

## **The complaint**

Mr F has complained, with the help of a professional representative, about a transfer of his ReAssure Limited personal pension (formerly Legal & General, but I'll refer to ReAssure only for ease) to a small self-administered scheme (SSAS) in August 2014. Mr F's SSAS was subsequently used to invest in an overseas property with The Resort Group (TRG.) The investments now appear to have little or no value. Mr F says he has lost out financially as a result.

Mr F 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 F 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**

In April 2014, Mr F says he was cold called by a business, which said it had 'tracked down' his pension and it was offering a free review. Mr F gave his authority to allow them to obtain information about his pension from ReAssure.

On 24 April 2014, a firm called Moneywise Financial Advisors Limited (Moneywise) – presumably, the business who called Mr F – wrote to ReAssure requesting information about Mr F's pension. ReAssure sent Moneywise the requested information on 25 April 2014. Moneywise was authorised by the FCA.

Mr F says he then agreed to meet with an adviser, which led to a meeting at his home. Mr F says the meeting was not with a representative of Moneywise, but with a representative of a different firm, which he now understands was unauthorised. I will discuss this in more detail later on. Mr F, who was 53 at the time, says they recommended he transfer his pension to a SSAS and invest in an overseas commercial property investment with TRG. He says it sounded like a realistic opportunity to achieve a significant increase on his pension savings providing for his future retirement.

On 13 May 2014, a company was incorporated with Mr F as director. I'll refer to this company as C Limited. On 21 May 2014, a SSAS was established and then registered with HMRC on 6 June 2014. C Ltd was recorded as the SSAS's principal employer and Cantwell Grove Limited (CGL) was recorded as the administrator. CGL was not subject to FCA regulation.

On 7 July 2014, ReAssure received documents from CGL to allow Mr F's pensions to be transferred to the SSAS. The letter accompanying the paperwork said that CGL was aware of concerns around 'pension liberation', it supported the efforts of the pension industry, and that its business model, as a pensions administrator, had been vetted by HMRC. It also said CGL supported the 'Scorpion' campaign of The Pension Regulator (TPR) and that the 'Scorpion' information leaflet, which warned about the risks of pension liberation, had been shared with Mr F.

CGL enclosed the completed application for the transfer, copies of the scheme trust deed and rules, the HMRC registration confirmation and a scheme details Q&A document, which gave answers to some general questions, including which investments were under consideration. The Q&A document said that the investments under consideration were a commercial property investment provided by TRG and a discretionary fund management service. The document said that appropriate advice, about whether the investments were satisfactory for the aims of the scheme, was being taken by the trustees of the SSAS from Central Markets Investment Management Limited (CMIM). The letter said CMIM was registered with and regulated by the FCA.

I note at this point there is no evidence that CMIM did in fact provide any advice to Mr F. The trustee advice was provided by another business, Broadwood Assets Ltd (BAL.) In an undated copy of a letter issued to Mr F, this said it was providing him with advice, in his capacity as trustee of the SSAS, on the potential suitability of the TRG investment “both as a specific example of an overseas commercial property investment, and more generally as an investment to be held within a SSAS.” It said it had not advised on the establishment of the SSAS, was not providing advice that would be deemed regulated – BAL was not regulated or authorised by the FCA – and it wasn’t advising on whether the TRG investment was “suitable for the particular needs and objectives of the members of beneficiaries of the SSAS.” This letter was signed by Mr F and dated 15 August 2014.

Also enclosed with the transfer request paperwork was a letter signed by Mr F. This letter said he was aware there had been a rise in cases of pension liberation fraud and he was aware of the issues relating to this. The letter said Mr F wanted to confirm he was requesting a transfer to take advantage of investment opportunities, none of which were connected with pension liberation. And it said he was not looking to access his pension before age 55 – the trust deed of the SSAS would not permit this – and he had not been offered a cash or other incentive to transfer.

At some point after receiving the transfer request, ReAssure wrote to Mr F asking him to complete a ‘Member Discharge and Declaration’ form. This form referred to an attached letter, but I’ve not been provided with a copy of this. The form said the letter outlined the concerns ReAssure had with the transfer request and it asked Mr F to confirm he still wanted to go ahead. It asked him to confirm, amongst other things, that he was exercising his statutory right to transfer, he understood the receiving scheme was registered with HMRC, he’d read the TPR leaflet on pension liberation and the important information about pension transfers ReAssure had provided.

It also said Mr F understood that if the receiving scheme were to facilitate early access to his pension he could incur a significant tax charge for which ReAssure wouldn’t be responsible. Mr F also crossed out the relevance box to confirm that he had received financial advice in relation to the transfer. Mr F signed and dated the form 19 August 2014 and returned it to ReAssure.

On 27 August 2014, ReAssure actioned Mr F’s transfer and according to ReAssure’s records, an amount of just over £31,000 was credited to the SSAS.

Mr F then gave an investment instruction to CGL to invest £22,000 in TRG.

Mr F says that, when he reached 55, he accessed £6,000 from his SSAS as a tax-free cash lump sum.

I understand the TRG investment has since failed and as such has little or no value.

In March 2020, Mr F complained to ReAssure. Briefly, he said it ought to have spotted, and

told him about, a number of warning signs in relation to the transfer. These included but were not limited to: Mr F having been cold called, the SSAS being newly registered with no genuine employment link to the sponsoring employer, CGL not being regulated and the intended investment being unregulated and overseas. Mr F said if ReAssure had properly informed him of these warning signs, he wouldn't have transferred.

ReAssure didn't uphold the complaint. In summary it said that it was reassured by Mr F's letter enclosed with the transfer request paperwork that he'd carefully considered the transfer and that it was in no way connected to pension liberation. It said it also asked Mr F to confirm that he still wanted to go ahead after outlining its concerns with the transfer, which he did. It then made payment on 27 August 2014.

Mr F then referred his complaint to the Financial Ombudsman Service. I issued a provisional decision in August 2024 explaining that I intended to uphold Mr F's complaint and award compensation. Below are key extracts from my provisional decision, which form part of my final decision, explaining why.

### *The relevant rules and guidance*

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

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

*The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme if certain conditions are satisfied (and they may also have a right to transfer under the terms of the contract). This right came to be exploited, with people encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren't entitled to – for instance, because they were below minimum retirement age. At various points, regulators issued bulletins warning of the dangers of taking such action. But it was only from 14 February 2013 that transferring schemes had guidance to follow that was aimed at tackling pension liberation – the "Scorpion" guidance.*

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

*The guidance was updated on 24 July 2014 (which was before Mr F's transfer). It widened the focus from pension liberation specifically, to pension scams – which it said were on the increase. I cover the Scorpion campaign in more detail below.*

*In late 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 SIPP and SSAs 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.*

### *The Scorpion guidance*

*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 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 contents of the Scorpion guidance was essentially informational and advisory in nature and that deviating from it doesn’t necessarily mean a firm has broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member’s 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 – what does the evidence suggest happened? Mr F says that he received a cold call from a business that said it had tracked down his ReAssure pension. He says it offered him a free review of his pension arrangements and that it could arrange for a very good investment opportunity in a resort development. Mr F says that the offer sounded interesting, so he agreed to meet with an adviser.*

*ReAssure received a request to release information about Mr F's pension and provide a transfer pack, on his authority, from MoneyWise Financial Advisors Limited. As I indicated earlier on, Moneywise was authorised by the FCA.*

*But Mr F says that the meeting that took place at his home was from a representative of a different business – a business he now understands was unregulated. He says he thinks it was likely to have been a representative from either BAL or CGL. He says it was this business who recommended he transfer his pension to a SSAS and invest in an overseas commercial property investment. Mr F says he trusted the information he was given, which was that he would receive a guaranteed return far greater than leaving his pension where it was. He says because it sounded like a realistic opportunity to achieve a significant return on his pension and provide for his future retirement, he accepted the recommendation and went ahead with the investment.*

*Mr F says he had no experience of investing. And I've not seen anything to suggest otherwise. Neither have I seen anything else in Mr F's circumstances which leads me to believe that he would've likely embarked on what is a complicated arrangement on his own – setting up a new company, opening a SSAS, transferring his existing pension and investing overseas. So, I think Mr F's recollections about the discussion he had with the business that he met with are plausible. And I think it was these discussions and the prospect of the higher investment returns he was told he would receive, that prompted him to transfer.*

*It's not entirely clear who these discussions were with. And it's not surprising that Mr F isn't now certain or can no longer remember who it was given the number of businesses that have been mentioned as being involved at various stages of the transfer process.*

*Mr F says he met with either BAL or CGL. But I don't think this is likely. I say this because firstly, Mr F's interaction with BAL appears to have happened later on in the process. The advice letter he signed from them was dated 15 August 2014, which was after the transfer request paperwork had been submitted by CGL. And in any event, the advice letter was clear about the extent of its involvement with Mr F – i.e. it was advising him on the investment in his capacity as trustee of the SSAS and not in relation to the transfer of his pension itself to a SSAS.*

*As for CGL's involvement, it seems unlikely to me that a representative of this business as a SSAS administrator would have visited Mr F at home at this early stage in the process to discuss the transfer of his pension and an overseas investment opportunity.*

*It's possible therefore the discussions were with Moneywise – after all this was the firm who it seems made the initial contact with Mr F and requested information about his pension on his authority. But there is no other reference to Moneywise in any of the other evidence, and Mr F says he was visited at home and recommended to transfer by a representative of*

another business.

So, it seems likely there was another business involved here. And the available evidence points to the involvement of a business called First Review Pension Services (FRPS). Mr F has provided copies of his certified identification documents from the time, which were certified with the company stamp of FRPS. Some of these copies are also signed by a representative of that business who is named as an individual connected with that business on Companies House. Because the certification of Mr F's identification required sight of his original identification (the certification wording says that the originals have been seen) I think it is more likely than not that Mr F would've presented his identification during a face-to-face meeting. He's not said things were carried out via the post for example.

Furthermore, Mr F has provided a copy of a certified bank statement from the time, presumably provided to confirm his address as part of his SSAS application / transfer process. I can see the bank statement covers a month's account activity up to 2 May 2014. So, this would tie in with what Mr F says about a meeting taking place at his home after Moneywise obtained details of his pension on 25 April 2014 – a bank statement with account activity up to 2 May 2014 means the meeting cannot have happened before this date.

In addition, the bank statement has been stamped with FRPS' company stamp. Accompanying the certification stamp is the name and signature of a different individual to that I mentioned above, who gave their job title as 'consultant.' And it is this individual, seemingly a representative of FRPS, who also signed Mr F's SSAS application / trust deed as the witness to his signature on the trust deed. And a witness to a signature requires physical presence by the witness.

So, taking all of the above into account, I think it is more likely than not that it was a representative(s) of FRPS who met with Mr F at his home following the unsolicited call from Moneywise, and it was this business that conducted the meeting with him during which it recommended, and he agreed, to transfer his pension to a SSAS, and it completed the necessary paperwork to do so. Crucially, FRPS was unregulated.

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

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.

ReAssure's letter to Mr F following receipt of the transfer request on 7 July 2014 in which it asked him to complete a 'Member Discharge and Declaration' said that it had sent him TPR's leaflet about its examples of pension liberation – the Scorpion leaflet. This would've been the version applicable at that date – the first version published in February 2013. I think it's unlikely Mr F would've signed and returned the declaration to say that he had received the insert if ReAssure hadn't sent it.

I'm mindful too that enclosed with the application to transfer was a signed letter from Mr F explaining why he wanted to go ahead with the transfer, that he understood the risks of liberation and that his transfer was not connected in anyway with that as he was not seeking to release funds from his pension before age 55. So, even if ReAssure didn't send Mr F the Scorpion leaflet as indicated, it would seem that Mr F had received and or was aware of the risks associated with pension liberation, which the Scorpion leaflet at this stage was only concerned about.

*It appears that ReAssure had some concerns with the transfer, which is why it sent Mr F a letter and asked him to complete a declaration. I don't know what those concerns were – as I said I haven't seen a copy of the letter ReAssure sent to Mr F following receipt of the transfer request. Any concerns are likely to have been in relation to pension liberation risk given the timing of the transfer request and the applicable guidance at this time. But it addressed those concerns by sending Mr F a letter, asking him to confirm a number of points I referred to earlier and sign a declaration to say that he still wanted to go ahead with the transfer.*

*So, taking all of the above into account, I think ReAssure took reasonable actions at this point to aim to reduce the risk of pension liberation.*

*But Mr F didn't sign and return his declaration form to say he still wanted to go ahead with the transfer until 19 August 2014. And by this time the Scorpion guidance had been updated with information which covered wider scams. While I don't think it is reasonable to expect ReAssure to have sent Mr F the updated version of the Scorpion insert at this time, as I will explain below, I think it is fair and reasonable to expect it to have taken the updated guidance into account before actioning Mr F's pension transfer request and notwithstanding his signed declaration that he wanted to proceed.*

*Due diligence:*

*In light of the Scorpion guidance, and in particular in this case the updated July 2014 guidance, I think firms like ReAssure ought to have been on the look-out for the tell-tale signs of not just pension liberation but wider pension scams and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk.*

*At the time the transfer request was made, and given the guidance at that time was focussed on pension liberation, as I concluded above, I think given the steps ReAssure took, it would've been fair and reasonable for it to have considered the risk of pension liberation taking place in Mr F's case was low.*

*But ReAssure doesn't appear to have given any thought as to whether further due diligence was required in this case in light of the Scorpion guidance being updated prior to Mr F returning his signed declaration to proceed with the transfer. I think it should have done. The updated guidance broadened the focus to pension scams more widely. So, in the circumstances I think ReAssure should've considered this and I think it ought reasonably to have looked at the transfer request again, notwithstanding Mr F's signed declaration that he wanted to proceed.*

*Given the information ReAssure had at the time, I think a potential warning sign of a scam was present in this case. This is because a feature of Mr F's transfer was that his SSAS was recently registered. ReAssure should have reasonably checked the SSAS was correctly registered. And in doing so it would've identified the registration date as being very recent. So, I think ReAssure should have followed up on it to find out if other signs of a scam were present. And I think the most reasonable way of going about that would have been to turn to the check list in the action pack to structure its due diligence into the transfer.*

*The check list provided a series of questions to help transferring schemes assess the potential threat by finding out more about the receiving scheme and how the consumer came to make the transfer request. Some items on the check list could have been addressed by checking online resources such as Companies House and HMRC. Others would have required contacting the consumer. The check list is divided into three parts (which I've numbered for ease of reading and not because I think the check list was designed to be followed in a particular order):*

1. *The nature/status of the receiving scheme*

*Sample questions: Is the receiving scheme newly registered with HMRC, is it sponsored by a newly registered or dormant employer, an employer that doesn't employ the transferring member or is geographically distant from them, or is the receiving scheme connected to an unregulated investment company?*

2. *Description/promotion of the scheme*

*Sample questions: Do descriptions, promotional materials or adverts of the receiving scheme include the words 'loan', 'savings advance', 'cash incentive', 'bonus', 'loophole' or 'preference shares' or allude to overseas investments or unusual, creative or new investment techniques?*

3. *The scheme member*

*Sample questions: Has the transferring member been advised by an 'introducer', been advised by a non-regulated adviser or taken no advice? Has the member decided to transfer after receiving cold calls, unsolicited emails or text messages about their pension? Have they applied pressure to transfer as quickly as possible or been told they can access their pension before age 55?*

*Opposite each question, or group of questions, the check list identified actions that should help the transferring scheme establish the facts.*

*I don't think it would always have been necessary to follow the check list in its entirety. And I don't think an answer to any one single question on the check list would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the check list to establish whether a scam was a realistic threat.*

*Given the warning sign that should have been apparent when dealing with Mr F's transfer request, and the relatively limited information it had about the transfer, I think in this case ReAssure should've addressed all three parts of the check list and contacted Mr F again as part of its due diligence.*

*What should ReAssure have found out?*

*If ReAssure had followed the questions in part 1 above, it should have established that the SSAS was not only recently established but also connected to a company where Mr F was the sole director, it wasn't trading and he wasn't actually employed by it in a meaningful way.*

*Investigations into part 2 would at that time have, most likely, identified that Mr F was neither offered any form of cash incentive to transfer nor told he could access his pension funds early. But he was being advised to invest in an overseas property venture.*

*In my view, this investment included some features that might be implicated in a pension scam (overseas, unregulated and/or unusual or creative techniques.)*

*If ReAssure had asked questions in part 3, it would likely have learned that Mr F was initially cold called. But more importantly, given what I've found above, I think it would've discovered that Mr F appeared to be taking advice from FRPS. And that firm was unregulated. Mr F said he was being advised when he returned his declaration. But this didn't specify that this was*

regulated advice, so I think an obvious and reasonable question for ReAssure to ask was who was advising him and to check their regulatory status. Had it done so, while I said above that Mr F can now no longer recall who he met with and advised him to transfer, this isn't surprising given the passage of time and the various different parties involved. But, on balance, I think Mr F would more likely than not have told ReAssure it was FRPS who was advising him. And even if he mentioned BAL or CGL instead, neither of these firms were regulated either.

The check list recommends that in order to establish whether its member has been advised by a non-regulated adviser, the ceding firm should "check whether advisers are approved by the FCA at [www.fca.gov.uk/register](http://www.fca.gov.uk/register)". In other words, they should consult the FCA's online register of authorised firms. ReAssure should have taken that step, which is not difficult, and it would quickly have discovered that Mr F's adviser was indeed unauthorised.

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 investment advice in the United Kingdom – indeed, the Scorpion guidance itself makes this point.

My view is that ReAssure should have been concerned by FRPS' involvement because it pointed to a criminal breach of FSMA. On the balance of probabilities, I'm satisfied such a breach occurred here.

What should ReAssure have told Mr F – and would it have made a difference?

I think if ReAssure had revisited the transfer request in August 2014 and done more thorough due diligence, there would have been a number of warnings it could have given to Mr F in relation to a possible scam threat as identified by the action pack. For the avoidance of doubt these are: the involvement of an unregulated adviser who gave Mr F illegal advice; he was intending to invest in the types of scheme often associated with pension scams; and a SSAS, sponsored by an artificial employer was set up for the purposes of making those investments.

In my view, the gravest oversight was ReAssure's failure to uncover the threat posed by a non-regulated adviser. Its failure to do so, and its failure to warn Mr F 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 F that the firm it appears he had been advised by was unregulated and could put his entire 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.

I'm satisfied any messages along these lines from Mr F's existing pension provider – a firm I think it's reasonable to conclude in the circumstances he would've considered trustworthy – would've carried significant weight. In my view, they would have set off alarm bells – I don't think Mr F wouldn't ignored these warnings.

The messages would have followed conversations with Mr F, 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 F aware that there were serious risks in using an unregulated adviser. I think the gravity of any messages along these lines would prompt most reasonable people to rethink their actions.*

*And I've seen no persuasive reason why Mr F would have acted differently to the majority of people in those circumstances. Mr F had received an unsolicited call to discuss his pension – he was not actively looking to transfer his pension or make different investments. He was an inexperienced investor who appears to have been dependant on advice. At the very least, I think he'd have sought further guidance as suggested in the action pack and/or advice from a properly regulated adviser before proceeding. Had he done so, I think this would've led him to fully appreciate the transfer and the investments being contemplated were of extremely high risk, unwise and so conclude they were not in his best interests. I therefore can't see Mr F would, more likely than not, have still gone ahead with the transfer.*

*So, I consider that if ReAssure had acted as it should, Mr F would not have proceeded with the transfer out of his personal pension or suffered the investment losses that followed. I therefore intend to uphold Mr F's complaint.*

*I think ReAssure could've prevented Mr F's losses, so in the circumstances it's fair and reasonable for it to compensate him for those losses.*

### **Responses to my provisional decision**

Mr F's representative said they had nothing further to add.

ReAssure also said it had nothing further to add and would wait for my final 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.

Having done so, and given neither party has given me anything new to consider, I see no reason to change my mind. So, I've decided to uphold this complaint for the same reasons as set out in my provisional decision.

Because I think ReAssure could've prevented Mr F's losses, in the circumstances it's fair and reasonable for it to compensate him for those losses.

### **Putting things right**

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

The SSAS only seems to have been used in order for Mr F to make an investment 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 F would have remained in his pension plan with ReAssure and wouldn't have transferred to the SSAS.

To compensate Mr F fairly, ReAssure should subtract the actual value of the SSAS 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 SSAS value at the date of my Final Decision. To arrive at this value, any amount in the SSAS bank account is to be included, but any overdue administration charges yet to be applied to the SSAS should be deducted. Mr F 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 F 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): TRG. This is because it has failed and appears to have little or no market value. Therefore as part of calculating compensation:

- ReAssure should seek to agree an amount with the SSAS as a commercial value for the illiquid investment(s) above, then pay the sum agreed to the SSAS plus any costs, and take ownership of those investment(s). The actual value used in the calculations should include anything ReAssure has paid to the SSAS for illiquid investment(s).
- Alternatively, if it is unable to buy them from the SSAS, ReAssure should give the illiquid investment(s) a nil value as part of determining the actual value. In return ReAssure may ask Mr F to provide an undertaking, to account to it for the net proceeds he may receive from those investments in future on withdrawing them from the SSAS. ReAssure will need to meet any costs in drawing up the undertaking. If ReAssure asks Mr F to provide this undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.
- It's also fair that Mr F should not be disadvantaged while he is unable to close down the SSAS. So to provide certainty to all parties, if these illiquid investment(s) remain in the scheme, I think it's fair that ReAssure should pay an upfront sum to Mr F equivalent to five years' worth of future administration fees at the current tariff for the SSAS, to allow a reasonable period of time for the SSAS to be closed.

### ***Notional value***

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

ReAssure should ensure that any pension commencement lump sum or gross income payments Mr F received from the 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 SSAS given Mr F's dissatisfaction with the outcome of the investment it facilitated.

ReAssure should reinstate Mr F'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 F was invested in).

ReAssure shouldn't reinstate Mr F'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 F'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 F'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 F 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 F doesn't incur an annual allowance charge. If ReAssure cannot do this, then it shouldn't set up a new plan for Mr F.

If it's not possible to set up a new pension plan, ReAssure should pay the amount of any loss direct to Mr F. 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 F is retired. (This is an adjustment to ensure that Mr F isn't overcompensated – it's not an actual payment of tax to HMRC.)

To make this reduction, it's reasonable to assume that Mr F is likely to be a basic rate taxpayer in retirement. So, if the loss represents further 'uncrystallised' funds from which Mr F 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 F 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 F's acceptance of my Final Decision, interest should be added to the compensation at the rate of 8% per year simple from the date of my 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 F how much has been taken off. ReAssure should give Mr F a tax deduction certificate in respect of interest if Mr F 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 F'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 F was invested.

Mr F or ReAssure must respond to let us know if they intend to dispute any of the following as soon as possible:

- the assumption that Mr F will be a basic rate taxpayer in retirement
- the assumption of a nil value for TRG at the date of my Final Decision

This is so that these assumptions can be revisited and Mr F receives appropriate compensation. It won't be possible for us to amend these assumptions if a Final Decision is issued on the complaint.

Details of the calculation should be provided to Mr F in a clear, simple format.

### **My final decision**

I've decided to uphold Mr F's complaint and I instruct ReAssure Limited to put things right in line with the approach set out in the section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 7 October 2024.

Paul Featherstone

**Ombudsman**