

The complaint

Mr B complained about a transfer of his ReAssure Limited (“ReAssure”) personal pension to a small self-administered scheme (“SSAS”), in January 2015. A SSAS is a type of occupational pension, in which the members are also trustees and therefore take responsibility for operating the scheme.

Mr B’s SSAS was subsequently used to invest £64,500 into a type of bond issued by Strategic Placements Limited in a so-called land investment opportunity in England named Wood Street Green. A few months later, £6,000 more was invested in Dolphin Capital Loan Notes. Dolphin Capital (also known as German Property Group) has since gone into a form of liquidation. Both these investments now appear to have little value and Mr B says he has lost out financially as a result.

Mr B 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.

What happened

Mr B says that in early 2014 he provided his authority allowing a firm called Pension Review Specialists (“PRS”) to obtain details and transfer documents in relation to his existing ReAssure pension. Mr B says this followed an unsolicited ‘cold call’ approach offering a free pension review. ReAssure declined to provide the requested details to PRS evidently because PRS wasn’t regulated by the Financial Conduct Authority (FCA). But around late February 2014, ReAssure provided the requested information to a firm called Moneywise Financial Advisors Limited (“Moneywise”).

Mr B says he was then introduced to a representative of an unregulated company called Property Investor Partnership (“PIP”). Following discussions with PIP, Mr B was attracted by the prospect it said was possible, of being able to grow his pension much more quickly than he believed was likely in his existing ReAssure pension scheme.

On 25 June 2014, Mr B signed documents to open a new SSAS with Rowanmoor Group plc (“Rowanmoor”), a known provider of SSAS’s. He already operated a limited company of his own as he was self-employed and the company had been incorporated since 2006. Mr B’s company was put down on the application as the SSAS’s principal employer. The SSAS documents also recorded that the SSAS was to be used to invest £65,000 (I’ve assumed this to be inclusive of the £500 fee) in the Wood Street Green investment, as set out above¹.

On 23 October 2014 Mr B’s transfer release papers were sent to ReAssure by Rowanmoor and these included details of the newly established SSAS Mr B was transferring to, and a copy of the scheme’s HMRC registration certificate. Rowanmoor also sent ReAssure a copy

¹ The further £6,000 investment in the Dolphin Loan Notes took place in June 2015.

of the trust deed and rules for the SSAS on 4 November 2014 – evidently at ReAssure’s request.

There was further correspondence (and apparently a phone conversation) between ReAssure and Mr B over the next few weeks where he was reminded of the guaranteed benefits he would be giving up if he transferred away from his existing scheme. But Mr B wrote back to ReAssure on 23 December 2014 explaining that he understood what he was giving up, but because he felt he wouldn’t have enough to fund a retirement if he remained with the ReAssure scheme, he wanted to transfer out.

Mr B’s pension was eventually transferred on 16 January 2015 and I can see the £75,907 arrived in his recently established SSAS account on 20 January. Mr B was 51 years old at the time of the transfer. Mr B says his investments can’t currently be sold or traded and have no value.

In August 2020, Mr B complained to ReAssure. Briefly, his argument is that it 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 recent registration of the SSAS; the catalyst for the transfer was the involvement of an unregulated business; he was a very inexperienced investor and was advised to invest in funds which he had little understanding of and were inappropriate for his attitude to risk.

ReAssure didn’t uphold the complaint. It said it had carried out due diligence checks but because it had received a fully completed transfer application, and a letter confirming Mr B’s limited company and registration of the SSAS, it considered this was satisfactory enough for the transfer to proceed.

Mr B wasn’t satisfied with this, so the complaint was referred to the Financial Ombudsman Service. One of our investigators looked into the case and issued a view setting out why they thought his complaint shouldn’t be upheld, but he still disagreed. His complaint was therefore passed to me to make a decision.

I issued a provisional decision (PD) about this complaint in October 2024, comprehensively explaining why it was my intention to uphold Mr B’s complaint. This final decision should be read in conjunction with that PD.

I explained in the PD why I thought ReAssure should have taken more robust action when presented with the facts at the point of the transfer request. And had it reacted appropriately to the warning signs as set out in my findings, I said ReAssure should have followed the relevant guidance of that time and began further enquiries into the nature and background of the proposed transfer. With this in mind, I think those enquiries would have uncovered that Mr B was in danger of putting his pension funds at risk by going ahead with the transfer.

However, I explained that ReAssure didn’t embark on any meaningful investigations before allowing the pension to be transferred. It only reminded Mr B of some of the guaranteed benefits he’d be giving up with his current scheme and it failed to warn of the main issues highlighted in the financial regulator’s guidance which it should have followed.

Having issued the PD, I gave the parties some time to consider all these issues and issue responses if appropriate. Mr B didn’t respond but ReAssure sent in some new information and evidence which I have read carefully.

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.

Having done this, I am now upholding Mr B's complaint.

The relevant rules and guidance

Personal pension providers are regulated by the Financial Conduct Authority. 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 B'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 SPPs and SSAs 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.

The Scorpion guidance

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 they 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.

What did personal pension providers need to do?

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.

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

Mr B told us that at around the time of the transfer he was self-employed and as such had an irregular income. He used a limited company to operate his business through and had done so for quite a few years.

Mr B says in early 2014 he received an unsolicited approach from PRS offering a free review of his pension arrangements with a view to increasing his returns. He thought this was a good idea and he provided PRS with his authority to obtain information from ReAssure.

ReAssure declined PRS's request for information on the basis it was not FCA regulated. But it wrote to Moneywise instead, in February 2014. ReAssure says that Mr B consented for his pension details to be sent to Moneywise as an alternative. This was because Moneywise's details and address had appeared directly next to PRS's details in the original request, which I'll refer to as a letter of authority (LOA). So, ReAssure sent the information to Moneywise, enclosing a current fund and transfer value. The rationale for sending it was supposedly that PRS was connected to Moneywise – and Moneywise was regulated whereas PRS wasn't.

Thereafter, Mr B was invited to discuss matters with someone he understood to be an adviser. He agreed and this led to a number of conversations with a representative from the firm called PIP. This firm was not authorised or regulated by the FCA. Over the course of these discussions, the PIP representative recommended that Mr B transfer his pension to a SSAS and place the money in investments which he says the representative told him was operated by a large and well-known British bank. He was also told that he would earn 10% return per year, that his capital would "be totally safe" and that he could use the limited company he already had in existence for his self-employment to act as the sponsoring employer to the SSAS.

From all the evidence I've seen in this case, I think it's clear that Mr B's motives for transferring appear to have been to generate higher returns for his pension savings, rather than anything else such as to receive unauthorised early payments from it. He gives plausible evidence of this and I've seen he also told ReAssure, in December 2014, that he wanted to transfer because he didn't think his retirement amount with ReAssure would be sufficient.

It's also clear from what I've seen that the transfer process was elongated – throughout almost the whole of 2014 from beginning to end. Various companies were involved at different stages and it's likely that the actual advice to transfer was given verbally rather than fully documented on paper. But on balance, I accept that it was more likely than not that it was PIP which gave Mr B the advice to transfer away from his ReAssure pension and then make the investments I've mentioned.

I say this because, firstly, Mr B's own recollections seem credible to me. These are of the PIP representative – and *not* Moneywise or PRS - making the recommendations I've described above. I also think the idea of opening a SSAS and then investing in these types of complex financial arrangements came from external factors as Mr B himself did not appear to have the knowledge to make these types of investment decisions on his own. I haven't seen anything about his circumstances, or anything from what he has told us, that makes me think it's likely he would have decided, without advice, to embark on such a complicated and esoteric arrangement, which involved transferring out of his existing pension, opening a SSAS and investing in property bonds and loan notes, and using his existing limited company to sponsor the newly created SSAS.

I've also noted that PIP was mentioned on the SSAS application form which Mr B signed. I accept ReAssure probably didn't see this at the time but nevertheless, this shows PIP as having provided advice to the SSAS trustee and a named 'adviser' from PIP was shown on

the form. In my view, these things corroborate the other evidence I've set out above about PIP's involvement.

The SSAS application form also required the confirmation from a "regulated firm" that information contained within the application had been properly obtained and met UK financial sector standards. A firm's name of "Insight Private Finance" was entered. However, the evidence I've seen points to this firm having no other role whatsoever to play in this case; it wasn't mentioned anywhere else in any of the file documentation I've seen, nor was it named by either Mr B or ReAssure. I have noticed though, that Insight Private Finance shared an identical postal address to PIP and a common director. In my view, all these things give credibility and reliability to Mr B's own recollections that it was PIP which provided the recommendation to leave his existing scheme.

Further to this, I've concluded that there's simply no other substantive evidence of the involvement of a regulated firm in advising Mr B to transfer away. Neither the original requestor of the LOA which was PRS - or PIP - were regulated firms. And whilst I note that Moneywise was regulated, Mr B himself also appears not to have had any direct contact with Moneywise (although he seems to have been prepared for his information to be sent to it). Of course, ReAssure knew of the early involvement of PRS and the documents imply it was working with Moneywise because the LOA contained both firms' address details. So, overall I've seen nothing which implies that ReAssure could have drawn sufficient comfort from Moneywise's regulatory status because there isn't enough evidence that it was involved in actually providing advice to Mr B on an ongoing basis, as opposed to seeking information about his pension together with PRS.

My finding about this is therefore that it was PIP which is more likely to have advised Mr B to transfer pension schemes.

In effect, Mr B submits that he received a personal recommendation to transfer his ReAssure pension into a SSAS from PIP. Advice of that nature was (and remains) regulated by the Financial Services and Markets Act 2000 (FSMA). Only someone authorised to do so by the Financial Conduct Authority (FCA) is permitted to give regulated financial advice unless they have a specific exemption under FSMA.

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 relevant Scorpion campaign material or given them substantially the same information. Mr B says he was never shown the Scorpion guidance or given anything which explained it.

When first responding to our Service (The Financial Ombudsman Service) about the issuance of any Scorpion campaign material, ReAssure said a Scorpion insert was provided but it was sent to Rowanmoor rather than to Mr B himself. I think this would have been a shortcoming and I mentioned why in my PD: as by doing this, ReAssure was relying on a third-party to pass this important information on.

But in any event, ahead of drafting my PD, I had looked very carefully at what ReAssure said was proof that it had at least sent out the Scorpion information to Rowanmoor, if not Mr B himself. This was contained in a letter of 26 September 2014. I noted the Scorpion insert included was the February 2013 version which focussed on the issue of mainly pension liberation, rather than the later version from July 2014 which raised wider pension scamming concerns.

So I thought there were two failures by ReAssure here and I explained them in my PD: I said the first was to not send Mr B the actual insert directly (or give him the same information in another form); the second was that it had sent the 'old' insert to a third party. We know Mr B most likely wasn't thinking of accessing (liberating) his pension earlier than he was allowed to, so even in the unlikely event he did see this insert – and I thought (in the PD) that on balance he didn't - I don't think it would have resonated with him. This is because the substance of the earlier version was on something Mr B clearly wasn't intending to do. So he probably wouldn't have changed his thinking on the transfer process even if he'd been provided with that insert.

However, after the issuance of my October 2024 PD, ReAssure said it had discovered that it had directly sent Mr B a Scorpion insert after all, in March 2014. Nonetheless, in my view the letter it refers to enclosing this contains no such evidence that the insert had definitely been sent – it certainly wasn't referred to in the letter ReAssure sent him. However, even if I accept that if a Scorpion campaign insert was indeed sent to Mr B himself, rather than only Rowanmoor, this could potentially only negate the first failing I'd mentioned in my PD (the failure is outlined above). Due to the timing, this insert was once again the earlier 2013 version focussing on the narrower concerns specifically about pension liberation. Nor would the sending of this insert negate the important requirement thereafter of carrying out meaningful due diligence on the actual transfer request as a whole, an issue I will deal with below.

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.

ReAssure raised two events it thinks substantially contributed to it carrying out sufficient due diligence in this case, ahead of the eventual transfer. In response to my PD it raised another. I've considered these with great care, but in my view ReAssure still didn't do enough.

I refer first to its final response letter about Mr B's complaint. In this, for instance, ReAssure says that it declined to respond to PRS when it had sent in Mr B's signed LOA. It emphasises that it replied to Moneywise (which was regulated).

I understand the point being made here, which is that ReAssure sent a reply about Mr B's pension to a regulated firm as this was the 'right' thing to do. It told Mr B what it had done and it said using unregulated firms could mean a subsequent complaint wouldn't be within the jurisdiction of the ombudsman. However, I think merely highlighting PRS's unregulated status at this point was only about the initial provision of information (i.e. about Mr B's existing pension and following PRS's LOA request at the beginning of 2014). There's no evidence that ReAssure made any further points to Mr B about the dangers of unregulated *advisers* as opposed to who it was prepared to provide information to. ReAssure couldn't be sure of what Moneywise's role was, if any, in any advice that might later be given. In any event, I'm satisfied it was PIP which gave Mr B the advice to transfer, not PRS.

Next, I've considered the fact that ReAssure did write personally to Mr B, on 13 November 2014, shortly before it finally agreed to go ahead and process the transfer request it had received on his behalf. However, the letter ReAssure sent to Mr B was exclusively about the considerations he ought to be having about leaving his existing scheme because it had a guaranteed annuity included with it. But there were certainly no wider warnings included, for instance warnings about the types of pension scams currently being experienced and the presence of unregulated *advisers* which the Scorpion campaign was established to tackle. Ultimately Mr B just replied to this letter and explained he recognised that his pension had certain useful guarantees, but he was more interested in growing his funds within a newly set up SSAS. So, the 'warning' Mr B was given in November 2014 failed to address the very real and current fears about the common pension scamming techniques that were being highlighted by the Scorpion campaign, a substantial update to which had been circulated to pension providers several months previously.

Upon issuing my PD, ReAssure replied with a further (new) point which is that it considered the long-standing existence of Mr B's self-employed registered company, as providing reassurance that the whole transfer process might well be legitimate. I say this because in effect ReAssure now implies that this was a good sign – and exempted it from further due diligence because the SSAS was being linked to an existing limited company which had been around for eight years.

However, I've seen no evidence that screening all transfer requests, based on the pre-existence of the sponsoring employer, was a part of ReAssure's diligence process at the time. This issue was never mentioned previously by ReAssure when originally defending the complaint (and before I issued my PD). Further, there's no evidence pointing to this being a specific approach that ReAssure can show it had in place at the time or that it based its decision to allow this transfer to proceed, specifically as a result of this particular feature.

To summarise then, given all the other information about Mr B ReAssure had at the time, a prominent feature of Mr B's transfer existed which would have been a potential warning sign of a scam. This was easily identifiable: it was that Mr B's SSAS was only recently registered. ReAssure should therefore have followed up on this to find out if other signs of a scam were present because this type of activity was explicitly mentioned in the Scorpion campaign.

As I've said, it appears that ReAssure did contact Rowanmoor seeking a copy of the SSAS deed and rules. But in my view the SSAS trust deed and rules was of generic application and on its own simply wouldn't have reassured the business nearly enough, that the SSAS wasn't a potential vehicle for a scam. I think it would have been fair and reasonable – and good practice – for ReAssure to have looked into the proposed transfer further. 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. And given the warning sign that should have been apparent when dealing with Mr B'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 B as part of its due diligence.

I note that at the time of the transfer Rowanmoor was a long established SSAS provider and had some repute in the industry. Rowanmoor Trustees Limited also had legal and fiduciary duties as a professional trustee. There's an argument, therefore, that ReAssure could have taken comfort from this. I disagree.

The Scorpion guidance gave ceding schemes an important role to play in protecting customers wanting to transfer a pension. It would defeat the purpose of the Scorpion guidance for a ceding scheme to have delegated that role to a different business – especially one that had a vested interest in the transfer proceeding. An important aspect in this is the fact that there is little regulatory oversight of single-member SSASs; they don't have to be registered with TPR. In the absence of that oversight, ReAssure was assuming, in effect, that Rowanmoor would want to maintain its standing in the industry and the trustee subsidiary would comply with its legal and fiduciary duties. In the context of guarding against

pension scams – and an environment where providers and trustees clearly didn't always act as they should have done – I don't consider this to have been a prudent assumption.

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

What should ReAssure have found out?

ReAssure knew, or certainly should have known, firstly of the threat posed by the newly established SSAS. As I've said, the sponsoring employer was already established because Mr B had operated a small limited company as he'd been self-employed for several years. But nevertheless, investigations under part 1 of the check list would still have shown the receiving SSAS as newly registered with HMRC and I think this should have been seen as a risk.

Investigations under part 2 of the check list would have revealed that Mr B was attracted to the investment opportunities pitched to him, including unusual investment techniques which were potential sources of concern under the action pack. By the standards of most people, I think the bonds and loan notes were unusual investments.

I think investigations would have then revealed the existence of a non-regulated adviser; again this was another risk area listed in part 3. I think these warning signals should have then caused investigations into the issue of unregulated advice. For this, I'm satisfied Mr B would have told ReAssure that he was being advised to transfer by PIP - my previous findings in the *circumstances surrounding the transfer* section support this. Had ReAssure asked him about this – as it should have done under part 3 of the check list, it would have revealed signs of a scam.

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 B'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 PIP'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 B – and would it have made a difference?

Had it done more thorough due diligence, there would have been a number of warnings ReAssure could have given to Mr B in relation to a possible scam threat as identified by the action pack. ReAssure should also have been aware of the close parallels between Mr B'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). This was several months before this transfer went through. But the most egregious 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 B 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 B that the firm he had been advised by was unregulated and could put his pension at risk. ReAssure should have said only authorised financial advisers are allowed to give advice on personal pension transfers, so he risked falling victim to illegal activity and losing regulatory protections.

I'm satisfied any messages along these lines would have changed Mr B's mind about the transfer. The messages would have followed conversations with Mr B 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 B 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.

Although I've taken into account Mr B's reaction to ReAssure's request for him to consider the value of his guaranteed annuity, I've seen no persuasive reason why Mr B would have reacted any differently to a reasonable person on being warned that he was dealing with an unregulated adviser. That's because I think his faith would have been shaken in the assurances he had been given about the investments he was making, and upon which he relied in concluding that he should give up his guaranteed annuity. So, I consider that if ReAssure had acted as it should, Mr B wouldn't have proceeded with the transfer out of his personal pension or suffered the investment losses that followed.

Other post-PD responses from ReAssure

Did ReAssure know about the existence of "PIP"?

ReAssure said it had noted my PD comments, that Mr B was more likely to have been advised by a company called PIP which was unregulated. However, it said there was no evidence from its own records that it had any knowledge of this and that as far as it was concerned the only company ReAssure had been dealing with was Moneywise (and later Rowanmoor which had an altogether different role as only the SSAS provider). The point being made by ReAssure is effectively that it didn't know anything about PIP's involvement.

I've considered ReAssure's response. However, I think this merely serves to demonstrate ReAssure's failings in this case. In essence, ReAssure was unaware of PIP's involvement only because it failed to expose it. But had it carried out reasonable due diligence and also used the check list I've described above, this would have revealed that Mr B was attracted to the unusual investment opportunities pitched to him by PIP and so, the likely existence of a non-regulated adviser. I remain satisfied Mr B, if asked, would have told ReAssure that he was being advised to transfer by PIP and this would have revealed signs of a scam.

ReAssure telling Mr B that it wasn't providing his information to PRS

I note that ReAssure is now saying that there was an early dialog between it and Mr B around which company – PRS or Moneywise – the requested pension information should be sent to. I note that in its letter to Mr B, which ReAssure provided after my PD, it made general comments about the dangers of replying to unregulated firms following the LOA and I take account that in his reply Mr B seems to have been more content that the LOA request

was returned to Moneywise and not to PRS. I have therefore considered the extent to which this could be viewed as meaning Mr B understood that a regulated firm was better than an unregulated one - and therefore its implications for him later dealing with PIP (which was also unregulated).

However, this could also simply mean he was intent for the LOA information to be 'switched' to the other named firm (Moneywise) because he thought PRS was directly connected with it and he wanted to press ahead with seeing what his current pension was worth. And even though there was a limited dialog about regulated / unregulated parties, ReAssure hadn't specifically explained to Mr B how to go to the FCA register and check if an adviser was registered. As a result, I'm insufficiently persuaded that when Mr B later came to deal with PRS, he would have appreciated the extent to which his pension arrangements might be put at risk. I think he would have realised this, had ReAssure carried out its due diligence properly and given him appropriate warnings about PRS – and it's essentially because ReAssure failed in its due diligence that he didn't.

Summary

I think ReAssure should have taken more robust action when presented with the facts at the point of the transfer request.

Had it reacted appropriately to the warning signs as set out in my findings above, it would have followed the Scorpion guidance and began further enquiries. I think those would have easily uncovered that Mr B was in danger of putting his pension funds at risk by going ahead with the transfer.

But other than obtaining the SSAS trust deed and rules, ReAssure didn't begin those investigations. It only reminded Mr B of some of the guaranteed benefits he'd be giving up with his current scheme and it failed to warn of the issues highlighted in the Scorpion guidance.

ReAssure then proceeded with the transfer. As a result of its omissions, I think this led to the losses Mr B suffered, including the loss of an ability to take a guaranteed annuity rate – which he wouldn't have given up if ReAssure had highlighted these risks of a scam to him. It follows that I think it's fair and reasonable for ReAssure to take the action set out below to put things right.

I am therefore now upholding this complaint.

Putting things right

In all compensation scenarios, ReAssure should financially honour Mr B's entitlement to the guaranteed annuity rate (GAR) element in his original pension. Following my PD, ReAssure confirmed that if it reinstates or sets up an augmented pension, if unable to reinstate his existing plan, it will still honour the GAR.

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

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

To compensate Mr B fairly, ReAssure should subtract the actual value of the SSAS 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 SSAS value at the date of my Final Decision. To arrive at this value, any amount in the SSAS bank account is to be included, but any overdue administration charges yet to be applied to the SSAS should be deducted. Mr B 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 B 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 Mr B's Strategic Placements Limited (Wood Street Green) bonds and also the Dolphin Capital Loan Notes investment. I've seen evidence that the bonds are valued at 'nil' in the Rowanmoor SSAS statements. Therefore as part of calculating compensation:

- ReAssure should seek to agree an amount with the SSAS as a commercial value for the illiquid investment(s) above, then pay the sum agreed to the SSAS plus any costs, and take ownership of those investment(s). The actual value used in the calculations should include anything ReAssure has paid to the SSAS for illiquid investment(s).
- Alternatively, if it is unable to buy them from the SSAS, ReAssure should give the illiquid investment(s) a nil value as part of determining the actual value. In return ReAssure may ask Mr B to provide an undertaking, to account to it for the net proceeds he may receive from those investments in future on withdrawing them from the SSAS. ReAssure will need to meet any costs in drawing up the undertaking. If ReAssure asks Mr B to provide this undertaking, payment of the compensation awarded may be dependent upon provision of it.
- It's also fair that Mr B should not be disadvantaged while he is unable to close down the SSAS. So to provide certainty to all parties, if these illiquid investment(s) remain in the scheme, I think it's fair that ReAssure should pay an upfront sum to Mr B equivalent to five years' worth of future administration fees at the current tariff for the SSAS, to allow a reasonable period of time for the SSAS to be closed.

Notional value

This is the value of Mr B's funds had he remained invested with ReAssure up to the date of my Final Decision.

ReAssure should ensure that any pension commencement lump sum or gross income payments Mr B received from the 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 SSAS given Mr B's dissatisfaction with the outcome of the investment it facilitated.

ReAssure should reinstate Mr B'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 it performs thereafter in line with the funds Mr B was invested in, and the guaranteed annuity option remains available to Mr B.

ReAssure shouldn't reinstate Mr B'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 B'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 B's original pension, meaning ReAssure must undertake to provide benefits equivalent to the guaranteed annuity option if Mr B draws a guaranteed income directly from ReAssure at a future date.

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

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

To make the tax reduction, it's reasonable to assume that Mr B is likely to be a basic rate taxpayer in retirement. So, if the loss represents further 'uncrystallised' funds from which Mr B 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 B 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 B's acceptance of my Final Decision, interest should be added to the compensation at the rate of 8% per year simple from the date of my 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 B how much has been taken off. ReAssure should give Mr B a tax deduction certificate in respect of interest if Mr B 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 B'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 B was invested. However, I expect any such reinstatement to be achieved promptly.

Details of the calculation should be provided to Mr B in a clear, simple format.

My final decision

For the reasons given above, I am upholding this complaint and require ReAssure Limited to put things right in line with the approach set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 January 2025.

Michael Campbell
Ombudsman