DRN-5158837

The complaint

Mr M has complained about a transfer of his personal pensions with ReAssure Limited (ReAssure) to a small self-administered scheme (SSAS) in June 2015. Mr M's SSAS was subsequently used to invest in The Resort Group (TRG). The investment now appears to have little value. Mr M says he's lost out financially as a result.

Mr M says ReAssure failed in its responsibilities when dealing with the transfer request. He says ReAssure should've done more to warn him of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance he says was required of transferring schemes at the time. Mr M says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if ReAssure had acted as it should've done.

Mr M's three personal pension policies, one of which was a stakeholder pension plan, were held with HSBC Life (UK) Limited (HSBC) whose pension business was sold to ReAssure in 2015. For ease I've just referred to ReAssure. References to ReAssure should be taken as including HSBC where appropriate.

What happened

I issued a provisional decision on 16 August 2024. I set out what had happened and my provisional findings. I've repeated here what I said.

'*First Review Pension Services Limited (FRPS) wrote to ReAssure on 14 December 2014 requesting information about Mr M's policies and enclosing a letter of authority (LOA). ReAssure replied, saying that as FRPS weren't registered with the FCA (Financial Conduct Authority), the information couldn't be sent to them so it had been sent to Mr M instead. Not having received anything, FRPS called ReAssure on 9 January 2015 and asked for the information to be resent to Mr M. ReAssure wrote to Mr M on 12 January 2015 saying it was unable to update its records to show he'd given authority for information to be released to FRPS as the LOA wasn't the original and FRPS wasn't registered with the FCA. ReAssure said it was enclosing the requested information previously sent on 15 December 2014 (which I don't think Mr M received) and which he could forward to FRPS at his discretion.*

I think Mr M may then have contacted ReAssure by telephone. ReAssure wrote to him on 4 March 2015, referring to his recent request to transfer and enclosing a transfer pack. ReAssure said Mr M's pension arrangements were important and he'd want to make the right choice and should consider getting advice if he wasn't sure that transferring his pension to another provider was right for him. If he decided to transfer he'd need to complete and sign the enclosed forms and return them and ensure the new provider completed and returned the warranty and undertaking forms.

In April 2015 a company which I'll call M Limited was incorporated with Mr M as the sole director. The name of M Limited appears to be a combination of the year of Mr M's birth and part of his address. On the same date Mr M signed an employment agreement whereby M Limited appointed him as its managing director. On 20 April 2015 Mr M signed a trust deed with rules establishing a SSAS. His signatures were witnessed by someone from FRPS who

gave their occupation as a consultant.

On the same date, Bespoke Pensions Services Limited (BPS) wrote to Mr M saying they'd heard from FRPS. BPS said they'd be the administrators for Mr M's new SSAS which BPS would set up and register and arrange for the transfers of Mr M's current pensions into the SSAS. It was noted that Mr M would receive information from Companies House which he would need to forward to them so they could process his annual returns and file his accounts. The letter also said he might receive correspondence from his current pension providers and asked that, if he did, he contact BPS so they could deal with it. Mr M also signed, on 20 April 2015, an agreement for BPS to provide administration services to him as a trustee of the SSAS.

On 11 May 2015 BPS wrote to ReAssure requesting the transfer of Mr M's three policies to the SSAS. The enclosures to the letter included:

> *• HMRC's registration letter for the SSAS showing it had been registered in early May 2015 and the Pension Scheme Tax Reference (PSTR) number. BPS pointed out that, as HMRC's letter recorded, when BPS had applied for registration, BPS had confirmed that the scheme rules didn't directly or indirectly entitle any person to unauthorised payments and the scheme wouldn't be administered in any way that knowingly entitled any person to unauthorised payments.*
> *• A copy of the July 2014 version of the booklet produced by The Pensions Advisory Service (TPAS) to warn about the risks of pension scams and known as the Scorpion booklet (and which I've mentioned further below). The first page was signed by Mr M 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 M on 1 May 2015 (and to which I've referred further below).*
> *• The employment agreement dated 9 April 2015.*
> *• The SSAS trust deed and rules dated 20 April 2015, which had been drafted by a large London law firm.*
> *• A letter from that firm dated 27 February 2014 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 M and dated 1 May 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.'

Mr M and BPS had also signed on 11 May 2015 ReAssure's transfer request form. In the section he completed he was asked the reason for the transfer. He ticked a box saying it was consolidation of all his pensions. In answer to the question 'How did you hear about this scheme?', he didn't tick the 'cold calling' box. He ticked 'Other' and said, 'I selected a pension review.' In signing the form he confirmed that the receiving scheme would be used only for the payment of retirement and death benefits and not for the purposes of pension liberation. And that when the transfer had been completed, liability for the rights under his pension plans would pass in full to the receiving scheme. There was a warranty and undertaking which had been signed by the receiving scheme. It included a declaration that the receiving scheme was a UK Registered Pension Scheme and authority to contact HMRC to confirm that remained the case was given. And a declaration that ReAssure was discharged from all liabilities relating to the pension plans on completion of the transfer.

ReAssure released the transfer values of Mr M's three policies – in total £42,757.13 – to BPS towards the end of June 2015.

In July 2015 £35,543.13 was invested in TRG. There's a letter from TRG confirming that sum was received on 9 July 2015. Mr M bought a fractional share of accommodation at the Llana Beach Resort in Cape Verde. But there was a change to that later – in 2016 he signed documents to switch to different accommodation at the resort. I understand that was because a transfer anticipated from another provider hadn't gone ahead and so Mr M had less to invest in TRG than he'd thought.

To explain, at the same time as the transfer request was made to ReAssure (11 May 2015), BPS also requested the transfer of another personal pension Mr M held with a different provider. The transfer request was received by that provider on 14 May 2015. We've seen letters sent by that provider to BPS and Mr M on 20 July 2015 saying that, to ensure pension liberation fraud wasn't occurring, it had to carry out due diligence checks as outlined by TPR (The Pensions Regulator). Confirmation from BPS that Mr M was an employee of the employer establishing the scheme and details of the investment providers were requested. In its letter to Mr M the provider said it was unable to proceed with the transfer until BPS had provided information – the details requested from BPS were set out. The provider also said it couldn't proceed until it had information from Mr M. Copies of promotional material, emails or letters he'd received about the receiving scheme were requested and details of how he'd become aware of the scheme and what information he'd been given about it.

The provider wrote to Mr M again on 14 September 2015 with further queries, saying BPS wasn't regulated by the FCA and asking for the names of the companies who'd originally contacted him about transferring and introduced him to BPS. Other questions included who'd suggested he set up his own company and establish the SSAS and if he'd received advice about that and, if so, from whom. Confirmation as to whether he was being remunerated by M Limited was also requested and if he was employed or self-employed elsewhere. The provider said Mr M would be aware of the reasons why information was sought when transfer requests were received from TPR's leaflet which he'd already received. The provider

added that there was further information available on transfers, the potential tax consequences of unauthorised payments and pension liberation plans on The Pensions Advisory Service (TPAS) website, the link to which was given.

The provider wrote to Mr M again on 23 October 2015. Under the heading, in bold, 'Potential pension scam', it said it hadn't yet complied with Mr M's transfer request due to its regulatory obligations and guidance. But it went on to refer to recently published decisions by The Pensions Ombudsman (PO) as providing helpful guidance on the extent to which firms were required to take steps where they had grounds to suspect a risk of pension scams or liberation, in light of which it was willing to make the transfer in accordance with Mr M's statutory and/or contractual right. And, under the heading, again in bold, 'Reason for our concern', the provider said it continued to have concerns and its willingness to proceed didn't mean that it approved of or endorsed the transfer. Those concerns included that Mr M was under age 55, had established his own employer to set up a SSAS and was investing his pension fund into an unregulated overseas investment.

The provider said, if Mr M still wanted to transfer, his instruction would be complied with after a 30 day cooling off period. The provider asked that Mr M, during that period, consider the risks of transfer and if he was satisfied it was appropriate for him. The provider strongly recommended that Mr M seek independent financial advice from a FCA authorised and regulated adviser. If he dealt with an unauthorised intermediary, he wouldn't be covered by the Financial Services Compensation Scheme (FSCS) or this service. And, as well as potential tax charges, he could lose his pension fund if things went wrong. There was information available for consumers on the FCA's website, the address of which was given. A link to the provider's website with details of how to find a local financial adviser was given.

Under the heading 'Further information' the letter referred to the enclosed booklet from TPR about pension scams and said that further information was also available on TRP's website, the address for which was given. There was also information available on pension transfers, the potential tax consequences of unauthorised payments and pension scams on TPAS's website, the address for which was given plus TPAS's contact phone number.

And, if Mr M still wanted to proceed, he'd need to sign and date the letter and by doing so acknowledged that the provider had raised concerns about the proposed transfer because it could involve a pension scam and/or pensions liberation. And confirm that he'd read TPR's booklet and he understood that the provider took no responsibility or liability for the consequences of the transfer, including any tax charges, loss of assets, suitability of any investments or any other loss Mr M might suffer.

I'm not sure what happened after that. And why, assuming Mr M confirmed he still wanted to go ahead, the transfer wasn't made after the expiry of the 30 day cooling off period. On 28 July 2016 BPS wrote to Mr M, saying the provider was 'continuing to use delaying tactics to hold onto their customer's pensions'. BPS referred to a High Court judgment on 19 February 2016 about a consumer having a statutory right to transfer if in receipt of earnings. BPS said a complaint to the PO could be made after first complaining to the provider and a draft letter of complaint was enclosed. Mr M did proceed with that complaint. I understand the provider issued a final response on 3 October 2016 (which we haven't seen). On 17 October 2016 BPS wrote to Mr M confirming they were in a position to make a complaint to the PO. A form for signature by Mr M was enclosed. I'm not sure what happened and if Mr M did proceed with a complaint to the PO. But, in the end, the transfer from that provider never went ahead.

Initially Mr M received some returns from his TRG investment. But these eventually dried up and he became concerned. There is no market for his investment and it appears it may no have little value.

Mr M complained, through his representative, to ReAssure in November 2020. Mr M said, in dealing with his transfer request, ReAssure had failed to act in line with its regulatory responsibilities. 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 (M Limited was dormant and set up solely to facilitate pension holdings); the transfer followed high pressure sales techniques; the catalyst for the transfer was an unsolicited call; Mr M had been advised by an unregulated business; he'd been promised unrealistically high returns; and the proposed investment was in unregulated, overseas, high risk and non diversified assets.

ReAssure didn't uphold the complaint. In its final response letter of 10 February 2021 it said it had presented Mr M with a number of warnings and concerns it had about the transfer to the SSAS. He'd ignored all the warnings and had gone on to exercise his statutory right to transfer. ReAssure referred to the declaration Mr M had signed and to his letter of 1 May 2015 in which he'd specifically referenced the concerns ReAssure had raised around pension liberation and scams but that he fully understood the implications saying ReAssure was preventing him from reinvesting into his SSAS. ReAssure raised the risks of making the transfer and strongly recommended taking regulated advice from a FCA authorised company (although regulated advice wasn't a legal requirement). ReAssure told Mr M that FRPS wasn't FCA regulated and that they weren't authorised to receive information about his policies. ReAssure also approached HMRC to check the registration status of the receiving scheme and that there was no evidence that it had been set up to facilitate pension liberation.

Our investigator's view was that the complaint shouldn't be upheld. Mr M's representative disagreed, saying the investigator had identified some but not all of the warning signs. There were also links between FRPS and TRG – they had two directors in common. This had been picked up by a major mainstream pension provider in July 2014. By March 2015 FRPS had been involved in a large number of prior transfer requests. By the time ReAssure got Mr M's transfer request, ReAssure should've been aware of industry concerns about FRPS and their links to TRG, an unregulated investment provider. ReAssure would've been aware of FRPS's involvement, given the information request and the fact that FRPS's representative witnessed Mr M's signatures on the trust deed.

The investigator's conclusion that Mr M would've insisted on transferring, was based on what had happened with the other provider but all the events involving that provider postdated the ReAssure transfer. At the time of the transfer by ReAssure, there'd been no indication from the other provider that it had identified any warning signs or that it was thinking about delaying the transfer for any reason.

By the time the other provider wrote to Mr M in October 2015 ReAssure had already transferred his pension – in June 2015 without raising any concerns. So he thought the provider was being unreasonable in delaying his transfer. If that provider and ReAssure had both undertaken due diligence and communicated with Mr M then he'd have been faced with an entirely different scenario – both of his providers acting in a similar manner, warning him that he might be moving into a scam scheme. ReAssure's actions in not raising any warnings impacted on Mr M's approach to any communication he subsequently received from the other provider. And the complaint to the other provider was entirely driven by BPS.

Mr M had been saving into his pension with ReAssure since 1997, making monthly contributions right up to the transfer and his fund was invested in safe mainstream funds. That wasn't the profile of someone prepared to take high risks in return for possible speculative returns and, if provided with warnings that he may be moving into a scam scheme, insist on going ahead with that. Mr M had been contacted by other firms prior to

transferring from ReAssure. Each had presented him with a proposed transfer but he'd declined to proceed, which evidences that he was prepared to pull out of a proposed transfer if he had information leading him to conclude it wasn't a good idea.

Mr M's representative also raised arguments in connection with section 27 and 28 of the Financial Services and Markets Act (FSMA).

As the investigator was unable to resolve the dispute informally the matter was passed to me to decide.

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

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. This came to be known as pension liberation.

Personal pension providers are regulated by the 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 how personal pension providers deal with 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.

In February 2013, The Pensions Regulator (TPR) issued its Scorpion guidance to help tackle the increasing problem of pension liberation. In brief, the guidance provided a due diligence framework for dealing with pension transfer requests and some consumer-facing warning materials designed to allow members decide for themselves the risks they were running when considering a transfer.

The Scorpion guidance 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 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 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. So the contents of the Scorpion guidance was essentially informational and advisory in nature. Deviating from it doesn't therefore mean a firm has necessarily 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 right to transfer.

That said, the launch of the Scorpion guidance in 2013 was an important moment in so far it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing those requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance's specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

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

The Scorpion guidance was updated in July 2014. It widened the focus from pension liberation specifically, to pension scams more generally – which included situations where someone transferred in order to benefit from "too good to be true" investment opportunities such as overseas property developments. An example of this was given in one of the action pack's case studies.

In a similar vein, in late April 2014 the FCA had also 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 SIPPs 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.

There was a further update to the Scorpion guidance in March 2015, which is relevant for this complaint. This guidance referenced the potential dangers posed by "pension freedoms" (which was about to give people greater flexibility in relation to taking pension benefits) and explained that pension scams were evolving. In particular, it highlighted that single member occupational schemes were being used by scammers. At the same time, a broader piece of guidance was initiated by an industry working group covering both TPR and FCA regulated firms: the Pension Scams Industry Group (PSIG) Code of Practice. The intention of the PSIG Code was to help firms achieve the aims of the Scorpion campaign in a streamlined way which balanced the need to process transfers promptly with the need to identify those customers at material risk of scams.

<u>The March 2015 Scorpion guidance</u>

When the Scorpion guidance was launched in 2013, it included two standard documents that scheme administrators could use to warn their members about some of the potential dangers of transferring: a short "insert", intended to be sent to members when requesting a transfer, and a longer booklet intended to be used for members looking for more information on the subject.

The March 2015 Scorpion guidance asked schemes to ensure they provided their members with "regular, clear" information on how to spot a scam. It recommended giving members

that information in annual pension statements and whenever they requested a transfer pack. It said to include the pensions scam "leaflet" in member communications. In the absence of more explicit direction, I take the view that the member-facing Scorpion warning materials were to be used in much the same way as previously, which is for the shorter insert (which had been refreshed in March 2015) to be sent when someone requested a transfer and the longer version (which had also been refreshed) made available when members sought further information on the subject.

When a transfer request was made, transferring schemes were also asked to use a three-part checklist to find out more about a receiving scheme and why their member was looking to transfer.

The Pension Scams Industry Group (PSIG) Code

The PSIG Code was voluntary. But, in its own words, it set a standard for dealing with transfer requests from UK registered pension schemes. It was "welcomed" by the FCA and the Association of British Insurers (amongst others). And several FCA regulated pension providers were part of the PSIG and co-authored the Code. So much of the observations I've made about the status of the Scorpion guidance would, by extension, apply to the PSIG Code. In other words, personal pension providers didn't necessarily have to follow it in its entirety in every transfer request and failure to do so wouldn't necessarily be a breach of the regulator's Principles or COBS. Nevertheless, the Code sets an additional benchmark of good industry practice in addition to the Scorpion guidance. And so in order to act in a member's best interest and to play an active part in trying to protect someone from scams, I think it's fair and reasonable to expect ceding schemes to pay regard to both the Scorpion guidance and the PSIG Code when processing transfer requests.

In brief, the PSIG Code asked schemes to send the Scorpion "materials" in transfer packs and statements, and make them available on websites where applicable. The PSIG Code goes on to say those materials should be sent to scheme members directly, rather than just to their advisers.

Like the Scorpion guidance, the PSIG Code also outlined a due diligence process for ceding schemes to follow. However, whilst there is considerable overlap between the Scorpion guidance and the PSIG Code there are several differences worth highlighting:

- *As a first step, the PSIG Code asks transferring schemes to determine whether the member has a right to a transfer (whether that is a contractual right and/or statutory right). The Scorpion guidance doesn't directly address the member's right to transfer.*
- *The PSIG Code includes an observation that: "A strong first signal of [a scam] would be a letter of authority requesting a company not authorised by FCA to obtain the required pension information; e.g. a transfer value, etc." This is a departure from the Scorpion guidance (including the 2015 guidance) which was silent on whether anything could be read into the entity seeking information on a person's pension.*
- *The Code makes explicit reference to the need for scheme administrators to keep up to date with the latest pension scams and to use that knowledge to inform due diligence processes. Attention is drawn to FCA alerts in this area. (I noted the contents of some of those alerts earlier in my decision.)*
- *Under the PSIG Code, an 'initial analysis' stage allows transferring schemes to fast-track a transfer request without the need for further detailed due diligence, providing certain conditions are met. No such triage process exists in the 2015 Scorpion guidance – following the three-part due diligence checklist was expected whenever a transfer was requested.*
- *The PSIG Code splits its due diligence process by receiving scheme type:*

occupational pension schemes, SIPPs, SSASs and QROPS. The 2015 Scorpion guidance doesn't distinguish between receiving scheme in this way – there's just the one due diligence checklist whatever the destination scheme.

TPR began referring to the Code as soon as it was published, in the March 2015 version of the Scorpion action pack. Likewise, the PSIG Code referenced the Scorpion guidance and indicated staff dealing with scheme members needed to be aware of the Scorpion materials. Transferring schemes therefore needed to be aware of both the Scorpion guidance and the PSIG Code and, where one differed from the other, they needed to consider carefully how to assess a transfer request taking into account the interests of the transferring member. Typically, I'd consider the Code to have been a reasonable starting point for most ceding schemes because it provided more detailed guidance as to how to go about further due diligence, including steps to potentially fast-track some transfers which – where appropriate – would be in a member's interest.

The considerations of regulated firms didn't start and end with the Scorpion guidance and the PSIG Code. 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 either the Scorpion guidance or the Code – 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>

In his complaint to us Mr M said he received a number of unsolicited calls about pensions in 2014 and had spoken to a number of 'advisers'. He'd given authority in August and September 2014 to two different firms to obtain information about his pension plans. In around December 2014 he was cold called by a third firm, FRPS. He gave authority to FRPS but, as they weren't FCA registered, ReAssure sent the information direct to Mr M.

Over the course of an initial telephone discussion and then a meeting, a representative from FRPS, who Mr M thought was an expert pensions adviser, recommended that Mr M transfer his pension with ReAssure to a SSAS and invest in TRG. Mr M was told this would generate an excellent return which would far exceed his ReAssure pensions, providing him with a much better pension at retirement. The adviser didn't make it clear that he wasn't FCA authorised and Mr M didn't appreciate the significance of that. Nor did he warn Mr M about the risks of the proposed investment or a SSAS pension structure. Mr M had no idea he'd have obligations as a trustee and company director or that there were high risks with TRG investment. Unaware of these issues, Mr M agreed to go ahead. At the time he was employed as a driver, earning around £30,000 pa. He had no savings or investments and no knowledge or experience of investments or the different types of pension arrangements available.

FRPS's representative put Mr M in touch with BPS who organised the establishment of a SSAS and contacted ReAssure to effect the transfer of Mr M's existing pensions. ReAssure didn't correspond with Mr M at all after the transfer request had been received.

Our investigator also spoke to Mr M about what had happened. Mr M said he'd got a phone call from a company who said that they were doing reviews of pensions to make sure they were all still heading in the right direction as a lot were underperforming. Mr M didn't have any issues with his existing providers but he didn't think there was any harm in finding out if his pension could be doing better so he agreed to a review. The outcome was that he was told his pension was underperforming but there was another scheme with returns between

5% and 8% pa as opposed to the 2% or 3% pa Mr M was actually getting and that it would be in his interests to go for the other scheme. It involved investing in fractional ownership of an overseas hotel group – TRG – and setting up a company, which he'd be a director of, and a single member SSAS.

Mr M was attracted by the professional nature of the individual he met and the expectation he'd receive investment growth of at least 5% pa. He was comforted by the fact HMRC was involved in the registration of the SSAS. Mr M discussed it with his wife and decided to go ahead with the transfer.

There were a number of visits to his house with documents to sign. Mr M saw leaflets about the investment and various charts showing performance. A number of investments were shown but they were all to do with the same hotel. Mr M thought he was told it was all regulated. He wasn't told it was high risk or that he could lose his money. It was all made to look like lots of people were doing it and who wanted better performance from their pensions. Mr M didn't really feel under any pressure or rushed. The people he was dealing with took their time and he was made to feel at ease. Having to set up a limited company didn't seem odd as he already had his own company – he was self employed at the time, he'd had his own business since 1995 and he'd set up a limited company in 2003. He thought it had been BPS who'd contacted him initially and who'd visited him subsequently with letters to sign or for ID documents. He didn't recall the involvement of any other businesses. No copies of the paperwork he'd signed were left with him.

We also asked about the other transfer which hadn't gone ahead. The transfer value was about £8,500. Mr M said, after the transfer had been requested, he didn't hear from the provider for some time. He was told to continue with the transfer from ReAssure. When the other provider got back to him it said it wasn't happy to process the transfer as things might not be as they seemed. By then the transfer from ReAssure had been done and the investment in TRG made. Mr M went back to BPS to say that the other provider hadn't processed the transfer which BPS wasn't happy about. Mr M was told his money had already been invested in a sea view room and he'd have to downgrade to a garden view room which would affect his investment as people wouldn't be paying as much. Mr M said, although he'd been told what he'd be investing in and the return he should get, he hadn't realised how high risk it was and, with hindsight, the other provider had been right.

Mr M referred to having signed a large amount of paperwork, copies of which weren't left with him. He explained how the visits for him to sign documents usually went – he wasn't rushed, the person who visited wasn't in a hurry and was happy to engage in small chat. That sort of approach put Mr M at ease and gave him confidence that nothing untoward was going on. With hindsight, he realises it was probably deliberately aimed at reassuring him that he'd made the right decision, that everything was above board and, although there was a lot of paperwork to sign, there was nothing which he needed to be concerned about, hence he didn't scrutinise it.

Mr M didn't recall seeing the Scorpion insert, a copy of which (the March 2015 version) the investigator had sent to him. When he reviewed it, Mr M said he thought it would've prompted him to research the transfer further.

Mr M had another review about three or four years ago with a company that hadn't had anything to do with what had happened in 2015. When Mr M explained what had happened the adviser said things hadn't worked out well for some investors and Mr M might want to try to get his money back. And BPS's charges for looking after his pension were high – about £1,000 pa.

I accept that what's been said by and on behalf of Mr M is a reasonable account of what

happened. There are some inconsistencies but I think that's understandable, given the time that's passed. Particularly when, as he's explained, although he may have signed multiple documents, he wasn't given copies and which may have helped him to piece together exactly who had been involved, what they'd done and when. But, in broad terms, what seems to have happened was that Mr M got an unsolicited call by a firm offering a free pension review. It wasn't the first time that he'd had that sort of call, nor was it the only time he'd given authority for information about his pensions to be obtained. But I don't think that makes any difference – what I'm looking at is what happened when Mr M did decide, following a review, to move forward and request a transfer from ReAssure.

What Mr M told our investigator about only having dealt with BPS is contrary to what was said when he complained to ReAssure (and repeated on his complaint form to us) – that he was initially contacted by FRPS and it was that firm who'd visited him at his home before passing him over to BPS (who'd also visited Mr M at home). From the paperwork we've seen, FRPS was involved, even if Mr M doesn't now recall. That's evidenced by the fact that FRPS wrote to ReAssure on 14 December 2014 requesting information about Mr M's policy and enclosing a LOA signed by him. ReAssure's records also show that FRPS called ReAssure on 9 January 2015 and asked for the information to be resent to Mr M. So I think it would've been FRPS who contacted initially Mr M – and I accept that contact was unsolicited, that is a cold call – to offer him a free pension review.

FRPS's continued involvement is evidenced by the fact that Mr M's signature on the SSAS trust deed was witnessed by someone from FRPS. So, by then, Mr M had been told his existing pensions were underperforming and he'd been introduced to the idea of investing in TRG as the returns would be much better. And to do that, he'd need to set up a limited company and a SSAS. As to what was said about Mr M not being aware he'd have obligations as a company director and trustee, he already had his own limited company. So he'd have known there were some formalities to observe. But he wouldn't have been familiar with a SSAS trustee's obligations. I'm unsure why, if a SSAS was recommended, Mr M's existing company couldn't have been used as the sponsoring employer.

I think it would've been FRPS who had the discussions with Mr M about transferring, setting up a SSAS and investing in TRG. It had contacted ReAssure at the outset and was still actively involved by the time the SSAS was set up. I think what happened in the interim would've likely been down to FRPS. Then, once Mr M agreed to go ahead, FRPS got BPS involved. That's supported by BPS's letter to Mr M dated 20 April 2015 – BPS said they'd heard from FRPS and BPS would set up the new SSAS. So it seems BPS was introduced by FRPS to deal with the transfer and then, going forwards, administer the SSAS.

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

The Scorpion insert:

For the reasons given above, my view is that personal pension providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information. ReAssure 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 had several opportunities to send the Scorpion insert. First, when it sent the information FRPS had requested to Mr M in December 2014 and January 2015 – ReAssure sent it direct to Mr M anyway so it would've been easy for ReAssure to include the Scorpion insert. The same is true of the transfer pack sent to Mr M on 4 March 2015. Or ReAssure could've sent the insert to Mr M in May 2015 when it got the transfer request from BPS.

That said, Mr M did see the longer Scorpion booklet: a copy of the July 2014 version (which Mr M had signed on the front to say he'd read and understood it) was supplied with the transfer request made by BPS in May 2015. If ReAssure had sent the Scorpion insert in response to the information requests or when it sent the transfer pack, it would've been the shorter version of the same edition. But, if it had been sent when the transfer request was received, it would've been the March 2015 updated version. When the transfer request was received, ReAssure would've seen that the Scorpion booklet Mr M had been given was the older version which had been superseded. Arguably, ReAssure should've made sure Mr M was given the correct version.

But, in any event, as the guidance had been updated and the PSIG Code had been introduced, ReAssure needed to factor that in when dealing with the transfer request and act in accordance with the revised and updated guidance.

Due diligence:

As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mr M's transfer in that light. But I don't think it would make a difference to the outcome of the complaint if I had considered ReAssure's actions using the 2015 Scorpion guidance as a benchmark instead.

ReAssure says it did conduct relevant due diligence and presented Mr M with a number of warnings. And ReAssure says it approached HMRC to check the registration status of the SSAS and that there was nothing to indicate it had been set up to facilitate pension liberation. ReAssure may have done the latter (although I'm not sure we've seen evidence to show that). But I can't see that ReAssure provided Mr M with any warnings. ReAssure had received his signed declaration, saying he'd considered the risks and costs involved in making the transfer and he understood, once his pension had been transferred, that ReAssure would have no responsibility for his pension benefits or any losses or costs. And there was also the letter he signed on 1 May 2015. But those weren't warnings given by ReAssure. Rather they were statements made by Mr M in support of his request to transfer.

I've referred above to the 'initial analysis' stage under the PSIG Code. That triage process should've led to ReAssure asking Mr M further questions about the transfer as per Section 6.2.2 ('Initial analysis – member questions"). I won't repeat the list of suggested questions in full. Suffice to say, at least one of them would've been answered "yes": For example, Mr M was transferring so he could invest in TRG, a resort development in Cape Verde. So he'd have said he'd been informed of an overseas investment opportunity.

I've also found that Mr M was cold called. But I'm not sure he'd have said that. I note, on the transfer request form he'd signed on 11 May 2015, he didn't tick the 'cold called' box – instead he said he'd been offered a review. So he'd have likely answered similarly – that he hadn't been cold called – if ReAssure had asked the same question, although further enquiries around that might've revealed that the review had been prompted by unsolicited contact from FRPS. Further, as I've noted above, the PSIG Code includes an observation that: "A strong first signal of [a scam] would be a letter of authority requesting a company not authorised by FCA to obtain the required pension information; e.g. a transfer value, etc." Here Mr M had signed a LOA in favour of FRPS but ReAssure had declined to provide information to FRPS as they weren't authorised.

Under the Code, further investigation should follow a "yes" to any question. So ReAssure should've looked into the transfer request further. The nature of that investigation depends on the type of scheme being transferred to. The SSAS section of the Code (Section 6.4.3) points to the following as being potential warning signs for ceding schemes to be on the lookout for:

(a) Employment link: a lack of an employment link to any member of the SSAS.
(b) Geographical link: a sponsoring employer that is geographically distant from the member.
(c) Marketing methods: a SSAS being marketed through a cold call or an unsolicited approach.
(d) Provenance of receiving scheme: a SSAS registered within the previous six months or a recently registered sponsoring employer or administrator one operating from 'virtual' offices, or using PO boxes for correspondence purposes.

Underneath each section, the Code set out a series of example questions to help scheme administrators assess the potential risk facing a transferring member.

Not every question would need to be addressed under the Code. Indeed, the Code makes the point that it is for scheme administrators to choose the most relevant questions to ask (including asking questions not on the list if appropriate). But the Code makes the point that a transferring scheme would typically need to conduct investigations into a "wide range" of issues to establish whether a scam was a realistic threat. With that in mind – and although ReAssure might've taken some comfort by the fact that Mr M had apparently seen and read the July 2014 Scorpion booklet and he'd signed the letter dated 1 May 2015 – I think in this case ReAssure should've addressed all four sections of the SSAS due diligence process and contacted Mr M as part of that.

<u>What should ReAssure have found out and would it have made a difference?</u>

Investigations under part (a) would've revealed, although an agreement dated 9 April 2015 had been supplied showing Mr M was employed by M Limited as its managing director, that he was self employed and working for a different (his own) limited company with M Limited registered as a dormant company. And enquiries under part (d) would've raised issues about the provenance of the receiving scheme – the SSAS had only been registered in April 2015, less than a month before BPS had written to ReAssure saying Mr M wanted to transfer. And M Limited had only been recently registered too. And, as I've indicated above, it's possible, in response to enquiries under part (c), Mr M would've said the idea of moving to a SSAS had come about following cold calls and unsolicited approaches and that he'd been dealing with FRPS, an unregulated adviser.

So, had it done more thorough due diligence, there'd have been a number of warnings ReAssure could've given to Mr M in relation to a possible scam threat as identified by the PSIG Code (and the Scorpion action pack), including that the firm he'd been advised by was unregulated and could put his pension at risk.

I've thought very carefully about whether, if ReAssure had done everything it should've, it would've changed Mr M's mind about the transfer. In doing so I need to 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 that he did receive.

Mr M had been given some warnings – it's clear, even if he doesn't now recall, that he did see the July 2014 version of the Scorpion booklet – he signed a copy to say he'd read and understood it. Although, as I've said, by the time the transfer was made, the booklet had been updated, the version Mr M was given did point out a number of warnings signs which were present in his case – he'd been offered a free pension review, the contact from FRPS had been unsolicited and the proposed investment was overseas. Plus, although he hadn't felt pressurised as such, he'd been visited at home and given documents to sign, copies of which weren't left with him. And the case study of 'Henry' does have some similarities to what happened to Mr M. The booklet said to make sure the adviser was registered by the

FCA by checking on its online register. Mr M knew FRPS wasn't regulated because ReAssure had told him that at the outset – it was why ReAssure wouldn't send information about Mr M's pensions direct to FRPS.

I don't know if Mr M read the Scorpion booklet but didn't think it applied to him or if he didn't read it at all and just simply signed it. I think from what he's said – about having signed a large amount of paperwork and having been made to feel there was nothing he needed to be concerned about – that it was likely to have been the latter. So I don't think it was the case that he read the booklet but concluded he wasn't at risk of being the victim of a pension scam. Rather I think it's more likely that he didn't actually read the booklet and just signed it when FRPS or BPS presented it to him, assuring him all was above board.

Similar considerations apply to the letter dated 1 May 2015 he signed. It looks to have been pre-prepared and, although it was only a page long, he may have signed it without reading it. But, in any event, it was all about pension liberation which he wasn't doing. So he may have felt confident about signing the letter on that basis.

But there's also what Mr M knew from the other provider who'd also been asked to process a transfer. I've referred above to the letters that provider sent to Mr M on 20 July 2015, 14 September 2015 and 23 October 2015. It's clear that provider had serious reservations about the transfer and was concerned that Mr M might've been drawn into some kind of scam.

From what I've seen, that provider didn't get in contact with Mr M about his transfer request (sent on 11 May 2015, the same date as the request was sent to ReAssure) until 20 July 2015. By then, the transfers from ReAssure had already been completed and the money (£35,543.13) had been passed over to TRG for investment. So, even if Mr M might've had some concerns about why the other provider was hesitant, it was by then too late to stop the transfers from ReAssure. But I don't think that's an end to the matter. Or that whatever steps the other provider took are irrelevant and shouldn't be taken into account in considering what Mr M would've likely done if ReAssure had given him further warnings.

The 20 July 2015 letter by the other provider doesn't say a copy of the Scorpion insert or booklet is enclosed. But the next letter dated 14 September 2015, in which the provider asks further questions about the proposed transfer, refers to Mr M being aware of the reasons why information was being sought from TPR's leaflet which had already been sent to Mr M. So it appears that would've been enclosed with the earlier letter sent to him on 20 July 2015. It's unclear if it was the insert or the longer version. But the letter of 23 October 2015 referred to the enclosed 'booklet' from TPR on pension scams. I think that change in terminology could indicate the longer version.

But it seems Mr M was at least given the March 2015 insert. When our investigator shared that with Mr M he didn't recall seeing it before. But based on what I've seen I think the other provider did send it and possibly the longer version to Mr M but he was prepared to proceed anyway and despite the warnings it contained. I think Mr M would've read the insert or booklet. He may not have read the July 2014 booklet for the reasons I've indicated. But here, where the other provider had declined to make the transfer and had specifically directed his attention to the insert/booklet, I think Mr M would've read it.

There's also what the other provider told Mr M. After expressing initial reservations on 20 July 2015, the other provider's concerns didn't go away and it wrote further to Mr M on 14 September 2015 and 23 October 2015. In the latter the other provider said it was imposing a 30 day 'cooling off' period for Mr M to consider the risks of transferring and satisfy himself that it was appropriate for him. The provider 'strongly' recommended that Mr M seek independent financial advice from an adviser who was authorised and regulated by the FCA.

The possible consequences of dealing with an intermediary who wasn't authorised and regulated were set out – that Mr M wouldn't be covered by FSCS or this service and that he could face potential tax charges and, if things went wrong, he could lose his pension fund.

The other provider had noted in its letter of 14 September 2015 that BPS wasn't authorised. That was the case but, to be clear, as the administrator of Mr M's SSAS, BPS didn't have to be authorised – administering an occupational pension scheme (which a SSAS is) isn't a regulated activity. But the letter also enquired about who'd initially contacted Mr M about transferring to another pension scheme and who'd introduced him to BPS. I think the message was clear – that dealing with unregulated firms could put Mr M's pension fund at risk. That's the same warning I've said that ReAssure (had it undertaken proper due diligence) should've given Mr M – that the firm he'd been dealing with was unregulated and could put his pension at risk. So Mr M got the message I've said ReAssure should've given him from another party.

I also bear in mind the clarity of the warnings given by the other provider and the language used. For example, the letter of 23 October 2015 to Mr M included the heading, in bold, 'Potential pension scam', before going on to set out that provider's concerns, where Mr M could find further information about pension scams and what he needed to do if he still wanted to proceed with the transfer, which included signing a declaration which specifically referred to the provider having raised concerns about the transfer because it could involve a pension scam and/or pension liberation. So there were repeated references to Mr M being scammed. Despite that, he apparently remained prepared to go ahead anyway.

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 M wanted to do at the same time. That may have been an even louder message. But, as I've said, the warnings given by the other provider were very clearly and strongly expressed. It's difficult to see, if Mr M was prepared to ignore those, that he'd have reacted differently if ReAssure had also warned him. And the fact remains that Mr M knew that dealing with an unregulated adviser – and he knew from the outset that FRPS was unauthorised – carried risks. I don't think he'd have heeded further warnings from ReAssure and which, as I've said, would've been along the same lines as what the other provider had told Mr M and which didn't make him reconsider.

I note that, in the end, the transfer from the other provider didn't proceed. But Mr M hasn't said that was because he realised there might be something in what the other provider was saying. It seems he wasn't persuaded by that because he made a formal complaint to that provider about its failure to make the transfer. I don't doubt what's been said about BPS having driven the complaint. But it still required Mr M's agreement, which he gave. I think that indicates that he still trusted BPS and wasn't put off by what the other provider had said.

And, by then, Mr M's TRG investment had been 'downgraded' to reflect that he'd be investing less. So it appears it was a case of the other transfer eventually just falling by the wayside, the impetus for it having passed, rather than Mr M concluding, based on what that provider had said, that he shouldn't go ahead. If that had been his position and he'd concluded that the transfer could pose a risk, I think that would've manifested itself in a complaint, whether to ReAssure and/or FRPS and/or BPS, coupled with some attempt to disinvest from TRG or at least some enquiries as to what options might be open to him.

In the circumstances and on balance I'm unable to say, if ReAssure had acted as it should've done, that Mr M wouldn't have gone ahead with the transfer. In saying that I bear in mind that ReAssure was the professional party, 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, for ReAssure to be responsible for

the losses he's suffered, I'd need to be convinced that, but for ReAssure's failings, Mr M wouldn't have transferred. As I've explained above, he was given warnings which he failed to heed and I'm unable to say that further warnings from ReAssure – and which would've been along the same lines – would've changed the outcome.

Lastly, Mr M has argued that section 27 of FSMA applies to this complaint, in essence because the arrangements to transfer his pension to his SSAS constituted an "agreement" which had been made in consequence of actions carried on by FRPS in contravention of the general prohibition. His argument is that, unless relief is otherwise granted under section 28 of FSMA, he may be entitled to recover money transferred under the agreement and associated losses.

I'm not persuaded that any "agreement" with FRPS, in the context of section 27, was being made at the point Mr M exercised his rights to rights to transfer away. He had already entered into an agreement with ReAssure some time previously – which was essentially the existing personal pension policy – and transferring away may have involved exercising clauses in that contract. But I've seen no evidence to suggest that any party was acting in contravention of the general prohibition when that agreement was made.

It's clear now that Mr M was the victim of a well-organised operation which persuaded him to transfer out of relatively safe, conventional pension arrangements to invest in a speculative, overseas property development. But, despite my sympathy for Mr M, for the reasons I've explained, I don't think it would be fair and reasonable to say that ReAssure is responsible for his losses.'

ReAssure didn't want to add anything in response to my provisional decision.

We shared with Mr M the letters I'd referred to from the other provider. Mr M's representative said they wanted to obtain the other provider's complete file and would be making a DSAR (Data Subject Access Request) to that other provider. But Mr M's representative later confirmed, having had sight of the information supplied by the other provider and having discussed it with him, that Mr M accepted the findings in 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.

Neither Mr M nor ReAssure had any further comments in response to my provisional decision.

So, in the absence of any new information or evidence, my findings are unchanged from those I reached in my provisional decision. I've set those out in full above and they form part of my final decision. For the reasons I've given, I'm not upholding Mr M's 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 M to accept or reject my decision before 18 December 2024.

Lesley Stead
Ombudsman