DRN-3798711

The complaint

Mr R has complained about a transfer of his personal pension in 2013 by a business that Reassure Life Limited (Reassure) is now responsible for.

Mr R 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 R 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 R is represented by a claims management company (CMC). But for simplicity, I'll refer to all submissions made on Mr R's behalf as being from Mr R except where necessary.

What happened

Reassure objected to this Service considering the merits of this complaint based on it believing the complaint had been brough too late under the Under the Dispute Resolution (DISP) Rules set out in the Financial Conduct Authority (FCA) handbook (set out below). As the transfer took place in 2013 it felt the complaint had been brought outside of the six-year element of the rule. It also stated that Mr R would have been aware of a cause to complain in 2017 when the complained to the FSCS about the transfer and the advisers involved. So as he didn't refer his complaint to this Service until 2021 he has brought his complaint outside of the required three year time period.

The investigator set out in his assessment why he felt the complaint had been brought in time so the merits could be considered. As Reassure didn't comment on this aspect of the complaint I have proceeded with deciding the merits of the complaint.

However due to Reassure raising the time bar object it has provided very little information on the transfer and the events surrounding it.

The background as far as I am aware is as follows:

Mr R has said that in 2013 he was introduced to the idea of transferring his personal pension to a Self-Invested Personal Pension (SIPP) held with Rowanmoor Personal Pensions Limited (the Rowanmoor SIPP). His CMC has said that this individual was someone who had previously advised Mr R's brother on some matters but in a call with our investigator Mr R said he had some dealings with someone who shared an office with him. He has also said he can't recall how this individual first made contact with him.

Neither party has confirmed when Reassure received a request for information about Mr R's pension along with his letter of authority. Or when Reassure provided the required information. It is likely however that this was around the last half of 2013 based on the transfer being completed in November 2013. It's also likely that the request for information came from Rowanmoor Personal Pensions Limited (Rowanmoor) who were the SIPP provider because no other information has been provided on this aspect.

When Reassure received the transfer documentation authorising the transfer of Mr R's pension to the Rowanmoor SIPP included was the transfer authority form signed by Mr R and the HMRC certificate for the Rowanmoor SIPP dated 16 April 2009. The transfer form also stated the form was produced by Moneywise Financial Advisers Limited.

Mr R's pension was transferred on 28 November 2013. He was 51 years old at the time of the transfer.

In 2021 Mr R complained to Reassure. Briefly, his argument is that Reassure failed to carry out due diligence on the receiving scheme and it didn't send him the Pension Regulator's (TPR) guidance documents aimed at highlighting the signs of a pension scam, knowns as the Scorpion leaflet. He felt, overall, that Reassure had failed to meet its obligation and permitted a transfer of the pension to an unsuitable pension vehicle with the purpose of allowing investment in unsuitable high risk illiquid assets.

Reassure didn't uphold the complaint. It didn't mention that it had sent the Scorpion leaflet to Mr R or to Rowanmoor or his adviser. However, it said that as the SIPP was registered with HMRC, the provider was FCA regulated and the adviser was also regulated it felt it had no grounds to suspect transfers to this scheme and therefore had no reason to stop the transfer. It received all the appropriate documents from Mr R and the receiving scheme including the HMRC documentation. It followed its normal process for transfer that was in place in 2013. And overall, it was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

It's worth noting that Mr R transferred other pensions he held with other providers to the same SIPP all around the same time. He has also pursued a number of claims in relation to the pension transfers with the Financial Services Compensation Scheme (FSCS). The claims were against advisory firms that were FCA regulated at the time. We have received reassignment of rights to investigate the complaint by the FSCS.

Our investigator was unable to resolve the dispute informally, so the matter was passed to me to decide.

What I've decided – and why

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

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've taken into account relevant: law and regulations; regulatory rules; guidance and standards; codes of practice; and (where appropriate) what I consider to have been good industry practice at the relevant time.

Where the evidence is incomplete or inconclusive (as some of it is here) I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened given the available evidence and wider circumstances.

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

Personal pension providers are regulated by the Financial Conduct Authority (FCA). Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority (FSA). As such Reassure was subject to the FSA/FCA Handbook, and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA/FCA rules governing pension transfer requests, but the following have particular relevance here:

- Principle 2 – A firm must conduct its business with due skill, care and diligence;
- Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;
- Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and
- COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme if certain conditions are satisfied (and indeed they may also have a right to transfer under the terms of the contract). This right came to be exploited, with people encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren't entitled to – for instance, because they were below minimum retirement age. At various points, regulators issued bulletins warning of the dangers of taking such action. But it was only from 14 February 2013 that transferring schemes had formal guidance to follow that was aimed at tackling pension liberation – the "Scorpion" guidance.

The Scorpion guidance was launched by The Pensions Regulator (TPR). It was described as a cross-government initiative by Action Fraud, The City of London Police, HMRC, the Pensions Advisory Service (TPAS), TPR, the SFO, and the FSA/FCA, all of which endorsed the guidance, allowing their names and logos to appear in Scorpion materials. The guidance comprised the following:

- An insert to be included in transfer packs (the 'Scorpion insert'). The insert warns readers about the dangers of agreeing to cash in a pension early and identifies a number of warning signs to look out for.
- A longer booklet issued by TPAS which gives more information, including example scenarios, about pension liberation. Guidance provided by TPR on its website at the time said this longer leaflet was intended to be sent to members who had queries about pension liberation fraud.
- An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "look out for" various warning signs of liberation. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where transferring schemes still had concerns, they were encouraged to write to members to warn them of the potential tax consequences of their actions; to consider delaying the transfer; to seek legal advice; and to direct the member to TPAS, TPR or Action Fraud.

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

The FSA's endorsement of the Scorpion guidance was relatively informal: it didn't take the form of Handbook Guidance, because it was not issued under s.139A of the Financial

Services and Markets Act (FSMA), which enabled the FSA to issue guidance provided it underwent a consultation process first. Nor did it constitute "confirmed industry guidance", as can be seen by consulting the list of all such FSA/FCA guidance on its website.

I take from the above that the contents of the Scorpion guidance was essentially informational and advisory in nature and that deviating from it doesn't necessarily mean a firm has broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's legal 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 those requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance's specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

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

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

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. And where the recommendations in the guidance applied, absent a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations. With that in mind, I take the view that personal pension providers dealing with transfer requests needed to heed the following:

1. When TPR launched the Scorpion guidance in February 2013, its press release said the Scorpion insert should be provided in the information sent to members requesting a transfer. It said on its website that it wanted the inclusion of the Scorpion insert in transfer packs to "become best practice". The Scorpion insert provided an important safeguard for transferring members, allowing them to consider for themselves the liberation threat they were facing. Sending it to customers asking to transfer their pensions was 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 with transfer packs by pension providers as a matter of good industry practice.

2. The contents of the Scorpion insert were directed towards consumers themselves and contained warnings about dishonest intermediaries who might be trying to lure them into a liberation scam. It would have defeated the purpose of the insert if, instead of sending it to their customer, pension firms sent the insert to the customer's representative in the hope that the intermediary would then share the insert with their client. I therefore consider it fair and reasonable for personal pension providers – operating with the regulator's Principles and COBS 2.1.1R in mind – to send the Scorpion insert direct to the transferring member even when the request for the transfer pack had come from a different party – an unregulated introducer, say.

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

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

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

<u>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.

As already explained Reassure hasn't provided any confirmation that it sent Mr R the Scorpion leaflet. Therefore, I can only conclude that it didn't. So, in light of what I have detailed above this was a failing – Reassure should have sent the leaflet directly to Mr R as the Regulator had encouraged and in no doing so it failed to make Mr R aware of the potential risks he could be facing in transferring pensions.

Due diligence:

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

The transfer request was received in November 2013 and so I think the guidance in the 2013 action pack is relevant to Mr R's case. Therefore, I've looked at what Reassure knew at the time of the transfer request and whether any elements of the transfer resembled anything in the action pack guidance.

As mentioned, its likely the request came from Rowanmoor Personal Pensions Ltd. Having carried out normal checks Reassure would have known the SIPP provider was regulated by the FSA (now FCA) and had been since April 2007 (they applied to cancel in 2023). So it isn't unreasonable that this provided Reassure with some comfort.

Furthermore, attached with the transfer request was a letter from HMRC confirming that the Rowanmoor SIPP (with a PSTR of 00738148RB) had been registered since April 2009.

So in terms of the scheme and provider – they had been registered for some years prior to the transfer and the provider was also FSA regulated.

Reassure has also confirmed that the paperwork it received provided information that Mr R was being advised in this endeavour by Moneywise Financial Advisers Ltd who at the time were regulated by the FCA. So having decided there were no warning signs, it is not unreasonable that at this stage Reassure didn't engage with the further due diligence guidance set out under Scorpion.

Had warning signs been present, I think it would have been fair and reasonable – and good practice – for Reassure to look into the proposed transfer to conduct some further due diligence, and the most reasonable way of going about that would have been to turn to the check list in the action pack to structure its due diligence into Mr R's transfer.

The check list provided a series of questions to help transferring schemes assess the potential threat by finding out more about the receiving scheme and how the consumer came to make the transfer request. Some items on the check list could have been addressed by checking online resources such as Companies House and HMRC. Others would have required contacting the consumer. The check list is divided into three parts (which I've numbered for ease of reading and not because I think the check list was designed to be followed in a particular order):

1. The nature/status of the receiving scheme

Sample questions: Is the receiving scheme newly registered with HMRC, is it sponsored by a newly registered employer, is that employer geographically distant from the transferring member and 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?

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?

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

I don't think it would always have been necessary to follow the check list in its entirety. And I don't think an answer to any one single question on the check list would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the check list to establish whether liberation was a realistic threat.

However, in this case, as I have already explained, I don't think it was unreasonable that Reassure felt there was no need to engage with Mr R to carry out further due diligence.

The only irregularity was that Mr R was 51 years old, however, given what Reassure knew about the transfer at that stage, it isn't unreasonable that it thought the transfer was a normal transfer to a UK based regulated SIPP. All of which was not unusual.

While Reassure didn't send the Scorpion leaflet to Mr R which it should have done, I don't think this would have changed the transfer from going through even if it had. I say this because the contents of that leaflet wouldn't have resonated with Mr R as none of the warning signs applied. He wasn't approached out of the blue by a cold call or text. He hasn't made any comment about the introducer being pushy or being offered upfront cash. He wasn't offered a loan, saving advance or cash back from his pension. And he hasn't said he wasn't informed about the potential tax consequences. Therefore, I don't think that by not being sent the leaflet directly Mr R was disadvantaged because I'm satisfied he wouldn't have stopped the transfer in any event.

Overall, I am of the view that in the circumstances of this specific complaint it wasn't unreasonable for Reassure not to carry out any further due diligence in respect of Mr R's transfer request. Knowing the SIPP provider and the adviser was FCA regulated gave Reassure the comfort that Mr R was not putting his pension at risk. And I am satisfied Reassure had no need to contact Mr R to ask about the transfer and the circumstances surrounding it because there were no warning signs in the information Reassure would have been provided with at the time that would have caused it to suspect pension liberation fraud was potentially involved.

My final decision

My final decisions is I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 24 April 2024.

Ayshea Khan
Ombudsman