

The complaint

Mr B has complained, with the help of a professional third party, about the transfer of his pension to a Qualifying Recognised Overseas Pension Scheme ("QROPS") in October 2017.

His pension was held with a business that ReAssure Life Limited has since become responsible for. So, for clarity I'll just refer to 'ReAssure' throughout my decision.

Mr B says he has lost out financially as a result of the transfer due to high-risk investments made. He 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 B 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.

In addition to the transfer of pension benefits from ReAssure, Mr B also transferred pension benefits from another provider to the QROPS at around the same time. He has raised a separate complaint about that transfer. The circumstances of that other transfer, from a business which I'll call 'Firm P', have relevance to his complaint about ReAssure and so I've referred to them below.

What happened

ReAssure says Mr B called it directly on 25 April 2017 and requested the discharge forms in order to transfer his pension benefits.

ReAssure wrote directly to Mr B on 1 May 2017 in response, providing transfer forms. The letter explained that certain protections and entitlements the existing pension may have offered Mr B would be lost on transfer. ReAssure says a leaflet produced by the Pensions Regulator ('TPR') about the risks of pension scams was also provided at the time. The leaflet referred to here is commonly known as a Scorpion booklet because of the imagery on the front.

Firm P sent Mr B a transfer pack on 9 May 2017. The covering letter acknowledged his enquiry about potentially transferring his pension. At the start of the letter Firm P said "*We strongly recommend you take independent advice from a financial adviser who is authorised and regulated by the Financial Conduct Authority.*" And it provided a link to the Financial Conduct Authority ('FCA') register to enable Mr B to check the authorisation status of an adviser. It then noted that pension scams were on the increase and recommended Mr B read "*the pension scams information which is contained within the attached booklet from The Pensions Regulator*" as well as providing a link to TPR's website for further information. The letter then went on to explain the information and forms that would be required to facilitate a transfer.

One of the documents Mr B signed and completed as part of the transfer pack from Firm P was an overseas transfer application form. On the first page of this document there was a section titled "Pension scams". This advised consumers considering a transfer to consider a

set of questions, amongst which were *“Have you been motivated by a call, online advert or text out of the blue?”*, *“Have you been advised by unregulated advisers who are based overseas?”* and *“Are you transferring your pension savings to another country, while remaining resident in the UK?”*. And it said if the answer to any of the questions listed was yes, *“there’s a chance your money could be at risk”*.

On 21 August 2017, Elmo Pensions Limited (‘EPL’) wrote to ReAssure. It said it was the scheme administrator for the Elmo International Retirement Plan – a QROPS based in Malta. It said it had received a request to transfer into the QROPS from Mr B and enclosed the completed transfer forms. EPL was not authorised or regulated by the FCA. A similar request was sent to Firm P on the same day.

ReAssure says it received follow up calls from both EPL and Mr B on 30 August 2017. ReAssure says it required the completion of additional forms which were sent to Mr B on the same day. And it says a further copy of the Scorpion leaflet was sent at the same time.

EPL provided the additional forms and information on 22 September 2017. This included correspondence between the QROPS and HMRC about its registration. And a copy of ReAssure’s transfer questionnaire which Mr B signed on 4 September 2017. This form was comprised of several questions that Mr B needed to either tick to confirm or leave blank and two questions for Mr B to provide answers in his own words. The questions included *“Have you received financial advice from a regulated adviser in relation to the transfer?”*. Mr B left the relevant box blank. In response to the question *“How did you first become aware of the new pension scheme?”* Mr B wrote *“Research”*. And in response to a question about how the QROPS was to be invested, Mr B wrote *“Customised Portfolio commensurate to my risk profile”*.

Firm P transferred the benefits Mr B held with it to the QROPS in September 2017.

ReAssure confirmed to EPL on 5 October 2017 that it had also authorised payment to the QROPS, representing Mr B’s pension benefits held with it.

Mr B complained to ReAssure in 2021. He said he’d originally been contacted by Vanguard Marketing Consultants LLP (‘VMC’), a business not regulated or authorised by the FCA, and offered a pension review. He agreed to a review regarding investment in the QROPS and says VMC promoted a transfer. His representative said Mr B had been advised to transfer by VMC and that ReAssure hadn’t provided him with any warnings, including TPR’s Scorpion leaflet and hadn’t undertaken appropriate due diligence.

ReAssure didn’t uphold the complaint. It said it had sent Mr B the Scorpion insert along with the transfer pack and had checked that the QROPS was registered with HMRC. And, it believed it had met the requirements of it at the time – noting it wasn’t required to advise Mr B about the transfer or the suitability of the any proposed investments.

The complaint was referred to the Financial Ombudsman Service. I issued a provisional decision in November 2024 explaining that I didn’t intend to uphold Mr B’s complaint. Below are extracts from my provisional findings, explaining why, which form part of my final decision.

The relevant rules and guidance

Mr B’s pension benefits with ReAssure, the provider, were held in an executive pension plan (‘EPP’) established through a business he was director of. An EPP is a contract of insurance a trustee has chosen to include within an occupational pension scheme. And the administration of the EPP, by the insurer providing it – ReAssure, is a regulated activity

under the Regulated Activities Order. For ease of reading though, I'll largely refer to ReAssure as the pension provider.

ReAssure was regulated and subject to the rules of the FCA, and prior to this its 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 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, 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 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 pension

providers dealing with transfer requests as a matter of fulfilling their duties under the regulator's Principles and COBS 2.1.1R.

The materials in the Scorpion campaign comprised an insert / leaflet to be included in transfer packs providing warnings to readers about the dangers of pension scams and some of the warning signs to look out for, a longer booklet giving more information and example scenarios and an 'action pack' for scheme administrators.

The Scorpion guidance was updated several times between it being introduced in 2013 and Mr B's transfer from ReAssure.

- In July 2014 the update 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 March 2015, the 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. The action pack also began suggesting businesses use the checklist within it whenever they received a transfer request. 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.*
- In March 2016, the guidance for businesses said they should direct members to the government's Pension Wise website and reiterated the recommendation for businesses to use TPR's checklist and carry out due diligence on all transfer requests. And it said businesses should communicate any suspicions to consumers, record these and direct consumers to TPAS. The leaflets for consumers were restructured setting out ten steps to protect their pensions and avoid being the next victim of a scam. Amongst these steps were to check the FCA register, to make sure advisers were registered, and the FCA's list of known scams.*
- In March 2017, the shorter insert / leaflet for consumers was restructured again, into five tips to protect yourself from scammers and a separate section on what to look out for. The content covered was largely the same as in the March 2016 version.*

The Scorpion guidance

From the March 2015 update to the Scorpion guidance, schemes were asked 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 was updated in March 2017) to be sent when someone requested a transfer pack and the longer version (which I understand was last updated, prior to Mr B's transfer, in March 2016 – and appears to have fallen out of use by mid-2017) 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, 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.*
- 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 2017 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, SIPP, SSASs and QROPS. The 2017 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 the interest of both parties.

The considerations of regulated firms didn't start and end with the Scorpion guidance and the PSIG Code. If a 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.

The circumstances surrounding the transfer: what does the evidence suggest happened?

Mr B has said that he was looking at his options for his pensions, including options such as self-administered schemes, and then he came across the QROPS being promoted online. He followed the advert which led to him being in contact with VMC. Mr B says he had several phone calls with VMC as well as email correspondence – and he has provided copies of the correspondence he holds. Mr B said he was assured the transfer was legitimate and legal and the QROPS was all above board and that an independent financial adviser ('IFA') would be involved. He thought the promotion was all very plausible.

He said he'd had to send documents to a business called 'A-Z Admin' but otherwise had only dealt with VMC. Mr B assumed the IFA would be suitably qualified and that a transfer was dependent on this, although he didn't see any accreditation. Mr B said he'd been told about a loophole and that he could access money following the transfer, before age 55, through an interest free loan, which persuaded him to transfer. But no payment was forthcoming. Mr B said he'd been told the investment would be across a wide portfolio, including a hedge fund. And the charge for arranging the transfer would be 15% of the value of the pension. And he said he didn't have any recollection of seeing the Scorpion information before he made a complaint.

Mr B has provided copies of emails from VMC. And I note the person that signed the emails was named as a director of VMC on Companies House. These refer to them operating a "very specialist process" and that they provided advice on bespoke Trust Arrangements. It said this followed "regulated advice guidelines for pension transfer advice and subsequent HMRC and statutory laws" which was to ensure their process was safe and legal. It went on to say that this was different to other schemes purporting to allow pension access before age 55 which were normally very high risk and resulted in people losing money. VMC said under its proposed arrangement Mr B could have a maximum of 75% of the transfer value made available to him. It talked about the option of purchasing a holiday property, to enjoy now and receive rental income, or leaving funds invested for future growth. It also suggested that the charge of 15% that its service would cost would be offset by the gains Mr B could make. VMC said "we are 'navigators' to help you on this journey" and that Mr B should only embark on it if he felt comfortable.

VMC sent Mr B its 'client process guide'. This said that he would need to obtain a current valuation from his existing pension provider. A fact-find would then be completed and "submitted to one of our panel of Regulated Independent Financial Advisers" who would conduct a review and prepare a report. If Mr B was happy, he'd be sent forms to apply to join

the QROPS and would need to ask his existing provider for the relevant transfer forms. VMC also said that QROPS had been available for many years and while initially intended for people intending to emigrate there was no requirement to move. After the transfer, investment would happen via a trading platform, which VMC stated had been independently reviewed by another IFA. And that funds would “embark on trading with a registered trust”. It said funds would be released and that VMC was able to shelter these, plus other investments held, so they were protected from taxation. There was also some information about potential investment, with VMC saying it had seen particular success in the “Dolphin Property Investment Scheme” and “Managed Forex”.

VMC also provided Mr B a copy of its ‘legal integrity and due diligence process’. Amongst other things this said its process operated under necessary HMRC rules. It explained that a regulated QROPS was used to facilitate the bespoke Discretionary Trust, based in the USA, and again said initial transfer advice would be from a registered UK IFA. It also stated that the QROPS would be based in the Isle of Man and that the Isle of Man had performed due diligence on the discretionary fund managers based in the USA. It said the discretionary fund manager was one of the oldest privately held investment firms in the USA, but did not name them. It then said funds would be ‘wrapped inside’ a bespoke Discretionary Trust and that the trust was established in 2012.

A copy of the application form for the QROPS, which Mr B has provided, refers to ‘DJB Financial’ as being the ‘introducer’. And I can see one of the emails from VMC to Mr B refers to DJB Financial as being a professional introducer to VMC. DJB Financial, like VMC, was not authorised or regulated by the FCA.

I think, on balance, the documentary evidence supports what Mr B has said. He has explained he was looking at options for his pension and that it was a promotion of the QROPS online that led to his contact with VMC. Given how VMC described DJB Financial, it seems likely that this business introduced Mr B to VMC. Although this may have happened without direct contact between DJB Financial and Mr B. And given the documentation it looks like VMC was the party that Mr B primarily dealt with.

While Mr B has said he was considering options for his pensions, he doesn’t appear to have had any prior connection with the QROPS. And he hasn’t said that he had any intention of moving overseas. So, in the circumstances I think it is likely it was the advertisement he mentioned and the correspondence he had with VMC that led him to consider this. And, as he told our Investigator, I think it was the promise of accessing his pension fund that ultimately persuaded him to transfer.

The emails between VMC and Mr B show that it talked up its process over others purporting to allow access to funds before age 55. So, it seems to have been aware that this was something that interested him. But I’m conscious that VMC described its role as helping Mr B navigate the transfer. And the documents I’ve seen refer to advice on the transfer being provided by a different regulated adviser. Which is something Mr B has said he understood was part of the transfer process.

I haven’t seen evidence of advice being provided by another business. The documents VMC sent Mr B suggested this would be part of the process and that a comparison report would be prepared for Mr B. But I haven’t seen a copy of this. And, when completing the questionnaire ReAssure sent him about the transfer, Mr B didn’t indicate he had received regulated advice.

There were other businesses mentioned in the documentation. I’ve seen a copy of a risk profile questionnaire Mr B completed with a business called Gravitas Finance LLC on 17 November 2017. VMC also refers to ‘Gravitas’ in an email to Mr B explaining the fee

breakdown. Gravitas Finance LLC is however based in Mauritius and again was not regulated or authorised by the FCA. And its involvement came after the transfer of funds had happened.

A-Z Admin, who Mr B says he sent documents to during the application, was incorporated in July 2017 and dissolved in November 2018. It briefly, went by the name Elmo Admin. Which suggests it may have had some connection to the QROPS. Copies of ID documents for Mr B were certified by a person referred to as a solicitor working for 'BMD Law'. They were then also verified by a representative of 'Elmo Insurance Ltd'. Companies House shows the director of A-Z Admin was the same person that verified Mr B's ID documents as a solicitor, working for BMD Law (although BMD Law doesn't appear to have been registered with Companies House until 2020). I can't see that the involvement of this business though went beyond verifying documents.

Overall, it isn't clear therefore if Mr B received the advice he was expecting to receive, on whether to transfer his pension to the QROPS. But what I can say is that the information available doesn't indicate that an FCA regulated business was involved.

ReAssure doesn't appear to have been provided any of the documents I've discussed above. It appears to have provided the transfer pack directly to Mr B – which VMC's process documents indicate was what would be required as they talked about him requesting this information directly. And the only business that appears to have contacted ReAssure was EPL.

What did ReAssure do and was it enough?

The Scorpion insert:

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

ReAssure says it sent Mr B the shorter Scorpion insert when it provided him a transfer pack in May 2017. It has provided a copy of the insert that it says was provided and explained that it was standard practice at the time to send this. Mr B has said he doesn't recall receiving the Scorpion insert prior to complaining. It also said it would've sent a further copy along with the additional forms that needed to be completed at the end of August 2017.

The covering letter ReAssure sent to Mr B with the transfer pack in May 2017 doesn't refer to the Scorpion insert as one of the enclosures. Which I might have expected to see. But, while I know Mr B says he doesn't remember seeing this, on balance I think it likely was sent by ReAssure.

Even if it didn't however, the covering letter for the transfer pack that Firm P sent directly to Mr B refers to a booklet from TPR being attached, as well as providing links to information on TPR's website. Firm P provided a copy of the booklet that this letter referred to. This was the longer booklet version of the consumer guidance from March 2016 (the last update to that material prior to the transfer). And I'm satisfied this was sent to Mr B.

The longer booklet provided more information, including a case study, for Mr B to think about. And it also included largely the same information that the shorter insert from 2017 did – just structured differently.

So, overall I'm satisfied on balance that Mr B was provided the Scorpion information prior to transferring his ReAssure pension benefits. And, while he may no longer remember doing

so, I think it is likely, particularly given how Firm P presented the information, that Mr B read this.

Due diligence:

Firstly, bearing in mind some of the things expressed by Mr B's representative when lodging the complaint, it is worth noting that ReAssure's responsibilities did not extend to advising Mr B. It was also not a requirement that a receiving pension scheme be registered with the FCA – as consumers had a statutory right to transfer their pension benefits to a number of different types of schemes, not all of which were FCA regulated. Clearly as a QROPS, the Elmo International Retirement Plan was recognised by HMRC and so satisfied that requirement. And at the time of Mr B's transfer, unless a transfer involved guaranteed benefits with a cash equivalent transfer value exceeding £30,000, consumers were not required to take regulated advice. And I understand Mr B's pension with ReAssure didn't involve guaranteed benefits.

ReAssure did though have to carry out appropriate and proportionate due diligence. As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mr B'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.

ReAssure has provided evidence that it checked HMRC's QROPS list to ensure the receiving scheme was recognised. But this alone was not enough to conclude there was no risk of Mr B falling victim to a scam. So, I think the PSIG Code ought to have prompted ReAssure to ask Mr B 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":

- Will you be receiving any cash payment, bonus, commission or loan from the receiving scheme or its administrators, as a result of transferring your benefits?*
- Have you been told that you can access any part of your pension fund under the receiving scheme before age 55, other than on the grounds of ill-health?*
- 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 QROPS section of the Code (Section 6.4.4) has the following statement:

"The key items to consider are the rationale for moving funds offshore, and the likelihood that the receiving scheme is a bona fide pension scheme, as if HMRC determine retrospectively that it is not, there may be a scheme sanction charge liability regardless of whether the receiving scheme was included on the list or not."

In order to address those two items – the rationale for moving funds offshore and the legitimacy of the QROPS – the Code suggests the transferring scheme should broadly follow the same due diligence process as for a SSAS, which outlined four areas of concern under the following headings: employment link, geographical link, marketing methods and provenance of the receiving scheme. 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.

What should ReAssure have found out – and would it have made a difference?

ReAssure did establish the legitimacy of the QROPS. And it did send Mr B a pension transfer questionnaire which asked him some questions. And the answers he gave were that he first became aware of the new pension scheme through ‘research’ and his money was to be invested in a ‘customised portfolio’. I haven’t seen any reason ReAssure shouldn’t have taken this at face value and so it could rule out that Mr B had been contacted unsolicited and that the intended investment was not likely to only involve a single investment – which the Scorpion guidance had previously suggested was potentially a warning sign.

But at the same time I don’t think the questions that ReAssure asked were enough to understand the rationale for Mr B transferring his funds overseas. Although it asked how he became aware of the scheme, ReAssure didn’t ask why he wanted to move to it.

Mr B has indicated to our Service that accessing money from his pension, through the arrangement VMC described, had motivated him to transfer. As part of the application, he completed to ReAssure, there was a section of the form asking him for feedback which asked why he was transferring. Mr B selected ‘no specific reason’. But this was from a set list of options, none of which referred to accessing funds and were more focussed on what ReAssure may have done and how it could improve. And I think if ReAssure had asked Mr B an open question about why he was transferring – which I think it should have done, using the PSIG Code framework outlined – I think he’d have said that it was because he’d been told he could access funds from his pension. ReAssure would also have learned that he was transferring to a type of arrangement more commonly used by people living overseas even though he wasn’t intending to do that.

As I’ve explained, Mr B seems to have primarily been in contact with VMC about the transfer. And VMC was not authorised by the FCA. But he’s also been clear that he believed that VMC was working with a regulated IFA – something the VMC documentation indicated would happen.

In response to the questionnaire ReAssure sent Mr B, when asked if he’d taken regulated advice, he didn’t tick to say that he had. And again, I haven’t seen evidence that he was provided written advice. But again, he’s been clear that he understood a regulated adviser was working with VMC and that he thought the transfer was dependent on the regulated adviser’s involvement. So, if ReAssure had asked about this, I think it is likely Mr B would have told it that he understood a regulated adviser was involved. However, I can’t see that he would have been able to name them. And if Mr B was getting regulated advice and this was all above board, I think ReAssure would reasonably expect that to have been given prior to the transfer and for Mr B to be aware of who was advising him.

Based on this I think ReAssure would've become aware of there being some warning signs present in Mr B's transfer that the Scorpion guidance warned about. As I've explained, I think it had already provided him with the Scorpion insert. And the version it shared (March 2017 version) gave tips to protect against scams including speaking to TPAS, using Pension Wise, checking everything for himself, looking at the FCA's list of known scams, being wary of unregulated investments and overseas ventures, making sure his adviser was regulated by checking the FCA register – with a link provided – and not be taken in by professional looking material. It also warned to look out for other things including the potential tax implications of the deal.

In addition to ReAssure providing the shorter Scorpion insert, Firm P provided Mr B with the longer booklet. This was titled "Scammed out of his retirement. Don't be next". After setting out an example scenario the booklet had a section titled "How not to be next" which listed ten steps to protect your pension. This covered a lot of the same ground as the shorter version ReAssure provided, just in a different layout. And there was then a further section of the booklet "what can you do with your pension pot?" which prominently stated that, if under age 55, while the pension could be transferred "You can't release or 'cash in' your pension (unless you are too ill to work)".

Although ReAssure didn't provide much context about why taking these actions was important in Mr B's circumstances I think there were several reasons the Scorpion warnings should have resonated with him. Mr B had followed an advert and was relying on information from a business he didn't have prior knowledge of. So, researching what he'd been told – which the Scorpion guidance prompted – would've been appropriate. VMC was not on the FCA register. Mr B said he understood a regulated business was involved but he doesn't appear to have been provided details of who this was. Rather he has said that he made assumptions that other parties were involved and were regulated. His transfer involved moving his pension overseas to a QROPS – based in a different country to that which the VMC due diligence process guide had suggested. And his funds were to be managed by an overseas business. And VMC had said about 75% of the pension would be made available to him – even though he was only 47 at the time – which was in contrast to the warning the Scorpion booklet gave about not being able to access funds before age 55.

In addition to the Scorpion booklet, Firm P's overseas transfer application form – which Mr B signed – also included a section about pension scams. This said if the answer was yes to questions including "have you been motivated by an online advert?" and "Are you transferring your pension savings to another country, while remaining resident in the UK?", then there was a chance Mr B's money might be at risk. Both of these resembled the circumstances of Mr B's transfer.

The warning and directions in the Scorpion material were clear and easy to read. And several highlighted things to be wary of that were directly relevant to Mr B's transfer. Mr B had continued with the transfer.

Taking everything into account, while ReAssure could've provided additional context to the warnings by relating them to Mr B's transfer specifically – and potentially provided the longer Scorpion booklet to do so - I don't think this would've made a difference. Mr B had already received the Scorpion information – which in my view gave stark warnings about falling victim to a scam. And Mr B had evidently ignored the warnings he'd already been given and the suggestion to take additional steps himself to look into the proposed transfer. So, given Mr B didn't heed or act on strong, easy to understand and relevant warnings about the scam risk he was potentially facing, I don't think it would be reasonable to say further warnings from ReAssure, which would've been along largely the same lines, would have prompted Mr B to reconsider his transfer. The contemporaneous evidence doesn't, in my view, support that argument.

Responses to my provisional decision

I gave both parties an opportunity to make further comments or send further information before I reached my final decision.

ReAssure said it had no further comments to make.

Mr B did not agree with my provisional findings. He confirmed his primary reason for transferring was accessing his pension funds, but he said he was not aware of the significant risks of doing so before age 55. He said it was his understanding he couldn't have gone ahead with the transfer without advice from an IFA and I hadn't sufficiently taken into account the actions of the adviser here. Mr B said it was clear VMC operated a sophisticated and convincing model, and he was coached and reassured throughout the process by it. This had given him a sense of confidence (albeit misplaced) and hindered his objectivity and impacted his ability to assess the warnings he received. But he said if ReAssure had done more and discussed the transfer with him, the warnings would have carried greater weight.

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 on board what Mr B has said about the role VMC played here and that the presentation of the transfer to him by it, EPL and the other parties involved was convincing and persuasive. And I have thought about this when making my decision, just as I did when reaching my provisional findings. But I think it is important to reiterate that my decision is about ReAssure.

As I said in my provisional findings, I'm satisfied ReAssure carried out due diligence, including asking Mr B some relevant questions. I do think it could've gone further and asked further questions about his motivation for transferring. Which would, in my view, have resulted in it being aware of further warning signs outlined by the Scorpion guidance. But it had provided the Scorpion warnings to Mr B, as had Firm P, which addressed the areas that would have been of concern.

The warnings and directions within the Scorpion documents were clear and easy to read and understand. And there were several with particular relevance to Mr B's circumstances.

Amongst this information was confirmation that consumers could not release or cash in their pension if they were under age 55 – as Mr B was here. Mr B has said accessing his pension was the motivation for transferring but he was not aware of the significant risks associated with this course of action. However, the Scorpion information said this was something he couldn't do – which I think ought to have made him wary of a business telling him otherwise. The section of the Scorpion leaflet warning against this also explained there were potentially significant tax implications, including potential tax penalties of 55% from HMRC. And the section about this concluded by saying, in bold, that *"People like you have lost their life savings after falling for a scam. Don't be next."*

There was clear direction in the Scorpion leaflets about not being drawn in by overseas investments. The information Mr B has provided from VMC referred to transferring overseas, the use of a QROPS and his fund being managed by a business based abroad. And the importance of checking the regulatory status of any adviser was highlighted. But Mr B has said he didn't think a transfer could go ahead without a regulated adviser being involved so assumed there was a regulated party involved, rather than verifying this.

And Firm P's overseas transfer form presented questions that, if the answer was yes, could indicate that Mr B's money was at risk. And, when considering his transfer, the answer to several of these questions would have been yes.

These were stark warnings for Mr B to consider, repeated over several documents. But these didn't deter him from transferring.

Mr B has said that VMC significantly influenced him and that their reassurance gave him confidence in the transaction and meant that he didn't consider the warnings objectively. ReAssure isn't responsible for VMC's actions though. And again, one of the things the Scorpion information highlighted, as a step to help avoid becoming a victim of a scam, was not to fall for professional looking websites or brochures and to "*question everything, however credible it sounds or looks*".

That notwithstanding though, Mr B has been clear that he was guided and influenced by VMC. He acknowledges that his confidence in VMC and the transfer was misplaced. But that is with the benefit of hindsight. I'm looking at what I think, on balance of probabilities, would've happened at the time. And given the stark warnings that he was provided which didn't lead him to reconsider, I don't think I can reasonably say, in the specific circumstances of this complaint, that any further warnings from ReAssure – which would've been largely along the lines of those it had already provided - would've led him to act differently, given the confidence he had in VMC and his motivations for looking into transferring in the first place.

So, while I know Mr B has said he doesn't agree, I don't think I can reasonably say further action from ReAssure would've led to him being in a different position.

My final decision

For the reasons I've explained, I don't uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 31 December 2024.

Ben Stoker
Ombudsman