

The complaint

Mr M complains that Zurich Assurance Ltd (Zurich) misinformed him about drawing his pension benefits causing a delay whilst the value of his fund was falling. He would like compensation for the losses.

Your text here

What happened

Mr M had a personal pension plan (the plan) with Zurich. He says he wanted to take benefits after 6 April 2022, as he'd received State benefits that would have to be repaid if he took his pension before then. In August 2021 he contacted Zurich to ask if he could just take tax-free cash. It said the plan didn't offer this but could be transferred to a different provider if required. A few days later the Origo electronic transfer system was discussed, and Zurich sent Mr M transfer forms. He called again on 27 January 2022 about taking all his benefits in one go (Uncrystallised Funds Pension Lump Sum - UFPLS) and it sent him the necessary form.

On 1 March 2022 Mr M called and asked if the fund value could be frozen until 6 April 2022. Zurich said this wasn't possible. He said the value of his fund had fallen and there was a discussion about the investment funds held. The process of taking benefits was discussed again including the option to postdate the paperwork to be dealt with on or after 6 April 2022. Mr M said he'd think about this.

Mr M then called Zurich on 8 March 2022 to chase the transfer of his plan to another provider, via the Origo system. Zurich said it hadn't received a transfer request which needed to be made by the other provider. He said he was concerned about sharp falls in the value of his investment and wanted to access his fund urgently and asked the quickest way to do this. Zurich said Origo was the quickest way. Mr M asked if there was another option and Zurich explained how he could draw the benefits and the timeframes involved. It said the value used would be the day of the request if received before noon, or the next day if after. But could then take up to three weeks to complete. Mr M asked again if the value could be frozen. Zurich said it couldn't but as he was quite distressed it opened a complaint. He completed the forms already sent to him, returning them by next day delivery.

On 10 March 2022, Zurich called Mr M because he'd been distressed on the call of 8 March 2022. It said it had received his claim form and the value had been frozen that day and it would prioritise the claim reducing the timeframe from ten working days to five. Mr M said he'd lost money on the policy due to Zurich's poor advice and confusion over the transfer. Zurich said if he'd mentioned he was concerned that his funds were high risk it could have discussed other funds with him. It asked him if he wanted to continue taking his benefits and he confirmed that he did, and payment was made on 18 March 2022.

Zurich said it thought there had been a misunderstanding about what Mr M wanted and it would look into it. But it didn't uphold his complaint. It said no incorrect or misleading information had been provided and there weren't any delays or poor service. It said investment funds prices changed daily so it couldn't guarantee any value until it received all its requirements. And the recent falls in the stock markets were outside its control.

Mr M said he understood Zurich didn't provide financial advice but it was there to provide factual information and options under the plan so he could "*make the correct choices*". He said if it had told him about the option to switch his investments to a safer fund before 10 March 2022 or provided him with documents by email earlier the losses suffered in March 2022 could have been avoided.

Mr M referred his complaint to our service and our investigator looked into it, but he didn't uphold it.

Our investigator said Zurich didn't provide advice, so it couldn't recommend Mr M switch investment funds even though he was concerned about falling values. He said the annual statements confirmed Zurich couldn't give advice about switching. And also reminded Mr M to review his investment fund choices and to take financial advice if required. He said the core reason for Mr M's calls was to discuss transfer or the process to take his benefits rather than switching investments.

Our investigator said that Zurich had correctly confirmed its processes in earlier calls. But Mr M had confirmed his plans had changed on 8 March 2022 and the confusion over the Origo system, but this related to the other provider rather than Zurich. He said Origo was the quickest way to transfer but Mr M now wanted to access his funds immediately due to his concerns about further falls in value. Our investigator said when Zurich called Mr M on 10 March 2022 it gave him the option to cancel the withdrawal and did discuss switching funds. But Mr M chose to proceed with the withdrawal, which was processed promptly.

Mr M didn't agree. He said Zurich hadn't provided any alternative options until 10 March 2022 when it was too late. He said he'd told it he wanted to stop the losses, but it had only discussed transfer via Origo or a postal application to take benefits. Our investigator said Mr M main concern was whether to transfer the plan or to take benefits rather than switching investments. And it would have been inappropriate for Zurich to recommend he simply switched funds. Mr M said his complaint was about what was not offered and had Zurich had dealt with things correctly he wouldn't have wasted time considering transfers.

As Mr M doesn't agree it has come to me to decide.

My provisional decision

I issued my provision decision on 18 May 2023; I explained the reasons why I was planning to uphold the complaint. I said:

I've considered all the available evidence and arguments to decide (provisionally) what's fair and reasonable in the circumstances of this complaint. Having done so I am planning to uphold the complaint.

At this stage I don't think Zurich has treated Mr M fairly. There was some confusion about the process involved in taking the benefits or transferring the plan to another provider. I think Zurich explained these matters fairly, and unfortunately, Mr M either somewhat misunderstood these explanations or has forgotten the specific details since then.

These misunderstanding were a contributing factor to what happened. However, I think the key issue of this complaint is that Mr M was repeatedly expressing concerns about the falling value of his investment during a very turbulent period for investment markets. I think it was clear he was seeking was the most expedient option to protect the capital value of his investment before accessing his benefits.

Zurich has said that information about fund switching and that investors should check fund choices remain appropriate, is set out in annual statements and other documents sent to Mr M during the life of his pension. So, he would be aware of these options. It says the wording of this information is carefully selected to avoid providing any advice. And it says if he'd "specifically" asked about fund switches during the calls it:

"would have confirmed this was an option and factual information about the funds available would have been provided."

But that:

"being told unprompted of the possibility to switch into a less volatile fund could easily have been construed by Mr M as "financial advice""

That investment losses were Mr M's primary concern is very clear on the calls made in March 2022. Particularly the call of 1 March 2022, where his investments were discussed in some detail. Zurich wasn't providing advice and nor was it able to do so. But it did provide some information about investment funds during this call and, unfortunately, I think it may have inadvertently confused Mr M as well.

During this call Mr M asks:

"Can I freeze or protect the funds?"

The call handler says:

"unfortunately no it's on the stock market, you can't protect it"

A discussion follows about the investment funds held in Mr M's plan. Principally the geographical spread of one, the Far East fund, which he is concerned about and whether it had holdings in Russia. The call handler checks and explains where the fund predominately invests. Mr M then asks how frequently the funds can go up or down. The call handler says they go up and down every day and continues:

"I know a lot of the stock market has been hit with the conflict in Russia and Ukraine and it has hit everything not just pensions ..."

Whilst I think it was unintended these comments could be construed as meaning that there was no option but to sit the current investment volatility out. Discussion then turns back to whether Mr M could give instructions to draw benefits after 6 April 2022 and whether this would freeze his fund, it is reconfirmed it wouldn't.

Whilst Mr M didn't "specifically" ask about switching investment funds I think it's clear from this call that he wasn't aware that he could. I think it's reasonable that Zurich should have reminded him of this option, or that he might want to take financial advice. It could have directed him to where there was information about the investment funds offered by his plan. And this is what Zurich's complaint handler seems to think should have happened when she called him on 10 March 2022. Had it been mentioned it would have provided Mr M with an alternative option to taking or transferring his benefits.

As Zurich has said, information about the option to switch and ensuring the selected investment funds remain appropriate are detailed in the annual statements sent to Mr M. But as noted above, I think that it's quite clear that Mr M wasn't aware of this at the time. The annual statement issued in October 2021 gave a valuation and breakdown of the investment

funds held. Following this in a section headed "Are your funds right for you?" is the following information in bold:

"Savers who are close to retirement and planning to take their savings as a lump sum or annuity often hold more of their pension pot in cash and bonds, while those with longer to invest or who plan to take drawdown may typically hold more as shares and property.

We offer a range of funds to suit the amount of risk you want to take. If you're thinking of changing funds, please speak to your adviser. If you don't have an adviser you can call us instead. While we can't tell you what funds to invest in, we can point you in the right direction to get the help and support you need."

Mr M was repeatedly expressing concerns about valuations and investment markets. Reminding him of this information or directing him to it wouldn't have constituted providing advice in my view. It would have been no different from the information given on the annual statement, which actually suggests calling Zurich to be pointed "in the right direction".

Had Zurich confirmed earlier that Mr M could switch investment funds whilst stating it couldn't advise him what to do or whether he should. I think he would have made his own enquiries and switched into a fund offering a high degree of capital security like a Cash or Deposit fund that were available with Zurich. Mr M acted promptly on 8 March 2022 when he'd clearly decided the ongoing losses couldn't be continued and it was worth incurring the tax and benefit costs to take control of the situation. So, there is no reason to think he wouldn't have acted equally as promptly had he been aware of the option to switch. Had he been informed and placed switch instructions on 1st or 2nd March 2022, I think it's likely that Mr M wouldn't have accessed his benefits before the new tax year.

So, I don't think Mr M has been treated reasonably. If he'd been made aware I think he would have placed switch instructions the same day. Depending on what time these were received by Zurich, these would have been processed either the next day or the day after that. This may have reduced some of the losses Mr M says were incurred. If so, I think it's reasonable that he be put back in the position he should have been in. I'll set out how I think this should be done below.

I've also carefully thought about what happened after 8 March 2022 when Mr M submitted the request to access his benefits immediately. I don't think he would have done this had he been provided with information about the option to switch investment funds sooner. And doing so did give rise to tax and benefit repayment costs that he says wouldn't have been incurred post 6 April 2022. But I don't think it is reasonable for me to hold Zurich responsible for these costs.

I say this because, whilst I understand Mr M was distressed at the time, I think during the very long call of 10 March 2022, Zurich did treat Mr M fairly. It did explain switching options and that Mr M's funds were now frozen. And it offered to stop the benefit withdrawal process. This was discussed at some length and Mr M was adamant he wanted to proceed with the withdrawal and was fully aware of the consequences of doing so and Zurich could only complete his instructions.

Putting things right

Had Mr M been told about the option to switch I think he would have provided instructions the same day. So, the time of the call on 1 March 2022 is relevant and Zurich should provide evidence to confirm whether the fund switch would have been processed on the 2nd or 3rd March 2022.

- *Zurich should compare the actual value of Mr M's plan on 10 March 2022 when it was frozen for him to access benefits to the notional value available had he switched all funds on the relevant day (the 2nd or 3rd March 2022) to a Cash or Deposit fund (I understand this is to be the Fixed Interest Deposit Fund with Zurich's plan) which I think he would have done had he been made aware of the option to switch.*
- *If this notional value would have been higher, then Mr M has suffered a loss and he should be compensated for it.*
- *As Mr M has fully encashed his plan it won't be possible for Zurich to pay any compensation due into the plan, so it will need to pay any compensation to him directly as a lump sum.*
- *Had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the compensation should 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 M won't be able to reclaim any of the reduction after compensation is paid.*
- *The notional allowance should be calculated using Mr M's actual or expected marginal rate of tax at his selected retirement age.*
- *It's reasonable to assume that Mr M is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr M would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.*
- *If either Zurich or Mr M dispute that this is a reasonable assumption, they must let us know as soon as possible so that the assumption can be clarified, and Mr M receives appropriate compensation. It won't be possible for us to amend this assumption once any final decision has been issued on the complaint.*
- *If there is a loss Zurich should add interest at 8% per year simple to the net compensation it has calculated to the date of settlement.*
- *Income tax may be payable on any interest paid. If Zurich deducts income tax from the interest, it should tell Mr M how much has been taken off. Zurich should give Mr M a tax deduction certificate in respect of interest if Mr M asks for one, so he can reclaim the tax on interest from HMRC if appropriate.*
- *Zurich should provide Mr M with a simple calculation of how it arrived at its figures.*
- *I think Mr M has been caused distress and inconvenience by what happened and that it is fair that Zurich pays him £150 compensation in respect of this.*

I asked parties should now send me any further information or comments they would like me to consider.

Response to provisional decision

Mr M said he accepted my decision. He said the income tax deducted by Zurich on the pension payment had been refunded by HMRC once he'd submitted his tax return due to losses incurred in his start up business. He said he was also unlikely to be a taxpayer in the

current tax year and said it wasn't fair that the compensation I'd proposed be notionally reduced by 15% to allow for tax.

Zurich disagreed with my decision. It said it was "*very disappointed*" I had dismissed the evidence showing it had repeatedly made Mr M aware he was responsible for reviewing his investment selections and making changes, if necessary, in its regular correspondence to him. This included when it sent a pre-retirement pack to him in August 2021. It reiterated its operatives couldn't provide advice on switching and telling Mr M about switching "*unprompted*" could have been construed as financial advice.

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.

Having done so, I've decided to uphold the complaint.

I don't think Mr M has been treated fairly. I don't dispute that Zurich had previously provided Mr M with information that would have made him aware he options to switch funds, and I haven't dismissed this. It isn't the role of our service to tell a business how it should administer products, but we can award compensation when we think procedures used have resulted in unfair outcomes as I think they have here.

I think when Mr M called Zurich, he was clearly concerned about what was happening to the value of his pension. He wanted to take action to protect the value of his fund. And in my view, he wasn't aware – at the time of the calls, probably due to stress and worry - that he could do anything about this other than to draw or transfer the benefits, having repeatedly asked if the value could be frozen and being told it could not.

I don't think it was reasonable for Zurich to discuss in some detail one of the existing funds held, state that all investments were similarly impacted by World events (arguably advice itself on Zurich's interpretation argued here), but then not notify Mr M of features his plan offered that it was prepared to refer to in routine documents issued to him.

Reading a similarly worded script about switching options to the information on the annual statements to Mr M in response to his request that his fund be frozen would not constitute advice in my opinion and I wouldn't construe it as such. That is information and very different from call handler saying, "*you should switch to fund x as it's low risk*" or similar. A caveat could be added that advice wasn't and couldn't be provided and that Mr M might like to take advice if he was unsure about what to do.

This would be merely pointing out features that Mr M's plan provided. Taken to a logical conclusion Zurich's argument would prevent it from discussing any features of Mr M's plan at all, such as what options it offered to take benefits for fear that it may direct him down a particular route and inadvertently "advised" him. I don't think that was reasonable not to mention appropriate features offered by the plan. And the staff member who called Mr M after the complaint was logged also seemed to think he could have been told about switching and to take financial advice if he wasn't sure about what to do.

So, I don't think Mr M has been treated fairly and if he has suffered losses as a consequence Zurich should put him back into the position he should have been in as closely as possible.

Putting things right

Had Mr M been told about the option to switch I think he would have provided instructions the same day. So, the time of the call on 1 March 2022 is relevant and Zurich should provide evidence to confirm whether the fund switch would have been processed on the 2nd or 3rd March 2022.

- Zurich should compare the actual value of Mr M's plan on 10 March 2022 when it was frozen for him to access benefits to the notional value available had he switched all funds on the relevant day (the 2nd or 3rd March 2022) to a Cash or Deposit fund (I understand this is to be the Fixed Interest Deposit Fund with Zurich's plan) which I think he would have done had he been made aware of the option to switch.
- If this notional value would have been higher, then Mr M has suffered a loss and he should be compensated for it.
- As Mr M has fully encashed his plan it won't be possible for Zurich to pay any compensation due into the plan, so it will need to pay any compensation to him directly as a lump sum.
- Mr M has confirmed that the PAYE tax deducted when he encashed his Zurich pension has been repaid by HMRC due to his overall tax position. And due to historical losses carried forward, he doesn't expect to be a taxpayer in the current tax year. So, it isn't necessary to notionally reduce the any compensation due for income tax. Mr M should make any further evidence available to Zurich should it wish to see this.
- If there is a loss Zurich should add interest at 8% per year simple to the net compensation it has calculated to the date of settlement.
- Income tax may be payable on any interest paid. If Zurich deducts income tax from the interest, it should tell Mr M how much has been taken off. Zurich should give Mr M a tax deduction certificate in respect of interest if Mr M asks for one, so he can reclaim the tax on interest from HMRC if appropriate.
- Zurich should provide Mr M with a simple calculation of how it arrived at its figures.
- I think Mr M has been caused distress and inconvenience by what happened and that it is fair that Zurich pays him £150 compensation in respect of this.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint against Zurich Assurance Ltd.

I direct Zurich Assurance Ltd to undertake the loss calculation set out above and if this shows a loss pay compensation to Mr M as outlined.

I further direct Zurich Assurance Ltd to pay Mr £150 compensation for the distress and inconvenience he has suffered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 21 August 2023.

Nigel Bracken
Ombudsman