DRN-3643071

The complaint

Mr N complained about the transfer of his personal pension from Zurich Assurance Ltd to a small self-administered scheme ("SSAS"). The transfer took place in June 2014. The SSAS was subsequently used to invest in storage units in England, an unregulated and higher-risk investment. The investment now appears to have little or no value. Mr N therefore says he has lost out financially as a result of transferring.

To keep things simple I'll mainly refer to the company complained of as "Zurich". Mr N is represented in bringing the complaint, but I'll refer to comments about the case as coming from Mr N himself.

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

What happened

I can see that some of the timeline and dates in this case aren't particularly clear. However, I've taken the view that these events are from some years ago now, and I'm satisfied Mr N has provided his own recollections of what happened. I've also been helped by Zurich and the records it has retained from the transfer process.

The available documentation relating to the transfer process which Mr N undertook sheds some light on a number of different firms which were involved and what role they played. I think it's helpful to begin by summarising their involvement:

- United Compliance Limited ("UC"). This firm is now dissolved. This was an 'introducer' firm which was *not* authorised to provide regulated financial advice. Mr N says he was cold called by a representative of this firm and that he then had discussions during which UC recommended that he should transfer from his Zurich pension, establish a limited company, open a SSAS and ultimately transfer his pension savings to the storage unit investment. UC was the adviser to the trustee of the SSAS under s36 of the Pensions Act 1995.

- Rowanmoor Group Plc ("Rowanmoor"). This was a widely known provider of SSAS administration services to retail clients at the time. Mr N's SSAS was arranged with Rowanmoor, and it was Rowanmoor which wrote to Zurich to request the release of Mr N's pension funds into the SSAS. Rowanmoor wrote to Zurich saying it had Mr N's signed authority to transfer to a SSAS.

- A company I'll refer to as "CML". CML was a chartered accountancy firm which appeared on the Rowanmoor SSAS application made by Mr N. On the part of the application form - the 'identity verification certificate' – CML effectively verified Mr N's signature and his application to open a SSAS. CML wasn't authorised to give financial advice.

- A company I'll refer to as "Mr N Ltd". Mr N went through the process of setting up a limited company to act as the sponsoring employer of the SSAS.This entity was incorporated in March 2014 with Mr N as the sole director.

As of 2014 Mr N was 50 years old and he held a pension with Zurich which he'd had since around 1991. Mr N says his interest in transferring this pension followed an unsolicited approach; he was 'cold' called by UC and says he was attracted by the prospect of an approximate 12% annual return on the investment. It's not entirely clear when this was, but it is likely to have been in early 2014.

On 7 April 2014, Zurich says it received a letter from Rowanmoor enclosing Mr N's authority. The letter confirmed that Mr N wished to transfer his Zurich pension to a newly established SSAS. The letter asked Zurich to send Rowanmoor the necessary forms which needed to be completed. In accordance with Mr N's signed authority, Zurich sent Rowanmoor a transfer claim pack on 18 April 2014.

I think the evidence shows that by this time, Mr N had already been contacted about his pension by UC. I say this because by 31 March 2014 he'd already incorporated his limited company "Mr N Ltd" to act as the sponsoring employer of the SSAS and he'd already signed some SSAS application papers and dated them 1 April 2014.

A SSAS is a type of occupational pension, in which the members are also trustees and therefore take responsibility for operating the scheme. SSASs are not regulated by the financial services regulator, the FCA. They can hold a wider range of investments and assets than many personal pensions. As an occupational pension, a SSAS must be sponsored by an employer company, hence the reason for "Mr N Ltd" being established.

Mr N says he was advised to do these things. And I've noted that UC (who Mr N says advised him to transfer), CML (which witnessed his signature) and "Mr N Ltd" were all companies registered at the same address. So, in my view there's strong evidence supporting Mr N's testimony about being advised by UC.

As well as sending a transfer pack to Rowanmoor on 18 April, Zurich later sent Mr N a transfer claim pack, on 20 May 2014. It originally told us the transfer packs included a copy of The Pension Regulator's 'predators stalk your pension' leaflet. However, as I'll explain later, there's no evidence of this being sent directly to Mr N himself, as opposed to the firm requesting the information on his behalf.

On 2 June 2014 Zurich received a letter from Rowanmoor Group Plc, enclosing Mr N's confirmation and signed authority to transfer his Zurich pension plan to Rowanmoor, paid to the trustees of the "Mr N Ltd" Executive Pension Scheme. Included in the information was confirmation that the scheme was authorised and registered with HMRC. The transfer was completed on 5 June 2014. The transfer value was around £71,769 and £63,512 was placed in the storage units investment.

In January 2021, Mr N complained to Zurich. Briefly, his argument is that Zurich ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including (but not limited to) the following: the SSAS was newly registered, there wasn't a genuine employment link to the sponsoring employer, the catalyst for the transfer was an unsolicited call and he had been advised by an unregulated business.

Zurich didn't uphold the complaint. It said Mr N had a legal right to transfer and that none of the information it had about the transfer at the time gave it cause for concern. It was satisfied it had conducted an appropriate level of due diligence given the requirements of the time. Zurich also said that Mr N was an experienced financial professional with previous regulated adviser status. It said this experience extended to him recommending the original Zurich pension "to himself" in this capacity when it had been originally set up. It said, given Mr N's experience in financial services, this would have given him a clear knowledge of the financial services industry and how it was regulated.

The complaint was later referred to the Financial Ombudsman Service. One of our investigators said we shouldn't uphold it, but Mr N still disagreed. As the parties have been unable to resolve the dispute informally 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 read with great care everything that's been said by both parties and also what our investigator said in their 'view'. And having done this, I'm not upholding Mr N's complaint. In doing so, I'm in agreement with the key points our investigator made about Mr N's knowledge and experience in this field, and why this meant any warnings Zurich could have given Mr N wouldn't likely have altered what he then did.

<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 Zurich was subject to the FSA/FCA Handbook, and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA/FCA rules governing pension transfer requests, but the following have particular relevance here:

- Principle 2 – A firm must conduct its business with due skill, care and diligence;

- Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;

- Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and

- COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

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

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

- An insert to be included in transfer packs (the ‘Scorpion insert’). The insert warns readers about the dangers of agreeing to cash in a pension early and identifies a number of warning signs to look out for.

- A longer leaflet issued by TPAS which gives more information, including example scenarios, about pension liberation. Guidance provided by TPR on its website at the time said this longer leaflet was intended to be sent to members who had queries about pension liberation fraud.

- An ‘action pack’ for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should “look out for” various warning signs of liberation. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where transferring schemes still had concerns, they were encouraged to write to members to warn them of the potential tax consequences of their actions; to consider delaying the transfer; to seek legal advice; and to direct the member to TPAS, TPR or Action Fraud.

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

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

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

That said, the launch of the Scorpion guidance was an important moment in so far 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.

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. And where the recommendations in the guidance applied, absent a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations. With that in mind, I take the view that personal pension providers dealing with transfer requests needed to heed the following:

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

2. When TPR launched the Scorpion guidance in February 2013, its press release said the Scorpion insert should be provided in the information sent to members requesting a transfer. It said on its website that it wanted the inclusion of the Scorpion insert in transfer packs to "become best practice". The Scorpion insert provided an important safeguard for transferring members, allowing them to consider *for themselves* the liberation threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. So, all things considered, I think the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party – 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.

The circumstances surrounding the transfer and Mr N's recollections

Mr N says he received a cold telephone call from UC and discussed his pension investments with someone from the firm. UC wasn't authorised by the regulator to provide financial advice and the inference from Mr N is that he lacked the knowledge and experience to know better and was led to invest in high-risk investments which were wholly unsuitable for him. Mr N's assets are now incapable of being sold on the open market. He has therefore lost the vast majority of his pension savings by reason of this pension transfer and the investments placed within the SSAS.

I can't confirm the existence of an unsolicited call, but I think there's strong evidence supporting the involvement of UC at the outset and most likely before Rowanmoor became involved. I start with the testimony from Mr N himself. He says that over the course of the discussion(s) he had with UC, it was the 'adviser' from UC that said he should transfer his pension and invest in storage units. So I can accept the idea and recommendation may have come from UC.

As I've said, UC was registered at a business address which was also the same business address as the accountancy firm CML, which witnessed Mr N's signature on the SSAS application. In my view, this strongly implies that Mr N used an accountancy firm which was involved in these discussions at some point. And upon being recommended to set up "Mr N Ltd" in order to have an 'employer' link to the SSAS, this too was also registered at the same business address as the accountants and also UC.

Mr N's motives for transferring appear to have been to generate higher returns for his pension rather than to receive unauthorised payments from it. Mr N was, by his own description, a medium-risk investor which I've taken to mean that he was an investor who would know that returns certainly aren't guaranteed. I would expect Mr N also to have a significant and understanding of investments himself as a result of his past career as an investment adviser and probably likely an ability to make many investment decisions on his own.

I've noted that he had previously held a CF21 investment adviser accreditation, with FSA controlled customer facing status used by investment and pensions advisers. This would have involved studies and qualifications on the nature of investment and pensions products. He worked within a leading financial advice network company and was also a sole trader working within a different network of advisers, again for a major and well-known financial services firm until 2005. So, Mr N at the time was an ex-investment adviser, with his own pension that he had taken out at the time he was performing this role. I don't have any reason to doubt Zurich's argument that he is recorded as the adviser for the sale of this plan, as this is plausible based on what can be viewed publicly of the nature of Mr N's role.

I accept it's likely the original idea of opening a SSAS and then investing in storage units came from external factors such as UC, but I think unlike many consumers, Mr N would have been able to appreciate that this was a more complicated and esoteric arrangement which involved a far from typical practice of setting up a new company and opening a SSAS. In my view, he would also reasonably have known about the higher level of investment risk associated with the storage unit investment.

When he brought this complaint to the financial ombudsman service, Mr N said that he had no experience of investments. But I'm afraid the evidence simply doesn't support this; he held a portfolio of shares but more so, his background in investment advice was significant, and I think, very meaningful to what he went on to do. It's also been argued Mr N only worked as a mortgage adviser, but I don't find that credible either, on the basis that he held the investment adviser function since at least 2001 (the FSA/FCA records only go back to 2001) - whereas the FSA only began regulating mortgage advice in October 2004.

What did Zurich 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. I've considered that Zurich has previously told our service that Scorpion information was sent out as a matter of routine. However, I don't think this means it necessarily would have reached Mr N himself – I think it's more likely that Zurich at the time routinely sent out the Scorpion insert to the firm(s) requesting pension and / or transfer information. I've seen no evidence that consumers were copied in other than when they themselves had made the request. But *for the purposes of this particular case only*, even if I accept a Scorpion warning leaflet was provided here, I don't think this would have made any material difference. I don't think this would have caused Mr N to act any differently given his existing knowledge and financial services experience.

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. Zurich didn't undertake any further due diligence.

Given the information Zurich had at the time, one feature of Mr N's transfer would have been a potential warning sign of liberation activity as identified by the Scorpion action pack: Mr N's SSAS was recently registered. In checking the Scheme was correctly registered – which it would have needed to have done – it would have become apparent when it was registered.

Zurich should therefore have followed up on this to find out if other signs of liberation were present. Given this warning sign, I think it would have been fair and reasonable – and good practice – for Zurich to look into the proposed transfer and the most reasonable way of going about that would have been to turn to the check list in the action pack to structure its due diligence into the transfer.

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

1. The nature/status of the receiving scheme

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

2. Description/promotion of the scheme

Sample questions: Do descriptions, promotional materials or adverts of the receiving scheme 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?

I don’t think it would always have been necessary to follow the check list in its entirety. And I don’t think an answer to any one single question on the check list would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the check list to establish whether liberation was a realistic threat. Given the warning sign that should have been apparent when dealing with Mr N’s transfer request, and the relatively limited information it had about the transfer, I think in this case Zurich should have addressed all three parts of the check list and contacted Mr N as part of its due diligence.

<u>What should Zurich have found out?</u>

Investigations under part 1 of the check list would have revealed a receiving scheme newly registered with HMRC and sponsored by a newly registered employer. And from asking Mr N Zurich would have found out he had very recently applied to open a SSAS and he was the sole trustee and member. The sponsoring company for the SSAS didn’t employ him or provide him any income. It was a dormant company and as I’ve said, incorporated only very recently. He was its sole director and shareholder. It never traded - the company seems to have existed only to allow the SSAS to be opened.

Investigations under part 2 of the check list would have revealed a link to unusual and higher risk investments. And investigations under part 3 would have shown Mr N had been encouraged to transfer to the SSAS and invest in storage units by a non-regulated firm and that this arrangement had come about from a cold call.

The check list recommends that in order to establish whether its member has been advised by a non-regulated adviser, the ceding firm should “*check whether advisers are registered with the FSA at www.fsa.gov.uk/fsaregister*”. In other words, they should consult the FSA’s online register of authorised firms. Zurich should have taken that step, which is not difficult, and it would quickly have discovered that UC was indeed unauthorised.

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

My view is that Zurich should have been at least concerned by UC’s involvement because it pointed to a breach of FSMA. On the balance of probabilities, I’m satisfied such a breach occurred here.

What should Zurich have told Mr N – and would it have made a difference?

I think Zurich's failure to uncover this risk of illegal advice and then warn Mr N about it meant it didn't meet its obligations under Principles 2, 6 and 7 and COBS 2.1.1R. With those obligations in mind, it would have been appropriate for Zurich to have informed Mr N that the firm he had been advised by was unregulated and could put his pension at risk. Zurich should have said only authorised financial advisers are allowed to give advice on personal pension transfers, so he risked falling victim to illegal activity and losing regulatory protections.

Any messages from Zurich would have followed from better due diligence and then likely conversations with Mr N. So, these would have seemed to him (and indeed would have been) specific to his individual circumstances and they would have likely been given in the context of Zurich raising concerns about the risk of losing pension monies, as a result of untrustworthy advice as described above. The purpose of this would have been to make him aware that there were serious risks in using an unregulated adviser even if he was not liberating his pension.

However, my role as an ombudsman is to look at all the relevant aspects of the complaint and to arrive at an impartial judgement, which is fair and reasonable in all the circumstances. And I'm not satisfied any messages from Zurich along the lines I've set out above would have changed Mr N's mind about the transfer.

Whilst I think the gravity of any messages along these lines would have prompted *most* people to change their mind about pursuing the investment, I've seen convincing reasons in this specific case (which are explained below) that Mr N would have been different to most people. I say this because I have considered very carefully that whilst Zurich clearly didn't act as it should have in its dealings with Mr N, overall I still agree with the investigator that I think he would have proceeded with the transfer out of his personal pension and therefore suffered the same investment losses that followed.

Zurich ought to have undertaken due diligence and then taken appropriate action by engaging with Mr N if it was apparent its customer might be at risk. In practical terms therefore, adherence to these standards would have probably seen Zurich's role as contacting Mr N and pointing out to him that something didn't look right. But the crucial question is whether this would have changed anything. Overall I think Mr N would have known all this already: he would have known of the higher risks, the involvement of an unregulated firm and the establishment of a SSAS not being a typical way to facilitate the investment. He wasn't liberating his pension and so the Scorpion insert might have seemed to him to be of very limited use.

I find the evidence much more persuasive that Mr N was a medium-risk investor seeking to yield more for his pension funds. The prospect of earning around 12% per year in an otherwise low interest rate environment was something he was interested in. He was qualified as an investment adviser in the past – so in my view he would, or should reasonably, have known to check the status of the firm advising him by virtue of the fact that in his past career he had to have those qualifications.

I think someone with his knowledge of investing would also have known to be aware of *"too good to be true"* investment proposals – especially those coming out of the blue by way of a cold call – even if he was relatively new to all the specific risks posed by this particular investment. Mr N would have also known that regulated financial advice would protect him as an investor and he would have certainly known how to go about getting it. I think the evidence shows he'd considered (or should have considered) all these issues before Zurich could have contacted him - and decided to proceed in any event.

In arriving at this view, I've considered that this type of investment in storage units may have been somewhat different to the sorts of (regulated) investments Mr N would have sold whilst an adviser himself. But even if the idea was 'sold to him' by UC, I think Mr N had much more capacity than the average person to appreciate the risks.

So, I don't think Zurich's actions, would have changed anything. Zurich's actions could only really have pointed out issues and risks that Mr N, a medium-risk investor and a person with significant investment experience, would have known about already. I think that ultimately he accepted the risks and went ahead with the investment because it was something he wanted to do at the time.

I'm sorry to disappoint Mr N.

My final decision

For the reasons given above, I am not upholding this complaint or directing Zurich Assurance Ltd to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 5 June 2024.

Michael Campbell
Ombudsman