

The complaint

Mr D complains about Zurich Assurance Limited. He says that Zurich has informed him that when he transferred his pension to another business, the transfer value was too low. This is because Zurich has incorrectly applied the plan charges. Zurich has discovered this error and has paid Mr D compensation. Mr D thinks it hasn't calculated the compensation correctly.

What happened

Mr D held a Pension Plan with Zurich. In January 2014 this plan was transferred to a third-party provider. Mr D transferred £418,131.63 and then took a tax-free cash withdrawal of £104,532.91. Mr D made a smaller withdrawal in September 2021.

In February 2022 Zurich wrote to Mr D as part of a remediation scheme. It explained that it had made a mistake in the amount it transferred from Mr D's pension plan and the amount was lower than it should have been. This is because it had calculated the annual management charges incorrectly and it had effectively 'overcharged' Mr D for a significant time.

Zurich calculated that if it had correctly applied the charges his policy would have been worth more in 2014 when he transferred it. It said his plan transfer value should have been £16,612.60 higher. It added interest to this and deducted basic rate tax from the interest. Giving a total payment to Mr D of £17,072.28.

Mr D complained in 2022 to Zurich about the calculation of the loss he had suffered. He explained that if this increased fund had been invested in his new pension arrangement it would have increased more than the interest that Zurich had added. And he would have been able to take a greater amount of tax-free cash in 2021. So, he didn't think the compensation was adequate. He also thought that he should be provided with a significant payment for the distress and inconvenience this issue had caused him.

Zurich agreed that Mr D's compensation payment should be increased. It added interest at 0.35% less than the Bank of England base rate to the increased transfer value of £16,6012.60 and deducted basic rate tax from the interest. Giving a total payment to him of £18,225.60. But this still wasn't close to the amount that Mr D thought he should receive.

Mr D referred his complaint to our service. An Investigator looked into it, and I've seen the correspondence between all the parties up to when he issued his opinion. I note that, in very broad terms, our Investigator initially thought that compensation should be based on the investment growth that Mr D would have received if he had transferred a higher amount into his new pension plan. It should reflect his tax position, and the increased amount of tax-free cash, he would have been able to take.

Our Investigator went on to uphold the complaint. He said that the remediation scheme that Zurich has started to address this problem was reasonable overall. But it should have taken a different approach for Mr D's circumstances. He agreed that a cash repayment was reasonable given the complications that can exist paying into a personal pension, particularly

where some benefits have been taken. And the arrangements that Zurich has said it made with HRMC itself in respect of this. But in broad terms he said that Mr D should receive compensation based on:

- A payment of £4,4153.15 to reflect the increased tax-free cash that that Mr D could have taken on 10 January 2014. Interest of 8% simple should be added this from the 10 January 2014 to the date of payment.
- The remaining £12,459.45 should be increased by the investment growth that Mr D would have received had it been invested in the same way the other benefits he transferred out were. This was a range of funds on the Transact platform.
- A payment of £150 for the distress and inconvenience that this had caused Mr D.
- Some adjustments for the notional tax that Mr D would pay when the pension would become payable.

Zurich agreed to what our investigator said.

Mr D largely agreed but he thought that the settlement date should be 9 February 2022. This is when he should have received the correct remediation payment. And the compensation now has to be paid in cash rather than into his pension, and so it is effectively a withdrawal at this point. And this would reflect this position Mr D would now be in if it had fairly put right the error at this time. Interest should be added from 9 February 2022 to the date of payment at the rate of 8% simple.

Our Investigator agreed that this was reasonable, given that Zurich now says it cannot pay Mr D's compensation into his new pension arrangements.

Zurich didn't agree with using the settlement date of 9 February 2022. This is because Mr D hasn't taken the benefits from his pensions and so it shouldn't be assumed that he would have taken this money early. It puts Mr D in a better position that he would have been in had it acted correctly.

There was some further correspondence, but the Investigator wasn't persuaded to change their opinion, and Zurich didn't agree. So, the complaint was referred to me to make a final 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.

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.

And 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.

It's not disputed that Zurich's error has caused Mr D a loss. And what is reasonable compensation has been broadly agreed. The remaining issue to decide is whether the loss should be 'crystallised' at 9 February 2022. This is when Zurich informed Mr D about the error and took steps to correct it.

Zurich thinks that Mr D's investment loss should be calculated to the date of the loss payment. This is because if it had transferred the correct amount this would be a more

accurate estimate of the monetary loss he has suffered. It thinks using an 'end date' to the loss of 9 February 2022 potentially overcompensates Mr D.

The correct way to put Mr D back into the position he would have been in would be to firstly reconstruct his Zurich pension plan at the date of transfer to reflect the value it would have had if the charges been applied correctly. Zurich seems to have done this.

Zurich should then go to Mr D's current provider and find out what his current pension would be worth if this amount been transferred to it in 2014. It should make a payment to Mr D's current provider to bring his fund up to this level. This could be different from the investment loss incurred due to charges and so on, if only by a modest amount.

Zurich has said that it's taken guidance from its own taxation specialists and has contacted HMRC about the taxation of the remediation scheme. Because of this, it now says that it will only pay a cash settlement, rather than take steps to make a payment into one of Mr D's pension plans. And this is further complicated by the fact that the initial compensation has been paid to Mr D and Zurich says HMRC would now consider this to be an 'unauthorised payment' into a pension plan. Zurich says that Mr D will not be disadvantaged by this. But overall, I don't disagree that it now may be complicated to make a payment to Mr D's pension plan.

I appreciate that Zurich did feel it was right to compensate its customers using a remediation scheme. And this may have been the best solution overall. But this doesn't mean that Zurich must always pay compensation in this way, especially when it isn't entirely right. And it's clear here that if Mr D accepts a cash payment, he won't be completely put back in the position he would be in had Zurich acted correctly. And this isn't entirely fair.

And it does seem there is an element here of Zurich saying that Mr D should be subject to the investment risk that increasing his new pension would be subject to. Whilst at the same time saying it can't pay into his pension, which disadvantages him. This doesn't seem reasonable to me.

He will be put back in a similar position to how he should be in monetary terms. And he will be able to use the compensation as he sees fit. But accepting a cash payment is still a compromise on Mr D's part. He says because of this he wants the certainty of the value of the compensation calculated as at the 9 February 2022. With interest added from that date until payment. I don't think this is unfair, on the face of it.

Zurich says that this may overcompensate Mr D. It's not provided detail of why this is, but I'm assuming it's reasoning would be that if his current pension arrangements have fallen in value from 9 February 2022, the compensation may give him a higher monetary amount.

I accept this may be the case. Although, whether this advantages Mr D won't really be known until the compensation is paid. And investment markets have shown some uncertainty recently, it's this uncertainty that Mr D wants to avoid. I don't think it's unreasonable to treat the compensation as essentially a withdrawal taken on 9 February 2022 as he says. Albeit one he didn't ask for.

Given all the circumstances of this case I don't think it's unreasonable that the compensation is based on a 'crystallisation date' of 9 February 2022. My decision is that the compensation should be paid on this basis.

Zurich's initial offer was much lower than the amount Mr D had evidently lost. And even when Mr D provided evidence to show this was the case it only increased its offer by a small

amount. The compensation I've awarded is a fairly common way of putting this kind of problem right and it won't have been unfamiliar to Zurich. I don't see why it didn't move closer this kind of compensation much sooner.

So, I agree that this issue has caused Mr D some distress and inconvenience when it shouldn't have. And that the £150 the Investigator recommended is reasonable to compensate for this.

Putting things right

To compensate Mr D fairly:

- Zurich should pay Mr D £4,153.15 plus interest at the rate of 8% simple*. Interest should be applied from 10 January 2014 until the date of settlement. This is to compensate Mr D for the larger amount of tax-free cash he could have taken.
- Zurich should also determine what an investment of £12,459.45 would be worth as at 9 January 2022 if it was invested on 10 January 2014 in Mr D's new personal pension. If this value is greater than the initial investment, then this is the loss. And Zurich should pay this increased amount to Mr D (that is the initial investment of £12,459.45 plus any growth it would have received until 9 February 2022). This should also be increased by interest at the rate of 8% simple* from 9 February 2022 to the date of settlement.
- If the actual the above calculation results in a lower amount then no compensation is payable for this element of the loss.
- Zurich says it is unable to pay the compensation into Mr D's pension plan, so it should pay that amount directly to him. But had it been possible to pay into the plan, it would have provided a taxable income. The compensation calculated with reference to his new pension arrangements (that is not the tax-free cash) should therefore be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr D won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr D's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume that Mr D is likely to be a basic rate taxpayer at the selected retirement age, so the reduction should equal 20%.
- Zurich should deduct any amounts already paid to Mr D as compensation and pay him the difference between the compensation calculated above and what he has already been paid.
- Zurich should pay Mr D £150 for the distress and inconvenience this issue has caused him.

Zurich should also provide the details of the calculation to Mr D in a clear, simple format.

*Income tax may be payable on the 8% simple interest paid. If Zurich considers that it is required by HM Revenue & Customs to deduct income tax from that interest, it should tell

Mr D how much it has taken off. Zurich should also give Mr D a tax deduction certificate in respect of interest if Mr D asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

My final decision

I uphold this complaint and require Zurich Assurance Ltd to pay Mr D the compensation amount as set out in the steps above.

If Mr D accepts this decision, it becomes binding on Zurich Assurance Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 20 April 2023.

Andy Burlinson
Ombudsman