

The complaint

Mr M has complained, through his representative, that ReAssure Limited ('ReAssure') undertook insufficient due diligence when transferring his personal pension to a Qualifying Recognised Overseas Pension Scheme ('QROPS') in November 2014.

Mr M's QROPS - the Harbour Retirement Scheme ('Harbour') - was based in Malta. Funds from his ReAssure pension were subsequently used to make a significant investment into loan notes on property in Germany through Dolphin Capital. Dolphin went into administration in 2020 and the investments have no value.

What happened

Mr M says he was approaching 55 and was looking at doing something low to medium risk with his pension. He contacted a firm in the UK who sent a representative to meet him. They suggested the Harbour QROPS and investments into Dolphin. Mr M says he was looking to emigrate to Malta so the proposition sounded good to him. He was then introduced to Servatus Ltd for advice. Mr M couldn't recall the name of the initial firm he contacted, but he remembered the individual's name who met him and the letter from Servatus indicates their involvement followed a meeting with this individual who worked for Portia Financial Limited ('Portia').

Portia was an unregulated firm. Servatus was regulated by the Central Bank of Ireland. At the relevant time they also appeared on the FCA register as being authorised in the UK with passporting rights.

ReAssure received Mr M's letter of authority for a firm called Global Partners Limited ('GPL') on 1 May 2014. On 6 May 2014 ReAssure wrote to Mr M to tell him they had been contacted by GPL who were registered outside the UK and therefore they might be subject to limited regulation by the Financial Conduct Authority. For security reasons they were writing to Mr M directly. Mr M doesn't recall any interactions with GPL.

In July 2014 Mr M received advice from Servatus. They issued a financial planning report recommending the transfer to a QROPS and the investments to be suitable for him.

In August 2014, ReAssure wrote to Mr M to say that they had been contacted by Global Partners informing them that he wanted to transfer his pension. They told Mr M what documents he needed to provide for a transfer to a QROPS.

On 21 October 2014 ReAssure received a transfer request from Harbour including completed discharge forms and documentation to demonstrate Harbour's status as a recognised QROPS by HMRC.

On 31 October 2014 ReAssure called Mr M as part of their due diligence as he was a resident in the UK but was transferring to a QROPS. The call notes show that he was asked why he was choosing to transfer outside the UK and when he was looking to take pension benefits. Mr M said he believed the returns and benefits were greater for himself and his family. He said he was looking to take benefits between now (Mr M was 55 at the time) and

age 60. ReAssure asked what he believed the additional benefits were by transferring to Harbour. Mr M said none other than what he already mentioned.

On 6 November 2014, ReAssure confirmed to Mr M that they had received all necessary forms from him and that he would receive confirmation paperwork soon. The transfer value of his pension was sent to Harbour the same day.

Mr M complained to ReAssure in 2022 that they should have done further due diligence and warned him about the transfer and the unsuitability of the intended investments. ReAssure rejected the complaint.

Mr M referred his complaint to this service. In their submissions to this service ReAssure admitted that their procedures could have been more thorough. They said there was no clear evidence the Scorpion leaflet -which was issued by the Pensions Regulator ('TPR') and warned about pension liberation risks- had been provided to Mr M.

One of our investigators rejected the complaint. He thought ReAssure should have sent Mr M a Scorpion leaflet and they ought to have done more in terms of due diligence. However, further enquiries would have shown that Mr M was being advised by Servatus, an EEA regulated firm with UK passporting rights which would have given them enough comfort that the scam risk was minimal. So no further warnings needed to be given. The investigator thought that even if ReAssure had acted as they should have done, the transfer still likely would have gone ahead.

Mr M's representatives disagreed that ReAssure could take comfort from Servatus's involvement. They say foreign advice would have been unusual and should have been seen as another red flag. Mr M also wouldn't have the same regulatory protections as from a UK adviser. ReAssure should have informed Mr M about all of this.

They also disagreed that Mr M would have proceeded with a transfer if ReAssure had asked more questions and sent him the Scorpion leaflet.

As the complaint couldn't be resolved, it was referred to me for an ombudsman 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.

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

What did ReAssure do and was it enough?

The investigator set out in detail the relevant rules and guidance in place at the time of the transfer and how they would apply. Both ReAssure and Mr M's representatives are very familiar with this and so I'm not going to repeat this here again in detail. However, in short I consider the Principles of Business (PRIN), COBS 2.1.1 R and the Pension Regulator's Scorpion guidance in the version of 2013 and 2014 to be relevant for this complaint.

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. I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance or PSIG 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. I consider this is a reasonable expectation of personal pension providers dealing with transfer requests bearing in mind their duties under the regulator's Principles and COBS 2.1.1R.

The Scorpion leaflet:

ReAssure have acknowledged that the Scorpion leaflet should have been sent but that there is no clear evidence it was.

Based on the letter in May 2014 it looks like ReAssure was intending to send a leaflet then. This would have been the version of February 2013. They wrote again to Mr M after the transfer had been requested in August 2014. This was another opportunity to send the leaflet which would have been the version of July 2014.

Due diligence:

In light of the Scorpion guidance, I think firms ought to have been on the look-out for the tell-tale signs of a pension scam and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk. ReAssure could be reasonably satisfied in my view that the QROPS was properly registered with HMRC and they even spoke to Mr M to ask him a few more questions about the motivation for his transfer to a QROPS which was the right idea. However, judging by the limited call notes, the questions didn't go far enough in my view and some of the pertinent questions were not asked. Mr M wasn't asked for example how he had heard about Harbour and if he had received any advice and by whom.

What would ReAssure reasonably have discovered if they had asked more detailed questions?

ReAssure already knew that Mr M was over 55 and therefore unauthorised early pension access wasn't a risk. And he had explained that he was looking at transferring to a QROPS as he thought it offered better benefits and returns.

From a few more simple questions directed to Mr M, ReAssure would have likely found out that it was Mr M who had contacted Portia and that he had been advised by Servatus.

The Scorpion checklist recommends that, in order to establish whether a member has been advised by a non-regulated adviser, the transferring scheme should consult the FCA's online register of authorised firms. ReAssure should have taken that step, which is not difficult. Had it done so it would have discovered that Servatus appeared on the FCA register as a firm that was passported from Ireland to the United Kingdom. This means that for UK purposes throughout the period of this transfer Servatus was an authorised person under s.31(1)(b) of the Financial Services and Markets Act (FSMA) 2000 and Schedule 3 to that Act.

ReAssure might have also found out that Mr M was looking to move to Malta in retirement.

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

A ceding pension scheme is not expected to act as a general pension adviser to a member who tells it they want to leave their scheme. The Scorpion guidance is aimed at spotting and averting potential pension transfer scams against the member, rather than delivering general advice about the merits of different regulatory systems or high-risk investments. So, for it to be reasonable to expect a ceding scheme to have concerns and raise these with its member, there must, viewed overall, appear to be a real risk their member is falling victim to a scam. For Mr M's transfer, viewed overall in that way and if ReAssure had taken the steps it should, I don't consider that would have been the case.

Mr M's representatives say ReAssure should have warned Mr M he wouldn't have the same regulatory protections than from a UK adviser. It is correct that Servatus didn't have a branch in the UK and so Mr M wouldn't have had any recourse via UK's complaints and investor protection institutions, like the Financial Ombudsman Service or the FSCS, as opposed to their Irish equivalents. The Republic of Ireland also has a complaints system, financial services and pensions ombudsman and a statutory investor compensation scheme, which EU countries are required to have under the EU's Investor Compensation Directive.

Servatus was passported from Ireland to the UK and so for the period of this transfer Servatus was an authorised person under FSMA 2000. The right to passport financial services from one EU country to another is a feature of the EU's internal market, which applied to the UK at the time. The right was underpinned by the introduction of EU wide standards of investor protection and harmonised conduct of business rules. So, the UK's regulatory system permitted EU passported firms, if duly registered with the FCA on its public register, to operate here as authorised persons under the FSMA 2000, and I think that, in the present case, that could have provided sufficient comfort for ReAssure's purposes.

As a firm that was regulated (albeit by a home-state regulator in another EU jurisdiction) the regulatory protections included the fact that Servatus would have been held to a high standard, mandated throughout the EU, by its own regulator. And as an authorised firm, Servatus would have had to follow the applicable European regulatory standards and conduct its practice in accordance with those standards. Its operations would have been under some oversight by its regulator to ensure it was acting in the best interest of its client. It therefore would have had to meet certain required standards in all of its dealings and be subject to regulation and to investor recourse under the Irish system. So, in my view, ReAssure could have been reassured that Servatus was regulated to EU standards that were accepted for the purpose of authorisation under United Kingdom law.

Overall, I think ReAssure could be comforted by the fact that Mr M had received regulated financial advice. Also, he hadn't been approached unsolicited, wasn't accessing his pension before minimum retirement age and at the time he was considering a move abroad which gave additional plausibility for a QROPS. So I don't think if ReAssure had made more detailed enquiries that this would have resulted in warnings to Mr M that he was at risk of a scam.

Would ReAssure sending Mr M the Scorpion insert have changed his mind about the transfer?

As noted earlier in this decision, I think Mr M should have received a Scorpion leaflet. I can't be certain whether the leaflet might have raised doubts about the transaction. I have to decide what-on the balance of probabilities- most likely would have happened based on the evidence I have. Looking at the leaflets, I don't think the majority of the warnings contained within it would have likely resonated with Mr M. It warned about claims that he could access

his pension before the age of 55, being enticed by upfront cash and being approached out of the blue. None of this applied to Mr M.

The 2014 leaflet did warn about being lured into “one off” investment opportunities which Mr M *might* have recognised as something similar to what had happened to him. The leaflet referred to further information being available through TPR’s website or by calling The Pensions Advisory Service or Action Fraud. However, TPR’s website at the time still focused heavily on early access pension liberation and the main recommendation was to seek regulated advice which is what Mr M had received. So overall, just like ReAssure I think Mr M would have been comforted by the fact he was dealing with a regulated adviser and likely wouldn’t have been concerned he was being scammed.

In summary I think ReAssure didn’t do quite enough here. However, if they had done everything they should have, on balance I still think Mr M would have transferred his pension and so he would be in the same position he is in now. So I don’t think ReAssure has caused the investment losses he has suffered.

My final decision

I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr M to accept or reject my decision before 12 February 2025.

Nina Walter
Ombudsman