DRN-5082505

The complaint

Mr T has complained, with the help of a professional representative, about a transfer of his personal pension with ReAssure Limited (previously Guardian) to a small self-administered scheme (SSAS) in May 2015. Mr T says the SSAS was subsequently used to invest in two overseas property-based investments – Dolphin Trust and Akbuk Resort Group. The investments now appear to have little or no value. Mr T says he has lost out financially as a result.

Mr T 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 T says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if ReAssure had acted as it should have done.

What happened

Mr T says he was cold called by a business offering him a free review of his pension arrangements. Mr T hasn't said exactly when this was – but given the timeline of events, I think it likely took place in the first quarter of 2015. Mr T says he agreed to the review and says he was then contacted by a business called Stevenson Pride. He says he met with them at his home. He says they recommended he transfer his pension to a SSAS and invest overseas. He says he was told his investment would double in five years. Mr T agreed to go ahead. According to the Financial Conduct Authority's (FCA) register, Stevenson Pride were appointed representatives of a regulated firm, but this status ceased in 2011. It would therefore appear they were not authorised at the time.

It's not clear which business first made contact with Mr T and there is no available evidence to show which business (if any) ReAssure provided information to about Mr T's pension.

On 15 April 2015, a company was incorporated with Mr T as director. I'll refer to this company as A Limited. Mr T then opened a SSAS (application dated 22 April 2015) with A Ltd as its principal employer. A company called Rowanmoor Group PLC was the SSAS administrator and Rowanmoor Trustees Limited its independent trustee. The SSAS application refers to the proposed investments I referred to above.

On 15 May 2015, ReAssure received an electronic request via the Origo system from Rowanmoor to transfer the benefits of Mr T's pensions. On 21 May 2015, ReAssure transferred the amount of £8,078.18 to Mr T's SSAS.

Mr T also transferred the sum of £87,208.14 representing the benefits of a number of pension policies he held with another provider – transferred between June and August 2015. According to the SSAS bank statements, the combined transferred funds were used to invest just under £40,000 in Akbuk Resort Group and £49,000 in Dolphin Trust.

Mr T has also brought a complaint to the Financial Ombudsman Service about the other provider, which I am also considering. I've taken into account the evidence in that complaint, which I consider demonstrates there were material failings by the provider that also led to Mr T transferring his pension and making the investments as I outlined above.

My understanding is that both the investments Mr T's pension monies were invested in have failed and as such have little or no value.

In August 2020, Mr T complained to ReAssure. In summary, he said ReAssure ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including (but not limited to) the following: the SSAS was newly registered, there wasn't a genuine employment link to the sponsoring employer, the catalyst for the transfer was an unsolicited call and he'd been advised by an unregulated business.

ReAssure didn't uphold the complaint. In summary it said because the transfer was made via Origo, Origo makes their own checks on companies that use their service. It said it understood the responsibility for any due diligence on the investments was Rowanmoor's. It said for this reason the transfer was processed.

Mr T then referred his complaint to us. I issued my provisional decision in which I said I intended to uphold Mr T'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>

Personal pension providers are regulated by the FCA. Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority (FSA). As such ReAssure was subject to the FSA/FCA Handbook, and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS).

There have never been any specific FSA/FCA rules governing how personal pension providers deal with pension transfer requests, but the following have particular relevance here:

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

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

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

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

In February 2013, The Pensions Regulator (TPR) issued its Scorpion guidance to help tackle the increasing problem of pension liberation, the process by which unauthorised payments are made from a pension (such as accessing a pension below minimum retirement age).

In brief, the guidance provided a due diligence framework for ceding schemes dealing with pension transfer requests and some consumer-facing warning materials designed to allow members decide for themselves the risks they were running when considering a transfer.

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

The FSA's endorsement of the Scorpion guidance was relatively informal: it didn't take the form of Handbook Guidance, because it was not issued under s.139A of the Financial Services and Markets Act (FSMA), which enabled the FSA to issue guidance provided it underwent a consultation process first. Nor did it constitute "confirmed industry guidance" as can be seen by consulting the list of all such FSA/FCA guidance on its website. So, the content of the Scorpion guidance was essentially informational and advisory in nature. Deviating from it doesn't therefore mean a firm has necessarily broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's right to transfer.

That said, the launch of the Scorpion guidance in 2013 was an important moment in so far it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing those requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance's specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

In those circumstances, I consider firms which received pension transfer requests needed to pay regard to the contents of the Scorpion guidance as a matter of good industry practice. It means February 2013 marks an inflection point in terms of what was expected of personal pension providers dealing with transfer requests as a matter of fulfilling their duties under the regulator's Principles and COBS 2.1.1R.

The Scorpion guidance was updated in July 2014. It widened the focus from pension liberation specifically, to pension scams more generally – which included situations where someone transferred in order to benefit from "too good to be true" investment opportunities such as overseas property developments. An example of this was given in one of the action pack's case studies.

In a similar vein, in April 2014 the FCA had also started to voice concerns about the different types of pension arrangements that were being used to facilitate pensions scams.

In an announcement to consumers entitled "Protect Your Pension Pot" the increase in the use of SIPPs and SSASs in pensions scams was highlighted, as was an increase in the use of unregulated and/or illiquid investments. The FCA further published its own factsheet for consumers in late August 2014. It highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.

There was a further update to the Scorpion guidance in March 2015, which is relevant for this complaint. This guidance referenced the potential dangers posed by "pension freedoms" (which was about to give people greater flexibility in relation to taking pension benefits) and explained that pension scams were evolving. In particular, it highlighted that single member occupational schemes were being used by scammers.

At the same time, a broader piece of guidance was initiated by an industry working group covering both TPR and FCA regulated firms: the Pension Scams Industry Group (PSIG) Code of Good Practice. The intention of the PSIG Code was to help firms achieve the aims of the Scorpion campaign in a streamlined way which balanced the need to process transfers promptly with the need to identify those customers at material risk of scams.

The March 2015 Scorpion guidance

When the Scorpion guidance was launched in 2013, it included two standard documents that scheme administrators could use to warn their members about some of the potential dangers of transferring: a short "insert", intended to be sent to members when requesting a transfer, and a longer booklet intended to be used for members looking for more information on the subject.

The March 2015 Scorpion guidance asked schemes to ensure they provided their members with "regular, clear" information on how to spot a scam. It recommended giving members that information in annual pension statements and whenever they requested a transfer pack. It said to include the pensions scam "leaflet" in member communications. In the absence of more explicit direction, I take the view that the member-facing Scorpion warning materials were to be used in much the same way as previously, which is for the shorter insert (which had been refreshed in March 2015) to be sent when someone requested a transfer and the longer version (which had also been refreshed) made available when members sought further information on the subject.

When a transfer request was made, transferring schemes were also asked to use a three-part checklist to find out more about a receiving scheme and why their member was looking to transfer.

The PSIG Code of Good Practice

The PSIG Code was voluntary. But, in its own words, it set a standard for dealing with transfer requests from UK registered pension schemes. It was "welcomed" by the FCA and the Association of British Insurers (amongst others). And several FCA regulated pension providers were part of the PSIG and co-authored the Code. So much of the observations I've made about the status of the Scorpion guidance would, by extension, apply to the PSIG Code. In other words, personal pension providers didn't necessarily have to follow it in its entirety in every transfer request and failure to do so wouldn't necessarily be a breach of the regulator's Principles or COBS. Nevertheless, the Code sets an additional benchmark of good industry practice in addition to the Scorpion guidance.

In brief, the PSIG Code asked schemes to send the Scorpion "materials" in transfer packs and statements, and make them available on websites where applicable. The PSIG Code goes on to say those materials should be sent to scheme members directly, rather than just to their advisers.

Like the Scorpion guidance, the PSIG Code also outlined a due diligence process for ceding schemes to follow. However, whilst there is considerable overlap between the Scorpion guidance and the PSIG Code, there are several differences worth highlighting here, such as:

- The PSIG Code includes an observation that: "*A strong first signal of [a scam] would be a letter of authority requesting a company not authorised by FCA to obtain the required pension information; e.g. a transfer value, etc*." This is a departure from the Scorpion guidance (including the 2015 guidance) which was silent on whether anything could be read into the entity seeking information on a person's pension.

- The Code makes explicit reference to the need for scheme administrators to keep up to date with the latest pension scams and to use that knowledge to inform due diligence processes. Attention is drawn to FCA alerts in this area. (I noted the contents of some of those alerts earlier in my decision.)

- Under the PSIG Code, an 'initial analysis' stage allows transferring schemes to fast-track a transfer request without the need for further detailed due diligence, providing certain conditions are met. No such triage process exists in the 2015 Scorpion guidance – following the three-part due diligence checklist was expected whenever a transfer was requested.

- The PSIG Code splits its later due diligence process by receiving scheme type: larger occupational pension schemes, SIPPs, SSASs and QROPS. The 2015 Scorpion guidance doesn't distinguish between receiving scheme in this way – there's just the one due diligence checklist which is largely (apart from a few questions) the same whatever the destination scheme.

TPR began referring to the Code as soon as it was published, in the March 2015 version of the Scorpion action pack. Likewise, the PSIG Code referenced the Scorpion guidance and indicated staff dealing with scheme members needed to be aware of the Scorpion materials.

Therefore, in order to act in the consumer's best interest and to play an active part in trying to protect customers from scams, I think it's fair and reasonable to expect ceding schemes to have paid due regard to both the Scorpion guidance and the PSIG Code when processing transfer requests. Where one differed from the other, they needed to consider carefully how to assess a transfer request taking into account the interests of the transferring member.

Typically, I'd consider the Code to have been a reasonable starting point for most ceding schemes because it provided more detailed guidance on how to go about further due diligence, including steps to potentially fast-track some transfers which – where appropriate – would be in a member's interest.

The considerations of regulated firms didn't start and end with the Scorpion guidance and the PSIG Code. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn't involve anything specifically referred to in either the Scorpion guidance or the Code – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's principles and COBS 2.1.1R.

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

Mr T says he agreed to a pension review following a cold call. It's unclear who called Mr T. But he says he was introduced by them to a business called Stevenson Pride and he agreed to a meeting with one of their representatives at his home. Mr T says the representative recommended he transfer his pension to a SSAS and invest in two overseas property-based investments. He says he was told his investment would double in 5 years. He says it all sounded like a realistic opportunity to increase his pension savings, so he agreed to go ahead. Mr T says he didn't receive any correspondence or communication from ReAssure.

I've seen nothing to indicate that Mr T was offered a cash or other incentive to transfer or that he was planning or did receive funds from the pension. I also can't see any evidence of ReAssure contacting him during the transfer process.

Mr T says he had no knowledge or experience of pensions or investments and I've seen nothing to contradict this. Neither have I seen anything else in Mr T's circumstances which leads me to believe that he would've 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 T's recollections about the discussion he had with the business 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.

As I said above, it's not clear who cold called Mr T offering the pension review – Mr T hasn't said and I haven't seen anything to enable me to draw a conclusion on this. But he's been clear that it was Stevenson Pride he met with and it was they who recommended the transfer and the overseas investments. I haven't had sight of any other paperwork such as an authority Mr T gave to allow his pension details to be disclosed, which might show an adviser or business name. The Origo transfer screen printout provided by ReAssure records no adviser was involved. But the SSAS application shows Stevenson Pride recorded against the trustee adviser section of the form.

So, taking all of the above into account and with no evidence to indicate the involvement of another business (other than Rowanmoor the SSAS administrator) I think it's more likely than not Stevenson Pride advised Mr T to transfer his pension as he says. I'm mindful that, with the SSAS application recording Stevenson Pride as the trustee adviser, this might suggest its role was limited to the appropriateness or suitability of the proposed investments for the aims of the SSAS only rather than the suitability of the transfer itself. But as I said above, I don't think Mr T had the requisite skill or knowledge to do this all alone – I think the transfer would only have come about following advice to do so.

So, in light of what Mr T has said about Stevenson Pride recommending he both transfer his pension and invest overseas, and as I said above, in the absence of any evidence to show or suggest the involvement of anyone else, I think it's more likely than not Stevenson Pride also advised Mr T to transfer. Stevenson Pride was not authorised to provide such 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 seen nothing to indicate that ReAssure sent Mr T the insert or otherwise provided the information contained within it in a different form. And ReAssure hasn't said it provided him with this information.

As I said above, I think it ought to have sent it as a matter of course if there was an earlier request for a transfer pack. Even if there wasn't (perhaps because this request came via Origo), ReAssure at least ought to have provided him with substantially the same information in some form.

But given I think there were other significant failings in this case, which I will set out below, I don't think it is necessary to consider this point any further.

Due diligence:

ReAssure has said that because the transfer was made via Origo who made their own checks on the companies that use their services, and because it understood Rowanmoor had responsibility for the due diligence, it appears to suggest this negated the need for it to do its own due diligence. I don't consider either of these arguments are reasonable.

Firstly, ReAssure hasn't provided any details on what exactly Origo did in this respect. And I think that points to the problem here, which is that ReAssure relied on due diligence conducted by a third party even though it doesn't appear to have really known what that due diligence involved. I've taken into account what the due diligence in question was aimed at preventing – pension scams, the end result of which can often be the loss of entire pension funds – and the clear steps that were expected of ceding schemes to prevent this happening. Also given the duties of personal pension providers under PRIN and COBS 2.1.1R, I don't think ReAssure's approach was good enough here.

For the sake of completeness, I've also considered whether it was reasonable for ReAssure to have assumed there was no risk of a pension scam because the transfer request came from Origo, which could be considered an acceptable club or group, and so fast-tracked the request in line with the initial analysis section of the Code. But I don't consider it was. The example PSIG gave of a recognised club or group was an association of pension schemes: the Public Sector Transfer Club. This was mostly large schemes in the public sector who would be making transfers between each other on a regular basis. It would be relatively unusual to be making a transfer to a scheme which had recently joined that club, and understandably some comfort could be drawn from that. I don't think the same would apply to Origo Options, which was a platform for processing transfers that potentially any scheme administrator could join.

Turning to Rowanmoor's responsibility – I note that at the time of the transfer Rowanmoor was a long established SSAS provider and had some repute in the industry. Rowanmoor Trustees Limited also had legal and fiduciary duties as a professional trustee. There's an argument, therefore, that ReAssure could have taken comfort from this. I disagree. The Scorpion guidance gave ceding schemes an important role to play in protecting customers wanting to transfer a pension. It would defeat the purpose of the Scorpion guidance for a ceding scheme to have delegated that role to a different business – especially one that had a vested interest in the transfer proceeding. An important aspect in this is the fact that there is little regulatory oversight of SSASs like this; they don't have to be registered with TPR. In the absence of that oversight, ReAssure was assuming, in effect, that Rowanmoor would want to maintain its standing in the industry and the trustee subsidiary would comply with its legal and fiduciary duties. In the context of guarding against pension scams – and an environment where providers and trustees clearly didn't always act as they should have done – I don't consider this to have been a prudent assumption.

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

So, instead of relying on third parties to have conducted due diligence, ReAssure should've turned to the PSIG code. As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes.

I've therefore considered Mr T's transfer in that light. But I don't think it would make a difference to the outcome of the complaint if I had considered ReAssure's actions using the Scorpion guidance as a benchmark instead.

The initial triage process should have led to ReAssure asking Mr T further questions about the transfer as per Section 6.2.2 (“Initial analysis – member questions”). I won’t repeat the list of suggested questions in full. Suffice to say, at least three of them would have been answered “yes”:

- Did receiving scheme/adviser or sales agents/representatives for the receiving scheme make the first contact (e.g. a cold call)?
- Have you been promised a specific/guaranteed rate of return?
- Have you been informed of an overseas investment opportunity?

Under the Code, further investigation should follow a “yes” to any question. The nature of that investigation depends on the type of scheme being transferred to. The SSAS section of the Code (Section 6.4.3) points to the following as being potential areas of concern:

a) Employment link: a lack of an employment link to any member of the SSAS.

b) Geographical link: a sponsoring employer that is geographically distant from the member.

c) Marketing methods: a SSAS being marketed through a cold call or an unsolicited approach.

d) Provenance of receiving scheme: a SSAS registered within the previous six months or a recently registered sponsoring employer or administrator one operating from ‘virtual’ offices, or using PO Boxes for correspondence purposes.

Underneath each area of concern, the Code set out a series of example questions to help scheme administrators assess the potential risk facing a transferring member.

Not every question would need to be addressed under the Code. Indeed, the Code makes the point that it is for scheme administrators to choose the most relevant questions to ask (including asking questions *not* on the list if appropriate). But the Code makes the point that a transferring scheme would typically need to conduct investigations into a “wide range” of issues to establish whether a scam was a realistic threat. With that in mind, and given the relatively limited information it had about the transfer, I think in this case ReAssure should have addressed all four sections of the SSAS due diligence process and contacted Mr T to help with that.

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

If ReAssure had carried out the necessary steps above, it would’ve established that the SSAS was not only recently established, but also that it was connected to a company that wasn’t trading and was geographically distant from Mr T. Also, Mr T was the sole director yet he wasn’t employed by it in a meaningful way. ReAssure would also have found out that Mr T was being advised to invest in a holiday resort abroad and an overseas property redevelopment company. In my view, both investments include some features that might be implicated in a pension scam (overseas, unregulated and/or unusual or creative techniques).

Furthermore and most importantly, ReAssure would have learned from Mr T that he had initially been cold called prompting him to agree to a review of his pension, and he appeared to be taking advice from Stevenson Pride. I think this is the business Mr T would’ve named based on the evidence and my conclusions earlier on. And that firm was unregulated.

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

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

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

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

ReAssure should have been aware of the close parallels between Mr T's transfer and the warnings the FCA gave to consumers in 2014 (and subsequently passed on to firms) about transferring to SSASs in order to invest in unusual investments.

But 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 failure to warn Mr T 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 T that the firm he had been advised by was unregulated and could put his pension at risk. ReAssure should have said only authorised financial advisers are allowed to give advice on personal pension transfers, so he risked falling victim to illegal activity and losing regulatory protections.

I don't think this would have been a disproportionate response given the scale of the potential harm Mr T was facing and ReAssure's responsibilities under PRIN and COBS 2.1.1R. And I don't think any such warnings would reasonably have caused ReAssure to think it was running the risk of advising Mr T, that it was replicating the responsibilities of the receiving scheme or that it was putting in place unnecessary barriers to exit.

I'm satisfied any messages along these lines from Mr T's existing pension provider – a firm I think it's reasonable to assume 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 T would've ignored these warnings. I think they would've changed Mr T's mind about the transfer.

The messages would have followed conversations with Mr T, 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 T 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 T would have been any different. Mr T received an unsolicited call to discuss his pension – he was not actively looking to transfer his pension or make different investments. Mr T was an inexperienced investor. I think it's reasonable to conclude he appears to have been dependant on advice. Mr T may well have given up and done nothing. But at the very least, I think Mr T would've sought further advice from a properly regulated adviser (or made use of free guidance from TPAS, which is a message contained in the Scorpion leaflet) before proceeding. And I think it's more likely than not that, had he done so, this would've led him to fully appreciate the transfer and the investments being contemplated were of extremely high risk, unsuitable and so conclude they were not in his best interests. I therefore can't see Mr T would, more likely than not, have still gone ahead with the transfer.

So, I consider that if ReAssure had acted as it should, Mr T wouldn't have proceeded with the transfer out of his personal pension plans or suffered the investment losses that followed.

Responses to my provisional decision

Both Mr T and ReAssure said they had nothing further to add.

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. 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 I gave in my provisional decision as set out above.

Putting things right – fair compensation

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

The A limited SSAS only seems to have been used in order for Mr T 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 T would have remained in his pension plan with ReAssure and wouldn't have transferred to the A limited SSAS.

To compensate Mr T fairly, ReAssure must subtract the proportion of the actual value of the A limited SSAS which originates from the transfer of the ReAssure pension, from the notional value if the funds had remained with ReAssure. If the notional value is greater than the actual value, there is a loss.

Actual value

This means the proportion of the A limited SSAS value originating from Mr T's ReAssure transfer (the **"relevant proportion"**) at the date of my Final Decision. To arrive at this value, any amount in the A limited SSAS bank account is to be included, but any overdue administration charges yet to be applied to the A limited SSAS should be deducted. Mr T 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 T 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): Dolphin Trust and Akbuk Resort Group. This is because I understand the investments have failed and as such have no value. And I don't think it's realistically possible for ReAssure to only acquire a part of the investment from the A limited SSAS as I'm only holding it responsible for the loss originating from a transfer in of the ReAssure funds. Therefore as part of calculating compensation:

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

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

Notional value

This is the value of Mr T's funds had he remained invested with ReAssure up to the date of my Final Decision.

ReAssure should ensure that the relevant proportion of any pension commencement lump sum or gross income payments Mr T received from the A limited 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 A limited SSAS given Mr T's dissatisfaction with the outcome of the investment it facilitated.

ReAssure should reinstate Mr T'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 T was invested in).

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

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

To make this reduction, it's reasonable to assume that Mr T is likely to be a basic rate taxpayer in retirement. So, if the loss represents further 'uncrystallised' funds from which Mr T 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 T 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 T's acceptance of the Final Decision, interest must be added to the compensation at the rate of 8% per year simple from the date of the Final Decision to the date of payment.

Income tax may be payable on any interest paid. If ReAssure deducts income tax from the interest, it should tell Mr T how much has been taken off. ReAssure should give Mr T a tax deduction certificate in respect of interest if Mr T 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 T'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 T was invested. However, I expect any such reinstatement to be achieved promptly.

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

My final decision

For the reasons above, I've decided to uphold Mr T's complaint and I direct ReAssure Limited to put things right in line with the approach set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 12 November 2024.

Paul Featherstone
Ombudsman