

## **The complaint**

Mr H has complained about a transfer of his ReAssure Limited pensions to a Qualifying Recognised Overseas Pension Scheme ("QROPS") in Malta in May 2016. Mr H's QROPS was subsequently used to invest in overseas property with The Resort Group and in a separate investment platform. Mr H says he has lost out financially as a result.

Mr H 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 H 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 H had two pension plans with Legal and General. Legal and General have since become part of ReAssure and it is ReAssure that is the respondent for Mr H's complaint. For ease of reading I will refer to any actions or responses as being attributable to ReAssure.

Mr H explains that he received an unsolicited approach from First Review Pension Services (FRPS) offering a review of his pensions. FRPS were not regulated to provide financial advice. On 10 February 2016, Mr H signed a letter of authority allowing FRPS to obtain details, and transfer documents, in relation to his pension. On 16 February 2016 ReAssure received Mr H's letter of authority from FRPS and a request for transfer information. ReAssure sent Mr H the requested information on 26 February 2016.

Mr H explains that he was then referred to Felicitas Management Investment Services (Felicitas) who were a financial adviser based in Cyprus. Mr H says he was attracted to the idea of the transfer by the prospect of improved investment returns.

On 14 April 2016 Mr H received a report from Felicitas about switching his pensions to a QROPS. Felicitas was an advice firm based in another EEA member state. Felicitas additionally held passporting rights to provide services within the UK. The report implied that Mr H wished to do the following: transferring his pensions to a QROPS with Harbour Pensions Limited and to invest £10,000 with TRG property, £8,000 in a TRG 7% bond, and the remainder across two investment funds.

Mr H subsequently applied to start a QROPS with Harbour Pensions. The application form, Mr H signed on 25 April 2016, named Felicitas Management Services as the investment adviser. And indicated that an adviser fee of 4% would be paid.

On 11 May 2016 ReAssure received Mr H's transfer papers. These were sent in by Harbour Pensions. Included in the transfer papers were: Mr H's letter of authority; completed and signed transfer discharge forms; completed HMRC forms APSS263 and CA1890; HMRC letter confirming recognition of QROPS.

Mr H's pensions were transferred on 24 May 2016. His combined transfer value was around £42,000. He was 52 years old at the time of the transfer. £10,000 of his transferred funds were invested in overseas property with TRG. £28,000 was transferred to Novia and invested via that platform.

The TRG investment is illiquid and failed to provide returns.

In August 2021, Mr H complained to ReAssure via a claims management company (CMC). 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 advisers involved were not regulated by the FCA; Mr H had been cold called and offered a free pension review; the transfer was overseas; that QROPS are only suitable for a small number of people; that the proposed investment was high risk and unsuitable for Mr H as a retail client. Mr H complained that ReAssure made no direct contact with him about his transfer and gave him no warning information.

ReAssure didn't uphold the complaint. It said it was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

Our investigator was unable to resolve the dispute 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.

#### The relevant rules and guidance

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 to 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 as 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.

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 were 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

The March 2015 update to the 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 pack 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 set 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 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, SIPP, 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 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 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.

#### The circumstances surrounding the transfer – what does the evidence suggest happened?

Mr H has explained that he received a call from FRPS. His complaint explained that this firm visited him, and that the advice was then reiterated by Felicitas. I think that the evidence supports this. FRPS sent in the initial request for pension information.

Mr H has explained that he was put into contact with Felicitas. And there is documentary evidence that Mr H received a written recommendation from Felicitas that was dated 14 April 2016. Mr H signed the client confirmation part of that letter on 25 April 2016 declaring that he'd read and understood the content. And this, crucially, was before Harbour submitted the transfer request.

The Harbour application form that Mr H signed on 25 April 2016 had a section headed "*investment adviser / investment manager / introducer details*". That listed Felicitas as the adviser. It indicated that there was a fee of 4% for the investment advice. Which was the same as the fee described in Felicitas' letter. The transaction history for the QROPS shows that a payment of £1,693.58, described as "*IFA Fees paid to Felicitas Management*", was made on 30 May 2016. This figure was 4% of the transfer value.

I have considered the fact that Mr H's complaint stated that he was offered a free pension review. But his testimony is his recollection of events from early 2016. And I don't think that the documentary evidence supports this part of his recollection. Instead, I think it's far more likely that Mr H understood that there was a charge. And that it was being paid to Felicitas. And I think he would have understood this prior to the transfer request of May 2016.

Had ReAssure asked Mr H how this transfer came about, I think that he would have given much the same explanation that he gave in his complaint. Because it is supported by the evidence available. Which is that the initial approach came from FRPS who suggested the transfer. But that he was also referred to Felicitas who reiterated the switch. And that it was Felicitas that he was paying for advice. I understand that Felicitas' letter also said that it was conducting the business on a reception and transmission basis which, it said, meant it wasn't testing for suitability or giving investment advice. But I don't think that statement, in the overall context of how this came about would have made Mr H consider that Felicitas was not commenting on the recommendation. He still had this letter when he made his complaint and still, at that time, considered that Felicitas were reiterating the switch recommendation.

In his complaint Mr H explained that he didn't understand the proposed investment and that he didn't understand that it was being invested overseas. He said that he simply understood that he could expect returns of 20-30%. But Mr H was in receipt of Felicitas' letter. Felicitas was quite clearly an advice firm that were based overseas and its recommendation made it clear that the proposed pension was also overseas.

Mr H then completed an application form for a QROPS that was based in Malta and signed ReAssure's '*Overseas receiving scheme declaration and discharge*' form on 25 April 2016. Although I have again considered Mr H's testimony in his complaint, I am not persuaded by it. I think that the documentary evidence, which I think he likely had, made it quite clear that he was moving his pension funds overseas. I understand that Mr H is recalling events that occurred a number of years ago. And he has made us aware that his health may impact his ability to accurately recall these things. So I think it was more likely than not clear that he was investing overseas.

I have also considered the transfer discharge form that Mr H signed on 25 April 2014. Mr H's CMC references this form because it had a section in which ReAssure stated "*we strongly recommend you use the free Pension Wise guidance service and if necessary, seek advice from a financial adviser to help you choose the option that suits you. Please provide the following information for our records*". After which it asked whether Mr H had read the Options or retirement pack; received guidance from Pension Wise; taken regulated financial advice. It provided the responses 'YES' and 'NO'. None of these responses were circled. Instead there was a tick to the right of YES and the left of NO. Mr H's CMC infers that this means that the answer given was no, although I do not consider it to be so clear. I think that it certainly highlights the fact that ReAssure emphasised the importance of seeking these forms of advice and guidance to Mr H. It is unclear why he then would have ignored these recommendations.

Nonetheless, I don't think that it would have had a bearing on the fact that if ReAssure had made additional contact to query how the transfer came about, it was the introduction of FRPS and Felicitas' recommendation that Mr H would more likely than not have said he was relying on.

#### What did ReAssure do and was it enough?

##### *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.

Mr H has said that he does not recall ReAssure making any contact with him regarding his transfer or sending him any warning information. But ReAssure have shown us a copy of a letter that it sent to Mr H on 25 February 2016. It asked him to read the enclosed Pension Regulator warning about the potential tax consequences of pension transfers. And provided the forms that he needed to complete in order to transfer to a QROPS. In providing his testimony, Mr H is trying to recall events from 2016. But I think that the correspondence that ReAssure have provided calls this element of Mr H's testimony into question. I find it more likely that ReAssure wrote directly to Mr H in response to the requested transfer pack from FRPS. Which, for the reasons I've set out above, I think was good practice. And I am persuaded by the content of that cover letter that it enclosed warning material. Which, given the Pension Regulator's warning material in use at the time was, more likely than not, the Scorpion insert published in March 2015.

In the transfer request were completed transfer discharge forms, signed by Mr H. Mr H had signed a declaration on 25 April 2016 that said, *"I have read and understood the Pension Regulators document which Legal & General has sent me"*. On balance, I don't think that Mr H would sign to say he had read something if he had not. So, even though Mr H may not now recall it, I think it's more likely that he'd seen the Scorpion insert prior to the transfer in 2016.

This warned of scams and listed the following warning signs:

- A cold call offering a free pension review or one-off investment opportunity
- Convincing marketing materials offering returns of over 8%
- Pension access before age 55
- Overseas transfer of funds
- A proposal to put your money in a single investment

Several of these warning signs are things that Mr H has said, in his complaint, were relevant to his circumstances. I therefore think that ReAssure provided relevant warning material to Mr H's circumstances and that it ought to have made a difference for Mr H. Mr H's testimony provides no comment on why he didn't respond positively to this warning material as he doesn't recall receiving it.

#### *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 H'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 2015 Scorpion guidance as a benchmark instead.

The initial triage process should have instead led to ReAssure asking Mr H 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 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. With that in mind, I think in this case ReAssure should have addressed all four areas of concern and contacted Mr H in order to help with this.

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

ReAssure did establish the legitimacy of the QROPS. But it didn’t address Mr H’s rationale for transferring. If it had asked Mr H about this – which it should have done, using the framework outlined above – it would have found out he was transferring his pension following an unsolicited approach and 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. ReAssure would also have found out that the reason for transferring overseas was to invest, in part, in TRG – an overseas property scheme of the type that was highlighted as an area of concern in the PSIG Code.

But even if it had done all it should have done, I’m satisfied ReAssure wouldn’t have considered there to be reason to provide any further warnings to Mr H. I say this because ReAssure needed to consider the overall circumstances in order to determine whether Mr H’s transfer presented a scam risk. So, whilst ReAssure would likely have (had it conducted thorough due diligence) found there to be some of the pension scam warning signs indicated in the Code, I think it would have ultimately concluded that the risk was minimal. I say this because Mr H would have explained that he wanted to transfer to take advantage of the potential for improved investment performance. And, key in this case, was that Mr H had likely received a recommendation from a financial adviser.

Overall, Mr H wouldn’t have given the impression to ReAssure that he was being led through a process by another party acting in a potentially unlawful way – which would be the usual pattern for someone falling victim to a scam. Instead, for the reasons I gave above, it would most likely have established that Mr H was acting on advice from a party that was regulated in an EEA member state and had passporting permission to provide services in the UK. I haven’t seen anything that ReAssure would, reasonably, have been aware of that should have alerted it to the potential of Mr H being misled in this way. It’s an important point that goes to the heart of this case: Mr H’s actions would have appeared to be following financial advice and a business could, reasonably, have taken comfort from that.

I have considered the fact that Felicitas was an overseas adviser. But as Mr H was transferring to a QROPS, it wouldn’t be unusual that overseas parties would be involved. The rules in place at the time allowed firms, which were properly regulated in an EEA state, to have passporting rights to legitimately provide services in the UK. I see no reason why ReAssure ought to have concluded that advice from a properly regulated firm with passporting rights was inferior to that of a FCA regulated firm. Or that Felicitas was not acting in Mr H’s best interests. I don’t think it would be reasonable to expect ReAssure to scrutinise the advice that Mr H had been given. It would have been enough for it to satisfy itself that Felicitas was regulated and possessed passporting rights.

I’ve considered if it’s reasonable to expect ReAssure to have done more to warn Mr H about what he was intending to do, even if the scam threat would have appeared to be minimal. But I think those arguments misread what should, reasonably, have been expected of



transferring schemes at that time. Investigations into the receiving scheme, and intended investments were a means to an end: to establish the risk of a pension scam. As I've said previously, a firm needed to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's statutory rights. Expecting a firm to share its due diligence "workings" in this way would cut across this (and could potentially be viewed as a self-serving tactic to hold on to a customer). Where the scam threat was assessed as being minimal (as I think it would most likely have been in this case) I don't think it would be unreasonable for the transfer to proceed as normal.

I've also considered whether ReAssure should have warned Mr H that it was unusual for him to be transferring a pension overseas when he was resident in the UK and wasn't planning to move overseas. At the time (unlike today) there wasn't a prospect of a tax charge that had to be levied by the ceding scheme in certain circumstances where someone transferred their pension overseas whilst remaining resident in the UK. I think whether it was appropriate for Mr H to be transferring his pension to Malta was a financial planning matter that it wasn't ReAssure's role to intervene in. And, as I have said, it would have established that Mr H had most likely taken advice separately on that.

It therefore follows that I'm satisfied Mr H wouldn't have stopped the transfer even if ReAssure had done more thorough due diligence in line with PSIG Code. The end result of any such due diligence wouldn't have resulted in any warnings being given to Mr H. And I don't think the mere act of contacting Mr H and asking questions about the transfer would have prompted a change of heart. The majority of the responses he would likely have provided would not have given rise to concerns. He would have confirmed that he had been cold called by an unregulated introducer and was investing overseas. But I think that Mr H had already received Scorpion information that highlighted these things as being warnings and had not reacted to it in a positive way. So, I am not persuaded that being asked for information about broadly the same things would have had any greater effect than the Scorpion insert had.

### **My final decision**

For the above reasons I am not upholding Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 10 March 2025.

Gary Lane  
**Ombudsman**