

The complaint

Mr S has complained, with the help of his representatives, about a transfer of his ReAssure Limited ('ReAssure') personal pensions to a small self-administered scheme (SSAS) in January 2015. Mr S' SSAS was subsequently used to invest in a fractional ownership of overseas hotel property with The Resort Group (TRG). The investment now appears to have little value and is illiquid. Mr S says he has lost out financially as a result.

Mr S' representatives said ReAssure failed in its responsibilities when dealing with the transfer request. They said 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 they say was required of transferring schemes at the time. Mr S stated he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if ReAssure had acted as it should have done.

What happened

On 25 September 2014, First Review Pension Services Ltd ('FRPS') wrote to ReAssure to obtain details and transfer documents in relation to Mr S' pensions, referring to a letter of authority he signed to allow the request.

ReAssure responded to FRPS that it wasn't able to provide the information or the requested documents as FRPS was not regulated by the Financial Conduct Authority (FCA). It also wrote directly to Mr S on 4 October 2014, to explain to him that FRPS was not regulated and it therefore sent the policy information and transfer request form directly to him. It also warned him of the risk of dealing with unregulated advisers and provided him with a warning leaflet, which I will discuss in more detail below.

Mr S said his interest in the transfer followed a cold call from FRPS. He said he was in a vulnerable situation as his wife had sadly passed away just before the transfer process and he was struggling to meet mortgage payments and funeral costs. He was therefore attracted by the prospect of better investment returns by investing in TRG, and he was told that he could access a tax-free cash lump sum straight away. He was 55 years old at the time of the transfer.

In September 2014, a company was incorporated with Mr S as director. I'll refer to this company as GC Ltd. Mr S subsequently opened a SSAS with Cantwell Grove Ltd ('Cantwell Grove'), registered by HMRC on 16 October 2014. GC Ltd was recorded as the SSAS's principal employer.

On 29 October 2014, Mr S' transfer papers were sent to ReAssure by Cantwell Grove. Included in the transfer request were:

- completed and signed transfer forms;
- a copy of the GC Ltd SSAS Trust Deeds and Rules;
- HMRC registration confirmation for the GC Ltd SSAS;
- key information about the scheme (including information that the intention was to invest in TRG);

- a letter signed by Mr S on 27 October 2014, declaring, amongst other things, that he was aware of the dangers of pensions liberation fraud and that he didn't want to access benefits prior to age 55.

Mr S' pensions were transferred on or around 10 January 2015. The transfer values were roughly £35,200 and £36,400. He said he received around £9,000 as a tax-free cash lump sum.

An investment into the fractional hotel shares with TRG was made by the GC Ltd SSAS for around £47,800 shortly after. This investment is illiquid and likely to have no actual value as it can't be sold on the open market.

On 6 February 2023, Mr S complained to ReAssure. Briefly, his representatives' argument is that ReAssure ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including that the catalyst for the transfer was an unsolicited call, he had been advised by an unregulated business, and the investment was high-risk and illiquid.

ReAssure didn't uphold the complaint. It said Mr S had a legal right to transfer and it was satisfied it had conducted an appropriate level of due diligence given the requirements of the time. And that it provided Mr S with suitable warnings about his transfer and required him to sign a declaration prior to agreeing to proceed.

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.

ReAssure has given our service consent to look into this complaint, so I have not considered whether Mr S made his complaint in time.

I've taken into account relevant law and regulations, regulatory rules, guidance and standards, codes of practice, and (where appropriate) what I consider to have been good industry practice at the relevant time. Where the evidence is incomplete or inconclusive, I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened, given the available evidence and wider circumstances.

The relevant rules and guidance

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

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

- On 10 June 2011, the Financial Services Authority (FSA) issued a warning about the dangers of “pension unlocking” and specifically referred to consumers transferring to access cash from their pension before age 55. (As background to this, the normal minimum pension age had increased to 55 in April 2010.) The FSA said that receiving occupational pension schemes were facilitating this. It encouraged consumers to take independent advice. The announcement acknowledges that some advisers promoting these schemes were FSA authorised.
- At around the same time, The Pension Regulator (TPR) published information on its website about pension liberation, designed to raise public awareness and remind scheme operators to be vigilant of transfer requests. The warnings highlighted that websites and cold callers were encouraging people to transfer in order to receive cash or access a loan.
- TPR launched its Scorpion campaign on 14 February 2013. The aim of the campaign was to raise awareness of pension liberation activity and to provide guidance to scheme administrators on dealing with transfer requests in order to help prevent liberation activity happening. The FSA, and the FCA which had succeeded the FSA, endorsed the guidance. The guidance was subsequently updated, including in July 2014. I cover the Scorpion campaign in more detail below.
- In late April 2014 the FCA started to voice concerns about the different types of pension arrangements that were being used to facilitate pensions scams. In an announcement to consumers entitled “Protect Your Pension Pot” the increase in the use of SIPPs and SSASs in pensions scams was highlighted, as was an increase in the use of unregulated and/or illiquid investments. The FCA further published its own factsheet for consumers in late August 2014. It highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.
- ReAssure was subject to the FCA Handbook and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA/FCA rules governing pension transfer requests, but the following have particular relevance:
 - Principle 2 – A firm must conduct its business with due skill, care and diligence;
 - Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;
 - Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and
 - COBS 2.1.1R (the client’s best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

The Scorpion guidance

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

The materials in the Scorpion campaign comprised:

- An insert to be included in transfer packs (the 'Scorpion insert'). The insert warns readers about the dangers of pension scams and identifies a number of warning signs to look out for.
- A longer booklet issued by The Pensions Advisory Service (TPAS) which gives more information, including example scenarios, about pension scams. Guidance provided by TPR said this longer leaflet was intended to be used in ongoing communications with members so that could become aware of the scam risks they were facing.
- An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "watch out for" various warning signs of a scam. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where a transferring scheme still had concerns, they were encouraged (amongst other things) to contact the member to establish whether they understood the type of scheme they were transferring to and – where a member insisted on transferring – directing the member to Action Fraud or TPAS.

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

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

I take from the above that the content 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 it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing transfer requests. The 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.

What did personal pension providers need to do?

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

1. As a first step, a ceding scheme needed to check whether the receiving scheme was validly registered.
2. The Scorpion insert provided an important safeguard for transferring members, allowing them to consider *for themselves* the scam threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. So, all things considered, I think the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party.
3. I also think it would be fair and reasonable for personal pension providers – operating with the regulator's Principles and COBS 2.1.1R in mind – to ensure the warnings contained in the Scorpion insert were provided in some form to a member before a transfer even if the transfer process *didn't* involve the sending of transfer packs.
4. The Scorpion guidance asked firms to look out for the tell-tale signs of scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The guidance points to the warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. Therefore, whilst using the action pack wasn't an inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.
5. The considerations of regulated firms didn't start and end with the Scorpion guidance. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn't involve anything specifically referred to in the Scorpion guidance – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's principles and COBS 2.1.1R.

The circumstances surrounding the transfer and Mr S' recollections

Mr S has explained to us that he was cold-called and offered a free pension review. He explained that this was with a view to getting better returns on his pension, as he was promised a 15% p.a. return, much higher than the ReAssure policies. He also told us that he was in a difficult position, having just lost his wife and struggling to pay for the funeral and mortgage payments. So the promise of higher returns as well as an instant tax-free cash sum were appealing to him.

Mr S remembered he had been guided through the transfer process and the investment by an agent from FRPS. He said he didn't ask or check whether it was an FCA regulated firm and that he didn't understand much of how the investment worked. But he appears to have been aware of the intended investment in TRG, including the details that it involved investing in a fractional property in a hotel in Cape Verde. He said that risks or the issues of pension liberation had not been discussed.

Mr S also confirmed he did receive the correspondence from ReAssure that was sent to him during the transfer process.

What did ReAssure do and was it enough?

The Scorpion inserts

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 have shown us that it wrote a letter directly to Mr S, in early October 2014. This first letter, in response to the information request from FRPS, referred to a leaflet being attached. From the evidence we've received, this seems to have been the shorter insert in a version from February 2013. So this leaflet would mainly have referred to the risks of pension liberation, but not to scams.

However, after having received the signed transfer forms in late October 2014, ReAssure wrote to Mr S again in December 2014 (I discuss this letter further below) and attached the longer, more informative booklet in the July 2014 version.

That Scorpion booklet was focussed on warning consumers against falling victim to scams, including claiming that cash could be accessed from pensions early. This doesn't seem to have been a feature of what Mr S was being recommended as he was already 55 at the time of the transfer, but the booklet did provide four warnings about what to watch out for. That included being cold called, which is something that Mr S said was a feature of his circumstances, and it included a scenario of a scam victim being made a director of a newly formed company, which was also similar to Mr S' situation. The insert also listed steps that he could take to avoid becoming a victim, which included checking that an adviser was regulated and speaking to an adviser not associated with the proposal.

So even though initially ReAssure sent an out-of-date version of the insert, this was followed up by a much longer booklet of the correct date in a subsequent letter. So I'm satisfied that ReAssure met the requirements of the 'Scorpion' guidance regarding provision of the leaflets to Mr S.

Due diligence

I explained earlier why I think that firms needed to be on the lookout for signs of scams and to take appropriate action where they were aware of such risks.

The transfer request informed ReAssure that the GC Ltd SSAS was newly established and it was aware that there appeared to be an intention to use the transferred funds to invest in TRG, an unregulated overseas investment. The key information that ReAssure had been sent indicated that it was also provided with a brochure for the TRG hotel investment.

It does not appear that ReAssure contacted Mr S to ask him for further information about this transfer. But it did write to both Cantwell Grove and to Mr S to apologise for a delay while it was still carrying out “further due diligence”. It stated that it was required to do so under its regulatory obligations.

In advance of the transfer request, ReAssure had already written to Mr S on 4 October 2014, making it clear that FRPS was not regulated. The letter said:

“We would like to make you aware that First Review Pension Service is not regulated by the Financial Conduct Authority (FCA).

This means you may be ineligible to use the services of the Financial Ombudsman Service (FOS) in the event you are unable to resolve a complaint with the firm. You also won’t be covered by the safeguards in place under the Financial Services Compensation Scheme (FSCS) if they were to become insolvent.”

It also provided a link to find regulated advisers in his area.

After receiving the transfer request and carrying out due diligence checks such as the SSAS’ HMRC registration, it’s clear that ReAssure had further concerns and it set these out to Mr S in its letter of 24 December 2014.

The letter set out the following concerns:

Regulated advice

ReAssure said that it understood that the transfer may have been prompted by an unsolicited approach from an introducer company that was not regulated. It explained in a clear way that this was not the way most pension transfers happened. And it clearly recommended that Mr S take regulated financial advice and how he could check that an adviser was regulated, repeating what it had stated in its letter from October 2014. And it included a leaflet from TPAS – the updated ‘Scorpion’ booklet. I think that this represented a warning that ought to have appeared relevant to Mr S’ circumstances.

Mr S’ responsibilities

In this section ReAssure clearly highlighted the issues with the GC Ltd SSAS, including the costs associated with having his own limited company. It explained that he would be a trustee of the SSAS and briefly what that would entail as well as indicating where to go for more information. I think that this ought to have made Mr S aware that this transfer was not a regular pension transfer.

Charges

ReAssure pointed out that the fees for the setup and running of a SSAS can be higher than those of other pension policies, and that he should be comfortable his pension funds could sustain those.

Investments

Lastly, it referred to the intended property investment in Cape Verde. It did not comment on the suitability of the scheme, but it provided a link to the Foreign and Commonwealth Office to find out more about the risks inherent in investing in Cape

Verde. And it quoted an extract from that site that suggested British nationals had experienced serious problems buying property in Cape Verde.

I think this was a very fair and clear way to draw Mr S' attention to potential concerns with this transfer, given the fact that ReAssure was not able to provide any specific financial advice on investment choices.

The Scorpion guidance to businesses included an Action Pack and while this wasn't a mandatory document, it provided a reasonable way for firms to put in place adequate measures to protect customers. And, given the additional information that ReAssure sent Mr S, I think that ReAssure demonstrated that it was aware of the potential risks of this transfer and took steps to inform Mr S of these.

Given the overall purpose of the Scorpion guidance and the Action Pack, I think that ReAssure took reasonable measures to inform Mr S of the risks it had identified. I think it was incumbent on ReAssure to highlight those concerns and provide Mr S with the information necessary to be able to avoid becoming a victim of a scam.

One of the biggest risk factors for Mr S was being advised by an unregulated party. And ReAssure provided clear guidance on the importance of that, told Mr S that FRPS was not regulated, and set out how Mr S could find regulated advice. Although it didn't ask Mr S if FRPS was advising him, ReAssure assumed (correctly) that it was, and gave an appropriate warning about this.

I think ReAssure's reaction to its knowledge of the intended overseas investment was also reasonable. It clearly flagged its concerns and signposted how Mr S could find out more information about that. The same is true for the risk of the company and SSAS setup and related costs.

The declaration that Mr S signed to confirm he still wanted to go ahead stated the following:

"I confirm that I would like to proceed with the transfer of my ReAssure pension benefits to [SSAS]. I confirm that I have considered the risks and costs involved in making the transfer. I further understand that once my pension has been transferred ReAssure will have no responsibility for my pension benefits, or for any losses or costs (including, but not limited to, tax charges) that I may incur as a result."

Given all of the information Mr S received, and the declaration he'd been asked to sign, it ought to have been very clear to Mr S that there were potential risks with this pension transfer. I think ReAssure had taken reasonable steps to highlight those and to make Mr S aware of where to find out more information. It had also provided the longer, updated Scorpion booklet that provided the link to contact TPAS and Action Fraud in response to concerns. So I think that ReAssure's actions were broadly sufficient given the guidance in place at that time.

ReAssure could have warned him that it was an offence under the law for an unregulated firm to provide advice on regulated products such as transferring a personal pension. However, ReAssure had told him that FRPS was unregulated, informed him of what this meant for him, and he had been told that as a result of also his investment being unregulated, he could lose everything and not be able to claim from a compensation scheme for the loss of that investment. So in that context, I think Mr S ought to have been aware of the consequences of dealing with FRPS despite knowing that it was unregulated.

ReAssure provided warnings to Mr S which it would reasonably have expected would lead to him changing his mind if he wasn't willing to take the risks that it and other parties, such as

TPAS, detailed to him. The longer Scorpion booklet contained an example of a person that was cold called, promised better returns from an overseas investment, was made a director of a newly set up company, and then lost everything they invested. This should have resonated with Mr S as these features were similar to his situation and FRPS' proposal.

However, Mr S ignored such a warning and went ahead with the process. So he made a reasonably informed decision to transfer in light of the risks ReAssure outlined to him, and in the circumstances of this case I consider it would have gone beyond what was reasonably expected of ReAssure at that time to attempt to find further ways in which it could try to block or halt his transfer.

For the above reasons, I think that ReAssure has demonstrated that its engagement with the Scorpion guidance meant it broadly complied with principles 2,6,7 and COBS 2.1.1R. It directly engaged with Mr S in a clear way. The information that it sent him ought to have seemed relevant to the specific circumstances of his transfer request, and highlighted concerns that I think it would be reasonable to expect him to have acted upon.

I'm therefore satisfied ReAssure carried out sufficient due diligence. And anything further ReAssure might have done to caution Mr S is unlikely, on the balance of probabilities, to have altered his decision to transfer.

My final decision

For the reasons given above, I don't uphold this complaint and don't make an award in Mr S' favour.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 31 March 2025.

Lea Hurlin
Ombudsman