

The complaint

Mr C has complained to ReAssure Limited (ReAssure) about a transfer of his personal pension to a small self-administered scheme (SSAS) in October 2014. Mr C's SSAS was subsequently used to invest in The Resort Group (TRG) and Dolphin Trust loan notes. The investments now appear to have little value. Mr C says he has lost out financially as a result.

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 on the transfer, 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.

Mr C's pension was originally with Guardian Financial Services (Guardian) which later became part of ReAssure. For ease I've just referred, in the main, to ReAssure which should be taken to include Guardian as appropriate.

What happened

I issued a provisional decision on 7 October 2024. I'll repeat here what I said about what had happened and my provisional findings.

'Mr C had two personal pension policies with ReAssure. Mr C says that in 2014 he was contacted by First Review Pension Services Limited (FRPS) offering a free pension review. I've referred further below to what Mr C says happened.'

In July 2014 a limited company was incorporated with Mr C as the sole director. I'll call this company C Limited. And on 22 July 2014 a trust deed was executed establishing a SSAS. C Limited was the sponsoring employer, Mr C was the trustee and the SSAS would be administered by Bespoke Pension Services Limited (BPS). Mr C's signatures on the deed were witnessed by a Mr B who gave his occupation as a consultant. The address he gave was that of FRPS.

BPS wrote to ReAssure on 7 August 2014 saying Mr C wanted to transfer to the SSAS and enclosing the following documentation.

- HMRC's registration letter for the SSAS showing it had been registered on 24 July 2014 and giving the Pension Scheme Tax Reference (PSTR) number.*
- The Pensions Regulator's 'scorpion letter' (I've referred further below to the Scorpion campaign). Here BPS enclosed a copy of the longer booklet the first page of which Mr C had signed on 24 July 2014 below a printed statement which read, 'I can confirm I have read this document. I am not party to any such pensions liberation activity in anyway whatsoever.'*
- A letter signed by Mr C on 24 July 2014 (and to which I've referred further below) requesting a transfer and setting out his reasons.*
- Confirmation that Mr C was employed by C Limited – an employment agreement dated 3 July 2014.*

- The SSAS trust deed and rules which had been drafted by a large London law firm.
- A letter from that firm confirming they'd drafted the trust deed and rules which conformed to the Finance Act 2004 as a registered pension scheme and which hadn't been drafted in a way which knowingly allowed the scheme to be operated other than as a registered pension scheme.

The letter signed by Mr C dated 24 July 2015 included the following:

'The purpose of this letter is to provide you with additional confirmation of the basis upon which I have made this request and to seek to provide a record of the fact that I am aware of the issues relating to pensions liberation. Indeed I have carefully considered my decision to request a transfer to the scheme and have not made it lightly.

I confirm that the scheme is a registered pension for HMRC purposes [reference number given] and that the trust deed and rules governing it only allow standard benefit options such as annuities and drawdown in accordance with the applicable legal requirements.

From guidance and information I have received in connection with this decision I appreciate that there has recently been a significant rise in cases of 'pensions liberation' fraud. As a result there is increased concern and scrutiny around transfer requests being made, to ensure members fully understand the implications of making a transfer.

I therefore wish to confirm that the transfer request is being made in order that I can take advantage of investment opportunities available under the scheme, none of which are in any way connected with pension liberation. I have received detailed information about the Scheme, how it operates, who administers it and the risks associated with making a transfer out of my existing pension arrangement.

In making this transfer I am not seeking to access my pension benefits before age 55 and I am aware of the potentially significant tax liabilities that would arise were I to attempt to do so. Indeed the trust deed and rules of the Scheme do not permit benefits to be taken prior to age 55, except in circumstances of ill health which meet HMRC requirements. I also confirm that I have not been offered any cash or other incentive by any person as part of my decision to transfer my pension to the Scheme.

On this basis I would be grateful if you could please proceed to transfer my pension to the Scheme as requested as soon as possible.'

ReAssure received the transfer request on 11 August 2014. ReAssure wrote to Mr C on 12 August 2014 requesting further information and asking him to complete a pension transfer questionnaire.

Question 1 was about employment – details about the employer, the nature of the business, the date set up and Mr C's job title were requested. Question 2 concerned the receiving scheme – the type, date set up and when Mr C had joined. Question 3 was about advice concerning the transfer – how Mr C had heard about the scheme and if the scheme had contacted him or vice versa. Mr C wrote 'FRPS' in that box. And, in answer to the question if he'd received any advice in connection with the transfer request, Mr C circled 'yes' and gave the name and address of the adviser – Mr B of FRPS, whose address was given.

At question 4, about the reason(s) for the transfer, Mr C wrote that it was to have all his pensions (three 'frozen' pensions) in one place. He also answered 'yes' to the question 'Have you been told that by transferring to this scheme you will be able to take your pension savings as cash or a loan?' And 'yes' to the follow up question about if he'd been told of the serious tax consequences of taking any of his pension savings before age 55 or taking more

than 25% after 55. He referred here to 'The Government Rules'. There was a warning that it would be an unauthorised payment, whether taken as cash or a loan and he'd be liable for a tax charge of up to 55% of the total value.

Mr C signed the questionnaire on 31 August 2014.

ReAssure wrote to HMRC on 18 September 2014 asking for confirmation of the registration status of the SSAS. HMRC replied on 26 September 2014. HMRC said it could only provide confirmation of registration status when both of the conditions set out applied. Those were that the scheme was registered with HMRC and not subject to a deregistration notice. And that at the present time the information held by HMRC didn't indicate a significant risk of the scheme being set up or being used to facilitate pension liberation. HMRC confirmed that those conditions presently applied. HMRC added that confirmation was given to help as part of the process ReAssure was required to carry out to satisfy itself whether the transfer should be made and obtaining that confirmation shouldn't be the only check done.

On 1 October 2014 ReAssure wrote to Mr C again saying that before his benefits were transferred to another registered pension scheme ReAssure needed to make sure that:

1. The transfer was either to a UK registered pension scheme or a qualifying registered overseas pension scheme, at the date of the transfer
2. Mr C was fully aware of all the risks involved and the consequences of any unauthorised payments that might be made in the future by the receiving scheme.

ReAssure added: 'It is not clear from your paperwork whether you have taken independent financial advice or legal advice on this matter. We would strongly recommend that you do so, before transferring.' ReAssure said it was prepared to pay the transfer, once Mr C had signed and returned the attached transfer declaration.

Mr C signed the transfer declaration on 10 October 2014. He said he'd read and understood TPAS' 'Predators stalk your pension' leaflet'. And he fully understood that:

- Guardian are authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority.
- My pension fund with Guardian is protected by the Financial Services Compensation Scheme (FSCS). This offers free, automatic, government backed protection should Guardian be unable to pay my benefits, up to 90% of the claim value.
- The scheme I am transferring my Guardian pension fund to is not authorised, regulated or protected in any such way. I understand that I could risk losing all my pension fund.
- The value of my Guardian pension fund can go down as well as up, in line with the change in the value of the funds I invest in.
- It is my responsibility to take professional financial and legal advice before transferring.
- Under current legislation, there are serious tax consequences, for me, as both the scheme trustee and member, if I take part of my pension fund before age 55 or more than 25% from age 55, whether as cash or a loan from the scheme. Such an event must be reported to HMRC by me. I understand that in these circumstances, I'll be liable to a tax charge from HMRC of up to 55% of the total value.
- I have a legal responsibility as the scheme trustee to operate within the latest pension legislation.

On 20 October 2014 ReAssure processed the transfer. ReAssure sent the transfer value of £31,331 to BPS and wrote to Mr C and BPS to confirm that the transfer had been completed and the amount paid over.

Mr C also transferred the proceeds of pension plans he held with two other providers to the SSAS. £45,504.53 was transferred on 8 October 2014 from one provider and £2,999.17 from a third provider on 22 December 2014. The SSAS fund was then invested in TRG (almost £34,000) and Dolphin Trust (£26,000) with the balance remaining in cash.

Initially Mr C's TRG investment produced some returns but eventually these dried up. And the Dolphin Trust investment was due to mature in 2019 but no capital or income was returned. By August 2020 Mr C had become concerned and, with the assistance of his representative, he 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 which was a newly registered dormant company; the catalyst for the transfer was an unsolicited call; Mr C had been advised by an unregulated business; and the investments were unregulated and high risk.

ReAssure didn't uphold the complaint. They said they'd carried out relevant due diligence checks. They'd received a completed transfer application, a letter from HMRC with proof of scheme registration and the Scorpion booklet which Mr C had signed on 24 July 2014. ReAssure sent a transfer questionnaire to Mr C to understand the background to his transfer request. And he'd signed a letter acknowledging the need to seek financial advice from a FCA (Financial Conduct Authority) regulated intermediary. ReAssure's records showed BPS were acting as financial advisers in the matter. On 10 October 2014 Mr C signed a declaration that he understood the scheme he'd be transferring to wasn't regulated or authorised by the FCA and he could lose all his money.

I understand that the Dolphin Trust investment has failed. Preliminary bankruptcy proceedings were commenced in Germany in 2020. Investors are very unlikely to get any of their money back. Development of TRG Cape Verde resort was beset by problems and there's no market for Mr C's investment – fractional ownership of hotel accommodation.

Our investigator was unable to resolve the dispute informally, so the matter was passed to me to decide. As I've noted above, Mr C also transferred funds held with two other providers to the SSAS. Mr C has also complained about one of those transfers but that complaint is being dealt with by the Pensions Ombudsman. No complaint has been made about the third transfer. Mr C's representative said they were unable to find sufficient grounds to proceed with a complaint. We've seen that provider's file. In considering Mr C's complaint against ReAssure I've taken into account how the other transfer was dealt with and information Mr C received in connection with that transfer.

What I've provisionally decided – and why

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

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 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.

- In late April 2014 the FCA started to voice concerns about the different types of pension arrangements that were being used to facilitate pensions scams. In an announcement to consumers entitled “Protect Your Pension Pot” the increase in the use of SIPP and SSASs in pensions scams was highlighted, as was an increase in the use of unregulated and/or illiquid investments. The FCA further published its own factsheet for consumers in late August 2014. It highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.

- 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.

The Scorpion guidance

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 that could become aware of the scam risks they were facing.*
- An ‘action pack’ for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should “watch out for” various warning signs of a scam. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where a transferring scheme still had concerns, they were encouraged (amongst other things) to contact the member to establish whether they understood the type of scheme they were transferring to and – where a member insisted on transferring – directing the member to Action Fraud or TPAS.*

TPR issued the guidance under the powers at s.12 of the Pension Act 2004. Thus, for the bodies regulated by TPR, the status of the guidance was that it provided them with information, education and/or assistance, as opposed to creating any new binding rule or legal duty. Correspondingly, the communications about the launch of the guidance were predominantly expressed in terms that made its non-obligatory status clear. So, the tenor of the guidance is essentially a set of prompts and suggestions, not requirements.

The FSA’s endorsement of the Scorpion guidance was relatively informal: it didn’t take the form of Handbook Guidance, because it was not issued under s.139A of the Financial Services and Markets Act (FSMA), which enabled the FSA to issue guidance provided it underwent a consultation process first. Nor did it constitute “confirmed industry guidance”, as can be seen by consulting the list of all such FSA/FCA guidance on its website.

I take from the above that the contents of the Scorpion guidance was essentially informational and advisory in nature and that deviating from it doesn’t necessarily mean a firm has broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member’s statutory rights.

That said, the launch of the Scorpion guidance was an important moment in so far it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing transfer requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance’s specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

In those circumstances, I consider firms which received pension transfer requests needed to pay regard to the contents of the Scorpion guidance as a matter of good industry practice. It means February 2013 marks an inflection point in terms of what was expected of personal pension providers dealing with transfer requests as a matter of fulfilling their duties under the regulator’s Principles and COBS 2.1.1R.

What did personal pension providers need to do?

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. In deciding how to apply the guidance, they needed to consider the guidance as a whole, including the various warning signs to which it drew attention, the case studies that highlighted different types of scam, and the checklist and various suggested actions ceding schemes might take. And where the recommendations in the guidance applied, absent a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations:

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

2. The Scorpion insert provided an important safeguard for transferring members, allowing them to consider for themselves the scam threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. So, all things considered, I think the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party.

3. I also think it would be fair and reasonable for personal pension providers – operating with the regulator's Principles and COBS 2.1.1R in mind – to ensure the warnings contained in the Scorpion insert were provided in some form to a member before a transfer even if the transfer process didn't involve the sending of transfer packs.

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

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

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

In his complaint to ReAssure, Mr C said he received an unsolicited call from FRPS in 2014 offering a free pension review. After further calls he eventually agreed to meet with someone from FRPS who came to his home. The reviewer wasn't FCA authorised or regulated, the significance of which Mr C didn't understand. Mr C was interested in consolidating pension plans held with three providers, including the policies he had with ReAssure. He was told

those plans weren't performing well and he could achieve better returns by transferring to a new scheme and investing in TRG and Dolphin Trust.

Mr C recalls being told he was entering into a five year investment plan which would generate a return of 12% pa in respect of TRG and 10% pa for Dolphin Trust. All in all, he was told his fund would double which would enable him to retire at age 61, the returns were guaranteed and he wasn't at risk of sustaining any losses. No risk assessment was undertaken by the reviewer and no explanation was given as to the complexity of a SSAS as a pension or the obligations Mr C would have to take on as a trustee and company director.

Persuaded by what he'd been told by the reviewer who he believed was acting in his best interests and feeling under some pressure to accept the advice given, Mr C agreed to go ahead with the transfer. He signed and returned the documentation given to him by FRPS or BPS. BPS then set up the SSAS and liaised with ReAssure to facilitate the transfer of Mr C's ReAssure pension funds to the SSAS.

At the time Mr C was 51. He was a driver earning about £21,000 pa with no savings or other investments and living in rented accommodation. He wasn't sophisticated or experienced in terms of investments and pensions and his attitude to investment risk was low.

I accept that Mr C's recollections are accurate. It seems he was contacted out of the blue by FRPS and he eventually agreed to a meeting following which he decided to transfer his ReAssure policies to a SSAS to invest in TRG and Dolphin Trust. FRPS' involvement is supported by the documentation. A consultant from FRPS witnessed Mr C's signature on the trust deed and Mr C referred to FRPS on the questionnaire he completed for ReAssure. There's also what Mr C told another provider. As I've said, he had pension plans with two other providers which he also wanted to transfer. One of those providers called him on 2 September 2014. The call note I've seen records Mr C said he'd been contacted by FRPS by phone several times before eventually agreeing for someone to come and see him. I think what Mr C said at the time is likely to be reliable when matters were then ongoing and so it wasn't a question of what, several years after the event, Mr C may have been able to recall.

I've also seen another document – a SSAS guide prepared by BPS which says it is issued by FRPS – so the intention is that it would be passed to the customer by FRPS. The guide defines FRPS as the introducer. About FRPS's role, the guide said that FRPS would, amongst other things, help with establishing the SSAS under a trust deed and liaise with existing providers to arrange a transfer value quotation to help decide if the funds should be transferred to the SSAS and how they should be invested and guide the applicant through the process to authorise BPS to complete the transfer. The guide said:

'[FRPS] will provide you with information about the main advantages and disadvantages of a SSAS and information about certain investment products and opportunities. The introducer is not authorised to, and does not provide, legal advice or investment advice. It is not regulated by the [FCA] and it does not provide advice on any investment products that are regulated by the FCA.'

All in all, it's clear that the initiative for the transfer to a SSAS came from FRPS, who was the central party Mr C dealt with. I can't see he'd have come up with the idea of transferring to a SSAS or even known that sort of arrangement was available, unless someone had suggested it to him. I say that because he didn't have any pensions or investment experience and a SSAS isn't a common pension arrangement for someone in his situation and the investments were unusual too. To some extent, that's consistent with the role of FRPS as set out in the guide. But it would've been very easy for FRPS to go further than that. For example, if FRPS said Mr C would be better off if he gave up his existing pension arrangements and transferred to a SSAS that would amount to regulated advice which

FRPS wasn't authorised to give.

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 would've been well aware of the industry guidance to try to combat pension scams at the time and ReAssure had a duty to ensure their member was given appropriate warnings. ReAssure told us that the Scorpion leaflet would've been sent to Mr C but separately and so ReAssure couldn't provide a copy of anything evidencing that but it was clear from the forms Mr C signed that he'd received it.

BPS's transfer request sent to ReAssure on 7 August 2014 enclosed a copy of the longer booklet signed by Mr C on 24 July 2014. So it's clear Mr C was given that booklet, albeit by BPS, not ReAssure. And I think ReAssure did send him the Scorpion insert or booklet at some stage. He signed the transfer declaration on 10 October 2014 and, amongst other things, he confirmed he'd read and understood TPAS' 'Predators stalk your pension' leaflet. So I'd assume ReAssure had sent it to him. Logically that would've been with ReAssure's letter of 1 October 2014 enclosing the transfer declaration for Mr C to sign, although the insert or booklet wasn't mentioned as an enclosure.

But 'Predators stalk your pension' was the title of the February 2013 insert and booklet. As I've noted above, the Scorpion campaign was launched then but updated in July 2014 with a refreshed insert and booklet which had a new title – 'A lifetime's savings lost in a moment'. By the time ReAssure received Mr C's transfer request on 11 August 2014, the updated versions were in use. And when he came to sign the declaration they'd been operative for almost three months. So anything (the insert or the booklet) ReAssure sent Mr C should've been the July 2014 version. Instead it seems ReAssure sent him a further copy of the February 2013 insert or booklet. He'd already seen the latter – as I've said he'd signed a copy which was submitted in support of the transfer request – and it had been superseded in any event.

But I've referred below to how one of the other providers dealt with Mr C's transfer request. And I'm satisfied Mr C did see the July 2014 version of the longer booklet.

Due diligence:

In light of the Scorpion guidance, I think firms ought to have been on the look-out for the tell-tale signs of a pension scam and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk.

ReAssure did undertake some due diligence. They checked the SSAS was still registered with HMRC, not subject to deregistration and that HMRC didn't have any reason to think pension liberation was involved. ReAssure also sent a questionnaire to Mr C to get further information about the transfer and to make sure he was aware of the tax rules. And ReAssure said in its letter dated 1 October 2014 it strongly recommended Mr C take financial and legal advice. That was repeated in the transfer declaration which Mr C signed on 10 October 2014 and which set out a number of risk factors.

I've referred above to the checklist set out in the action pack and which could be used by businesses to structure their due diligence into a transfer and assess the potential threat by finding out more about the receiving scheme and how the consumer came to make the transfer request. The checklist is divided into three parts (which I've numbered for ease of

reading and not because I think the check list was designed to be followed in a particular order):

1. The nature/status of the receiving scheme

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

2. Description/promotion of the scheme

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

3. The scheme member

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

Opposite each question, or group of questions, the check list identified actions that should help the transferring scheme establish the facts. 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.

But I don't suggest it would've always been necessary to follow the checklist in its entirety. And here ReAssure used its own questionnaire which covered some of the same areas. Amongst other things it requested details about when the sponsoring employer and receiving scheme had been set up and Mr C's job title. There were also questions about how he'd heard about the scheme and if he'd initiated the contact. And that was followed by questions about who'd advised him in connection with the transfer request. I don't think there's any point in asking for further information if whatever details are provided aren't then properly considered.

We asked ReAssure about the questionnaire and what Mr C had said (see question 4) about having been told that, by transferring, he'd be able to take pension savings as cash or a loan. Which might indicate that pension liberation – early access to a pension fund – was involved. ReAssure said that question was aimed at encouraging the customer to ensure benefits were taken in line with current legislation. Mr C had confirmed he'd been advised of the rules and checks had been undertaken to ensure the scheme he was transferring to was HMRC registered. Further, it had been pointed out to him that there might be serious tax consequences if he took his benefits other than as stipulated by government regulations.

But, even if it was reasonable for ReAssure to conclude that further investigations about that issue weren't warranted, some of the other information Mr C gave on the questionnaire would've been potential warning signs. And taking into account that, as I've said above, by the time his transfer request was made, the scope of the Scorpion campaign had been widened from early access pension liberation fraud to pension scams more generally. In particular, Mr C said he'd had advice from FRPS in connection with the transfer. The check list recommends that in order to establish whether its member has been advised by a non-

regulated adviser, the ceding firm should “check whether advisers are approved by the FCA at www.fca.gov.uk/register”. In other words, they should consult the FCA’s online register of authorised firms. ReAssure should’ve taken that step, which isn’t difficult, and would’ve quickly discovered that Mr C’s adviser – FRPS – was indeed unauthorised.

Being advised by an unauthorised firm to transfer benefits from a personal pension plan would have been a breach of the general prohibition imposed by FSMA, which states no one can carry out regulated activities unless they’re authorised or exempt. Anyone working in this field should have been aware that financial advisers need to be authorised to give regulated investment advice in the United Kingdom – indeed, the Scorpion guidance itself makes this point. So ReAssure should’ve been concerned by FRPS’s involvement because it pointed to a criminal breach of FSMA.

What should ReAssure have told Mr C?

I’ve thought very carefully about whether, if ReAssure had done everything it should’ve, it would’ve likely changed Mr C’s mind about the transfer. In doing so I take into account all the information he had at the time, what he knew or should’ve reasonably known and how he reacted to any warnings he did receive.

Mr C was given some warnings. He did see the February 2013 longer Scorpion booklet. He signed a copy on 24 July 2014 to say he’d read and understood it and he said the same when he signed ReAssure’s transfer declaration on 10 October 2014. I think it’s reasonable to assume that he did read it – he confirmed that twice. There were a couple of warning signs which Mr C might’ve recognised: being contacted out of the blue and transferring his pension fund overseas – both TRG and Dolphin Trust investments were abroad. And the ‘Five steps to avoid becoming a victim’ advised finding out about the company’s background through information online. And it said that any financial advisers should be registered with the FCA. But the booklet was aimed at combatting pension liberation fraud – access to pension funds before age 55 and the tax consequences that could result. Mr C wasn’t doing that and so wouldn’t have thought he was about to become a victim of that type of scam. So I’m not sure the warnings given would’ve really resonated with him.

He also signed the letter dated 24 July 2014 which BPS submitted with the transfer request. It looks to have been pre-prepared but it was only a page long so I assume Mr C did read it before signing. But it was all about pension liberation which he wasn’t doing and so he may have felt confident about signing the letter on that basis.

So, and just looking at the transfer from ReAssure, I don’t think Mr C was given the relevant warnings or made aware there might be an issue. In particular ReAssure didn’t make sure he was given the up to date Scorpion insert or booklet or materially the same information in a different format.

Would it have made a difference to the outcome if ReAssure had done all it should’ve?

Although there were failings on ReAssure’s part, I need to take into account all the information Mr C had at the time from all sources, including what another provider told him.

A transfer request to that provider was made on the same date (7 August 2014) as the request to ReAssure. It’s clear the other provider did have concerns about the transfer which it shared with Mr C. That provider wrote direct to Mr C on 14 August 2014 saying it had written to the receiving scheme for further information and pointing out the tax charges that could result if the transfer wasn’t deemed to be a recognised transfer. A leaflet from TPR giving further information was enclosed. It’s unclear if that would’ve been the Scorpion insert or the longer booklet. But, as I’ve noted below, the booklet was later provided anyway. And

the other provider mentioned TPAS and Action Fraud (whose contact details were given) along with details as to how Mr C could find a professional adviser if he didn't have one. As I've said, the other provider also called him on 2 September 2014 and wrote to him the next day, saying it had started its due diligence checks and had written to HMRC and enclosing a leaflet from the FCA. I think that would've been the FCA's 'Protect your pension pot' leaflet which I've mentioned further below.

The provider wrote to Mr C again on 4 December 2014. It said that what HMRC had confirmed, coupled with the provider's due diligence checks, meant it believed the scheme was valid and it was willing to transfer Mr C's policy. But the provider went on to say it had concerns: Mr C had stated in a phone call that he'd been cold called and checks had identified that BPS weren't FCA registered. And BPS had said that Mr C's money would be invested in overseas property and the provider was unable to say if the investment was regulated or not.

The provider said it wanted to bring Mr C's attention to leaflets attached about pension scams and asked him to read them carefully before making his decision whether he wanted to transfer. It repeated what it had said earlier about contacting TPAS or Action Fraud. And it strongly suggested he seek advice from an authorised financial adviser before proceeding with the transfer. He could make sure an adviser was authorised by checking the FCA's website, a link to which was given. The provider added that it strongly suggested he seek legal advice. A discharge form for completion and return if Mr C wanted to transfer was enclosed.

Mr C signed that on 14 December 2014. In doing so he declared that he'd read and understood the FCA's leaflet 'Protect your pension pot' and TPAS' leaflet entitled 'A lifetime's savings lost in a moment'; he particularly understood the risks involved in investing monies in unusual investments; he had no right to complain to this service or claim compensation from FSCS if monies are used to purchase unregulated investments; and he should seek advice from an authorised financial adviser and legal advice before proceeding. I think the provider supplied Mr C with the longer Scorpion booklet. I say that because a copy appears on that provider's file immediately after the declaration. And it's clear from the title that it was the updated, July 2014, booklet.

It pointed out a number of warnings signs which were present in his case – Mr C had been offered a free pension review, the contact from FRPS had been unsolicited and the proposed investments were overseas. Plus, although he hadn't felt pressurised as such, several calls were made before he'd agreed to someone coming to see him. And the case study of 'Henry' does have some similarities to what happened to Mr C. A cold call, the offer of a free pension review and a unique investment opportunity (specifically in overseas property developments) were all highlighted as 'hallmarks' of a pension scam. The booklet said to make sure the adviser was authorised by the FCA by checking the online register, the address for which was given.

The FCA's 'Protect your pension pot' leaflet was particularly informative. It had been launched in August 2014 and set out three questions: was the new scheme a SIPP (self invested personal pension) or a SSAS; would the pension fund be invested in unusual investments such as overseas property; and was the motivation for the transfer contact by a call, online advert or text out the blue offering a free pension review. The leaflet said, if the answer to any of the questions was 'yes', then the consumer should read on to find out how to protect their pension pot. In Mr C's case he'd have answered in the affirmative to all three questions – he was transferring to a SSAS; both TRG and Dolphin Trust were overseas property developments in Cape Verde and Germany respectively; and he'd received an unsolicited call offering a free pension review.

The leaflet said Mr C needed to be very wary and that any free review was often designed to persuade someone to move their existing pension into high risk schemes. And that financial advice from an authorised financial adviser should be sought first and that to make sure the financial adviser was authorised to give pensions advice by checking the FCA's website, the address of which was given.

That provider's focus seems to have been on BPS – which wasn't a regulated firm. And I'm unsure why (and as ReAssure said in its final response letter) ReAssure's records would've shown BPS was acting as Mr C's financial advisers in the matter. I haven't seen anything to indicate why ReAssure or the other provider would've formed that view from the documents. For example, the trust deed clearly set out that BPS were the SSAS administrators. And, as such, BPS, didn't need to be regulated – establishing, operating and winding up an occupational pension scheme (which is a SSAS is) isn't a regulated activity. But the message was that Mr C should make sure that anyone he was dealing with was an authorised financial adviser. So that would apply to FRPS too.

And I think Mr C knew that FRPS wasn't regulated. I say that first because the SSAS guide I've referred to above expressly said that the introducer (FRPS) wasn't authorised, doesn't provide legal or investment advice and isn't regulated by the FCA. And that, if Mr C wanted to get independent investment advice, FRPS would refer him to an independent financial adviser or he could appoint his own adviser. So, assuming Mr C got that document, he'd have known that FRPS wasn't an authorised firm and as such couldn't provide advice. So the warnings given about needing to ensure that any advice came from a regulated firm would've applied to FRPS too.

Secondly, and even if Mr C didn't get that guide, it seems, from what he told the other provider on 2 September 2014, that he'd checked FRPS out anyway. He'd done what he termed background checks which I assume would've shown FRPS wasn't a regulated firm. So Mr C would've known he was dealing with an unauthorised adviser which the July 2014 Scorpion booklet and the FCA's factsheet pointed to as being of concern. And that was the other provider's position too. Moreover, it appears Mr C took those warnings on board and took steps to address them – he checked what he'd been told by FRPS with two professional advisers who'd confirmed that, unless there were pension liberation issues, Mr C could proceed, which he did. I'd assume that by professional advisers Mr C meant they were registered and authorised. I say that because there'd be little point, if he'd been warned about dealing with unregulated advisers, to seek advice other than from a regulated adviser.

In the circumstances, I can't see, if ReAssure had given similar warnings, that would've changed the outcome. I accept the situation wasn't – and as it should've been if ReAssure had acted as I consider it should've done – that both providers were expressing reservations about what Mr C wanted to do at the same time. That may have been an even louder message. But, as I've said, it was clear the other provider had concerns about the transfer which it shared with Mr C. The other provider also gave him information – the Scorpion booklet and the FCA factsheet – to help him decide what he wanted to do. Mr C was therefore in a position to make an informed decision. And, having done some of his own research into the parties involved (FRPS and BPS), he decided he wanted to go ahead with the transfer. In the circumstances, I can't see that the outcome would've been any different if ReAssure had also expressed reservations.

I note that the transfer from the other provider was a lot smaller – £2,999.17 as opposed £31,331 which was transferred from ReAssure. But I don't see that the amounts mean any distinction can be drawn between transfers. Mr C knew, from what the other provider had said and the information about pension scams that provider gave him, that setting up a SSAS and investing in overseas property developments, might turn out to be a scam or a high risk strategy and that either way, he could lose his entire pension savings. Despite that,

Mr C went ahead with the transfers and the investments.

In reaching my conclusions I've taken into account the points made by Mr C's representative in response to the investigator's view. But, in the main, those relate to what ReAssure's obligations were and the warning signs which were present and which ReAssure should've identified and communicated to Mr C. I don't disagree that ReAssure should've done more. As I've said above, ReAssure's due diligence was lacking – although ReAssure did look further into the transfer, there was then a failure to assess the further information provided and give appropriate warnings to Mr C. I also bear in mind that ReAssure was the professional party here, operating a regulated pensions business in which dealing with transfer requests was an everyday occurrence and in respect of which ReAssure had responsibilities as I've outlined above.

But I don't agree that, if ReAssure had acted as it should've done, Mr C would've backed out of the transfer or taken FCA regulated advice. He did seek further albeit, it seems, informal advice from two authorised advisers who didn't say he shouldn't go ahead. For ReAssure to be responsible for the losses Mr C has suffered, I'd need to be convinced that, but for ReAssure's failings, he wouldn't have transferred. For the reasons I've explained, I'm unable to say that further warnings from ReAssure and which would've been along the same lines as those given by the other provider, would've changed the outcome.'

ReAssure had no further comments. Mr C said, having discussed my findings with his representative, he was disappointed but he accepted my provisional decision.

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.

In the absence of any further evidence or information from Mr C or ReAssure, my views remain as set out in my provisional decision. I've set that out in full above and it forms part of my final decision. For the reasons I gave in my provisional decision I'm unable to uphold the complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 18 December 2024.

Lesley Stead
Ombudsman