DRN-5058529

The complaint

Mr A has complained, with the help of a professional representative, about a transfer of his ReAssure Limited personal pension to a small self-administered scheme (SSAS) in November 2014. Mr A'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 A says he has lost out financially as a result.

Mr A 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 A 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 August 2014, Mr A says he received a cold call from a business he believes was Moneywise Financial Advisors Limited (Moneywise) offering him a free pension review with a view to increasing his returns by investing elsewhere. Mr A gave Moneywise his authority to allow it to obtain his pension details from ReAssure. Moneywise was authorised by the Financial Conduct Authority (FCA).

Moneywise wrote to ReAssure to obtain details of Mr A's pension and according to ReAssure's records, on 19 September 2014 it replied to Moneywise with the requested information.

Mr A says he then agreed to meet with an adviser, which led to at least one meeting taking place at his home. Mr A says this was with a business called First Review Pension Services (FRPS). Mr A, who was 59 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, so he agreed to go ahead.

On 14 October 2014, a company was incorporated with Mr A as director. I'll refer to this company as B Limited. On 22 October 2014, a SSAS was established and then registered with HMRC on 24 October 2014. B 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 November 2014, ReAssure received documents from CGL to allow Mr A's pension 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 A.

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 Sequence Financial Management Limited (SFML). The letter said SFML was an independent financial advice firm regulated by the FCA.

I note at this point there is no evidence that SFML did in fact provide any advice to Mr A. The trustee advice was provided by another business, Broadwood Assets Ltd (BAL). On 15 October 2014, it sent Mr A letter, which 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 A and dated 7 November 2014.

Also enclosed with the transfer request paperwork was a letter signed by Mr A. 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 A 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.

On 10 November 2014, ReAssure wrote to Mr A saying that it had received all of the information it needed for his transfer and that it wanted to draw his attention to some concerns it had with the request.

The letter also referred Mr A to TPR's leaflets it said it sent with the original transfer quote pack. It said if Mr A still wanted to go ahead with the transfer, he needed to sign and return the enclosed Member Discharge and Declaration. The bottom of the letter said that it strongly recommended that Mr A seek independent financial advice on the suitability of the transfer.

The declaration asked Mr A 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 TPR's leaflet on pension liberation and the important information about pension transfers ReAssure had provided, he 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 signed and dated the form 13 November 2014 and ReAssure received it on 17 November 2014.

On 19 November 2014, ReAssure transferred Mr A's pension and an amount of just over £19,200 was credited to Mr A's SSAS. From the SSAS bank statements provided, shortly afterwards, an investment of around £16,700 was made in TRG.

In February 2016, Mr A also transferred the benefits of a pension he held with another provider into his SSAS – just over £67,300 – and a further investment of just over £29,000 was made in TRG.

In May 2016 and again in May 2017, lifetime allowance certificates as part of the evidence presented, show Mr A accessed his pension and took amounts of around £24,000 and £28,000 respectively.

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

In March 2020, Mr A 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: him 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 A 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 A'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 and he was aware of the risks involved. It said it also asked Mr A to confirm that he still wanted to go ahead after outlining its concerns with the transfer, which he did. It then made payment on 19 November 2014.

Dissatisfied with its response, Mr A then referred this complaint to us. I issued my provisional decision in which I explained why I intended to not uphold Mr A's complaint. Included below are the key extracts from my provisional findings, explaining why.

Extracts from my provisional decision

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

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

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

- On 10 June 2011, the Financial Services Authority (FSA) issued a warning about the dangers of "pension unlocking" and specifically referred to consumers transferring to access cash from their pension before age 55. (As background to this, the normal minimum pension age had increased to 55 in April 2010.) The FSA said that receiving occupational pension schemes were facilitating this.
  It encouraged consumers to take independent advice. The announcement acknowledges that some advisers promoting these schemes were FSA authorised.

- At around the same time, TPR published information on its website about pension liberation, designed to raise public awareness and remind scheme operators to be vigilant of transfer requests. The warnings highlighted that websites and cold callers were encouraging people to transfer in order to receive cash or access a loan.

- TPR launched its Scorpion campaign on 14 February 2013. The aim of the campaign was to raise awareness of pension liberation activity and to provide guidance to scheme administrators on dealing with transfer requests in order to help prevent liberation activity happening. The FSA, and the FCA which had succeeded the FSA, endorsed the guidance. The guidance was subsequently updated, including in July 2014. I cover the Scorpion campaign in more detail below.

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

- ReAssure was subject to the FCA Handbook and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA/FCA rules governing pension transfer requests, but the following have particular relevance:

    - Principle 2 – A firm must conduct its business with due skill, care and diligence;

    - Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;

    - Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and

    - COBS 2.1.1R (the client’s best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

<u>The Scorpion guidance</u>

The Scorpion campaign was launched on 14 February 2013, and was initially focused just on pension liberation – namely, the access to pension funds in an unauthorised manner (such as before normal minimum pension age).

However, it’s the update to that guidance on 24 July 2014 that’s most relevant to this complaint. It widened the focus from pension liberation specifically, to pension scams – which it said were on the increase.

The materials in the Scorpion campaign comprised:

- An insert to be included in transfer packs (the ‘Scorpion insert’). The insert warns readers about the dangers of pension scams and identifies a number of warning signs to look out for.

- A longer booklet issued by 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 statutory rights.

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

In those circumstances, I consider firms which received pension transfer requests needed to pay regard to the contents of the Scorpion guidance as a matter of good industry practice.

It means February 2013 marks an inflection point in terms of what was expected of personal pension providers dealing with transfer requests as a matter of fulfilling their duties under the regulator’s Principles and COBS 2.1.1R.

<u>What did personal pension providers need to do?</u>

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.

<u>The circumstances surrounding the transfer – what does the evidence suggest happened?</u>

Mr A says that he received an unsolicited phone call from Moneywise who offered him a free review of his pension arrangements and said he could increase his returns by investing elsewhere. Mr A says he thought this sounded interesting, so he gave Moneywise his authority to allow it to request details of his pension from ReAssure.

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

Mr A says he then agreed to meet with an adviser, who met with him at his home. Mr A says the representative was from FRPS. He says it was this business who recommended he transfer his pension to a SSAS and invest in an overseas commercial property investment. Mr A says that he had previously worked as an adviser specialising in a particular aspect of the mortgage market, but he had no experience of pensions or investments. He says he was recovering from a medical condition at the time and had been retired on medical grounds

He 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 – up to 12% a year. He says because it sounded like a realistic opportunity to achieve a significant return on his pension and provide for his future retirement, he agreed to go ahead.

While Mr A clearly had some knowledge of the financial services sector given his occupation history, I've not seen anything to contradict what he's said about not having any pension or investment experience. Neither have I seen anything else in Mr A'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 A'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.

I also think the evidence in this case supports Mr A's claim that the business he met with was FRPS and it was they who advised him to transfer his pension and make the investment. FRPS' company stamp appears on certified copies of Mr A's identification documents and a representative of FRPS signed to say they witnessed Mr A's signature on his SSAS trust deed. Because witnessing of a signature and certifying original copies of documents requires physical presence, and Mr A has said he only met with FRPS at this stage in the process, I think it is more likely than not Mr A is correct and it was FRPS that advised him and recommend he transfer his pension. FRPS was not FCA authorised or regulated.

As I said above, the transfer paperwork submitted by CGL referred to the involvement of SFML – a FCA regulated firm. But as I also said, there is no evidence that it provided any advice whatsoever to Mr A. CGL's reference to SFML's involvement was described as it being the trustee adviser. It appears that this role was in fact carried out by BAL. And the evidence I referred to earlier on is clear that it was not involved in providing Mr A with any advice in relation to the transfer of his pension itself.

But even if SMFL was involved, the information available to ReAssure at the time was clear that its role in the process was a limited one – specifically in relation to the appropriateness or suitability of the proposed investments for the aims of the SSAS. So, ReAssure could not take any comfort or reassurance that SFML was involved in the advice and recommendation to transfer itself. And it would appear that it didn't because it then went on to write to Mr A to say that he might be getting unregulated advice.

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

The Scorpion insert:

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

I've not seen any evidence that ReAssure sent Mr A the Scorpion insert or the information it contained in another format to him direct. But as I will explain below, on balance, I think Mr A did likely receive and see the insert.

Firstly, the transfer paperwork CGL submitted to ReAssure said that it had explained and provided Mr A with the Scorpion leaflet. I'm mindful that its paperwork references the 2013 version of the insert – 'Predators stalk your pension' – and not the updated July 2014 version which is relevant here. Mr A would likely have been made aware of the risks of pension liberation, which is what his signed letter explaining why he wanted to go ahead with the transfer suggests. But in this case the risks were broader than just pension liberation covering wider scams more generally.

ReAssure says that it included the Scorpion insert with the original transfer quote or pack. And the Member Discharge and Declaration form it asked Mr A to sign referred to the inclusion of TPR's leaflet within the pack. I haven't seen copies of what ReAssure sent within this pack – only an internal system record which indicates that it sent the transfer pack to Moneywise. So, while there seems to have been a version of the leaflet included here, it's not clear which version or whether Mr A received it. I think it's likely that Mr A signed ReAssure's declaration because he'd received at least one leaflet from someone. But I can't be certain that what Mr A saw was the leaflet warning him about pension scams more broadly and not just liberation. And because both CGL and ReAssure described the leaflet as being about liberation and early access to funds, I'm not persuaded it would've been very impactful on its own.

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 pension liberation and more broadly pension scams and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk.

Mr A's letter enclosed with the transfer pack said he was not liberating. I think it would've been fair for ReAssure to have considered the risk of that taking place was low. But importantly here the transfer took place after TPR broadened its campaign and guidance into scams more broadly. So, this should not have satisfied ReAssure that the transfer posed no threat to Mr A's pension.

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 A's transfer was that his SSAS was recently registered. ReAssure understood this because CGL included the HMRC registration certificate. ReAssure should therefore 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 A’s transfer request, and the relatively limited information it had about the transfer, I think in this case ReAssure should have addressed all three parts of the check list and contacted Mr A as part of its due diligence – which it did as I will discuss below.

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

And under part 3, it would likely have learned that Mr A was initially cold called and he appeared to be taking advice from FRPS. And that firm was unregulated.

So, in this particular case, I think it was appropriate for ReAssure to share these warnings with Mr A.

ReAssure made some attempt to do so because it made contact with Mr A in its letter of 10 November 2014 I previously referred to. The letter said that it had received all of the information requested and it wanted to draw Mr A’s attention to some concerns it had. The three concerns were listed as follows:

- ‘You may not have received advice from a financial advisor who is authorised by the FCA. (The client having the option to see an IFA at any time on any issue)

- The Scheme B Limited SSAS Trust Deed & Rules state that a proportion of the investment may be made outside of the United Kingdom.

- If you choose for B Limited SSAS to opt for an overseas investment then that proportion of any transfer would not have the protection of the Financial Services Compensation Scheme (FSCS).'

Because Reassure did not contact Mr A before sending this letter to ask him questions about how things came about, the warnings it gave were not as specific as I think they ought to have been – i.e. warning him about FRPS as an unauthorised adviser and specifically referring to TRG as the overseas investment.

As I said earlier on, the letter referred to the TPR's leaflets and it asked Mr A to sign a declaration to confirm he still wanted to go ahead with the transfer. The letter also said that it strongly recommended Mr A seek independent financial advice about the suitability of the transfer. It said this could be done by speaking to a FCA authorised adviser or if he didn't have an adviser, he could find one at www.unbiased.co.uk. Again, I'm mindful that the declaration Mr A signed appeared to be more focused on pension liberation and accessing funds early. And these were the things CGL (and Mr A) assured he wasn't doing. Equally, the warning about seeking independent advice appears to be a generalised warning, which in my view did not highlight the particular risks in Mr A's transfer. I think ReAssure could've done more to draw out the specific risks here.

But in this case ReAssure identified what, in my view, represented the most potentially significant risk to Mr A's pension. And that was he appeared to be receiving advice from an unregulated adviser. It could perhaps be argued that ReAssure should have been clearer on this particular point – 'may not have received advice from a financial advisor who is authorised by the FCA' isn't quite the same as saying that only authorised financial advisers are allowed to give advice on personal pension transfers or that illegal activity might be taking place. But the guidance didn't require ReAssure to spell things out quite in those terms. And even if it had said more about this point, and the particular risks of investing in the type of asset (hotel accommodation) that by this point both TPR and the FCA had implicated in scams, I don't currently think it would have made a difference and caused Mr A to act differently.

I say this because Mr A's representative has told us that he used to work as an adviser in the financial services sector and in a FCA regulated capacity. Mr A also had experience of working with a variety of financial services industry product lines in previous roles. And while I accept Mr A didn't necessarily have any direct experience of pensions or investments, he would have been familiar with the fact that many aspects of financial services were regulated by the FCA, including pensions and pension advice. And I think he would've understood that someone advising him on his pension ought to have been regulated and the lack of protection which came from using an unregulated adviser.

ReAssure's second point of concern was about Mr A seemingly making investments outside of the UK. And its third connected concern was that, if he did, he would lose the protection of the FSCS. Again, given Mr A's financial services industry experience, I think he would've recognised that the loss of the ability to recover compensation when things went wrong was significant.

ReAssure also made the point about strongly recommending Mr A seek independent financial advice from a FCA authorised adviser about the suitability of the transfer. And while as I said above I accept this could be seen as a more general point rather than specific to Mr A's particular circumstances, knowing what Mr A ought reasonably to have known about the significance of regulated financial advice, I think this along with the other warnings or concerns should've prompted him to pause, think again about the transfer and take appropriate action. I think ReAssure's letter showed it had concerns that were broader than just pension liberation related, and the leaflet he received (even if this was mainly about liberation) contained the details of TPAS who he could've contacted for independent guidance. But Mr A went ahead anyway and signed and returned the declaration instructing ReAssure to go ahead with the transfer.

I can see that Mr A's representative has said that he had a medical condition, which he was still recovering from at the time and had not worked since being retired on medical grounds. And I've thought about this. On the one hand, this might suggest that Mr A was in a vulnerable position and not act as he might otherwise do. Mr A was likely still recovering as his representative says. But I've not seen enough to persuade me that Mr A was not in a position to apply the knowledge I think he ought reasonably to have had and taken notice of the warnings or concerns ReAssure raised and acted on them.

So, in summary, I think ReAssure didn't do all that it ought reasonably to have done in this particular case. But given the warnings it did give to Mr A, and in his particular circumstances, I think he ought reasonably to have understood the significance of those warnings, taken notice of them and acted accordingly – either by seeking independent advice as ReAssure recommended or guidance free of charge from TPAS. Because Mr A didn't, I'm not persuaded that if ReAssure had provided him with more warnings that it would have resulted in him acting differently.

Responses to my provisional decision

ReAssure didn't respond to my provisional decision.

Mr A's representative said he disagreed with my provisional decision. In summary, they said the following:

- Because Mr A had to give up work, he wasn't working at the time of the transfer, so legally he did not have a right to transfer his pension. ReAssure should've identified there was no statutory right to transfer and refused to transfer his pension. And I should deal with this issue primarily rather than the question of what due diligence it was appropriate for ReAssure to carry out.

- Two decisions made by the Pensions Ombudsman support their contention that there was an expectation for ceding schemes to check the member's employment status.

- In this particular case, specific concerns about Mr A's unemployment ought to have arisen from the transfer paperwork ReAssure saw at the time. One of ReAssure's completed forms asked for the name of the employer, which was left blank. A further question asked for the date contracted out employment began and this was answered "N/A".

- Rather than the most significant risk to Mr A's pension being that he appeared to be receiving advice from an unregulated adviser, the most significant risk was that he was entering into a pension transfer which carried warning signs that it was a scam. ReAssure's communication should've been more specific and focused – the message it ought to have given to Mr A was that it had identified scam warning signs.

- Given Mr A's circumstances, he was unlikely to have an opportunity to add to his pension provision, so a communication that scam warning signs had been identified would've had a clear and significant impact – he wouldn't have put his pension at risk.

- My decision on causation is inconsistent with another published Financial Ombudsman Service decision. In that case a finding of contributory negligence was appropriate, even though that provider in the representative's view did more to warn its customer about a potential scam than ReAssure did here.

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 having done so, I've decided to not uphold this complaint for the same reasons I gave in my provisional decision. I've addressed below, where I've felt it is necessary to do so, some of the points Mr A's representative has made in response to my provisional decision.

Firstly I'd like to stress that, I've reached my decision based on the specific circumstances of Mr A's individual complaint. While on the face of it two cases might look similar or indeed the same, in my view no two complaints are exactly the same. So, the facts and circumstances here are different to those in complaints and transfer requests made by other consumers to other ceding schemes. Given the specific facts and circumstances of Mr A's transfer, I'm satisfied – for the reasons I've already given – that I've reached a fair and reasonable outcome.

I've outlined the obligations businesses had in my provisional decision. I won't repeat them here other than to explain that the 2014 Scorpion action pack – which I've already said sets out a reasonable standard of due diligence for a ceding scheme to follow – doesn't contain an explicit requirement to ask whether the member was in receipt of earnings. The relevant question, which I set out in my provisional decision, was whether the receiving scheme was *"sponsored by an employer that doesn't employ the member".* And it strikes me that Mr A's answer to that question wouldn't, more likely than not, have revealed he was unemployed – just that B Limited didn't employ him in any meaningful sense. I say this bearing in mind that ReAssure wouldn't necessarily have phoned Mr A to ask this question – it could have done so in writing.

Finding out this, and other, information was enough for ReAssure to realise that Mr A was at risk of a scam. Indeed as I noted above, ReAssure was already aware of some of this risk without asking Mr A any questions. So, I don't agree with Mr A's representative that it was incumbent on ReAssure to look for a reason to refuse to make Mr A's transfer, rather than communicating an important warning that he was at risk of a scam so that he could make an informed choice about what he should do. And it was clearly the intention of the guidance that providing these warnings would then be likely to deter the customer from proceeding with the transfer.

If ReAssure's attempt to warn Mr A hadn't resulted in him changing his mind, and the information received as part of the transfer request already indicated that he was unemployed, I might've expected ReAssure to consider if it had a basis for blocking the transfer request. But as his representative is aware, the statutory right may not have been the only route Mr A had to transferring his pension.

And most importantly, despite what Mr A's representative has said, I don't think there was anything in the transfer paperwork here that would reasonably have led ReAssure to believe

Mr A was unemployed. The name of the sponsoring employer being blank wasn't of itself concerning – the name of the sponsoring employer was given in the 'Q&A' document sent to ReAssure with the transfer request. And the date contracted out employment began wasn't applicable because the SSAS wasn't a contracted-out scheme.

Mr A's representative has referred to conclusions reached by the Pension Ombudsman, in complaints that they believe to be similar to Mr A's, which they say supports its view that there was an expectation for ceding schemes to check the member's employment status. But I'm not bound by those findings. I'd expect a transferring scheme to assess each transfer request on its own individual facts, and in the cases the representative has cited it's apparent that the ceding scheme already had good reason to believe the member wasn't working. So, given what I said above, that may well result in different outcomes based on what looks to be similar circumstances.

Mr A's representative has said, in summary, that ReAssure's communication of the warnings it had identified ought to have been more specific and focussed. And broadly I said I thought this should have been the case. I said that, while ReAssure made some attempt to share the warnings it had identified with Mr A, it could've been clearer on some points – for example the warning about getting independent advice was a generalised warning, which didn't highlight the particular risks in Mr A's transfer.

But I maintain the view that, while ReAssure didn't do all that it ought reasonably to have done in this particular case, given the warnings it did give to Mr A, and in his particular circumstances, I think he ought reasonably to have understood the significance of those warnings. And I think he ought reasonably to have taken notice of them and acted accordingly – either by seeking independent advice as ReAssure recommended or getting guidance free of charge from TPAS.

I think Mr A's representative misses the point that this is a situation that should only lead to deduction for contributory negligence. Here, I've concluded that the resolve Mr A already had to go ahead with the transfer, despite the information ReAssure gave him, wouldn't have altered even if ReAssure had provided more specific warnings. So, a finding of contributory negligence doesn't arise here.

So, while I understand that Mr A has lost out financially by investing in high-risk investments, which were likely unsuitable for him, in the particular circumstances of this complaint and for the reasons I've given above, I don't think it is fair and reasonable for ReAssure to put right those losses.

My final decision

For the reasons I've set out above, I've decided to not uphold this complaint, so I make no award in Mr A's favour.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 6 November 2024.
Paul Featherstone
Ombudsman