DRN-5321421

The complaint

Mr C has complained, via his professional representatives, about a transfer of his ReAssure Limited personal pension to an occupational pension in August 2014. Mr C says that his pension funds were invested in 'unregulated investments' and that he has lost out financially as a result.

At the time of the events complained about Mr C's personal pension was provided and administered by another company. But as ReAssure has confirmed it is now responsible for responding to the complaint, for ease of reading I will only refer to it within this decision.

Mr C 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, in line with the guidance he says was required of transferring schemes at the time. Mr C says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if ReAssure had acted as it should have done.

What happened

On 7 November 2013, Mr C signed a letter of authority (LOA) allowing AIMS Finance Limited (AFL)[1] to obtain details, and transfer documents, in relation to his pension. On 11 December 2013 AFL wrote to ReAssure, enclosing Mr C's LOA and request for information about his personal pension. ReAssure sent AFL the requested information on 13 December 2013. At that time AFL was authorised and regulated by the Financial Conduct Authority (FCA).

On 3 April 2014 Mr C signed another LOA. That allowed a firm called Smith & Williamson Employee Benefits Consultants – a division of Smith & Williamson Financial Services Limited (S&W)[2] to release information concerning his pension. On the same day Mr C signed ReAssure's discharge form to transfer the funds from his personal pension to the Choice Capital Management Trust (CCMT) occupational pension scheme.

On 10 April 2014 S&W sent ReAssure Mr C's LOA and documents requesting a transfer to the CCMT scheme.

ReAssure wrote to Mr C on 16 April 2014. It said it had received the request to transfer his pension and was making further enquiries before doing so. It added that if he hadn't already done so it suggested he speak with an independent financial adviser. It also said it would like to highlight an issue that The Pensions Regulator (TPR) and the Financial Services Authority (FSA) had brought to its attention concerning some pension schemes making pension benefits available before age 55. It said that if that applied to Mr C to let it know. It provided links to webpages from both TPR and FSA giving further information. ReAssure said that payments from pension schemes before the age of 55 or which were not HMRC registered are subject to an additional tax charge.

[1] This was AFLs registered name at that time; however, it subsequently changed its registered name in June 2014. As of 2020 it is no longer FCA registered.
[2] S&W is now operating under a different name but remains an FCA authorised firm.

On the same day, 16 April 2014, ReAssure wrote to S&W. It asked for some information including the scheme's trust deed and evidence that the scheme was registered with TPR. It also asked if Mr C worked for the CCMT sponsoring employer and if not evidence that such employment was not a condition of joining the scheme.

On 9 May 2014 ReAssure wrote to Mr C. It said it was unable to proceed with the transfer because it could not satisfy itself that Mr C's pension investment would continue to be adequately protected. ReAssure said it would consider another request to transfer to a registered pension scheme. It recommended that Mr C take independent financial advice from an FCA authorised adviser before transferring. ReAssure also wrote to S&W that day advising that it wouldn't proceed with the transfer.

Later that month, May 2014, S&W sent ReAssure a number of documents. Amongst other things it enclosed:

- The scheme's deeds and rules.
- Evidence that TPR had registered the scheme in June 2013,
- Evidence that the scheme had changed its name and trustees. It had appointed Choice Capital Pension Trustees (CCPT) in December 2013.
- confirmation that the scheme's sponsoring employer was Choice Capital Management Limited (CCML).
- HMRC registration of the new scheme name from May 2014.
- Confirmation that S&W was appointed as the scheme administrator.

ReAssure wrote to Mr C on 22 July 2014. It said it was in a position to continue with the transfer and asked Mr C to contact it if he wished to do so. On 8 August 2014 ReAssure confirmed it had transferred Mr C's pension funds of over £45,000 to the CCMT scheme. Mr C was 47 years old at the time.

In June 2024 Mr C complained, via his representatives, to ReAssure. Briefly, his argument is that ReAssure didn't carry out adequate due diligence. There wasn't a genuine employment link to the sponsoring employer, the transfer followed an unsolicited call and he had not taken advice from an authorised adviser.

ReAssure didn't uphold the complaint. It said it had received LOAs from two FCA regulated firms – AFL and S&W – and said it could reasonably be assumed that the financial suitability of the transfer had been discussed. It said it had initially refused the transfer. But after receiving information from TPR and Mr C's confirmation that he wished to proceed it went ahead.

Mr C's representatives submitted his complaint to the Financial Ombudsman Service. One of our Investigators looked into it. He didn't recommend that the complaint be upheld. Mr C, via his representatives, did not agree with our Investigator's complaint assessment. As our investigator was unable to resolve the dispute informally, the matter was passed to me to decide.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

While doing so I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

My findings are similar to those our Investigator reached in his assessment of the complaint. So, my analysis as described below occasionally echo's the wording our Investigator presented.

The relevant rules and guidance

Before I explain my reasoning, it will be useful to set out the environment ReAssure was operating in at the time with regards to pension transfer requests, as well as any rules and guidance that were in place. Specifically, it's worth noting the following:

- 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 a member may also have a right to transfer under the terms of the contract). This 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.

- On 10 June 2011, the FSA issued a warning about the dangers of "pension unlocking" and specifically referred to consumers transferring to access cash from their pension before age 55. (As background to this, the normal minimum pension age had increased to 55 in April 2010.) The FSA said that receiving occupational pension schemes were facilitating this. It encouraged consumers to take independent advice. The announcement acknowledges that some advisers promoting these schemes were FSA authorised.

- At around the same time, TPR published information on its website about pension liberation, designed to raise public awareness and remind scheme operators to be vigilant of transfer requests. The warnings highlighted that websites and cold callers were encouraging people to transfer in order to receive cash or access a loan.

- TPR launched its Scorpion campaign – so called because of the imagery it used – on 14 February 2013. The aim of the campaign was to raise awareness of pension liberation activity and to provide guidance to scheme administrators on dealing with transfer requests in order to help prevent liberation activity happening. The FSA, and the FCA which had succeeded the FSA, endorsed the guidance. The guidance was subsequently updated, including in July 2014. I cover the Scorpion campaign in more detail below.

- ReAssure was subject to the 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:

– 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.

<u>The Scorpion guidance</u>

The Scorpion campaign was launched on 14 February 2013, and was initially focused just on pension liberation – namely, the access to pension funds in an unauthorised manner (such as before normal minimum pension age). However, it updated the guidance on 24 July 2014 when it widened the focus from pension liberation specifically, to pension scams – which it said were on the increase.

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 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 checklist 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 statutory rights.

That said, the launch of the Scorpion guidance was an important moment in so far as it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing transfer requests. It was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And its specific purpose was to inform and help ceding firms, like ReAssure, 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 a turning point in terms of what was expected of personal pension providers dealing with transfer requests as a matter of fulfilling their duties under the regulator's Principles and COBS 2.1.1R.

<u>What did personal pension providers need to do?</u>

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. In deciding how to apply the guidance, they needed to consider it 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, without 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 ceding schemes should have sent the Scorpion insert to consumers as a matter of good industry practice with transfer packs and direct to the transferring member when a different party had asked for the transfer pack.

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 other appropriate action where it was apparent

their client might be at risk. The guidance points to the warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. Therefore, whilst using the action pack wasn't an inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.

5. The considerations of regulated firms didn't start and end with the Scorpion guidance. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn't involve anything specifically referred to in the Scorpion guidance – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's principles and COBS 2.1.1R.

<u>The circumstances surrounding the transfer – what does the evidence suggest happened?</u>

Mr C said, via his representatives, that an introducer acting for CCML contacted him offering a free pension review. He said that CCML's representative visited him on 3 April 2014 and produced promotional material including graphs, diagrams etc of projected growth for CCML's 'Cleaner Energy Portfolio'. Mr C said the benefits were:

- allocation across six different asset classes
- it would outperform the FTSE 100
- the portfolio was actively managed to ensure the balance between asset class is reflective of shifts in global markets.

Mr C said the introducer indicated he could double his returns compared to his existing ReAssure personal pension. Mr C signed the forms to transfer his pension to the CCMT scheme that day.

Mr C has said that CCML was not authorised to give financial advice. That is correct. However, there's no evidence beyond Mr C's comments that it was a representative of CCML who gave Mr C advice. However, given that the introducer's recommendation was ultimately that Mr C should transfer his funds to the CCMT, I can understand why, over ten years later, he might have had the impression that the introducer was working for CCML.

I think it's worth pointing out that the first evidence of contact with Mr C came from an FCA authorised firm in AFL. I haven't been provided with any evidence of further involvement from AFL after ReAssure sent it pension information in December 2013. However, it's notable that two of CCPT's directors were listed on the FCA register as being authorised personnel to act for AFL at the time of the transfer. I think the link between the scheme's trustees (CCPT) and AFL is likely more than just coincidence. So it seems probable that AFL had a hand in either recommending the transfer itself or acting as an introducer to S&W.

Further, the LOA which Mr C signed on 3 April 2014 did not give any right or authority to CCML to request information or act on his behalf. Instead it enabled S&W to do so. So I think it's more likely than not that it was an agent of either AFL or S&W who visited Mr C on 3 April 2014. And S&W was fully FCA authorised to provide advice on pension transfers. So I don't think it would be accurate to conclude that it was an unregulated advising firm that recommended the transfer. That said I do recognise that S&W was clearly later appointed as administrator of the CCMT. And I've seen no evidence that Mr C appointed S&W as his financial adviser. But, that does not mean S&W was an unregulated firm.

I haven't been provided with any documents which evidence how Mr C's funds were invested after ReAssure transferred them to the CCMT scheme. But Mr C provided ReAssure with a copy of the proposed portfolios' promotional materials.

The material supplied refers to two portfolios:

- Central Markets Investment Management's (CMIM) Global Growth Portfolio. The promotional material said that this was a diversified portfolio, invested in six asset classes, with a focus on low risk and protection of client's capital. The materials showed that over the previous six years the portfolio had produced returns between 3.71% and 11.2% a year. The lowest growth, 3.71% occurred the previous year in 2013.

- CMIM's Clean Energy Portfolio. The material described this as a portfolio with a strategy of investing in the worlds 10 largest exchange traded funds operating in the 'clean energy space'. The portfolio had operated from 2012, when it made a loss of 8.86%. However, according to the material, it had produced positive returns of 85.92% in 2013.

CMIM is an investment management company whose services included discretionary fund management. It was (and at the time of writing still is) fully authorised by the FCA. I understand it went into a voluntary liquidation process in 2024.

As indicated above Mr C said that he was told that a benefit of the proposed portfolio was allocation across six assets classes. It's notable that CMIM's promotional material for the Global Growth Portfolio shows six asset classes. So this would appear to be the portfolio that Mr C recalls being promoted. However, he says his funds were invested 100% in CMIM's Clean Energy Portfolio. It's not apparent, from the paperwork I've been provided with, if this was Mr C's choice or if this was the scheme's default position once he signed the transfer papers. However, Mr C said that he wanted to ensure that his accrued retirement provisions were safe for the future and covered all basic and accommodation needs.

Mr C says that, following the transfer, he didn't hear from CCML or the scheme again. CCPT was dissolved in 2016. CCML was dissolved in 2021. Mr C said that owing to the status of the companies he considers that he has suffered a significant financial loss.

<u>What did ReAssure do and was it enough?</u>

The Scorpion insert:

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

ReAssure has acknowledged that it is unable to evidence that it sent Mr C the Scorpion insert. It had two opportunities to do so: when AFL and S&W requested pension information in December 2013 and April 2014. But there's no evidence it did so.

However, while I think that ReAssure should have sent the Scorpion insert to Mr C I note that it did, nevertheless, provide him with very similar information to the insert. That is it explained in its letter of April 2014 that TPR had brought to its attention the risks of accessing a pension early. It also provided links to two websites, from the FSA and TPR, which provided further similar information and warnings about pension liberation. In fact, while they didn't contain the same imagery, the webpages gave more information about the threats of accessing pension funds in an unauthorised manner than the Scorpion insert did.

Mr C's representatives have argued that given the volume of documents Mr C received at the time of his transfer it was unreasonable to assume that providing a link was an adequate warning. However, it's notable that ReAssure's letter of 16 April 2014 was a standalone document. It didn't enclose any other forms, information etc for Mr C to consider. And it appears that he'd most likely already completed the application forms to join the CCMT and transfer his pension. So, there's little evidence that he was deluged with information at the time that ReAssure wrote to him on 16 April 2014.

Further Mr C's representative told us that he did not intend to access his pension before age 55 and was not promised any cash or other incentive to transfer. Yet they also said that the Scorpion insert was 'highly relevant' to Mr C's situation. But I disagree.

On the occasions when ReAssure received requests for pension information the relevant Scorpion insert was the one TPR produced in February 2013. That focused heavily on the threats of pension liberation, that is of being offered cash incentives to transfer, accessing pension funds before the age of 55 and the tax implications of doing so. But those things simply did not apply to Mr C's situation. It seems to me that that the only warning within the Scorpion materials relevant to Mr C was being contacted 'out of the blue'. However, that warning was given in the context of accessing funds before age 55. And given that Mr C was not planning on doing that I don't think receiving the Scorpion insert would have resonated with him. In those circumstances I don't think he would have found the Scorpion insert 'highly relevant' to his situation. So I don't think it would have changed the outcome if ReAssure had sent it to him.

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 or a scam and needed to undertake further due diligence and other appropriate action if it was apparent their customer might be at risk.

In this case it's notable that ReAssure did do some initial due diligence. It put questions to S&W including attempting to confirm CCMT's registration and asking questions about whether or not Mr C was actually employed by CCML. S&W didn't provide all of the information ReAssure had asked for. And it appears this persuaded ReAssure to initially refuse the transfer, on the grounds that it couldn't be certain that it was safe to go ahead.

Subsequently, S&W provided further information. That showed that, rather than being recently registered the scheme and CCML had actually existed since June 2013, some eleven months earlier. Although the scheme had changed name and S&W had only recently updated that name with HMRC.

S&W also provided the scheme's trust deeds which showed that Mr C did not need to be employed by CCML in order to become a scheme member. And it seems that this information together with the other evidence S&W provided persuaded ReAssure that it could move forward with the transfer. I'll add that for a statutory right to transfer a pension to exist, there is no requirement for an occupational pension scheme member to be employed by the scheme's sponsoring employer. The member must simply be employed, which Mr C was, albeit by a different employer. So, the fact that CCML did not employ Mr C does not mean, as Mr C's representatives have argued, that CCMT was 'misrepresenting itself' as an occupational pension scheme. In fact the evidence from TPR and HMRC shows that the CCMT was an appropriately registered occupational pension scheme.

So, in the above circumstances, I'm not convinced that ReAssure needed to do further in-depth due diligence. I say that as both the February 2013 and July 2014 Scorpion material provided lists of things for ceding schemes to be on the look out for. And those include things like a recently registered scheme and accessing funds before age 55. But none of those warning signs would have been apparent to ReAssure given the information that was before it. The scheme wasn't particularly recently registered, it had existed for 11 months. Also information from TPR showed that the scheme had ten members. And while Mr C was not employed by CCML, as I've already said, he didn't need to be. So I don't think there were any particular warning signs that would have indicated that ReAssure was required to undertake further in-depth due diligence.

Further, even if ReAssure had done further due diligence I don't think that was likely to have changed the outcome. I say that as ReAssure needed to check for the risk of pension liberation and scams in a way that was proportionate to the warning signs. But a ceding scheme is not expected to act as a general pension adviser to a member who tells it they want to leave their scheme. The Scorpion guidance is aimed at spotting and averting potential pension or transfer scams, rather than delivering general advice about the merits of different regulatory systems or investments.

So, for it to be reasonable to expect a ceding scheme to have concerns and raise these with its member, there must, viewed overall, appear to be a real risk their member is falling victim to a scam. For Mr C's transfer, viewed overall in that way I don't consider that would have been the case.

However, Mr C didn't have an employment link to CCML and was trying to transfer his funds before age 55. And while I don't think those factors meant that ReAssure needed to do further due diligence, for completeness, I've thought about what was likely to have happened if ReAssure had done so.

In those circumstances it seems likely that ReAssure would have confirmed that Mr C was not employed by CCML. But it would also have learned that he wasn't planning to access his pension funds early or in an unauthorised manner, nor was he being offered any incentive to transfer. Instead he was planning on transferring in order to benefit from higher investment returns by investing in a diversified asset portfolio managed by an FCA investment firm – CMIM.

Further, for the reasons given above I also think it's likely that Mr C would have answered any questions about who recommended the transfer as saying that it was either a representative of AFL or of S&W that made that recommendation. And both firms were FCA authorised. In those circumstances ReAssure would have understood that a regulated adviser had provided the recommendation to transfer.

So it's unlikely ReAssure would have intervened further. That's the case even where there were other warning signs, such as a cold call or no genuine employment link to the scheme's sponsoring employer. That's because, as I've already indicated, ReAssure's role was not to give Mr C advice about the suitability of a transfer or his chosen provider or investments. Its role in doing due diligence would principally have been to ensure Mr C was transferring to an appropriately registered scheme (he was) and to give him the warnings associated with pension liberation or scams and transfer risks in general.

It follows that it's extremely unlikely that ReAssure, which wasn't acting – nor was it authorised to act – in an advisory capacity, would have told Mr C that he might be putting his pension at risk if he followed the recommendation given by a regulated adviser. That’s the case even if that adviser was also acting for the pension scheme involved. It wasn’t ReAssure’s responsibility to question or scrutinise that recommendation.

Further, contrary to Mr C’s representatives’ comments, ReAssure was not under any obligation to confirm that Mr C had taken regulated financial advice because the transfer was in excess of £30,000. The regulation the representatives have referred to when making that comment didn't apply until 2015 and even then it only applied to certain pensions offering safeguarded benefits. That wasn't the case for Mr C’s ReAssure personal pension.

Also, I don’t think the mere act of contacting Mr C and asking questions about the transfer would have prompted a change of heart. ReAssure had already told Mr C on one occasion that it would not proceed with the transfer. And it had recommended, twice, that he take independent financial advice before transferring. But Mr C went ahead with the transfer anyway. So it appears that he was already content with the transfer advice he’d received.

In those circumstances I think that even if ReAssure had done further due diligence Mr C would still be in the same position he is in now. That is he would have proceeded with the transfer. So I don’t think ReAssure has caused the investment losses he has suffered.

My final decision

For the reasons given above, I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C to accept or reject my decision before 15 April 2025.

Joe Scott
Ombudsman