DRN-4986428

Financial Ombudsman Service

The complaint

Mr B has complained about a transfer of his personal pension to a small self-administered scheme (SSAS) in July 2015. The personal pension was formerly operated by Legal & General (L&G) whose book of past business has since been taken over by ReAssure Limited. So I'll refer to the firm as ReAssure throughout this decision.

Mr B's SSAS was subsequently used to invest in Park First (a UK investment in car parking spaces in an area of Glasgow), Chateau de la Cazine (a French luxury hotel) and Dolphin Capital (a German Property investment). These investments now appear to have little value. Mr B says he has lost out financially as a result. He is now represented by a firm of solicitors.

Mr B 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 B 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 B says he was cold-called and put in touch with an unregulated firm called Return on Capital UK Limited (ROC). On 23 February 2015 this firm made a request to ReAssure for a transfer pack, attaching a Letter of Authority signed by Mr B on that day.

ReAssure replied to this request directly to ROC two days later, enclosing the transfer pack. The letter was worded as if ROC was Mr B's financial adviser, and it appears as a result didn't include any warnings about the steps Mr B should take to protect himself from scams. Its system notes describe ROC as the "IFA" [independent financial adviser]. ROC wasn't authorised by the Financial Conduct Authority (FCA). ROC followed up this enquiry with an email to ReAssure, to which it responded on 18 March 2015 giving details of the bonus rates on its with profits fund.

On 23 April 2015 a new 'consulting' company was incorporated with Mr B as sole director at a registered address in Birmingham which matched ROC's address. Shortly after this time the SSAS was established with Rowanmoor, using this company as the sponsoring employer. HMRC confirmed registration of the SSAS on 5 May 2015.

ReAssure says that it then received a request from Rowanmoor on 21 May 2015 to transfer Mr B's policy using the Origo 'Options' online transfer system. It no longer has a printout of this request, but we know that the Origo requests printed out at Rowanmoor's end to request funds from several of Mr B's existing providers, recorded the adviser name as "Return on Capital Group Limited".

Whilst ReAssure was considering Mr B's transfer request, he successfully transferred £25,995 from Scottish Equitable into the SSAS on 29 May 2015. Then, on 6 July 2015 ReAssure paid the transfer of £29,192 to Rowanmoor. This was followed by a further payment of £15,285 from Abbey Life on 26 August 2015. Mr B was aged 50 by this point.

At the time of making my last provisional decision on this complaint, it wasn't clear where the proceeds of the transfer were invested. Mr B was at that time using a claims management company who stated they were invested overseas and had been lost due to fraudulent activity, and my provisional decision was made on that basis. It is now clear that the following investments, which were mainly overseas, were specifically made:

25 August 2015: £17,424 to the Hetherington Partnership, a firm of solicitors, in respect of an investment in Park First, a Glasgow-based car parking investment. The book cost of the investment is showing as £20,000, suggesting that in common with other such investments, the guaranteed rent for an initial period may have been offset from the purchase price.

16 September 2015: £30,000 invested in loan notes in Dolphin Capital, an investment in distressed German property.

29 September 2015: £11,500 invested in the Halycon Retreat Golf and Spa resort at Chateau de la Cazine in France.

I'm aware that Mr B had also been looking to transfer about £13,000 from a Friends Life policy at the same time, but this transfer didn't take place at that time. Instead, he later transferred that Friends Life policy to a third-party SIPP provider in late October 2015 and transferred £13,208 from that SIPP provider into the SSAS on 9 November 2015.

2 December 2015: £12,999 invested in a further Dolphin loan note investment.

Some investments appear to have provided income to the SSAS. £479 received in July 2016 was denoted as being from *"BARRSFD + BRD WL…"* and a total of £96 in March 2017 from the Halcyon Spa. I can see further rental income was also paid by Park First in December 2021 – other payments may have been received before that date (as I do not have the transaction history between 2018 and 2021), but as of November 2024 there had been no subsequent payments. Further ongoing charges were paid to ROC and Rowanmoor resulting in the SSAS bank account balance reducing to nil.

The Dolphin loan notes would have been for a five year term and intended to pay interest of 10%pa which was rolled up onto the maturity amount. However, the capital wasn't returned at the end of the term.

Little information is available on Chateau de la Cazine. Although the hotel is operational under that name, the original investment is not providing Mr B with an income and as a result is unlikely to be marketable. My understanding is that investors haven't received the promised returns and although it seems that guarantees were given – including that if the development wasn't completed by a certain date (which has passed) then all monies paid would be refunded within 30 days – and that hasn't happened.

In December 2017, the FCA announced its view that Park First was a collective investment scheme operating without authorisation. It obtained Park First's agreement to either offer investors the opportunity to buy back their investment or move into a new leaseback scheme that didn't contravene the restrictions on operating a collective investment. Four companies in the Park First Group went into administration in July 2019, having been unable to make the commitments they had entered into in these arrangements. This appears to include both the companies that were offering the buy back and lease back options. The car parks would continue to operate, but during the administration no distributions would be made to investors.

The FCA then launched legal proceedings against Park First Limited in October 2019, seeking compensation orders in favour of investors. From what I can establish that matter is still ongoing.

In January 2020, Mr B complained to ReAssure. Briefly, his argument is that ReAssure ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including (but not limited to) the following: the SSAS was newly registered, there wasn't a genuine employment link to the sponsoring employer, and he had been advised by an unregulated business.

ReAssure's response to the complaint was that as the request came through the Origo 'Options' online transfer system, it had reason to think Rowanmoor had been subjected to 'due diligence and comprehensive screening checks' by Origo. It had been informed by Origo that providers failing those checks would be referred to an anti-fraud team at HMRC. It added that Mr B had a statutory right to transfer to his new SSAS (something the CMC had questioned). And it had no obligation to check that Mr B had taken regulated financial advice, as this was a reference to a legal requirement that only applied when transferring benefits with an underlying guarantee (which wasn't applicable in Mr B's case).

I've issued a provisional decision on this complaint. I concluded that ReAssure failed to send Mr B an information leaflet from the Pensions Advisory Service known as the 'Scorpion leaflet'. Although I was unsure that Mr B would have backed out of the transfer on the strength of this leaflet alone, I also concluded that ReAssure was wrong to exclude his transfer from further due diligence merely on the basis that it came from Rowanmoor and through the Origo system. The result of asking Mr B questions about his transfer should have revealed that it was at a high risk of being a scam. And by ReAssure providing more tailored warnings to Mr B, including about acting on unregulated advice, he would most likely have decided not to transfer.

ReAssure didn't agree with the provisional decision. In summary, it said:

- Mr B had admitted in his testimony that even if he had been provided with the Scorpion leaflet, it wouldn't have made any difference.
- I had ignored the fact that Origo does have its own due diligence processes.
- Rowanmoor was established in 1979 and was one of the UK's largest self-invested personal pension (SIPP) providers, so the transfer went to a trusted third party and professional administrator. There had been no warning flags or concerns raised over schemes administered by Rowanmoor.
- ReAssure wasn't obliged to provide advice on the suitability of the investment, but there was a long-standing adviser in the background, which Mr B said he used regularly, who could have done.
- For ReAssure to intervene could be seen as adding a barrier to Mr B's actions – and it could then have been penalised for any delay in the transfer.

I corresponded further with ReAssure, making some further comments. In particular I didn't feel Mr B should be criticised for admitting that he couldn't be completely sure whether the Scorpion leaflet alone would have changed his decision to transfer, if he excludes the knowledge he now has of the outcome of his transfer (which he wouldn't have had in 2015). I emphasized that the very process of ReAssure questioning Mr B would have acted as a further prompt for him to realise that ReAssure had concerns about his transfer, and would have reinforced the message in the leaflet it should have sent him.

I also considered ReAssure's comments about the connection Mr B had to ROC via his previous adviser. I considered this connection was recently-formed and not strong enough that it couldn't easily have been broken by ReAssure highlighting these matters of concern with Mr B in compliance with its regulatory responsibilities. By his own account Mr B already had one pension he wasn't transferring, and that didn't suggest he had predetermined to transfer them.

We didn't receive a response from ReAssure to my further comments, and subsequently this service paused its work on complaints like Mr B's. When we later chased ReAssure for an answer it indicated it was reviewing its position, and it then wanted clarification of what investments Mr B made (which has been provided). On 22 November 2024 ReAssure confirmed that it was still seeking a Final Decision on this complaint. It's now my role to make that decision.

What I've decided – and why

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

<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, The Pensions Regulator (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 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 (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 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. 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 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 interest 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 interest 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>

Our investigator spoke to Mr B to gather his recollections and I've listened to that call. Mr B said the transfer happened as a result of him contacting his 'regular' financial adviser. He had one pension he didn't want to touch but he wanted to consolidate '4 or 5 others' together. We now know these were pensions with L&G (now ReAssure), Scottish Equitable (about whom Mr B has complained to the Pensions Ombudsman), Abbey Life and Friends Life (albeit the latter was transferred in two stages to the SSAS via a third party SIPP provider, about which Mr B has also complained to this service).

His regular adviser put him in touch with ROC as it was owned by the adviser's father. We know that ROC was involved in this case through its information request to ReAssure and then being named on Origo requests from Rowanmoor. ROC told him the proposal to move his pensions into a SSAS would be 'fantastic'. It would involve property or hotel developments abroad, which wasn't Mr B's area of expertise. ROC didn't give him any information about its regulatory status.

Our investigator discussed the March 2015 version of the Scorpion leaflet with Mr B. Of the warning signs highlighted in that leaflet, he thought he would never have responded to contact out of the blue and he knew that guaranteed returns or returns of over 8%pa were things to be wary of – but ROC hadn't mentioned these. There was also no suggestion that he would be accessing funds from the SSAS himself before age 55 (the minimum pension age).

Instead, Mr B explained that he was shown a lot of 'glossy brochures' about where his money was going to be invested, and started to realise about three years later that the promised 'bonuses' from the investments hadn't materialised. He was told there were problems with arranging for these to be paid, but now realised he'd been fobbed off.

The investigator asked Mr B how he thought he might have acted had he received the Scorpion leaflet. He thought it would have 'raised flags' about what he was doing, but also said that warnings about scam calls *"…get rammed down your throat now more than ever. Would I have picked that up at the time…probably not. But now, you'd realise it."*

Mr B thought that his pension providers should have come back to him and asked if he was sure, or said that they wouldn't recommend what he was doing. And that he might then have thought further about it and spoke to someone else to get further advice. So essentially, Mr B's view was the same as that which I took in my provisional decision – which was that it was only direct intervention by ReAssure that would have made the difference in him deciding not to go ahead.

Since my provisional decision I've established the following about what happened to the other transfers Mr B made to the SSAS:

Scottish Equitable: transfer was requested on 19 May 2015 and paid across relatively quickly on 29 May, without Scottish Equitable giving Rowanmoor the requested confirmation of whether any guaranteed benefits or penalties applied. There is no evidence of Scottish Equitable warning Mr B during this time and that is consistent with Mr B having complained about this transfer to the Pensions Ombudsman.

Abbey Life: the only transfer pack issued was sent directly to Rowanmoor on 24 August 2015, but it did include Abbey Life-branded versions of the Scorpion leaflet and FCA 'protect your pension pot' factsheet relevant to that time period. There's no evidence these were passed on to Mr B by Rowanmoor.

The Abbey Life discharge form stated, *"We recommend that you seek guidance from Pension Wise (guidance service) to help you understand your retirement options before proceeding with this application";* and *"We recommend that you seek financial advice (for example from a financial adviser) to help you understand your retirement options before proceeding with this application."*

However it doesn't explain where Mr B could contact Pension Wise or find a (regulated) adviser. Abbey Life has confirmed to this service that it had no other direct contact with him.

Friends Life: has no record of an earlier transfer request direct to the Rowanmoor SSAS before a decision was made to use a third-party SIPP provider to transfer the funds. However its approach at the time was to decline transfers to SSAS without genuine sponsoring employers. It's therefore likely that ROC, which this service is aware was involved in many such transfers, would have been aware of this and that was why it didn't seek to transfer Mr B's funds directly from Friends Life to the SSAS.

The third-party SIPP provider used to make the Friends Life transfer also didn't send him a Scorpion leaflet, and failed to identify the risk that the funds weren't actually invested and transferred out very shortly after the transfer-in had been made, or that there were wider risks of a pension scam present in the transfer request. It has agreed to settle Mr B's complaint in respect of the funds transferred through it.

<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.

Even though a transfer pack was requested by ROC in this case, ReAssure didn't send the Scorpion insert or contact Mr B at all. So, it failed to do was reasonably expected of it here. Nor it seems did any other provider issue the Scorpion leaflet to Mr B. However, ReAssure has picked up on the fact that Mr B has given the impression that even if he had been provided with this leaflet, it wouldn't have made any difference.

The version of this leaflet that our investigator discussed with Mr B was the March 2015 version. I've compared this with the July 2014 version, which was current at the time ReAssure responded to ROC's request for a transfer pack. If anything, I think that the July

2014 leaflet would have been even less effective in Mr B's case because overseas transfers weren't mentioned at all. As I've previously said, I don't think Mr B should be criticised for admitting that he's not sure if this leaflet would have made a difference in his case. I'm equally not satisfied that it would have done. But that doesn't solely determine the outcome of the complaint, as I'll go on to explain what more steps ReAssure should have taken.

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 B'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 Scorpion guidance as a benchmark instead.

I've firstly looked at what due diligence ReAssure carried out in this case. ReAssure says it had been informed by Origo that providers failing the Origo due diligence checks would be referred to an anti-fraud team at HMRC. And it also placed weight on Rowanmoor's pedigree and being subject to FCA regulation in respect of the SIPPs it also provided.

I realise ReAssure's point about Origo might be that it could consider the transfer request came from a recognised 'club' or group, which was one of the initial filter questions for transfers at low scam risk under the PSIG Code. But the example given of a recognised club or group was an association of pension *schemes*, not providers: the Public Sector Transfer Club. This was mostly large schemes in the public sector who would be making transfers between each other on a regular basis. It would be relatively unusual to be making a transfer to a scheme which had recently joined that club, and understandably some comfort could be drawn from that. I don't think the same would apply to Origo Options, which was a platform for processing transfers that potentially any scheme administrator could join.

ReAssure hasn't provided any details on what due diligence checks Origo would have carried out. However, the evidence I've seen from another provider who has asked Origo was a series of questions that didn't actually get into the detail of how a SSAS provider established whether the introducers and investments involved with the schemes it established were likely to be acting in the client's best interests. Against this background I don't think an assurance that any provider failing the checks would be reported to HMRC, was going to act as an adequate substitute for ReAssure actually enquiring with Mr B as to who was advising him and what investments he was intending to make.

I've taken into account what the due diligence in question was aimed at preventing – pension scams, the end result of which can often be the loss of entire pension funds – and the clear steps that were expected of ceding schemes to prevent this happening. Given also the duties of personal pension providers under PRIN and COBS 2.1.1R, I don't think ReAssure's approach was good enough here.

I note that at the time of the transfer Rowanmoor was a long established SSAS provider and had some repute in the industry. Rowanmoor Trustees Limited also had legal and fiduciary duties as a professional trustee. There's an argument, therefore, that ReAssure could have taken comfort from this. I disagree. The Scorpion guidance gave ceding schemes an important role to play in protecting customers wanting to transfer a pension. It would defeat the purpose of the Scorpion guidance for a ceding scheme to have delegated that role to a different business – especially one that had a vested interest in the transfer proceeding.

An important aspect in this is the fact that there is little regulatory oversight of SSASs like this; they don't have to be registered with TPR. And TPR had specifically highlighted that scams were now focusing on single-member schemes in its 2015 update to the Scorpion action pack. In the absence of that oversight, ReAssure was assuming, in effect, that

Rowanmoor would want to maintain its standing in the industry and the trustee subsidiary would comply with its legal and fiduciary duties. In the context of guarding against pension scams – and an environment where providers and trustees clearly didn't always act as they should have done – I don't consider this to have been a prudent assumption.

The fact that a different part of Rowanmoor's business was regulated by the FCA doesn't change my thinking on this. The key point is that Rowanmoor Group Plc and Rowanmoor Trustees Limited (both of which were involved in the operation of the SSAS) *weren't* FCA-regulated so I see no reason why ReAssure could have expected that they would have operated with FCA regulations and Principles in mind – or why their actions would have come under FCA scrutiny. As such, I'm not persuaded ReAssure could, reasonably, have derived sufficient comfort about the Rowanmoor SSAS as a destination for Mr B's transfer.

So for the reasons given above, the "accepted club" part of the "Initial analysis" section of the PSIG Code isn't applicable here. Neither could ReAssure have considered the receiving scheme/administrator as being free of scam risk. So the initial triage process should have instead led to ReAssure asking Mr B 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 one of them would have been answered "yes":

- 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 B to help with that.

<u>What should ReAssure have found out?</u>

Under part a) above, I think ReAssure would readily have been able to establish that Mr B wasn't genuinely employed by the sponsoring employer to the SSAS. This was a company registered to the address of ROC, who had introduced him to whole SSAS proposal and these investments. In other words, this employer was merely a means to establish the SSAS and not a going concern.

Under b), I accept there was little geographical separation between Mr B and ROC's address. Nevertheless Mr B's answers under a) would have made it clear that he wasn't commuting to or working remotely for a company at that location, as it wasn't a trading business but a means to go on to make the investments promoted to him.

Under part c), I think Mr B would have explained that he'd been referred to ROC by his existing financial adviser. So, he wasn't transferring on the basis of unsolicited contact. However, in following the Scorpion guidance and PSIG Code it was necessary for ReAssure to establish whether Mr B was being advised to make the transfer, and who that advice was coming from.

ROC's name (rather than any other adviser) is all over the Rowanmoor and transfer paperwork. Indeed it was remunerated for advising on and arranging the SSAS transfer. So, I find it unlikely that Mr B would have told ReAssure that his existing financial adviser was actually recommending the transfer and/or the investments. That was evidently why he had been referred to someone else.

Given ROC's heavy involvement I find it likely that he would have named this firm. And ReAssure would readily have been able to check, as the Scorpion guidance expected, that ROC didn't appear on the FCA register. I think ReAssure would likely also have learned from Mr B that the investments under consideration were mainly overseas – and all were property-based and of a more esoteric nature. In fact on Mr B's original Rowanmoor application form (signed in April 2015), Akbuk Resort Group was mentioned in place of Park First, so all three originally intended investments were overseas property developments, consistent with Mr B's recollection of the initial discussions.

To complete the picture, under part (d) Mr B's SSAS was also recently established. Together with the information in part (a) this would have been viewed as the means to make an investment – rather than being the genuine establishment of a SSAS as part of a small business Mr B operated. So, even though Mr B wasn't cold-called or promised high or guaranteed returns, I think ReAssure would have been able to recognise the other hallmarks of a potential scam in the nature of the advice Mr B was getting, the type of pension scheme involved (a single-member occupational scheme) and the nature of the investments.

Being *advised* by an unauthorised firm to transfer benefits from a personal pension plan would have been a breach of the general prohibition imposed by FSMA, which states no one can carry out regulated activities unless they're authorised or exempt. Anyone working in this field should have been aware that financial advisers need to be authorised to give regulated advice in the UK. The PSIG Code (and the Scorpion guidance) make much the same point. Indeed, the PSIG Code says firms should report individuals appearing to give regulated advice that aren't authorised to do so.

My view is that ReAssure should therefore have been concerned by ROC's involvement because it pointed to a criminal breach of FSMA. On the balance of probabilities, I'm satisfied such a breach occurred here. Rather than doing this, ReAssure went on to refer internally to ROC being an "IFA", giving it the credibility of a term usually used for a regulated adviser - when ROC was not.

<u>What should ReAssure have told Mr B – and would it have made a difference?</u>

Had it done more thorough due diligence, there would have been a number of warnings ReAssure could have given to Mr B in relation to a possible scam threat as identified by the

PSIG Code (and the Scorpion action pack). ReAssure should also have been aware of the close parallels between Mr B's transfer for the purposes of investing (mainly) in overseas property and the warnings the FCA gave to consumers in 2014 (and subsequently passed on to firms) about transferring to SSASs in order to invest in unusual investments. But the most egregious oversight was ReAssure's failure to uncover the threat posed by a non-regulated adviser. Its failure to do so, and failure to warn Mr B accordingly, meant it didn't meet its obligations under PRIN and COBS 2.1.1R.

With those obligations in mind, it would have been appropriate for ReAssure to have informed Mr B that the firm he had been advised by was unregulated and could put his pension at risk. ReAssure should have said only authorised financial advisers are allowed to give advice on personal pension transfers, so he risked falling victim to illegal activity and losing regulatory protections. I think ReAssure should also have appreciated that it would have been effective in Mr B's case to draw out the similarities in what he was doing and the examples of pension scams set out by TPR and FCA. Noting that it hadn't sent Mr B the Scorpion insert prior to his transfer request, ReAssure could have sent Mr B a longer booklet version including an actual example similar to his, which would have been effective in this case (and more effective than the insert, as I've previously discussed).

I don't think this would have been a disproportionate response given the scale of the potential harm Mr B 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 B, that it was replicating the responsibilities of the receiving scheme or that it was putting in place unnecessary barriers to exit.

I'm satisfied any messages along these lines would have changed Mr B's mind about the transfer. The messages would have followed conversations with Mr B so would have seemed to him (and indeed would have been) specific to his individual circumstances and would have been given in the context of ReAssure raising concerns about the risk of losing pension monies as a result of untrustworthy advice. This would have made Mr B aware that there were serious risks in using an unregulated adviser. These messages were completely absent at the time of Mr B's transfer – as I've noted above, we have no evidence that any of the other providers Mr B was transferring from warned Mr B in these terms either.

The closest a provider came appears to be Abbey Life, but it sent some key warning material (in particular the FCA factsheet about SSAS scams) to Rowanmoor instead of Mr B. There's no evidence that Rowanmoor passed that onto Mr B and I think it's unlikely it would have done so. Abbey Life's disclaimer that Mr B should seek advice or go to Pension Wise, wouldn't have been effective in a situation where Mr B already thought he was getting appropriate advice (because no-one had warned him otherwise) from someone he'd been referred to by his existing adviser.

ReAssure hasn't specifically responded to my view on the connection Mr B had to ROC via his previous adviser, and I remain of that view. To reiterate, I don't consider the degree of trust Mr B may have had with his long-standing adviser would have survived him being told that ROC wasn't authorised to provide him with the advice he was getting, and was in fact breaking the law. It's evident from Mr B's recollections that ROC hadn't explained that it was unregulated. So if ReAssure had discussed this with him he would have become aware that the referral of his business to ROC was taking him outside the regulated environment, and was one of a number of features of what he was doing that placed him at high risk of a scam. Mr B didn't have a long-standing relationship with ROC, so I'm not persuaded it's likely that he would have valued ROC's proprietor being his adviser's father above protecting his pension provision from the possibility of a scam.

I think the gravity of the messages ReAssure should have been giving would prompt most reasonable people to rethink their actions. I've seen no persuasive reason why Mr B would have been any different. So, I consider that if ReAssure had acted as it should, Mr B wouldn't have proceeded with the transfer out of his personal pension or suffered the investment losses that followed. I therefore uphold Mr B's complaint.

Putting things right

My aim is that Mr B should be put as closely as possible into the position he would probably now be in if ReAssure had treated him fairly.

The Rowanmoor SSAS only seems to have been used in order for Mr B to make investments that I don't think he would have made from the proceeds of this pension transfer, but for ReAssure's actions. So I think that Mr B would have remained in his pension plan with ReAssure and wouldn't have transferred to the Rowanmoor SSAS.

To compensate Mr B fairly, ReAssure must subtract the proportion of the actual value of the Rowanmoor SSAS which originates from the transfer of the ReAssure (originally L&G) pension, from the notional value if the funds had remained with ReAssure. If the notional value is greater than the actual value, there is a loss.

Actual value

This means the proportion of the Rowanmoor SSAS value originating from Mr B's ReAssure transfer (the **"relevant proportion"**) at the date of my Final Decision. For ease of calculation, it should be assumed all the transfers into the SSAS were paid in on the same day and spread across all of the investments made. And the amount paid from ReAssure can then simply be divided by the total transferred-in.

To arrive at the value of the relevant proportion on the date of my final decision, any amount in the Rowanmoor SSAS bank account is to be included, but any overdue administration charges yet to be applied to the Rowanmoor SSAS should be deducted. Mr B may be asked to give ReAssure his authority to enable it to obtain this information to assist in assessing his loss, in which case I expect him to provide it promptly.

My aim is to return Mr B to the position he would have been in but for the actions of ReAssure. This is complicated where an investment is illiquid (meaning it cannot be readily sold on the open market), as its value can't be determined. On the basis of the evidence I have, that is likely to be the case with the following investment(s): Park First, Chateau de la Cazine (Halcyon Spa), Dolphin Capital. This is because the investments are not producing a return and appear as a result to be unmarketable.

I also don't think it's realistically possible for ReAssure to only acquire a part of these investments from the Rowanmoor SSAS as I'm only holding it responsible for the loss originating from a transfer in of the ReAssure funds. Therefore as part of calculating compensation:

- ReAssure must give these illiquid investment(s) a nil value as part of determining the actual value. In return ReAssure may ask Mr B to provide an undertaking, to account to it for the relevant proportion of the net proceeds he may receive from those investments in future on withdrawing them from the Rowanmoor SSAS. ReAssure will need to meet any costs in drawing up the undertaking. If ReAssure asks Mr B to provide this undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

- It’s also fair that Mr B should not be disadvantaged while he is unable to close down the Rowanmoor SSAS. So to provide certainty to all parties, if these illiquid investment(s) remain in the scheme, I think it’s fair that ReAssure must pay an upfront sum to Mr B equivalent to the relevant proportion of five years’ worth of future administration fees at the current tariff for the Rowanmoor SSAS, to allow a reasonable period of time for the Rowanmoor SSAS to be closed.

Notional value

This is the value of Mr B’s funds had he remained invested with ReAssure up to the date of my Final Decision.

ReAssure should ensure that the relevant proportion of any pension commencement lump sum or gross income payments Mr B received from the Rowanmoor SSAS are treated as notional withdrawals from ReAssure on the date(s) they were paid, so that they cease to take part in the calculation of notional value from those point(s) onwards.

Payment of compensation

I don’t think it’s appropriate for further compensation to be paid into the Rowanmoor SSAS given Mr B’s dissatisfaction with the outcome of the investment it facilitated.

ReAssure should reinstate Mr B’s original pension plan as if its value on the date of my Final Decision was equal to the amount of any loss established from the steps above (and it performs thereafter in line with the funds Mr B was invested in).

ReAssure shouldn’t reinstate Mr B’s original plan if it would cause a breach of any HMRC pension protections or allowances – but my understanding is that it might be possible for it to reinstate a pension it formerly administered in order to rectify an administrative error that led to the transfer taking place. It is for ReAssure to determine whether this is possible.

If ReAssure is unable to reinstate Mr B’s pension and it is open to new business, it should set up a **new** pension plan with a value equal to the amount of any loss on the date of my Final Decision. The new plan should have features, costs and investment choices that are as close as possible to Mr B’s original pension.

If ReAssure considers that the amount it pays into a **new** plan is treated as a member contribution, its payment may be reduced to allow for any tax relief to which Mr B is entitled based on his annual allowance and income tax position. However, ReAssure’s systems will need to be capable of adding any compensation which doesn’t qualify for tax relief to the plan on a gross basis, so that Mr B doesn’t incur an annual allowance charge. If ReAssure cannot do this, then it shouldn’t set up a new plan for Mr B.

If it’s not possible to set up a new pension plan, ReAssure must pay the amount of any loss direct to Mr B. But if this money had been in a pension, it would have provided a taxable income during retirement. Therefore compensation paid in this way should be notionally reduced to allow for the marginal rate of income tax that would likely have been paid in future when Mr B is retired. (This is an adjustment to ensure that Mr B isn’t overcompensated – it’s not an actual payment of tax to HMRC.)

To make this reduction, it’s reasonable to assume that Mr B is likely to be a basic rate taxpayer in retirement. So, if the loss represents further ‘uncrystallised’ funds from which Mr B was yet to take his 25% tax-free cash, then only the remaining 75% portion would be taxed at 20%. This results in an overall reduction of 15%, which should be applied to the compensation amount if it’s paid direct to him in cash.

Alternatively, if the loss represents further ‘crystallised’ funds from which Mr B had already taken his 25% tax-free cash, the full 20% reduction should be applied to the compensation amount if it’s paid direct to him in cash.

If payment of compensation is not made within 28 days of ReAssure receiving Mr B’s acceptance of the Final Decision, interest must be added to the compensation at the rate of 8% per year simple from the date of the Final Decision to the date of payment.

Income tax may be payable on any interest paid. If ReAssure deducts income tax from the interest, it should tell Mr B how much has been taken off. ReAssure should give Mr B a tax deduction certificate in respect of interest if Mr B asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

This interest is not required if ReAssure is reinstating Mr B’s plan for the amount of the loss – as the reinstated sum should, by definition, mirror the performance after the date of my Final Decision of the funds in which Mr B was invested. However, I expect any such reinstatement to be achieved promptly.

Details of the calculation must be provided to Mr B in a clear, simple format.

My final decision

I uphold Mr B’s complaint and require ReAssure Limited to pay him compensation as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 11 April 2025.

Gideon Moore
Ombudsman