in this complaint of what he was told by FRPS essentially amounts to FRPS giving him a recommendation to transfer. I know from this service's experience of dealing with complaints from individuals in very similar circumstances to Mr D's that this is indeed likely to have happened. But I'm mindful that Mr D told Scottish Widows in his handwritten 11 September 2015 response that *"I have not received advice on the transfer (although I will be considering investment advice on the investments under consideration)."* And in his later response to Scottish Widows, he simply wrote *"No"* in answer to the question about whether he'd received any advice about the transfer.

Mr D's recollection in his complaint that FRPS told him the investment would produce guaranteed returns differs from what he told our Investigator, and Scottish Widows in both of his responses at the time - that he had not been promised a guaranteed rate of return. This may reflect the fact that this service's understanding with the TRG investment is that only an initial period of returns was usually guaranteed, so I don't read much significance into the variation in Mr D's recollections on this specific point. The projections of the non-guaranteed returns in the subsequent years of the TRG investment typically looked impressive, which is consistent with why Mr D says he wanted to transfer.

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

The Scorpion insert:

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

I've seen a letter from ReAssure dated 16 February 2015 and addressed to Mr D that followed the request it had received for information about his pension from Capital Facts on 10 February 2015. (This appears to be separate to the reply ReAssure sent Capital Facts on 27 February 2015, which only contained a policy projection.) The 16 February letter gave details of the transfer value and provided the transfer pack, explaining the process involved, and it included the following: *"Please read the enclosed warning about the potential tax consequences of pension transfers."* That suggests ReAssure sent the Scorpion insert to Mr D.

However, the copy of that letter I've seen has a handwritten note on it that says: *"Waiting for projections.* [ReAssure employee's name] *is fax over today 27/2/15* (sic)." The ReAssure employee's name is also on a fax cover sheet I have seen dated 27 February 2015 that ReAssure sent to Capital Facts with its letter of the same date. That letter was addressed to Mr D, but clearly it was sent to Capital Facts. There's no other indication that copies of these letters were sent to Mr D. Therefore, I've found it's also possible that ReAssure's 16 February 2015 letter to Mr D was generated only in order to be sent under cover of a letter/fax to Capital Facts. I haven't therefore been able to conclude with certainty that this letter would have gone directly to Mr D.

However, the 'Member Declaration and Discharge' form Mr D signed on 16 September 2015 stated he had *"read and understood* [TPR's] *leaflet about its examples of pension liberation fraud which* [ReAssure] *has sent me."* We know in any case from looking at a number of these complaints that Cantwell Grove was providing a copy of the Scorpion materials to transferees, which is why they signed a letter addressed to the ceding scheme confirming they'd been made aware of the risks of pension liberation.

My conclusion here is that whether it was ReAssure or Cantwell Grove who provided the Scorpion insert to Mr D, at least one (or both) of them did. And that's consistent with Mr D confirming to ReAssure – both as part of the transfer request and on its discharge form - that he had seen this information. So, any failure by ReAssure to send the insert hasn't made a difference because Cantwell Grove would have provided the same information to Mr D shortly afterwards. The version Mr D received from Cantwell Grove may even have been more up to date (the materials were revised in March 2015), but it essentially provided similar warnings about the risk of scams. But importantly, that wasn't the only thing ReAssure was expected to do - as I'll discuss next.

Due diligence:

As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mr D's transfer in that light. But I don't think it would make a difference to the outcome of the complaint if I had considered ReAssure's actions using the 2015 Scorpion guidance as a benchmark instead.

ReAssure says it carried out the required due diligence and raised concerns with Mr D in a letter it sent him with the 'Member Declaration and Discharge' form. ReAssure hasn't been clear whether this was a different letter to that which it says it sent on 16 February 2015 (which enclosed a transfer pack, including what it referred to at that time as a 'Form of Discharge').

The Member Declaration and Discharge form Mr D signed, referred to not only an *"attached letter, which outlines the concerns* [ReAssure] *has with regard to my transfer request,"* but also the Scorpion leaflet. Whereas the letter enclosing the transfer pack discharge form, which was sent six months earlier and is in a different font, only refers to an *"enclosed warning about the potential tax consequences of pension transfers*." So I accept it's possible that ReAssure had sent Mr D a new letter, but ReAssure hasn't provided it and I would have expected it to do so.

What I can conclude is that the declaration Mr D signed in September 2015 only referred to pension liberation (in terms of getting access to pension benefits before age 55). Mr D had already declared in writing he wasn't liberating his pension (which was evidently a statement he made to confirm he wasn't releasing funds from his pension early). At that point in time ReAssure should also have been providing warnings about potential pension scams – which is much broader in scope, and it hasn't sent any other documents that would allow me to conclude that it did. So, I'm not satisfied ReAssure carried out all the required due diligence and raised the relevant warning signs with Mr D.

Due to the lack of information from ReAssure I've considered what form its due diligence should have taken. With the limited information it had about the transfer in mind, I don't consider ReAssure could reasonably have considered the receiving scheme/administrator as being free of scam risk under the PSIG Code. So, the initial triage process should have instead led to ReAssure asking Mr D further questions about the transfer as per Section 6.2.2 ('Initial Analysis – Member Questions'). I won't repeat the list of suggested questions in full. Suffice to say, at least two of them would have been answered *"yes:"*

- Did receiving scheme/adviser or sales agents/representatives for the receiving scheme make the first contact (e.g. a cold call)?

- Have you been informed of an overseas investment opportunity?

Under the Code, further investigation should follow a *"yes"* to any question. The nature of that investigation depends on the type of scheme being transferred to. The SSAS section of the Code (Section 6.4.3) points to the following as being potential areas of concern:

a) Employment link: a lack of an employment link to any member of the SSAS.

b) Geographical link: a sponsoring employer that is geographically distant from the member.

c) Marketing methods: a SSAS being marketed through a cold call or an unsolicited approach.

d) Provenance of receiving scheme: a SSAS registered within the previous six months or a recently registered sponsoring employer or administrator operating from 'virtual' offices, or using PO Boxes for correspondence purposes.

Underneath each area of concern, the Code set out a series of example questions to help scheme administrators assess the potential risk facing a transferring member.

Not every question would need to be addressed under the Code. Indeed, the Code makes the point that it is for scheme administrators to choose the most relevant questions to ask (including asking questions *not* on the list if appropriate). But the Code makes the point that a transferring scheme would typically need to conduct investigations into a *"wide range"* of issues to establish whether a scam was a realistic threat. With that in mind, and given the relatively limited information it had about the transfer, I think in this case ReAssure should have addressed all four sections of the SSAS due diligence process and contacted Mr D to help with that.

What should ReAssure have found out?

ReAssure would have known from the information provided to it that the SSAS had been registered with HMRC less than a month prior to the transfer request. It would have known Business B was the sponsoring employer. A simple search of the Companies House register would have revealed that Business B had been recently incorporated, was a dormant company, and that Mr D was its director. If ReAssure had asked Mr D if he was employed by Business B and how it'd come to be set up, I think he would have told ReAssure: he was the director of the company; it was dormant and so he wasn't being remunerated by it; and, he had established the company to facilitate the transfer of his pension. This is what Mr D told Scottish Widows in his September 2015 response to the same questions, and everything I've seen doesn't lead me to think he would have responded differently to ReAssure. Those discoveries should have caused ReAssure concern about the lack of employment link between Mr D and Business B.

Investigations under part (c) of the Code should also have given ReAssure cause for concern. The Code repeatedly references cold calling and unsolicited approaches as being warning signs of a scam. If ReAssure had asked Mr D about how he'd become aware of the proposed scheme, I think he would have told it that events began with a cold call that led to him being persuaded to transfer by the information FRPS gave him about an investment opportunity in a property development in Cape Verde This tallied with the information provided to ReAssure by Cantwell Grove.

ReAssure should have asked Mr D if he'd received any advice on transferring his pension. The account Mr D has given – being given a persuasive case to transfer based on higher investment returns – would amount to advice to transfer. But that doesn't mean Mr D would have realised that was the case. Based on how he answered a similar question to Scottish Widows, I think he would have told ReAssure he had not received any transfer advice (only that he was getting advice on the investments to be made within the SSAS). That should have caused ReAssure concern about how the proposed scheme had been marketed to Mr D. The factsheet in the Scorpion Action Pack highlights the warning sign of individuals apparently transferring without any advice, especially where they had been cold called.

Mr D actually clarified to Scottish Widows that another FCA regulated firm, Astute Financial Services, would be advising on the Aviva portfolio also to be held within the SSAS – but he didn't give any impression that it had advised any more widely on the transfer itself. Notably, he didn't disclose to Scottish Widows that Broadwood Assets had issued him with a written letter of advice dated 27 March 2015 on whether, as a trustee, he should invest in TRG. This was despite the fact that he didn't fill in the first of Scottish Widows' questionnaires until September 2015, by which point I think he would have been in receipt of Broadwood Assets' letter. Broadwood Assets' advice was that, with some caveats, the TRG investment was suitable for Mr D's SSAS. But it was clear that this advice did not extend to the suitability of the investment for Mr D as a member, or the suitability of the transfer.

So I think it's most likely that ReAssure would have gained a similar picture to that which Mr D gave Scottish Widows, if ReAssure had asked him appropriate questions. The Aviva investment wasn't subsequently made, but ReAssure wouldn't have known this at the time. In any event, I don't think ReAssure could have taken much comfort from Mr D giving it the name of a regulated adviser (if he had done this), because he would have indicated it was neither involved in the transfer nor the TRG investment. ReAssure should also have identified the TRG investment was of a type the PSIG Code identified as being linked to high fraud risk. Coupled with the very recent establishment and registration of the SSAS, that should have caused ReAssure concern about the provenance of the scheme as well.

All of these warning signs of a potential pension scam in Mr D's transfer meant there was a serious risk to his pension savings. By proceeding with the transfer, he risked falling victim to a scam and losing regulatory protections, which could result in the total loss of his pension. ReAssure's failure to communicate these warning signs to Mr D meant it didn't meet its obligations under PRIN and COBS 2.1.1R.

It would have been appropriate for ReAssure to have communicated these warning signs to Mr D before proceeding with the transfer. I've seen nothing that leads me to think ReAssure could reasonably have dismissed these warning signs and proceeded with Mr D's transfer without discussing them with him. I don't think this would have been a disproportionate response given the scale of the potential harm Mr D was facing and ReAssure's responsibilities under PRIN and COBS 2.1.1R. And I don't think any such warnings would reasonably have caused ReAssure to think it was running the risk of advising Mr D, that it was replicating the responsibilities of the receiving scheme or that it was putting in place unnecessary barriers to exit.

For the reasons I've given above, it's not clear that ReAssure did write to Mr D on a separate occasion to when it issued the transfer pack, and what any further warnings it gave Mr D were. I've continued with this decision on the basis that ReAssure didn't provide any further warnings.

<u>Would further warnings from ReAssure have changed Mr D's mind about transferring?</u>

Mr D said in his complaint that if ReAssure had warned him about the risk factors involved in the transfer, he would have heeded those warnings and decided not to proceed with the transfer.

Its apparent Mr D was interested in doing something with his pensions before Capital Facts contacted him, for the reasons I've already explained. However, the evidence is that Mr D was sent some warnings prior to the transfer as I set out above. The July 2014 Scorpion leaflet (which was likely sent to him either by ReAssure or Cantwell Grove, or both) said:

> *"The scammers have a variety of tricks to catch you out. They may:*
>
> *…*
>
> - *Approach you out of the blue over the phone, via text message or in person door to door.*
> - *Offer a free 'pension review' or try to lure you in with so-called 'one-off' investment opportunities."*

And in the event that the leaflet Cantwell Grove later showed Mr D was the March 2015 version, I've noted this contained similar messages.

By the time Mr D read the leaflet, which he confirmed to ReAssure he'd read on its discharge form, he would have been able to spot some similarities with the steps he was taking to take advantage of an investment in TRG following a cold call. The 2014 version of the leaflet, at least, didn't highlight other key signs such as transferring overseas and being offered high returns. So I accept receipt of this leaflet isn't determinative in itself of how Mr D might have acted if ReAssure had done proper due diligence.

However, this isn't the only evidence I have on which to reach a view on how he would likely have acted. When it came to the transfer of Mr D's Scottish Widows pension, I think the warnings he received from it ought to have added to these concerns, notwithstanding that he had by then already transferred his ReAssure pension – and yet he still transferred the Scottish Widows pension too.

Further to the transfer request from Cantwell Grove, Scottish Widows sent Mr D a questionnaire asking detailed questions about how the transfer had come about, including (but not limited to):

> *"If you are employed by an employer that sponsors the receiving scheme, please provide the name and address of your usual place of work for the employer."*
>
> *"How did you become aware of the Provider/adviser/receiving scheme? Did they make first contact?"*
>
> *"Have you received any advice in connecting with transferring your pension benefits? If so, please provide details of the organisation or company that provided you with that advice and a copy of the advice along with any* [FCA] *registration number provided."*

Those questions are similar to those I think ReAssure should have asked Mr D.

After receiving his responses, Scottish Widows informed him in its October and November 2015 letters that it had concerns about the validity of the transfer and about the set up of the SSAS and the investment model. Those concerns led Scottish Widows to decide Mr D did not have a statutory right to transfer, and not to allow a discretionary transfer. Its November 2015 explained said:

> *"We have a regulatory requirement to conduct due diligence on the destination of the funds.* [TPR] *and the Pensions Ombudsman Service has provided guidance on what transferring providers should consider when they receive a transfer request.*
>
> *The set up of the scheme and the investment model provides us with sufficient concerns that have led to our decision. This is not to suggest that there is anything untoward occurring, but as there is neither a legal nor a contractual right for you to transfer your pension to this scheme, we do not feel we can allow the transfer using our discretionary powers."*

I realise Scottish Widows was later proven to be incorrect about Mr D's lack of statutory right to transfer. But I still think that ought to have given Mr D cause for concern about the transfer of both of his pensions to the SSAS. Scottish Widows was raising concerns, with reference to its regulatory obligations, about the validity of the transfer and SSAS itself.

Scottish Widows sent Mr D the same questionnaire further to the later transfer request it received from Cantwell Grove. It sent the questionnaire with a letter that said enclosed with it were *"risk warnings you should consider and a guide prepared by* [TPR] *which you should take the time to read before you make your decision as they give you further information on scams."* The risk warnings from Scottish Widows enclosed with the letter included the following:

Under the heading "*Types of pension scams:"*

> *"You should also be wary of schemes which are registered as occupational pension schemes but where there is no genuine link of employment between the members of the schemes and the scheme employers. These schemes can be deregistered by HMRC and you could become liable to high tax charges on any funds transferred to such schemes. Scams do not always take the form of pension liberation and may include investment scams."*

Under the heading *"Be aware of the signs:"*

> *"Indicators of a pension scam could be receiving an unexpected call, email or text offering a "free pension review."*

And under the heading *"Investment options:"*

> *"If the investment opportunity seems too good to be true – for example it offers a promise of unrealistic investment return – it probably is and you should be very cautious. You should consider the security of your pension funds if they are being invested offshore and also the liquidity of the assets. Illiquid assets such as property can be more difficult to realise when you come to take your benefits from the scheme."*

The letter went on to strongly recommend that Mr D get regulated independent financial advice.

On receiving that letter and the enclosed Scorpion insert and risk warnings, Mr D would have recognised several signs of a potential scam were present in both of his pension transfers. He knew he had been cold called and offered a free pension review, and that the investment he was making was in an overseas property development. He would have known he had not received any regulated advice on the transfer itself. He also knew when he established Business B that whilst he was its director, he wasn't remunerated in that role, it was just in order to make the pension transfer, and he was employed elsewhere. I think Mr D would have started to realise he had put a lot of faith in unregulated businesses and could stand to lose all of the money he invested.

These warnings should have resonated strongly with Mr D. They added significant weight to the warnings he'd already received from Scottish Widows about the transfers of his pensions. But these warnings did not deter him from transferring his Scottish Widows' pension.

I realise these letters from Scottish Widows were sent to Mr D after his ReAssure pension had been transferred. But I consider how Mr D responded to them is strong contemporaneous evidence of how he responded to the sort of warnings I think ReAssure should have communicated to him about his pension transfer.

Mr D's CMC have said his responses to Scottish Widows were heavily influenced by FRPS and Cantwell Grove. I don't think that assists their argument, as it serves to show Mr D was more inclined to listen to those parties than his existing pension provider (Scottish Widows, and therefore by extension ReAssure). So even if I accept the possibility that having warnings from two ceding schemes and not one might have been even more concerning for Mr D, that has to be weighed up against the possibility that Mr D might nonetheless have still not been deterred. That is not to say I consider ReAssure met its responsibilities to Mr D, or that it could escape those responsibilities because of the actions of other parties. But in my view Mr D's reaction to the warnings Scottish Widows gave him gives the most reliable indication I have as to how he would have likely reacted if ReAssure had acted in the way his CMC argues it should have.

Scottish Widows' warnings were directly relevant to the risks of proceeding to make an investment on unregulated advice that was susceptible to being a scam. And even though they were also accompanied by a refusal to make Mr D's transfer (which I'm not saying that ReAssure had to follow), they bore a strong similarity to the warnings ReAssure would have given him. I think those warnings were only limited in their effectiveness by the fact that Mr D didn't tell Scottish Widows (and likely wouldn't have told ReAssure) that FRPS (or Capital Facts) had advised him to make the transfer. So I can't fairly expect ReAssure to have identified that an adviser was, in fact, acting unlawfully and given Mr D the benefit of greater warnings than those which Scottish Widows gave him.

However, despite the warnings Mr D did have from Scottish Widows, rather than losing faith in the complex structure that the unregulated firms had set up for him, he continued (with their assistance) to assert the scheme's legitimacy and ultimately succeed in getting his Scottish Widows pension transferred.

Conclusion

In summary, I find ReAssure did not meet its responsibilities to Mr D in dealing with his transfer. Those responsibilities should have led it to identify and communicate to Mr D a number of warnings of the threat of a scam in his pension transfer. ReAssure hasn't evidenced that it did that. If ReAssure had done that though, I don't think Mr D would have changed his mind about transferring because he was not dissuaded from transferring another of his pensions after being provided with materials that communicated a number of those warnings to him.

My final decision

For the reasons I've explained, I don't uphold Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 28 March 2025.

Asa Burnett
Ombudsman