

## The complaint

Mr M complains about the advice Zurich Assurance Ltd gave to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

Professional representatives have helped Mr M to bring this complaint. But, for ease of reading I will refer to their comments as being Mr M's.

## What happened

### Provisional decision

On 25 October 2022 I issued a provisional decision and invited Zurich and Mr M to comment on it. For ease of reference I've copied the relevant extracts from that provisional decision below.

#### ***"What happened***

*Mr M was a deferred member of his previous employer's DB scheme. He stopped working for that employer in 1988. In 1991 Mr M spoke with an adviser to discuss his pensions and retirement provisions. At the time of the advice, the adviser was working for a different firm, but as that firm is now part of Zurich, I will only refer to Zurich in this decision.*

*Zurich completed a fact-find to gather information about Mr M's circumstances. Amongst other things it recorded that:*

- *Mr M was 30 and single.*
- *He was employed earning £17,500 a year.*
- *He had regular outgoings, including his mortgage repayment, of around £1,090 a month.*
- *He was making payments into a personal pension of £50 a month.*
- *His DB scheme had a cash equivalent transfer value of £8,961, which would pay him a lump sum at age 60 of £4,354 together with a yearly income of £1,451.*
- *He had a medium level attitude to risk.*

*Zurich noted that its recommendation was to:*

*"Transfer [Mr M's DB scheme benefits] into DBT [a named personal pension] to improve prospective retirement benefits through investment. Informed client that it is possible to transfer into present PP [personal pension]. Client wishes to leave TV [transfer value] separate."*

*In 2021, around three months before his 60<sup>th</sup> birthday, Mr M approached his former employer about claiming his DB pension. His former employer told him that he had previously transferred his benefits to another pension and as such had no entitlement to*

*his DB benefits.*

*Mr M complained to Zurich. Amongst other things he said*

- *Zurich's advice was negligent as the pension transfer wasn't suitable for him and not in his best interests..*
- *Zurich didn't make clear that a personal pension would have to grow significantly In order to match the benefits of his DB scheme.*
- *He was an inexperienced investor and Zurich didn't advise him of the guaranteed benefits he would lose by transferring out of the DB scheme.*
- *The DB scheme had guaranteed death benefits that were lost when he transferred.*
- *The personal pension was subject to fees whereas the DB scheme wasn't.*
- *Zurich didn't comply with its "regulatory duty".*

*Zurich replied. It said it had invited Mr M to take part in an industry-wide review of potential mis-selling of pensions in 1999 but Mr M hadn't replied. It said that as a result Mr M was outside of the applicable time-limits to bring his complaint.*

*Mr M brought his complaint to us. He explained that by 1999 he had moved house and didn't receive Zurich's letters inviting him to take part in the pensions review. Zurich objected to us looking into the complaint on the basis that Mr M had brought it out of time. One of my colleagues issued a decision explaining why Mr M's complaint wasn't out of time.*

*One of our Investigators looked into Mr M's complaint. He initially upheld it. But after further review he said he wasn't upholding it. He said that, if Zurich had conducted a review of Mr M's pension in 1999, given the high projected growth rates for investments in 1991, Zurich would have concluded that Mr M hadn't suffered a loss.*

*Mr M disagreed. Amongst other things he said that we had upheld other complaints with similar circumstances.*

*The Investigator wasn't persuaded to change his opinion, so the complaint was referred to me to make a final decision.*

### ***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.*

*I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. Where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.*

### ***The applicable rules, regulations and requirements***

*At the time of the advice the regulator was the Life Assurance and Unit Trust Regulatory Organisation (LAUTRO). Its code of conduct said advisers should not advise customers to convert, cancel or allow to lapse any occupational pension, unless they genuinely believed it to be in the consumer's best interest and clearly disclosed all relevant consequences and disadvantages of doing so. LAUTRO's rules also required firms to keep records to show their compliance with the regulatory requirements.*

## *The pensions review*

*In 1994, the Regulator at the time established an industry-wide review of particular pension business carried out by authorised firms between 29 April 1988 and 30 June 1994. It was generally known as the "Pensions Review". The intention was for the advising firms concerned to invite affected consumers to take part in the review.*

*Mr M didn't receive Zurich's invitation for it to review the sale of his pension in 1991. But Zurich wasn't aware of that, so the opportunity to review his pension at that time was lost. That means that Zurich didn't carry out a review of the sale or a loss assessment based on the assumptions at the time. So, I will look at the suitability of its advice by considering its requirement to act in Mr M's best interests at the time.*

### *Was Zurich's advice in Mr M's best interest?*

*At the time of the advice Zurich should only have advised Mr M to transfer his pension if it genuinely believed it was in his best interest to do so. And, in explaining the reasons for its recommendation Zurich was required to clearly disclose the advantages and disadvantages of doing so. It was also required to keep records showing that it had met its regulatory requirements.*

*The documents Zurich has provided are brief. From what it has shown us it's apparent that it carried out a fact find of Mr M's circumstances and gathered details of his DB scheme pension entitlement. It appears that Zurich recommended Mr M transfer out of his DB scheme in order to improve on the benefits he would've been entitled to. But Zurich's provided no evidence of any analysis of the benefits Mr M would be giving up compared to what he stood to gain from the recommended transfer to a personal pension. While I'm aware of the level of growth that Mr M could reasonably have expected at the time of the advice, there's no evidence to demonstrate whether that level of growth would've been sufficient for Mr M to have exceeded the level of income his DB scheme would've provided at retirement. So, for this reason alone, I don't think the evidence supports the transfer was in Mr M's best interest.*

*Furthermore, Zurich hasn't shown that it made it clear to Mr M what the advantages or disadvantages were of him transferring. And there's no evidence it pointed out that by transferring out of his DB scheme he would be giving up a guaranteed and index linked income in retirement and instead would be investing in a product that was subject to investment risk and the volatility of the financial markets. So I'm not satisfied that Zurich did all it needed to do to ensure that Mr M was aware of the consequences and disadvantages of transferring out of the DB scheme. It follows that I don't think Zurich gave Mr M all the information he needed in order to make an informed choice about whether or not he wanted to transfer out of the scheme.*

*Of course it's possible that if Zurich had given Mr M all the appropriate information he needed in order to make an informed choice he might have decided to transfer. But based on the evidence I've seen, I don't think it would be fair for me to second guess, even on the balance of probabilities, what decision Mr M would have come to if Zurich had given him all the appropriate information. And as it didn't give him enough information to make a fully informed decision I'm satisfied that its advice was not in Mr M's best interest. And but for that advice its likely he would not have transferred out of his DB scheme. So I think Zurich should compensate Mr M for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology."*

Neither Zurich nor Mr M made any substantive comments concerning 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.

As neither Zurich nor Mr M objected to my provisional decision I see no reason to change it.

### **Putting things right**

A fair and reasonable outcome would be for Zurich to put Mr M, as far as possible, into the position he would now be in but for Zurich's unsuitable advice.

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and has set out its proposals in a consultation document - CP22/15-calculating redress for non-compliant pension transfer advice. The consultation closed on 27 September 2022 with any changes expected to be implemented in early 2023.

In this consultation, the FCA has said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 whilst the consultation takes place. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with any new rules and guidance that may come into force after the consultation has concluded.

We've previously asked Mr M whether he preferred any redress to be calculated now in line with current guidance or wait for any new guidance/rules to be published. He has chosen not to wait for any new guidance to come into effect to settle his complaint.

I'm satisfied that a calculation in line with FG 17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr M. Zurich must therefore undertake a redress calculation in line with the guidance in FG 17/9.

For clarity, I'm aware that Mr M had intended to take his benefits from his DB scheme at the scheme's normal retirement age of 60. So, Zurich should base the compensation on that normal retirement age of 60, as per the usual assumptions in the FCA's guidance. This calculation should be carried out as at the date of my final decision and using the most recent financial assumptions at the date of this decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr M's acceptance of my final decision.

Zurich may wish to contact the Department for Work and Pensions (DWP) to obtain Mr M's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on

Mr M's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr M's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr M as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement - presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mr M within 90 days of the date Zurich receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% a year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes Zurich to pay Mr M.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above. So any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

If the complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect Zurich to carry out a calculation in line with the updated rules and/or guidance in any event.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that Zurich pays the balance.

### **My final decision**

Determination and money award: I uphold this complaint and require Zurich Assurance Ltd to pay Mr M the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require Zurich Assurance Ltd to pay Mr M any interest on that amount in full, as set out above. Where the compensation amount already exceeds £160,000, I would only require Zurich Assurance Ltd to pay Mr M any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Zurich Assurance Ltd pays Mr M the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr M.

If Mr M accepts my final decision, the money award becomes binding on Zurich. My recommendation would not be binding. Further, it's unlikely that Mr M can accept my decision and go to court to ask for the balance. Mr M may want to consider getting independent legal advice before deciding whether to accept any

final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 12 December 2022.

Joe Scott  
**Ombudsman**