The complaint

Mr S has complained about a transfer of his ReAssure Limited personal pension (previously an Old Mutual policy) to a small self-administered scheme ("SSAS") in December 2014. Mr S' SSAS was subsequently used to invest in Parkfirst and Storefirst (investments in car parking and storage pods respectively.) The investments now appear to have little value. Mr S says he has lost out financially as a result.

Mr S 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 S 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

On 15 July 2014, Mr S signed a letter of authority allowing Just Pensions to obtain details, and transfer documents, in relation to his pension (the form also referred to a firm called Moneywise[1] – I'll come back to this later on.) Mr S says this followed a phone call from Just Pensions. He says he left his details on their website after looking at investment information and they called him back. On 21 July 2015, Just Pensions wrote to ReAssure requesting information on Mr S' pension and discharge forms to allow a transfer. ReAssure replied on 25 July 2014.

Mr S says he was then passed on to a business called Return On Capital (ROC) who advised him to transfer his pension to take advantage of property-based investments. Mr S says this was conducted by phone.

Just Pensions made a further request for information about Mr S' pension in October 2014 and ReAssure provided the required information again. Just Pensions wasn't regulated.

On 6 November 2014, a company was incorporated with Mr S as director. I'll refer to this company as C Limited. On 16 November 2014, Mr S signed documents to open a SSAS with C Limited as its sponsoring employer. A company called Rowanmoor Group PLC was the SSAS administrator and Rowanmoor Trustees Limited its independent trustee. The SSAS documents also recorded that the SSAS was to be used to invest in Parkfirst and Storefirst. On 20 November 2014, the SSAS was registered with HMRC.

On 24 December 2014, ReAssure received an electronic request via the Origo system from Rowanmoor to transfer the benefits of Mr S' pension. Due to the passage of time, I don't have a copy of the details contained within this electronic request. But on 31 December 2014, ReAssure processed the request and transferred Mr S' pension.

On 6 January 2015, just over £239,100 was received into the SSAS. Mr S was 52 years old at the time. Around the same time Mr S also transferred the benefits of three other pensions

[1] Moneywise was registered with the Financial Conduct Authority (FCA) as an appointed representative of an authorised firm.

he held with different providers The combined value of these was smaller – somewhere in the region of around £12,500. Mr S' pension monies were then duly invested in Parkfirst and Storefirst.

Both Parkfirst and Storefirst have since failed and as such Mr S' pension has little or no value.

In June 2023, Mr S complained to ReAssure. Briefly, his argument is that ReAssure ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including (but not limited to) the following: the SSAS was newly registered, there wasn't a genuine employment link to the sponsoring employer, and he had been advised by an unregulated business.

ReAssure didn't uphold the complaint, although I haven't seen a copy of its final response letter setting out its reasons.

Following referral to the Financial Ombudsman Service, our investigator upheld the complaint and said ReAssure should put things right. ReAssure disagreed. Because things could not be resolved informally, so the matter was passed to me to decide.

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, regulatory rules, guidance and standards, codes of practice, and (where appropriate) what I consider to have been good industry practice at the relevant time. Where the evidence is incomplete or inconclusive I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened, given the available evidence and wider circumstances.

<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 pension transfer requests, but the following have particular relevance here:

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

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

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

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

In late April 2014 the FCA had also started to voice concerns about the different types of pension arrangements that were being used to facilitate pensions scams. In an announcement to consumers entitled "Protect Your Pension Pot" the increase in the use of 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.

<u>The Scorpion guidance</u>

The materials in the Scorpion campaign comprised:

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

- A longer booklet issued by TPAS which gives more information, including example scenarios, about pension scams. Guidance provided by TPR said this longer leaflet was intended to be used in ongoing communications with members so that could become aware of the scam risks they were facing.

- An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "watch out for" various warning signs of a scam. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request.

  Where a transferring scheme still had concerns, they were encouraged (amongst other things) to contact the member to establish whether they understood the type of scheme they were transferring to and – where a member insisted on transferring – directing the member to Action Fraud or TPAS.

TPR issued the guidance under the powers at s.12 of the Pension Act 2004. Thus, for the bodies regulated by TPR, the status of the guidance was that it provided them with information, education and/or assistance, as opposed to creating any new binding rule or legal duty. Correspondingly, the communications about the launch of the guidance were predominantly expressed in terms that made its non-obligatory status clear. So, the tenor of the guidance is essentially a set of prompts and suggestions, not requirements.

The FSA's endorsement of the Scorpion guidance was relatively informal: it didn't take the form of Handbook Guidance, because it was not issued under s.139A of the Financial Services and Markets Act (FSMA), which enabled the FSA to issue guidance provided it underwent a consultation process first. Nor did it constitute "confirmed industry guidance", as can be seen by consulting the list of all such FSA/FCA guidance on its website.

I take from the above that the contents of the Scorpion guidance was essentially informational and advisory in nature and that deviating from it doesn't necessarily mean a firm has broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's rights.

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

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

<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>

In July 2014, Mr S says he was looking for investment information on the internet and left his personal details on Just Pensions website. He received a call back from Just Pensions and having given them his authority to obtain details of his pension from ReAssure, he says he was then put in touch with a company called ROC.

Mr S says he received advice from ROC over the phone to transfer his pension. He says he was told his pension would be safer in property-based investments than stocks and shares and was told about investments in both storage and car parking, which would return a guaranteed 8% a year. He says the sole purpose of the transfer was the proposed investments. It was on this basis Mr S says he agreed to go ahead.

I can see from the letter of authority Mr S signed with Just Pensions Moneywise is also mentioned. Moneywise was FCA authorised. But the contact details were for Just Pensions and there's nothing else I've seen which refers to Moneywise, and crucially no evidence to suggest it had any involvement in things. So, I think it's likely it was Just Pensions who called Mr S as he says and started the process and that Moneywise did not have any contact or dealings with Mr S.

Mr S says he was then introduced to ROC and it was this business who advised him to transfer. Mr S' representative said in their letter of complaint to ReAssure that the Origo transfer request referred to ROC as the adviser in the case. But I haven't seen a copy of the Origo screen print.
However, there are two pieces of evidence which I think support what Mr S says about who advised him. Firstly, the SSAS application form records ROC as the trustee member adviser. And while this might suggest its role was limited to advising Mr S in his capacity as trustee of the SSAS and only in so far as his investment requirements, in the circumstances I find this unlikely. And secondly, I can see from the SSAS bank account statements provided that a fee of around £5,000 was paid to ROC following receipt of Mr S' pension into the SSAS. A fee of this nature suggests to me that it was the advising firm here.

Furthermore, Mr S does not strike me as someone who would have embarked on what is a complicated arrangement without advice – he doesn't appear to have had the requisite investment / pension skill and knowledge to have done this alone. I think this transfer would only have come about following advice.

I can see that one other firm was involved during the process – Midland Financial Advisers. It was FCA authorised. But I agree with the investigator that its involvement appears limited to verifying Mr S' identity which was a requirement of the SSAS application.

ReAssure said in response to our investigator's assessment of the complaint that there is nothing to suggest ROC was involved in the transfer process. But I disagree. Taking all of the above into account, and in the absence of persuasive evidence to suggest another business was involved, I think more likely than not it was ROC who advised Mr S to transfer his pension and make the investments he went on to make. Crucially, ROC was not FCA authorised.

For the sake of completeness, I've seen nothing to indicate that Mr S was offered a cash or other incentive to transfer. So, I think the reason Mr S went ahead appears to have been the prospect of the higher investment returns he was told he would receive by transferring.

<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.

In this case, while ReAssure ultimately received the transfer request via Origo – the electronic transfer system – it received an information request in writing and provided details of Mr S' pension to Just Pensions. So, ReAssure had an opportunity to send Mr S the Scorpion insert directly at this stage. But there is no evidence that ReAssure did so. I think it should have done – in my view this was the ideal opportunity to provide Mr S with this information. So, ReAssure did not do what was expected of it here.

But I can see from the evidence we have obtained from one of Mr S' other pension providers who also transferred his pension benefits to the SSAS around the same time, that they did send Mr S a copy of the Scorpion leaflet. This was contained within a letter in September 2014. So, I think it's likely this was the July 2014 version of the insert.

That said, I'm mindful this version still talked about the risks of pension liberation and early access to pension funds, which wasn't something Mr S was contemplating. So, on its own, I don't think the Scorpion leaflet would have been very impactful in this particular case and circumstances.

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.

There is no evidence that ReAssure carried out any meaningful further due diligence – other than perhaps the basic checks around the SSAS' registration status. But I think ReAssure should have done more. I say this because, in my view, a potential warning sign of a scam was present in this case because a feature of Mr S' transfer was that his SSAS was recently registered. I accept that the date might not have been clear from the Origo request. But ReAssure should have reasonably checked the SSAS was correctly registered. And in doing so it would’ve identified the registration date as being very recent – within five weeks. So, I think ReAssure should have followed up on it to find out if other signs of a scam were present.

Given this warning sign, I think it would have been fair and reasonable – and good practice – for ReAssure to have looked into the proposed transfer and 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 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 S as part of its due diligence.

What should ReAssure have found out?

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

Investigations into part 2 would at that time have, most likely, identified that Mr S 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 Parkfirst and Storefirst, both of which, in my view include some investment features that might be implicated in a pension scam (unregulated and/or unusual or creative techniques).

If ReAssure had asked questions in part 3, it would likely have learned that Mr S appeared to be taking advice from ROC.

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

Being advised by an unauthorised firm to transfer benefits from a personal pension plan would have been a breach of the general prohibition imposed by FSMA, which states no one can carry out regulated activities unless they're authorised or exempt. Anyone working in this field should have been aware that financial advisers need to be authorised to give regulated investment advice in the United Kingdom – indeed, the Scorpion guidance itself makes this point.

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

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

I think if ReAssure had done more thorough due diligence, there would have been a number of warnings it could have given to Mr S in relation to a possible scam threat as identified by the action pack. For the avoidance of doubt these are: an unregulated adviser gave Mr S 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 also have been aware of the close parallels between Mr S' transfer and the warnings the FCA gave to consumers in August 2014 about transferring to SSASs (which was brought to the attention of pension providers the following month).
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 S 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 S that the business 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'm satisfied any messages along these lines from Mr S' existing pension provider – a firm I think it's reasonable to conclude in the circumstances he would have considered trustworthy – would have carried weight. The messages would have followed conversations or written exchanges with Mr S 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 S 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 S would have acted differently to the majority of people in those circumstances. I think the warnings would have set off alarm bells with him – I don't think Mr S would've ignored these warnings. Mr S was not an experienced investor who acted alone – I think he was someone who was dependant on advice. At the very least, I think he'd have sought further guidance as suggested in the action pack and/or advice from a properly regulated adviser before proceeding. 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, unwise and so conclude they were not in his best interests. I therefore can't see Mr S would more likely than not have still gone ahead with the transfer.

So, I consider that if ReAssure had acted as it should, Mr S would not have proceeded with the transfer out of his personal pension or suffered the investment losses that followed.

I therefore uphold Mr S' complaint.

Putting things right – fair compensation

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

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

To compensate Mr S fairly, ReAssure must subtract the proportion of the actual value of the C 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 C Limited SSAS value originating from Mr S's ReAssure transfer (the **"relevant proportion"**) at the date of my Final Decision.

To arrive at this value, any amount in the C Limited SSAS bank account is to be included, but any overdue administration charges yet to be applied to the C Limited SSAS should be deducted. Mr S 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 S 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): Parkfirst and Storefirst. This is because the investments have failed. And I don't think it's realistically possible for

ReAssure to only acquire a part of the investment from the C 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 S 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 C Limited SSAS. ReAssure will need to meet any costs in drawing up the undertaking. If ReAssure asks Mr S to provide this undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

- It’s also fair that Mr S should not be disadvantaged while he is unable to close down the C 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 S equivalent to the relevant proportion of five years’ worth of future administration fees at the current tariff for the C Limited SSAS, to allow a reasonable period of time for the C Limited SSAS to be closed.

Notional value

This is the value of Mr 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 S received from the C 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 C Limited SSAS given Mr S’ dissatisfaction with the outcome of the investment it facilitated.

ReAssure should reinstate Mr 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 S was invested in).

ReAssure shouldn’t reinstate Mr 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 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 S’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 S 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 S doesn’t incur an annual allowance charge.

If ReAssure cannot do this, then it shouldn't set up a new plan for Mr S.

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

To make this reduction, it's reasonable to assume that Mr S is likely to be a basic rate taxpayer in retirement. So, if the loss represents further 'uncrystallised' funds from which Mr S 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 S 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 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 S how much has been taken off. ReAssure should give Mr S a tax deduction certificate in respect of interest if Mr S 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 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 S was invested. However, I expect any such reinstatement to be achieved promptly.

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

My final decision

For the reasons above, I've decided to uphold this complaint and I instruct ReAssure Limited to put things right in line with the approach above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 2 April 2025.
Paul Featherstone
Ombudsman