DRN-4903163

Financial Ombudsman Service

The complaint

Mrs D has complained about a transfer of her ReAssure Limited personal pension to a small self-administered scheme (SSAS) in January 2014. Mrs D's SSAS was subsequently used to invest in overseas property developments with Akbuk Resort Group and Dolphin Trust GmbH. These investments now appear to have little value. Mrs D says she has lost out financially as a result.

Mrs D says ReAssure failed in its responsibilities when dealing with the transfer request. She says that it should have done more to warn her of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance she says was required of transferring schemes at the time. Mrs D says she wouldn't have transferred, and therefore wouldn't have put her pension savings at risk, if ReAssure had acted as it should have done.

Mrs D made her complaint via a claims management company but for ease of reading I will simply refer to Mrs D in this decision.

What happened

On 22 March 2013, Mrs D signed a letter of authority, from a company that was an appointed representative of a firm regulated by the Financial Conduct Authority, to obtain details, and transfer documents, in relation to her pension. ReAssure sent the information to the appointed representative on 15 April 2013. That company was an appointed representative of the regulated business at the time, and until November 2013.

Mrs D explains that a colleague of her husband's made them aware of someone who had helped him with his pension. Mr and Mrs D contacted this person who I will refer to as Mr S from a Firm I will refer to as SP. Mrs D explains that she was attracted by the prospect of better returns that were described as around 4% a year guaranteed over 5 years.

On 22 November 2013, a company was incorporated with Mrs D as director. I'll refer to this company as Firm A. On 25 November 2013, Mrs D signed documents to open a SSAS with Rowanmoor. Firm A was recorded as the SSAS's principal employer. The SSAS documents also recorded that the SSAS was to be used to invest in 'Akbuk Resort Group'

On 19 December 2013 ReAssure received a letter from Rowanmoor Group plc (Rowanmoor) including a letter of authority from Mrs D informing ReAssure of her intention to transfer her pension. It also included pages 5 and 6 of the SSAS application form that Mrs D had signed on 25 November 2013.

On 22 January 2013 ReAssure received its completed transfer request forms from Rowanmoor. It was notice of Mrs D's intention to transfer her ReAssure pension to the Firm A SSAS. It did not include an HMRC Certificate for the SSAS.

ReAssure noted, on 23 January 2014, that it had not received an HMRC certificate but confirmed that Rowanmoor had been FCA authorised since June 2007 and was a scheme that was known to them. ReAssure proceeded to process Mrs D's transfer request and on

24 January 2014 wrote to Rowanmoor to confirm the transfer of around £21,000 to the Firm A SSAS. Mrs D was 49 years old at the time of the transfer.

Mrs D also applied to a second pension provider to transfer another personal pension at the same time, as part of the same process. That transfer request was submitted by Rowanmoor on 21 January 2014. That ceding scheme requested further information from Rowanmoor on 21 February 2014 and wrote to Mrs D on 21 February 2014 to draw her attention to the risks of pension liberation. That transfer subsequently completed in early April 2014 with a transfer of around £35,000.

Funds in the SSAS were used to make an investment of £43,013 in the Akbuk Resort Group on 9 May 2014. Then, on 26 April 2016, an investment of £7,000 was made in a Dolphin Trust loan note. The investment in Akbuk Resort Group subsequently failed and ended up with nil value. The Dolphin Trust investments also failed. They are unlikely to realise any return on the investment either.

In October 2021, Mrs D complained to ReAssure. Briefly, her argument is that ReAssure ought to have spotted, and told her about, a number of warning signs in relation to the transfer, including (but not limited to) the following: the SSAS was newly registered with HMRC; there wasn't a genuine employment link to the sponsoring employer which ought to have been obvious from the scheme name and date of registration; the catalyst for the transfer was an unsolicited call and she had been advised by an unregulated business; the promise of unrealistically high returns; the absence of any involvement from a regulated Independent Financial Adviser (IFA); the proposed scheme being in an unregulated, overseas, high risk investment.

ReAssure didn't uphold the complaint. In its response it said:

- its transfer paperwork highlighted that it wasn't authorised to give advice and suggested that Mrs D take financial advice.
- that the Scorpion Campaign hadn't been introduced by TPR at that time.
- Mrs D had a legal right to transfer and that none of the information it had about the transfer at the time gave it cause for concern.
- that Mrs D could refer a complaint to the Financial Services Compensation Scheme because Firm A had been dissolved in September 2018.

Our investigator was unable to resolve the dispute informally, so the matter was passed to me to decide. I issued both parties my provisional decision which explained why I was minded to uphold Mrs D's complaint. Mrs D accepted what I had provisionally decided. Reassure provided no further evidence or comment.

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 received no further evidence or arguments to consider since I reached my provisional decision. Having considered everything a final time my decision is that Mrs D's complaint should be upheld for the same reasons that I set out in my provisional decision. I will explain those reasons again below.

Mrs D's complaint was made more than six years after the transfer that is the subject of the complaint. ReAssure have consented to our service considering her complaint irrespective of the potential time bar. So I am satisfied that our service has jurisdiction to now give a decision on the merits of Mrs D's complaint.

The relevant rules and guidance

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 formal 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 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 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.

<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. 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.

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

This case involves the transfer of Mrs D's ReAssure personal pension to the Firm A SSAS. But it is worth noting that this was one of two transfers that Mrs D made to that SSAS. And Mrs D's transfers came about at the same time and as a consequence of the same circumstances in which her husband – Mr D – also set up a SSAS that he transferred three pensions to.

Our service has contacted Mr and Mrs D who explained that they were both acting on the same recommendation and the details of what happened have been provided predominantly by Mr D. He has explained that a colleague referred him to a third party regarding improving pension performance. That colleague put him in touch with someone – Mr S – from a firm that I've referred to as SP.

Mr D explains that they were visited by Mr S who talked them through other options with their pensions. Mr D explained that he and Mrs D were attracted by the prospect of better investment returns. Mr D explains that they were led to believe their pensions could be invested in a way that offered guaranteed 4% returns a year over a five year fixed term. This investment was in overseas holiday property. Mr and Mrs D explained that they thought Mr S was knowledgeable about pensions and investments and that he purported himself to be a regulated adviser. He wasn't, however, a regulated financial adviser. They were not offered any cash incentive to transfer and were not promised or seeking to release any money from their pensions.

I have seen evidence of Mr S being listed on SSAS applications as the trustee adviser. So I think that Mr S clearly had an involvement in bringing about this transfer. This transfer involved setting up a limited company with no intention that it would trade. So it appears this was purely a means to be able to set up a SSAS. Neither Mr or Mrs D had investment or pensions experience and I don't think they conceived of this without being advised to do so. The SSAS bank account statement also shows that on 11 February 2014 SP was paid £995 with the transaction listed as '*IFA FEES'.* As well as ongoing payments to SP of £250 in November 2014, December 2015, December 2016, and November 2017. Overall, I think it's more likely than not, that SP were the third party that advised Mr and Mrs D to transfer their personal pensions in this way. And received payment for its advice.

ReAssure have told us that it received a letter of authority from a regulated financial adviser on 22 March 2013. I've considered that but have not seen any evidence of that company having been involved in the subsequent process in any of Mr and Mrs D's transfers. As I've explained, the evidence instead makes it far more likely that advice to transfer was being given by SP.

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.

ReAssure didn't send Mrs D the Scorpion insert. Nor did it send any other correspondence with any kind of similar warnings. For the reasons I set out above, I don't think that was good enough. It did nothing to draw Mrs D's attention to risks that the industry had identified at that time.

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 didn't undertake any further due diligence. It appears to have accepted the request on the basis that it came from Rowanmoor who were known to it.

I note that at the time of the transfer Rowanmoor was a long established SSAS provider and had some repute in the industry. Rowanmoor Trustees Limited also had legal and fiduciary duties as a professional trustee. There's an argument, therefore, that ReAssure could have taken comfort from this. I disagree. The Scorpion guidance gave ceding schemes an important role to play in protecting customers wanting to transfer a pension. It would defeat the purpose of the Scorpion guidance for a ceding scheme to have delegated that role to a different business – especially one that had a vested interest in the transfer proceeding. An important aspect in this is the fact that there is little regulatory oversight of single-member SSASs; they don't have to be registered with TPR. In the absence of that oversight, ReAssure was assuming, in effect, that Rowanmoor would want to maintain its standing in the industry and the trustee subsidiary would comply with its legal and fiduciary duties. In the context of guarding against pension scams – and an environment where providers and trustees clearly didn't always act as they should have done – I don't consider this to have been a prudent assumption.

The fact that a different part of Rowanmoor's business was regulated by the FCA doesn't change my thinking on this. The key point is that Rowanmoor Group Plc and Rowanmoor

Trustees Limited (both of which were involved in the operation of the SSAS) *weren't* FCA-regulated so I see no reason why they would have operated with FCA regulations and Principles in mind – or why their actions would have come under FCA scrutiny. As such, I'm not persuaded ReAssure could, reasonably, have derived sufficient comfort about the Rowanmoor SSAS as a destination for Mrs D's transfer.

The transfer pack that ReAssure received included quite limited information. But it had the SSAS application, which it could see had only been signed on 25 November 2013. And a receiving scheme being newly registered was listed as one of the things to look out for in the Scorpion action pack. 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 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 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 allude to overseas investments or hint at 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?

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 Mrs D's transfer request, and the relatively limited information it had about the transfer, I think in this case ReAssure should have addressed all three parts of the check list and contacted Mrs D as part of its due diligence.

What should ReAssure have found out?

If ReAssure had followed the questions in part one above it should have established that the SSAS was not only recently established but also connected to a company, which was registered to an address around 70 miles from Mrs D's home address. She was the sole director and enquiries with Mrs D would likely have indicated that it wasn't trading in a meaningful sense.

Investigations into part two would at that time, most likely, have identified that Mrs D wasn't offered any form of cash incentive to transfer nor told she could access her pension funds early. But she was originally advised to invest in property in a Turkish holiday resort. This investment included some features that might be implicated in pension liberation (overseas, unregulated and/or unusual or creative techniques).

Following the checklist in part three ReAssure would likely have learnt that even though Mrs D wasn't cold-called or likely to receive a cash payment from her pension, she originally took advice from an adviser/introducer working for SP. But that firm was not regulated. And was different from the appointed representative that had contacted ReAssure in April 2013. It would have negated any reassurance that ReAssure may have taken from the fact that it had previously been contacted on Mrs D's behalf by an appointed representative of a regulated firm. As it would by then have appeared likely that a regulated adviser was in no way involved with this transfer or with the likely investment in the SSAS.

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 Mrs D'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 about Mr S'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 Mrs D – and would it have made a difference?

I think ReAssure's failure to uncover this risk of illegal advice and then warn Mrs D 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 Mrs D that the firm she had been advised by was unregulated and could put her pension at risk. ReAssure should have said only authorised financial advisers are allowed to give advice on personal pension transfers, so she risked falling victim to illegal activity and losing regulatory protections.

I'm satisfied any messages along these lines would have changed Mrs D's mind about the transfer. The messages would have followed direct contact with Mrs D so would have seemed to her (and indeed would have been) specific to her individual circumstances and would have been given in the context of ReAssure raising concerns about the risk of losing pension monies as a result of untrustworthy advice. This would have made Mrs D aware that

there were serious risks in using an unregulated adviser even if she was not liberating her pension. I think the gravity of any messages along these lines would prompt most reasonable people to change their mind. I've seen no persuasive reason why Mrs D would have been any different.

I've considered the information that Mrs D received from her other ceding scheme ahead of that transfer. It did not send her the Scorpion insert. But, as I referred to earlier, it did write to her on 21 February 2014 with a warning about pension liberation. This letter was sent too late to have made any difference in the ReAssure transfer. But did draw her attention to pension liberation as being "*a way of releasing pension funds before retirement through a variety of different arrangements, and converting them partly or entirely into cash".* I don't think that this warning would have been particularly impactful to Mrs D as she wasn't transferring to convert the funds to cash but in the hope of receiving improved investment returns. I don't think this would reasonably have had the same impact as being informed that she was potentially falling victim to illegal activity. So, I consider that, if ReAssure had acted as it should, Mrs D wouldn't have proceeded with the transfer out of her personal pension or suffered the investment losses that followed.

<u>The cause of Mrs D's loss</u>

I bear in mind that this complaint is similar to the type of claim that in legal proceedings would be treated as a claim for damages for negligent failure to give someone the information or advice to which they were entitled. In that kind of case, the court asks itself whether there is a sufficient connection between the harm for which the claimant seeks damages as compensation and the subject matter of the defendant's duty of care. The court looks to see what risk the defendant's duty was supposed to guard against and whether the claimant's loss represents that particular risk coming to fruition.

So, it's important I bear in mind that the Scorpion guidance was directed towards protecting people from the risk of pension liberation and that doesn't appear to have happened here. The loss was suffered because Mrs D accepted unsuitable advice from an introducer who wasn't authorised to act as a financial adviser at all, and it wasn't (as far as can be established taking into account what Mrs D has said) a case of seeking to cash in a pension in an unauthorised way.

Nonetheless, the circumstances that gave rise to this complaint were very similar to those of a pension liberation scam: the transfer followed a recommendation from an unauthorised business and involved the setting up of a new pension scheme to house an investment and the involvement of recently established businesses. The Scorpion action pack and insert both recommend checking that financial advice comes only from an authorised person by checking the FSA/FCA register. And ReAssure's obligations under the Principles and COBS were of general application and went well beyond just protecting its customers from pension liberation. In the circumstances, even though this doesn't appear to be a case of pension liberation, I'm satisfied there is sufficient connection between the harm Mrs D wants to be compensated for and the risk that ReAssure had a duty to guard against. So I do consider it fair and reasonable for ReAssure to compensate Mrs D for her losses.

Putting things right

Fair compensation

My aim is that Mrs D should be put as closely as possible into the position she would probably now be in if ReAssure had treated her fairly.

The Firm A SSAS only seems to have been used in order for Mrs D to make an investment

that I don’t think she would have made from the proceeds of this pension transfer, but for ReAssure’s actions. So I think that Mrs D would have remained in her pension plan with ReAssure and wouldn’t have transferred to the Firm A SSAS.

To compensate Mrs D fairly, ReAssure should subtract the proportion of the actual value of the Firm A SSAS which originates from the transfer of the ReAssure pension, from the notional value if the funds had remained with ReAssure. If the notional value is greater than the actual value, there is a loss.

Actual value

This means the proportion of the Firm A SSAS value originating from Mrs D’s ReAssure transfer (the **“relevant proportion”**) at the date of my Final Decision. To arrive at this value, any amount in the Firm A SSAS bank account is to be included, but any overdue administration charges yet to be applied to the Firm A SSAS should be deducted. Mrs D may be asked to give ReAssure her authority to enable it to obtain this information to assist in assessing her loss, in which case I expect her to provide it promptly.

My aim is to return Mrs D to the position she would have been in but for the actions of ReAssure. This is complicated where an investment is illiquid (meaning it cannot be readily sold on the open market), as its value can’t be determined. On the basis of the evidence I have, that is likely to be the case with the following investments: Akbuk resort group and Dolphin loan note. This is because there isn’t likely to be any market for these investments. And I don't think it's realistically possible for ReAssure to only acquire a part of the investment from the Firm A SSAS as I'm only holding it responsible for the loss originating from a transfer in of the ReAssure funds. Therefore as part of calculating compensation:

- ReAssure should give the illiquid investments a nil value as part of determining the actual value. In return ReAssure may ask Mrs D to provide an undertaking, to account to it for the relevant proportion of the net proceeds she may receive from those investments in future on withdrawing them from the Firm A SSAS. ReAssure will need to meet any costs in drawing up the undertaking. If ReAssure asks Mrs D to provide this undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

- It’s also fair that Mrs D should not be disadvantaged while she is unable to close down the Firm A SSAS. So to provide certainty to all parties, if these illiquid investments remain in the scheme, I think it’s fair that ReAssure should pay an upfront sum to Mrs D equivalent to the relevant proportion of five years’ worth of future administration fees at the current tariff for the Firm A SSAS, to allow a reasonable period of time for the Firm A SSAS to be closed.

Notional value

This is the value of Mrs D’s funds had she remained invested with ReAssure up to the date of my Final Decision.

ReAssure should ensure that the relevant proportion of any pension commencement lump sum or gross income payments Mrs D received from the Firm A SSAS are treated as notional withdrawals from ReAssure on the date(s) they were paid, so that they cease to take part in the calculation of notional value from those point(s) onwards.

Payment of compensation

I don't think it's appropriate for further compensation to be paid into the Firm A SSAS given Mrs D's dissatisfaction with the outcome of the investment it facilitated.

ReAssure should reinstate Mrs D's original pension plan as if its value on the date of my Final Decision was equal to the amount of any loss established from the steps above (and it performs thereafter in line with the funds Mrs D was invested in).

ReAssure shouldn't reinstate Mrs D's original plan if it would cause a breach of any HMRC pension protections or allowances – but my understanding is that it might be possible for it to reinstate a pension it formerly administered in order to rectify an administrative error that led to the transfer taking place. It is for ReAssure to determine whether this is possible, but if ReAssure doesn't consider this is possible, it should explain why.

If ReAssure is unable to reinstate Mrs D's pension and it is open to new business, it should set up a **new** pension plan with a value equal to the amount of any loss on the date of my Final Decision. The new plan should have features, costs and investment choices that are as close as possible to Mrs D's original pension.

If ReAssure considers that the amount it pays into a **new** plan is treated as a member contribution, its payment may be reduced to allow for any tax relief to which Mrs D is entitled based on her annual allowance and income tax position. However, ReAssure's systems will need to be capable of adding any compensation which doesn't qualify for tax relief to the plan on a gross basis, so that Mrs D doesn't incur an annual allowance charge. If ReAssure cannot do this, then it shouldn't set up a new plan for Mrs D.

If it's not possible to set up a new pension plan, ReAssure must pay the amount of any loss direct to Mrs D. But if this money had been in a pension, it would have provided a taxable income during retirement. Therefore compensation paid in this way should be notionally reduced to allow for the marginal rate of income tax that would likely have been paid in future when Mrs D is retired. (This is an adjustment to ensure that Mrs D isn't overcompensated – it's not an actual payment of tax to HMRC).

To make this reduction, it's reasonable to assume that Mrs D is likely to be a basic rate taxpayer in retirement because the likely income from these transferred pensions, plus her likely state pension entitlement is unlikely to put her into a higher tax bracket under the current tax rules. So, if the loss represents further 'uncrystallised' funds from which Mrs D was yet to take her 25% tax-free cash, then only the remaining 75% portion would be taxed at 20%. This results in an overall reduction of 15%, which should be applied to the compensation amount if it's paid direct to her in cash.

Alternatively, if the loss represents further 'crystallised' funds from which Mrs D had already taken her 25% tax-free cash, the full 20% reduction should be applied to the compensation amount if it's paid direct to her in cash.

If payment of compensation is not made within 28 days of ReAssure receiving Mrs D's acceptance of my Final Decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my Final Decision to the date of payment.

Income tax may be payable on any interest paid. If ReAssure deducts income tax from the interest, it should tell Mrs D how much has been taken off. ReAssure should give Mrs D a tax deduction certificate in respect of interest if Mrs D asks for one, so she can reclaim the tax on interest from HMRC if appropriate.

This interest is not required if ReAssure is reinstating Mrs D's plan for the amount of the loss – as the reinstated sum should, by definition, mirror the performance after the date of my

Final Decision of the funds in which Mrs D was invested.

Details of the calculation must be provided to Mrs D in a clear, simple format.

My final decision

I uphold Mrs D's complaint for the above reasons and direct ReAssure Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 13 August 2024.

Gary Lane
Ombudsman