DRN-5361269

The complaint

Mr S has complained, via his representatives, about a transfer of his ReAssure Limited personal pension to a small self-administered scheme (SSAS[1]) in September 2014. Mr S's SSAS was subsequently used to invest in an overseas commercial property development. The investment now appears to have little value. Mr S says he has lost out financially as a result.

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

Mr S says ReAssure failed in its responsibilities when dealing with the transfer request. He says 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 S 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

In October 2013, in response to a request, ReAssure sent a company called Wise Review Limited details of Mr S's personal pension and the forms required for a transfer. The Financial Conduct Authority (FCA) did not regulate Wise Review.

Mr S says he became interested in a pension transfer after Wise Review contacted him by cold call and told him he could get a better return on his pension my moving it elsewhere. Wise Review then introduced Mr S to a firm called First review Pension Services (FRPS). FRPS was not FCA authorised. FRPS recommended Mr S transfer his pension in order to take advantage of the opportunity to invest in an overseas property development run by The Resort group (TRG)

On 25 November 2013 a company was incorporated with Mr S as director. I'll refer to this company as K Ltd. In December 2013, Mr S signed documents to open a SSAS with Cantwell Grove Limited. K Ltd was recorded as the SSAS's principal employer.

On 2 January 2014 Cantwell Grove wrote to ReAssure asking for it to transfer Mr S's pension funds to his Cantwell Grove SSAS. It enclosed a number of documents including;

- A signed form from ReAssure dated 16 December 2013 allowing it to transfer Mr S's pension funds to his SSAS. On that form Mr S ticked a box to say that he had not sought advice from a professional financial adviser.

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[1] A SSAS is a type of occupational pension in which the members are also trustees and therefore take responsibility for operating the scheme. It's an arrangement typically intended to meet the needs of people who run their own companies. SSASs are not regulated by the Financial Conduct Authority (FCA). They can hold a wider range of investments and assets than many personal pensions. As an occupational pension, a SSAS must be sponsored by an employer company.

- Confirmation that it had warned Mr S about pension liberation and given him a copy of a leaflet (referred to as the “Scorpion leaflet” because of the imagery it contains) produced by The Pensions Regulator (TPR) which warned about pension liberation.

- A letter from Mr S which said Cantwell Grove had explained pension liberation to him along with the risks of transferring his pension. He said he hadn’t been offered any cash incentive to transfer nor was he trying to access his retirement benefits before the age of 55.

- A letter from HMRC confirming the SSAS was a registered scheme.

- The scheme trust deed.

- A Q&A document which said, amongst other things, that as required under s.36 of the Pensions Act 1995, the trustee (i.e. Mr S) was taking appropriate advice about whether the proposed investments were satisfactory for the scheme’s aims, from an FCA authorised firm called Sequence Financial Management Limited (Sequence). It said Mr S was considering investing in a discretionary fund management (DFM) service offered by a company called Parmenion Capital Partners LLP and also in an investment provided by The Resort Group (TRG). It provided a link to a TRG webpage.

On 8 January 2014 ReAssure wrote to Cantwell Grove asking for further documents and information about the SSAS, K Ltd and its relationship with Mr S.

On the same day, 8 January 2014, ReAssure wrote directly to Mr S. It said that, owing to the threat of pension liberation it was conducting further due diligence. It asked him to complete an enclosed questionnaire. It added that it had included information from TPR and said if he had any concerns he should contact The Pensions Advisory Service (TPAS).

Cantwell Grove replied to ReAssure’s letter on 10 January 2014. It said K Ltd was a “personal service business” which had yet to start trading and Mr S was a trustee of it. It said that Sequence was providing section 36 advice. It repeated that the investments being considered where Parmenion’s DFM service and TRG’s commercial property development. It enclosed TRG’s ‘key features document’.

On 22 January 2014 Mr S completed ReAssure’s transfer questionnaire. In answering the questionnaire he gave the following information.

- FRPS had made him aware of the scheme.

- He was employed by K Ltd. He said he was a ‘trustee of the scheme’.

- He was not intending to access benefits before age 55 and was aware of the tax consequences of doing so.

- He had not been offered any cash, bonus or incentive for transferring.

- He said the scheme did not allude to overseas investments or hint at unusual, creative or new investment techniques.

From evidence provided by Mr S’s representative (ReAssure did not send us the same information when it provided us with its documents) it’s apparent that over the ensuing months Cantwell Grove regularly chased ReAssure for updates. It seems that ReAssure had referred the matter to its ‘tech team’ for advice. It also made enquiries of HMRC. Although we haven't been provided with copies of any supporting documents concerning those.

ReAssure wrote to Mr S again on the 15 July 2014. Its letter was similar to the one it sent to him on 8 January 2014. It again said that, owing to the threat of pension liberation, it was conducting further due diligence. It advised him of the tax consequences of accessing a pension fund early. It asked him to complete and sign a transfer declaration it enclosed. It said the transfer wouldn't proceed without the signed declaration. It again included information from TPR. It also directed Mr S to an HMRC webpage about pension liberation for further information.

On 10 September 2014 Mr S signed ReAssure's transfer declaration. Amongst other things Mr S agreed that he understood the risks involved of transferring to a scheme recommended by an unregulated firm or investing in unregulated investments.

ReAssure confirmed, on 17 September 2014, that it was in the process of transferring Mr S's pension of £43,567 to K Ltd's SSAS.

A firm called Broadwood Assets Limited wrote to Mr S in his capacity as sole trustee and member of his SSAS. The letter is undated. Mr S signed to say that he'd read and understood it on 26 September 2014. Broadwood said it was providing appropriate advice under s.36 of the Pensions Act 1995. It said the scope of its advice was limited to this and it hadn't advised him on the establishment of his SSAS. It added that the nature of its advice wasn't regulated under the terms of the Financial Services and Markets Act 2000 (FSMA).

Neither was Broadwood Assets regulated or authorised by the FCA to give financial advice. The letter said the TRG investment was a "credible and substantive" arrangement that didn't facilitate pension liberation and was suitable to be held in a SSAS. But it also warned Mr S that the investment was risky, highly illiquid and not suitable for a cautious investor. It added that if Mr S preferred advice on the suitability of the investment for him personally, he should seek regulated financial advice from an independent financial adviser. It also recommended he should take independent financial advice regarding the SSAS's cash holdings.

On 24 September 2014 £38,150 of the SSAS funds were used to invest in a TRG overseas hotel resort. Mr S was 44 years old at the time.

In January 2015 SSAS funds of £2,985 were invested in Parmenion's DFM.

I understand the TRG investment did initially provide some returns, but these were lower than expected and – from my understanding of events – these payments would have dried up around 2019. The investments are now considered illiquid and incapable of sale on the open market. Parmenion's DFM remains a liquid investment.

In November 2021, via his representatives, Mr S 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, there wasn't a genuine employment link to the sponsoring employer, the catalyst for the transfer was an unsolicited call and he had been advised by an unregulated business.

ReAssure didn't uphold the complaint. It said Mr S had signed a transfer declaration to say he understood the risks he was taking transferring to a scheme recommended by an unregulated firm or investing in unregulated investments. It added that it received the SSAS documents and confirmed that it was appropriately HMRC registered.

Mr S brought his complaint to the Financial Ombudsman Service. One of our Investigators looked into it. After explaining to ReAssure why he didn't think Mr S had brought his complaint out of time – which ReAssure accepted – he didn't recommend it should be upheld.

Mr S didn't agree with our Investigator's complaint assessment. So, as the investigator was unable to resolve the dispute informally the matter was passed to me to decide.

Provisional decision

On 31 January 2025 I issued a provisional decision explaining why I wasn't minded to uphold the complaint. For ease of reference I've copied the relevant extracts below. I said:

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

When 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.

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

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 Financial Services Authority (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 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's the update to that guidance on 24 July 2014 that's most relevant to this complaint. 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. 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 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 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 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 S told us, via his representatives, that he received unsolicited contact from Wise Review who said he could get a better return on his pension by transferring. It then introduced him to FRPS. He said FRPS told him that his ReAssure pension was "sat doing nothing". It 'strongly recommended' he transfer in order to invest with TRG. FRPS told him he could expect returns of around 13%.

On balance I accept that FRPS recommended the transfer. That's because FRPS witnessed Mr S's signature on the SSAS trust deed and also certified his identification documents. So it appears it was involved through key stages of the process. And I'm persuaded that FRPS took Mr S through the required steps to make the TRG investment. In order to achieve that he needed to set up his own company and establish a SSAS. Doing that, i.e. setting up his own limited company, establishing a SSAS, transferring his existing pension and investing in an overseas property development – were complex and unusual arrangements for someone such as Mr S. He wasn't a sophisticated investor. I can't see he'd have done all that, or even known that sort of arrangement was available to him, unless he'd been told it would be a good idea and he'd end up better off. So I'm satisfied that action was recommended to him.

Advice to transfer out of his personal pension with ReAssure would be regulated advice which should only have been given by an FCA authorised adviser. But I'm satisfied that, on balance, it was FRPS's unregulated adviser who made that recommendation.

However, it's not obvious what understanding Mr S had about FRPS's role in this. That's because, while the evidence is that it was FRPS that made the recommendation to transfer, Mr S said that he had not sought professional financial advice. It's not clear why Mr S would have given that answer. Although I'm also aware from other cases we've considered that the FRPS's terms of business generally advised its clients that it was not FCA regulated. Its terms said it didn't give regulated advice. Instead it said it gave clients information they might find interesting. So its possible Mr S has accepted that explanation at face value and determined that in fact FRPS did not give him advice.

Mr S clearly understood that his investment involved an offshore vehicle. And he told us he had asked about investing in the UK but the adviser told him the TRG investment would be the same and would be safe. So it's unclear why in answer to a question on ReAssure's questionnaire, he would say that the investment did not involve an investment overseas.

It's notable that Mr S also told us that he didn't have any doubts about the transfer. He found the process smooth and felt he'd been provided all the relevant information. So perhaps, in those circumstances, he felt there was nothing unusual about the investment that he needed to bring to ReAssure's attention. But, his answer appears to be contradictory to the facts.

We now know, as I've said above, that the TRG investments did provide some returns initially. But they are likely to have dried up, or become sporadic at best, from 2019 onwards. The TRG investments are now considered to be of little value and are illiquid having no recognised secondary market to sell them.

<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.

In this instance there's evidence that ReAssure sent Mr S the Scorpion insert on two occasions: it referred to having included information from TPR when it wrote to him on 8 January 2014 and 15 July 2014. And on balance I'm satisfied that 'information' was most likely the Scorpion insert. That's because TPR had recommended firms issue it to consumers in such circumstances, and the information wasn't officially known as the Scorpion information, but has come to be known that in the pension industry.

There's also evidence that Cantwell Grove had already given Mr S a copy of the Scorpion information. I say that as Cantwell Grove said in its letter to ReAssure that it had explained the Scorpion information to him. And Mr S signed another letter to say he was aware of the issues around pension liberation. He also said he had received "guidance and information" concerning that. Mr S's letter doesn't expand on what the guidance was. But his letter explaining why he wanted to go ahead with the transfer said he understood the risks of liberation and was not seeking to release pension funds before age 55 and was not receiving any form of cash incentive. So he refers to issues the Scorpion insert discusses regarding pension liberation.

It follows that I'm satisfied that Mr S received, on three occasions, the February 2013 version of the Scorpion insert. However, by the time ReAssure actually made the transfer in September 2014, TPR had updated the guidance to cover pension scams more generally.

However, while the emphasis in the updated action pack shifted from liberation to scams, the information in the insert didn't differ dramatically from the earlier version. So I don't think ReAssure needed to send that to Mr S again. But I do think it needed to have regard to the contents of the updated action pack when making the transfer.

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 other appropriate action if it was apparent their customer might be at risk.

Given the information ReAssure had at the time that Cantwell Grove sent the transfer request, one feature of Mr S's transfer would have been a potential warning sign of a scam: Mr S's SSAS was recently registered. So ReAssure should have followed up on it to find out if other signs of a scam were present. Given this warning sign, I think it would have 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 checklist in the action pack to structure its due diligence into the transfer.*

The checklist 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 checklist could have been addressed by checking online resources such as Companies House and HMRC. Others would have required contacting the consumer. The checklist is divided into three parts (which I've numbered for ease of reading and not because I think the checklist 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 checklist identified actions that should help the transferring scheme establish the facts.

I don't think it would always have been necessary to follow the checklist in its entirety. And I don't think an answer to any one single question on it would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the checklist to establish whether a scam was a realistic threat. Given the warning sign that should have been apparent when dealing with Mr S'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 checklist and contacted Mr S as part of its due diligence.

It's apparent that ReAssure did do additional due diligence. It sent Mr S a transfer questionnaire. While that was somewhat limited in its scope, it did ask Mr S and Cantwell Grove some of the relevant questions that the checklist advocates asking. For example, it asked him about his relationship with K Ltd. And Mr S said that he was employed by it, although he described his role as 'trustee'. This contrasts with the reply Cantwell Grove had already sent to ReAssure in which it said that K Ltd was a personal service business but that it hadn't yet started trading. It also referred to Mr S's relationship with K Ltd as being one of a trustee. So it's not clear why Mr S would answer that K Ltd did employ him.

ReAssure also asked Mr S who had introduced him to the scheme (his SSAS) and he replied that it was FRPS. But the transfer questionnaire didn't ask if this was as a result of a cold call offering a free pension review, which would have been a more relevant question at the time.

It's also apparent that, after receiving Mr S's and Cantwell Grove replies to its questions ReAssure still had concerns. I say this as while this isn't documented on any of the paperwork ReAssure provided me with, I've seen notes which show that ReAssure referred the matter to its 'tech team', presumably to address the question of whether this was a transfer it should make. It also made further enquiries of HMRC. It's not clear if the referral to the 'tech team' was solely in respect of Mr S's transfer request or if ReAssure had wider concerns about transfers of that nature at the time. I haven't seen any documents which set out what the specific referral was for or the tech team's reply.

Matters progressed in July 2014, presumably after receiving the tech team's response, ReAssure wrote to Mr S. It reminded him of the tax implications of taking pension benefits early and enclosed a copy of the February 2013 Scorpion insert (as TPR still hadn't produced the updated version at that time). It also briefly set out the role of regulators and the Financial Services Compensation Scheme (FSCS), it asked Mr S to sign a declaration. That declaration said that he was aware of the risks of transferring to a scheme offered by an unregulated firm or of investing in unregulated investments.

I understand that from ReAssure's perspective it was most likely just waiting for Mr S to return the declaration and, once he'd done so, believed it could complete the transfer without further due diligence. However, Mr S didn't return the declaration promptly. In fact it was almost two months until he signed and returned that declaration, in September 2014.

Between ReAssure's July letter and Mr S signing the declaration TPR had updated its Scorpion leaflet. And, as I've said above, that update shifted the focus from watching out for the threats of pension liberation – taking funds early, to pension scams more generally. And I think ReAssure should have reacted to that update and adapted any ongoing transfers to reflect that updated guidance.

It follows that I don't think it was fair for ReAssure to simply give the transfer the green light once Mr S returned the declaration. Instead I think it needed to look again at it in light of the updated guidance.

One of the things the updated guidance said to watch out for was:

'Transfers of money or investments overseas, meaning the money is harder to recover'.

As we know investing overseas, in TRG's development, was something which Mr S was planning to do. And I think ReAssure should have been aware of that. I say that as Cantwell Grove had told ReAssure that, as well as Parmenion's DFM service, Mr S was considering investing with TRG, although Cantwell Grove didn't explain what the intended proportionate split between the two investments was. Cantwell Grove also sent ReAssure TRG's 'key features document'. That made it clear that this was an overseas commercial development. It also indicated that TRG was Gibraltar based. So it should have been evident to ReAssure that Mr S was intending to invest overseas. That was clearly the case even though Mr S had previously told it that he did not intend on investing overseas.

So, before effecting the transfer I think ReAssure should have taken some additional steps and contacted Mr S again. In particular I think it should have let him know that transferring overseas could be a risk factor for him and, ideally, it could have sent him the longer version *of the updated Scorpion leaflet. That's because it included an example of a pension scam which involved investment in an overseas property development that might have caused Mr S to sit up and take notice.*

I'll add that ReAssure was already aware of some warning signs. The most obvious was the recent establishment of K Ltd and its SSAS. Also Mr S's response to its questions that he was employed by the SSAS as a 'trustee', even though Cantwell Grove said that K Ltd wasn't trading, could have also caused ReAssure to ask some further questions. But Mr S had already provided an answer to its question about the employment link between K Ltd and himself. And I think the onus was on him to answer it honestly and accurately, rather than on ReAssure to unpick his direct evidence to it.

There were other warning signs that ReAssure might well have been unaware of. For example Mr S said the process began with a cold call from Wise Review, which was a warning sign identified in the Scorpion guidance. ReAssure hadn't specifically asked Mr S how the process began, although it should have been aware of Wise Review's involvement as it sent Wise Review Mr S's pension information in October 2013. While I haven't seen the letter requesting that information its unlikely to have made it clear that it was as a result of a cold call. But, in any event, ReAssure sent Mr S the Scorpion insert, initially, on 8 January 2014. And at that time, the first risk warning sign the insert said to watch out for was being approached 'out of the blue'. That had happened to Mr S fairly recently but it apparently didn't put him off moving forward with the process. So I don't think ReAssure raising this warning sign with him would have made any difference.

Another warning sign would have been Mr S's evidence that he hadn't taken financial advice. He had also referred to FRPS being the business that made him aware of 'the scheme'. FRPS wasn't FCA authorised. But Mr S's own evidence to ReAssure was that he hadn't sought advice. So, I don't think it would be fair to say that ReAssure should have assumed that FRPS had provided advice it wasn't authorised to give, when Mr S had indicated that it didn't do that.

Also, while it might have been a matter of concern that Mr S had chosen to transfer his pension without, according to his own evidence, taking regulated advice, he was under no obligation to do so. And ReAssure couldn't insist that he do so before he transferred. I'll add that ReAssure's transfer form said that it "recommends that you consult your financial adviser before taking this action". But, on the same page Mr S ticked boxes to confirm he hadn't sought advice. So he'd either concluded that FRPS wasn't advising him or he was aware that FRPS was not regulated.

Further, the Scorpion insert, which Mr S received on at least three different occasions advised Mr S that any financial advisers should be FCA regulated. It also recommended that he speak to an adviser not associated with the proposal for unbiased advice. But there's no evidence that he did so. And, it appears he was unconcerned that he hadn't taken regulated advice. In those circumstances I don't think ReAssure again encouraging Mr S to take advice from an FCA authorised advising firm, or of the risks of following that recommendation of an unauthorised adviser, would have made a difference.

However, it's not clear that Mr S was aware that transferring overseas was a risk factor for the transfer. So I do think that ReAssure should have brought this to Mr S's attention. But after careful consideration I don't think it would have made any difference to the outcome if it had.

I say the above as Mr S's evidence is that he did ask FRPS if he could invest in the UK. That suggests that he was aware that an overseas investment could add complications or risks.

But he was apparently happy to accept FRPS's answer that the TRG investment was as safe as investing in the UK.

Further, I think its more likely than not that Mr S was aware that the TRG investment was not FCA regulated in the UK. I say that not only because of its overseas nature but also because the TRG key facts document made it clear that it wasn't UK regulated and would not benefit from the protections of being so. And Mr S signed a declaration to say that he was aware of the risks of investing in unregulated investments. Also he told us that he was happy with the information FRPS had provided and had no concerns about the safety of the transfer or investment. In those circumstances I'm satisfied that, even if ReAssure had pointed out further warnings to Mr S, given that he was satisfied with the risks that he was taking, he would have gone ahead with the transfer anyway.

So, for the reasons given above I'm not convinced that even if ReAssure had done further due diligence Mr S would have been in a different position. In those circumstances I don't think it would be fair to hold ReAssure responsible for any losses that he may have suffered as a result of the transfer.'

ReAssure accepted my provisional findings. Mr S didn't. Via his representatives he made a number of detailed points. I've considered everything said but I don't intend to repeat all of that or produce a line by line analysis on each of those points. Instead I have summarised what I see as being the key matters and the reasons for my final decision below.

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.

Mr S noted, via his representatives, that I'd said ReAssure should have taken additional actions including warning him about the concerns of an overseas investments. Mr S accepted that ReAssure did not need to repeat all of the issues already covered. However, he said it should have revisited areas where there was uncertainty or contradictions. To do so he essentially said it needed to work back through the full action pack checklist, provide Mr S with the longer Scorpion leaflet and make further contact with him to represent the warning signs.

I don't agree with Mr S's stance. As I said in my provisional decision, ReAssure needed to take a proportionate approach to its due diligence. It had already asked, and Mr S had answered, a number of points. Some of those answers could have been clearer. But I don't think that meant that the onus fell onto ReAssure to almost start again. So I don't think it would be fair to expect it to revisit matters it believed it had already addressed because the Scorpion materials had been updated while it was waiting for Mr S to sign its transfer declaration.

For example, Mr S has again raised the matter of the recent registration of K Ltd and its SSAS being a warning sign; he thinks ReAssure should have made further enquiries about this. But I think ReAssure had already reasonably discounted this warning sign. That's because it had previously questioned him about this, in line with the Scorpion checklist, when it asked him if K Ltd employed him. His answer was that K Ltd did employ him. As I said in my provisional decision his answers were somewhat curious which could have caused ReAssure to ask further questions. But I don't think the onus was on it to do so.

I said in my provisional decision that I think there was an obligation on Mr S to answer ReAssure's questions honestly and accurately. This was not a criticism of Mr S. However, ReAssure was asking questions in the context of providing a service to Mr S he had asked it to provide. So it was in his interests to answer questions appropriately and to the best of his ability. It follows that, having answered the question in the manner that he chose, I think ReAssure could have had an expectation that he would answer it appropriately. So I don't think ReAssure was required, after receiving the transfer declaration, to further interrogate the answers Mr S gave many months earlier because the Scorpion guidance had been updated in the meantime.

In contrast Mr S thinks there were enough contradictions in the information before ReAssure to require it to dig deeper. For example he noted that Cantwell Grove had said that K Ltd was yet to commence trading. And he said that Companies House would have shown K Ltd as a dormant company. As I've already said, I don't think ReAssure was required to readdress this point after Mr S returned the transfer declaration. But, for completeness my understanding is that Companies House will only show companies as *dormant* once it has determined that a company has had no significant transactions it the financial year. But, as far as I'm aware at the point ReAssure was considering the transfer K Ltd wouldn't have been expected to submit accounts. So it's unlikely Companies House would have yet determined that it had no significant transactions to show it as *dormant* on its website at that stage.

Also, it's possible for companies in a start-up phase to be working diligently but not actively trading. For example because their directors and employees are in the process of establishing premises, infrastructure, marketing etc, before they begin sales/trading activities. So that was a possible explanation for why Cantwell Grove and Mr S had given different answers as to K Ltd's status. And whether that was the actual situation or not, I think it would have been reasonable for ReAssure to believe that Mr S understood whether K Ltd actually employed him or not. It is not a difficult question. So I don't think this was something that ReAssure needed to revisit many months later.

Turning to whether Mr S had taken advice to transfer, he had already told ReAssure that FRPS had introduced him to the scheme. But he'd also said he had not taken advice. However, Mr S was not under any obligation to take advice. So I don't think it's reasonable to expect ReAssure to revisit this point because of the update to the Scorpion guidance.

Also, given Mr S had already told ReAssure once that he had not taken advice, I can't be certain that he would have changed his answer if ReAssure had asked him a second time who had advised him to transfer.

Further, I think it's worth commenting that Mr S had received recommendations to take regulated advice from ReAssure and also from the Scorpion warnings he'd received. But he had chosen not to do so. And while I think he should have received the warnings around overseas investments, he had already received information about the risks involved with unregulated firms and investments. But he went ahead with the TRG investments in the knowledge they were unregulated and the investments illiquid with no secondary market anyway.

I'll add that in my provisional decision I found that 'ideally' – that is, it would have been helpful – if ReAssure had sent Mr S the longer version of the updated Scorpion leaflet. But I did not make a finding that was something it was required to do at that time. Looking back at what happened this could have been something Mr S might have found useful in re-evaluating his position. But at the time of the events I don't think ReAssure had sufficient information to be able to establish that this was something it might need to send to him. So I don't think it would be fair to criticise it for not taking that action.

It might have been the case that, as Mr S has now argued, if ReAssure had revisited the questions it had already asked him, run through those again with him and challenged any contradictions in his answers then the outcome could have been different.

But, I think it's worth repeating that, ReAssure was required to act proportionately. It had already done a certain amount of due diligence and was in a position where, on receipt of the transfer declaration, it was ready to transfer. I don't think the update to the Scorpion guidance meant that ReAssure was required to revisit all the action it had already taken nor begin working through the checklist again. And ReAssure was not under any obligation to have an oral conversation with Mr S at any stage.

Further, Mr S had found the entire process smooth and professional. He said he had no doubts about it. So even if ReAssure had brought the warnings about overseas investments to his attention, I'm not convinced this would have raised sufficient doubts to have persuaded him to seek out other advice. It follows that I'm not persuaded that a warning about overseas investments would have significantly altered his thinking about whether or not this was the action he wanted to take.

It follows that I'm satisfied that ReAssure is not responsible for any investment losses Mr S suffered.

My final decision

For the reasons given above I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 March 2025.

Joe Scott
Ombudsman