DRN-5257850

The complaint

Mr R has complained about a transfer of his ReAssure Limited personal pension to a small self-administered scheme (SSAS) in March 2014. Mr R's SSAS was subsequently used to invest in Store First Limited, which offered storage pods on industrial sites. The investment now appears to have little value. Mr R says he's lost out financially as a result.

Mr R says ReAssure failed in its responsibilities when dealing with the transfer request. He says it should've 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 R says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if ReAssure had acted as it should've done.

Mr R's pension was originally with Legal & General (L&G). Some of L&G's pension business was transferred to ReAssure in 2020 and ReAssure has assumed responsibility for what happened with Mr R's pension. For ease I've just referred below to ReAssure, references to which should be taken as including L&G where appropriate.

What happened

I issued a provisional decision on 6 January 2025. I set out what had happened and what I'd provisionally decided. I've repeated that here:

'*Mr R had two pension policies with ReAssure – a Free Standing Additional Voluntary Contributions (FSAVC) and a personal pension.*

In early January 2014 a limited company was incorporated with Mr R as the sole director. I'll refer to this company as R Limited.

On 10 January 2014 Mr R signed an application form to open a SSAS with Rowanmoor Group plc (Rowanmoor). The principal employer was R Limited. The trustee adviser was shown as a Mr W of Return on Capital Group Limited (ROC), an unregulated firm. The proposed investment was 'Storefirst Store Pod'.

Rowanmoor wrote to ReAssure on 15 January 2014 saying Mr R wanted to transfer to the SSAS and enclosing a transfer in ceding scheme information form and a letter of authority (LOA) signed by Mr R. ReAssure wrote to Rowanmoor on 17 January 2014 with information about Mr R's policies. Towards the end of the letter it said: 'Please draw your client's attention to the enclosed leaflet before proceeding with the transfer.' We haven't seen a copy of the leaflet referred to.

On 23 January 2014 ROC sent a LOA which Mr R had signed on 20 December 2014 and requesting information about Mr R's pension policies and discharge forms. On 27 January 2014 ReAssure sent policy details and discharge forms to ROC.

Rowanmoor wrote to ReAssure on 25 February 2014 enclosing completed transfer forms signed by Rowanmoor and Mr R and a copy of the SSAS's HMRC registration certificate

which gave the Pension Scheme Tax Reference (PSTR) number and confirmed the SSAS had been registered on 17 January 2014. Rowanmoor gave details of the bank account into which the transfer value should be paid.

On 3 March 2014 ReAssure wrote to Rowanmoor confirming that a transfer payment totalling £92,727.16 in respect of Mr R's two policies had been made. On the same date ReAssure wrote to Mr R confirming the transfer payment had been made. On 12 March 2014 Rowanmoor wrote to Mr R confirming that a transfer value of £92,727.16 had been received from ReAssure.

Later in March 2014 the bulk of Mr R's SSAS fund was invested in Store First. I'm not sure exactly how much – figures of £84,972 and £87,000 have been mentioned. Mr R acquired a leasehold interest in six storage pods on an industrial site in Manchester and possibly Northampton. In October 2014 he invested a further £12,750 – I understand he was paid two years' rent upfront for the pods he'd initially bought which was used to buy another two pods. Following an initial period of guaranteed income, returns were then dependent on the particular pods being rented out for storage purposes. Recovering the capital would depend on if the pod could be sold to a third party.

I understand that issues arose about Store First's marketing materials. In May 2014 the Self Storage Association of the UK (SSA UK) issued a press release (amended in January 2015) detailing the outcome of a review it had commissioned of the marketing material made available to potential investors by Store First and referring to a serious question that had arisen as to how Store First was funding the guaranteed returns to existing investors and if that was from the sale of new units, and not the operation of the self storage business.

Store First and three associated companies were also the subject of a winding up order in April 2019. The Official Receiver was appointed as liquidator and the freehold, associated assets and goodwill of 15 storage centres were sold by the Official Receiver to a company called Store First Freeholds Limited. As I understand it, the storage pods continue to be rented to end users and Pay Store Limited now manages the storage sites trading as Store First. The Official Receiver and Store First Freeholds Limited agreed that the latter would accept any requests from investors to surrender their pods. Store First Freeholds Limited would cover its own costs of the surrender but investors wouldn't receive any payment.

In June 2021 Mr R complained to ReAssure. Briefly, his argument is that ReAssure ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including (but not limited to) the following: the SSAS was newly registered as was R Limited; there wasn't a genuine employment link to the sponsoring employer; Mr R's decisions were made following advice from an unregulated business during a free pension review; and the proposed investments were in unregulated, high risk and non diversified assets.

ReAssure didn't uphold the complaint. It referred to a case which it said was similar to Mr R's and which had been the subject of a complaint to The Pensions Ombudsman (TPO) and which hadn't been upheld. ReAssure said Mr R's case was different in that he didn't intend to use the SSAS to invest in his own business. But in Mr R's case the receiving scheme was established by Rowanmoor and the application was made on Rowanmoor headed paper. In 2014 there were no indications that a transfer to Rowanmoor was a cause for concern. Accounts for the financial year ending 30 September 2013 showed a group profit of £1.553m and net assets of £2.82m. In 2013 they were named the best SSAS provider at the Investment Life and Pensions Moneyfacts Awards. Their subsidiaries included Rowanmoor Personal Pensions Limited and Rowanmoor Consultancy Limited, two FCA registered businesses.

ReAssure was unable to confirm whether a copy of the Scorpion insert was included in the

transfer pack sent to Mr R. Nor could ReAssure confirm if further checks were carried out on the receiving SSAS. ReAssure maintained that the relevant COBS (Conduct of Business Sourcebook) rules had been complied with and that internal procedure had been followed by reviewing HMRC's notification of registration of the SSAS and the PSTR.

Our investigator was unable to resolve the dispute informally, so the matter was passed to me to decide. In doing so I've taken into account what ReAssure said in response to the investigator's view and, in particular, why ReAssure considers Mr R would've continued with the transfer regardless of any risk warnings given or concerns raised by ReAssure – essentially because, although the adviser may not have been regulated, Mr R trusted him and had acted on advice given by him in the past. That built up trust would've prevailed over any warnings issued by ReAssure and Mr R wouldn't have reconsidered his decision.

What I've provisionally 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 seen that the issue of whether Mr R's complaint was made in time has arisen. ReAssure referred to an email from Mr R on 16 November 2018 enquiring about the transfer – in particular he wanted details of the account to which the transfer payment had been made. The transfer was made in March 2014. Mr R didn't complain to ReAssure until June 2021, which was more than six years later. But the investigator said there was no reason to conclude that Mr R had complained more than three years after he became aware (or ought reasonably to have become aware) he had cause for complaint about ReAssure. I think ReAssure has accepted that and that we can consider the complaint.

I'd add that, as mentioned below, Mr R did complain to ROC in December 2017. From what he said, it's clear that by then he'd become concerned about his pension and whether he'd done the right thing by transferring. But there's nothing to suggest that, at that stage, Mr R became aware (or reasonably ought to have become aware) that he might have a complaint against ReAssure, as the ceding scheme, on the basis that ReAssure had responsibilities in connection with the transfer which it had failed to fulfil. Instead his complaint to ROC centred on whether any advice he'd been given had been suitable.

<u>The relevant rules and guidance</u>

Personal pension providers are regulated by the Financial Conduct Authority (FCA). Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority (FSA). As such ReAssure was subject to the FSA/FCA Handbook, and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA/FCA rules governing pension transfer requests, but the following have particular relevance here:

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

The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme if certain conditions are satisfied (and they may also have a

right to transfer under the terms of the contract). This right came to be exploited, with people encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren't entitled to – for instance, because they were below minimum retirement age. At various points, regulators issued bulletins warning of the dangers of taking such action. But it was only from 14 February 2013 that transferring schemes had guidance to follow that was aimed at tackling pension liberation – the "Scorpion" guidance.

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

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

• A longer leaflet issued by TPAS which gives more information, including example scenarios, about pension liberation. Guidance provided by TPR on its website at the time said this longer leaflet was intended to be sent to members who had queries about pension liberation fraud.

• An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "look out for" various warning signs of liberation. 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 transferring schemes still had concerns, they were encouraged to write to members to warn them of the potential tax consequences of their actions; to consider delaying the transfer; to seek legal advice; and to direct the member to TPAS, TPR or Action Fraud.

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 content 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 statutory 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 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.

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. 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. With that in mind, I take the view that personal pension providers dealing with transfer requests needed to heed the following:

1. As a first step, a ceding scheme needed to check whether the receiving scheme was validly registered.

2. When TPR launched the Scorpion guidance in February 2013, its press release said the Scorpion insert should be provided in the information sent to members requesting a transfer. It said on its website that it wanted the inclusion of the Scorpion insert in transfer packs to "become best practice". The Scorpion insert provided an important safeguard for transferring members, allowing them to consider for themselves the liberation 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 pension liberation scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The action pack 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?

In deciding what led up to Mr R's transfer request, who he was dealing with and who did what, I've considered what Mr R said in his complaint to ReAssure, what he and his representative and ReAssure have told us during our investigation and what the contemporaneous documentation shows.

Mr R says it all started of when someone (who I'll call Mr D) he'd known for about six years and who'd arranged mortgages for him, got in contact out of the blue and asked if he had any pensions he wanted to transfer. I understand Mr D was a self employed mortgage broker. Companies House shows that, at the time, he was the sole remaining director of a limited company which had been set up in 2008. The nature of the business was activities auxiliary to financial intermediation and Mr D's occupation was given as a broker. The company was dissolved in August 2014, which was after Mr R's transfer had been completed.

According to Mr R, over the course of a number of discussions, Mr D recommended that Mr R transfer his ReAssure pension to a SSAS and invest in storage units and airport car parking spaces (although, in the end, Mr R didn't invest in the latter). Mr R says the storage pod investment turned out to be a high risk, unregulated investment and only suitable for sophisticated investors, whereas he wanted low risk, which he was told it was. The specific risks weren't discussed, nor were the fees or the regulatory implications of setting up a SSAS. He says he was strongly advised to transfer his pension to a SSAS on the promise he'd make significantly better returns over the next five to six years than if he left his pension where it was. He understood it would take up to five years to get his money back which fitted in with when he planned to retire. And, because he had more than one policy with ReAssure and was being charged fees on each, going forwards he'd only have to pay one set of fees.

Mr R has six or eight storage pods. He does get rental payments of about £3,000 pa but the fees are some £1,000 pa. He can't sell the pods as there's no market. The only incentive he received was that he was paid two years' rent upfront (£12,000). But that was then used to buy more pods.

Mr R says he had no experience of pension schemes or investments. He was employed as an equipment engineer earning around £40,000 per annum. He had no savings or investments and his home was subject to a mortgage. He trusted the information and advice he was given, which was that his investment would produce greater guaranteed returns, which sounded to him like an opportunity to significantly increase his retirement provision. On that basis he agreed to go ahead. Mr D provided him with the paperwork to establish a SSAS with Rowanmoor. Everything was set up for him and Mr R was just presented with the documents to sign.

ReAssure corresponded directly with Rowanmoor and didn't contact Mr R about the transfer. Other parties were involved. Mr R mentioned ROC (which he knew had since been wound up) and someone I'll call Mr O. He wasn't sure what they did as he'd only dealt with Mr D. He now felt it had been a scam. He hadn't known Mr D was unregulated and he said it would've changed things if he had.

The paperwork shows that ROC was involved – as I've mentioned above, ROC submitted a request for information to ReAssure on 23 January 2014. That was after Rowanmoor had written to ReAssure on 16 January 2014 saying Mr R wanted to transfer. But ROC had clearly been in contact with Mr R before then – he'd signed, on 20 December 2013, the LOA

enclosed with ROC's information request. It's also clear ROC was also involved in setting up R Limited. And with the SSAS – Mr W of ROC was named as the trustee adviser on the SSAS application form. Section 36 of the Pensions Act 1995 requires a trustee (which Mr R was) of an occupational pension scheme (which a SSAS is) to obtain and consider written advice as to whether an investment is satisfactory for the aims of the scheme. So, although, as I've mentioned below, ROC maintained that no advice was given by Mr W, it seems it was envisaged that he'd give the section 36 advice. But that isn't the same as advice about the suitability of an investment for Mr R as a member which would be regulated advice (and which section 36 isn't).

Although ROC has since been dissolved, we've seen a letter from ROC dated 8 January 2018 in response to a complaint made by Mr R on 15 December 2017. He said ROC's Mr W had failed to provide satisfactory advice when setting up the SSAS in January 2014. Mr R said he knew from the pension application (presumably the SSAS application form) that it had been 'signed off' by Mr W. But Mr R said he had no idea who Mr W was and didn't recall meeting him. Mr R said he'd been notified that the storage pods were about to go into liquidation and he was worried his pension might be worthless.

ROC responded (its letter of 8 January 2018). Amongst other things, it said it accepted instructions from intermediaries and clients who approached ROC direct. ROC wasn't regulated by the FCA or authorised to give financial advice on pension transfers. Clients who engaged with ROC did so on the understanding that no advice was given about suitability. Mr R had been referred by Mr D and Mr O, neither being authorised to give financial advice. Mr R had been introduced to ROC on the basis he'd decided to transfer an existing pension with a view to investing in Store First and he'd satisfied himself as to the merits of the investment. ROC received a completed application for a Rowanmoor SSAS from Mr R on 10 January 2014. He'd signed a declaration to sign to confirm his understanding of ROC's role – that he hadn't received any advice from ROC in respect of making any investment decisions, the establishment of the SSAS, or the suitability of transferring pension benefits.

ROC's position is that it didn't give any advice to Mr R, the fee paid to ROC was just an arrangement fee and ROC only became involved after Mr R had decided he wanted to transfer and invest in storage pods and had completed Rowanmoor's SSAS application form. And Mr R agrees he didn't get any advice from Mr W. Mr R says he didn't meet Mr W or anyone else from ROC and he wasn't advised by ROC – he complained to ROC because Mr W's and ROC's name appeared on the paperwork. So I accept that ROC's role was administrative and not advisory.

Mr R also knows Mr O who ROC said, along with Mr D, had referred Mr R to ROC. Mr O was, until July 2011, a co director of Mr D. His occupation was given as financial adviser but a search of the FCA register doesn't show he is registered. Mr R's representative has suggested that Mr O was possibly linked to a regulated firm – he either worked for that firm or introduced clients. But again that's not apparent from the FCA register. Mr R says he dealt with Mr O in connection with the later transfer of a different pension – which I think was some kind of occupational or employer's pension scheme – to a QROPS – a Qualifying Recognised Overseas Pension Scheme. I understand that transfer is the subject of a claim to FSCS (Financial Services Compensation Scheme). But, so far as the transfer from ReAssure is concerned, Mr R says that only Mr D was involved.

As to exactly what Mr D did, it's possible that, in discussions with Mr R about a SSAS and potential investments, Mr D just provided information for Mr R to consider and then decide for himself what he wanted to do. But, in practical terms, I think it would be very difficult for whatever Mr D said to Mr R in one to one meetings about setting up a SSAS and investing in storage pods not to stray into advice territory by suggesting to Mr R that he should transfer. And that's what Mr R says happened – that Mr D told him he'd be better off if he transferred

to a SSAS to invest in storage pods. I accept Mr R had no experience of pensions or investments. I don't think he was someone who'd have been confident in making his own decisions as to what he should do with his accumulated pension savings. A SSAS is a relatively unusual and somewhat complex pension arrangement for someone in Mr R's situation. And storage pods aren't a mainstream investment. I can't see he'd have been prepared to transfer to a SSAS to invest in storage pods unless he'd been told that he'd be better off in retirement if he did that. So essentially a personal recommendation was given by Mr D that Mr R should transfer away from ReAssure. That would amount to regulated advice which should only be given by a regulated adviser, with the appropriate permissions to give advice about pensions, which Mr D wasn't.

Mr D didn't recall any other paperwork or contact, by way of phone, email or otherwise, from ReAssure prior to the eventual transfer. Our investigator sent Mr R a copy of the Scorpion insert and the longer booklet. Mr R didn't recall seeing either but, he said if he had, it would've made no difference as he looked on the person he was dealing with, Mr D, as a friend – he'd arranged two or three mortgages for Mr R over the years with no problems.

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. Sending the insert to customers asking to transfer their pensions was a simple and relatively inexpensive step for pension providers to take and one that wouldn't have got in the way of efficiently dealing with transfer requests.

ReAssure was unable to confirm whether a copy of the Scorpion insert was included in the transfer pack which it says was sent to Mr R. But, from what I've seen, transfer packs were sent to ROC and Rowanmoor. The letter to Rowanmoor dated 17 January 2014 did refer to a leaflet being enclosed but ReAssure can't confirm that it was the Scorpion insert. And, even if it was enclosed, it should've been sent direct to Mr R. It would've defeated the purpose of the insert if, instead of sending it to their customer, providers sent it to the customer's representative or some other party involved in the transfer (and who might have a vested interest in it proceeding) in the hope it would be shared with the customer.

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 pension liberation and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk. ReAssure isn't sure what, if any, further due diligence was undertaken.

ReAssure has pointed to the fact that Mr R's SSAS was established with Rowanmoor. 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. But 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've 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 R's transfer.

Given the information ReAssure had at the time, one feature of Mr R's transfer would have been a potential warning sign of liberation activity as identified by the Scorpion action pack: Mr R's SSAS was recently registered – ReAssure was provided with HMRC's letter which showed the SSAS had been registered on 17 January 2014. That was just two days before Rowanmoor had written to ReAssure saying Mr R wanted to transfer.

ReAssure should therefore have followed up on this to find out if other signs of liberation were present. Given this warning sign, I think it would've been fair and reasonable – and good practice – for ReAssure to look into the proposed transfer and the most reasonable way of going about that would have been to turn to the check list in the action pack to structure its due diligence into the transfer.

The check list provided a series of questions to help transferring schemes assess the potential threat by finding out more about the receiving scheme and how the consumer came to make the transfer request. Some items on the check list could have been addressed by checking online resources such as Companies House and HMRC. Others would have required contacting the consumer. The check list is divided into three parts (which I've numbered for ease of reading and not because I think the check list was designed to be followed in a particular order):

1. The nature/status of the receiving scheme

Sample questions: Is the receiving scheme newly registered with HMRC, is it sponsored by a newly registered or dormant employer, an employer that doesn't employ the transferring member or is geographically distant from them, or is the receiving scheme connected to an unregulated investment company?

2. Description/promotion of the scheme

Sample questions: Do descriptions, promotional materials or adverts of the receiving scheme include the words 'loan', 'savings advance', 'cash incentive', 'bonus', 'loophole' or 'preference shares' or allude to overseas investments or unusual, creative or new investment techniques?

3. The scheme member

Sample questions: Has the transferring member been advised by an 'introducer', been advised by a non-regulated adviser or taken no advice? Has the member decided to transfer after receiving cold calls, unsolicited emails or text messages about their pension? Have they applied pressure to transfer as quickly as possible or been told they can access their pension before age 55?

Opposite each question, or group of questions, the check list identified actions that should

help the transferring scheme establish the facts.

I don't think it would always have been necessary to follow the check list in its entirety. And I don't think an answer to any one single question on the check list would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the check list to establish whether liberation was a realistic threat. Given the warning sign that should have been apparent when dealing with Mr R's transfer request, and the relatively limited information it had about the transfer, I think in this case ReAssure should've addressed all three parts of the check list and contacted Mr R as part of its due diligence.

What should ReAssure have found out?

Investigations under part 1 of the checklist would've revealed that, not only was the SSAS very newly registered with HMRC, the sponsoring employer (R Limited) was also newly set up – only a week or so before Rowanmoor had written on 15 January 2014 saying Mr R wanted to transfer. It was a dormant company. If asked, Mr R would've said that aid that he wasn't actually employed by R Limited which had been set up simply to facilitate the SSAS.

Enquiries under part 2 of the checklist would've identified that Mr R was planning to invest in storage pods which I think could fairly be described as a new and unusual investment.

I think enquiries under part 3 would've been particularly pertinent. As I've noted, it had all started off when Mr D asked Mr R if he had any pensions which he might be interested in transferring. And, when Mr R said he did, it seems Mr D then went on to advise Mr R that he'd be better off if he transferred to a SSAS so he could invest in storage pods. I don't see any reason why Mr R wouldn't have told ReAssure that's what had happened and that he'd been dealing with Mr D who'd taken things forward by suggesting he should transfer to a SSAS so he could invest in storage pods. It seems that ROC then became involved but that was after Mr R had decided to transfer, based on what Mr D had said – that is, advised Mr R what he should do.

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 registered with the FSA at www.fsa.gov.uk/fsaregister". In other words, they should consult the FSA's online register of authorised firms. ReAssure should have taken that step, which is not difficult, and it would quickly have discovered that Mr R'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 insert itself makes this point.

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

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

I think ReAssure's failure to uncover this risk of illegal advice and then warn Mr R about it meant it didn't meet its obligations under Principles 2, 6 and 7 and COBS 2.1.1R. With those obligations in mind, it would have been appropriate for ReAssure to have informed Mr R that the firm he'd been advised by was unregulated and could put his pension at risk. ReAssure

should've 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.

But the more difficult question is whether any messages along these lines would have changed Mr R's mind about the transfer. Any messages from ReAssure would've followed conversations with Mr R so would've seemed to him (and indeed would've been) specific to his individual circumstances and would've been given in the context of ReAssure raising concerns about the risk of Mr R losing pension monies as a result of untrustworthy advice. This would've made him aware that there were serious risks in using an unregulated adviser even if he wasn't liberating his pension.

On the one hand, I think the gravity of any messages along these lines would prompt most reasonable people to change their mind if, having checked out the adviser they'd been dealing with, they'd have discovered they were unregulated and so shouldn't have been giving advice about transferring a pension and indeed were acting unlawfully in doing so. But I bear in mind here that Mr R wasn't dealing with someone new. Instead his relationship with Mr D went back several years. And he's explained that he trusted Mr D and indeed regarded him as a friend. In that sort of situation it's not obvious that Mr R would've thought any warnings ReAssure expressed about the dangers of relying on untrustworthy advice might apply to him and call into doubt what Mr D had told him to do and so prompted Mr R to check Mr D's regulatory status.

In saying that I acknowledge that a suggestion that someone, because they aren't regulated and don't hold the necessary FCA permissions, may have been acting unlawfully, is a serious issue. And Mr R has said, if he'd have known that his adviser had been unregulated, that would've changed things. But I think Mr R's existing, longstanding and clearly positive relationship with Mr D is pivotal. And such that I'm not persuaded that any warnings given by ReAssure would've resonated with Mr R. I think his trust in Mr D would've prevailed. I don't think it would've crossed Mr R's mind that he might be about to fall victim to a scam or otherwise inappropriate transfer and investment. I can't see he'd have thought any concerns expressed by ReAssure might apply to him or that he needed to worry about whether Mr D should've been telling him what to do with his pension and if what he'd suggested was really in Mr R's best interest.

As I've said above, ReAssure should've given Mr R the Scorpion insert. But, when we shared it with him, Mr R said, if he'd have seen it, he wouldn't have changed his mind about transferring because he trusted Mr D. Further, ReAssure should've given Mr R a copy of the February 2013 insert entitled 'Predators stalk your pension'. Its focus was on early access pension liberation fraud – that is trying to access pension savings before age 55 (which is only allowed in very rare circumstances) and the serious tax consequences which could result. When the transfer request was made Mr R had recently turned 53. But there's no suggestion he was seeking to access his pension savings then. He's said a five year investment term – the length of time he was given to understand he'd need to keep the storage pods for – fitted with his plans to retire about then. So I don't think there's any suggestion that he was seeking to access his pension fund early. Hence the warnings given in the Scorpion insert wouldn't have seemed particularly relevant.

The 'What to watch out for' section of the insert warned about being approached out of the blue over the phone or via text message, pushy advisers or introducers offering upfront cash incentives or a loan, saving advance or cash back or not being informed about the potential tax consequences. Mr D may have got in touch with Mr R about his pension arrangements out of the blue, rather than in connection with any mortgage business. But Mr R knew Mr D so it wasn't a cold call in the strict sense. And Mr R hadn't been offered any cash or similar incentive in return for transferring, so what the insert said about wasn't relevant to him. So I

don't think anything much turns on ReAssure's failure to provide the Scorpion insert.

On balance, I think the upshot is that Mr R would've likely gone ahead with the transfer anyway and even if ReAssure had done all it should've – whether by providing Mr R with the Scorpion insert or contacting him direct about his transfer request. In the circumstances I'm unable to say that failings on ReAssure's part have caused Mr D's losses.'

ReAssure confirmed its agreement with my provisional decision and didn't have anything further to add.

Mr R's representative didn't make any further comments but Mr R did. He said I'd found ReAssure had failed him in many ways by not following correct due diligence procedures and not reacting to obvious red flags which, as someone with no investment knowledge, he wasn't aware of. If ReAssure had taken the time to speak to him directly and pointed out that he was dealing with people who weren't regulated or authorised to carry out this type of transfer, it would've made him wonder if they were legitimate. He felt too much emphasis had been placed on any friendship with Mr D. They weren't friends socially and any meetings were for mortgage or investment purposes.

Mr R added that, prior to transferring to ReAssure, he'd been in a final salary company pension scheme. After he'd left that employment, an acquaintance who worked for L&G asked him what he was going to do with his pension and convinced him he'd be better off transferring out and starting a private pension. From what Mr R knows now, the transfer wasn't in his best interest. If ReAssure had followed the correct protocols he'd have been prevented from making a life changing decision to transfer away into what was obvious to ReAssure was a very risky and unregulated scheme. Mr R also queried why he wouldn't sign an agreement when there wasn't anything to suggest he shouldn't.

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 considered carefully the points Mr R has made in response to my provisional decision but I haven't been persuaded to change my mind.

I don't disagree, and as my provisional decision made clear, that ReAssure didn't do all it should've done. But a finding that ReAssure was at fault isn't enough – I have to go on to consider what the likely impact would've been.

I reach my conclusions about that on the balance of probabilities – that is, what I consider is more likely to have happened and taking into account all the available evidence (which may be incomplete, inconclusive or contradictory) and the wider circumstances. I'd emphasise that I'm not looking at what would've happened with the benefit of hindsight. Mr R clearly wishes now that he hadn't gone ahead with the transfer. But I need to consider what he'd have likely done at the time. I still think it's unlikely, given his relationship with Mr D, that he'd have thought any warnings from ReAssure about unregulated and untrustworthy advisers might apply to Mr D.

Although Mr R says he and Mr D weren't friends in the true sense, Mr R said himself that he regarded Mr D as a friend. And, from a professional perspective, Mr R's dealings with Mr D went back some years and Mr R was happy with how Mr D had dealt with other financial matters. As I recognised in my provisional decision, a warning from ReAssure about an unregulated adviser would've been a serious matter. But Mr R trusted Mr D and had confidence in him. I think that trust and confidence would've prevailed and Mr R wouldn't

have been prompted to think about if Mr D might not be acting in his (Mr R's) best interest or whether it might be unwise to do what Mr D had suggested. Essentially, given his relationship with Mr D, I don't see that any warnings would've resonated with Mr R or made him think that anything untoward might be going on and such that he should question what Mr D had told him.

As to what Mr R has said about having no reason not to sign an agreement, I'm not sure if he's referring here to a particular agreement or more generally – he'd have signed lots of documents and agreements (such as the one he signed for ROC) in connection with the transfer and investment. But I don't think that changes anything – I accept he didn't suspect there might be any reason why he shouldn't go ahead, hence he signed what he was asked to. But I think his willingness to proceed was primarily due to the fact that Mr D had suggested and was driving the transfer and investment. In the circumstances, I don't think further warnings from ReAssure, even if they'd been more specific about the role Mr D was undertaking, would've made Mr R rethink if he should follow what Mr D had said.

I note Mr R says he shouldn't have transferred out of his former employer's pension scheme into the personal pension with ReAssure. It seems Mr R feels he was also let down then by relying on what an acquaintance had suggested. As I think Mr R probably appreciates, that transfer is a different matter and doesn't form part of this complaint. His point is that his position, and his (albeit not so valuable) personal pension, would've been preserved, had ReAssure acted as it should've. However, I maintain the views I set out in my provisional decision. I've repeated above what I said and it forms part of this decision. I'm sorry Mr R is disappointed but, for the reasons I've given, I'm not upholding his complaint.

My final decision

I don't uphold the complaint and I'm not making any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 13 February 2025.

Lesley Stead
Ombudsman