DRN-5282189

The complaint

Mr T has complained about a transfer of his Zurich Assurance Limited (Zurich) personal pension to a small self-administered scheme (SSAS) in August 2014. Mr T's SSAS was subsequently used to invest in an overseas property development with The Resort Group (TRG). The investment now appears to have little value. Mr T says he has lost out financially as a result.

Mr T says Zurich failed in its responsibilities when dealing with the transfer request. He says Zurich should've 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 T says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Zurich had acted as it should've.

What happened

I issued a provisional decision on 31 December 2024. I've repeated here what I said had happened, my provisional findings and what I said about fair compensation.
'*On 10 September 2013 Portal Financial Services LLP (Portal), a regulated firm, wrote to Zurich enclosing a letter of authority (LOA) signed by Mr T on 30 August 2013. Zurich responded on 13 September 2013 enclosing a transfer claim form and plan information.*

Mr T signed a LOA in favour of Wise Review Limited on 29 November 2013. The heading to the LOA indicated that Wise Review was an introducer. Sorensen Financial Services (Sorensen) was also shown on the LOA. And at the foot of the LOA it said that Wise Review is an appointed introducer to Sorensen, who are authorised and regulated by the Financial Conduct Authority (FCA), with Sorensen's FCA number given.

Wise Review Limited wrote to Zurich on 4 December 2013 with the LOA and requesting a transfer value, projections and discharge forms. At the bottom of the letter it said 'Wise Review Limited are Introducer Appointed Representatives to a number of financial service businesses who provides Financial Reviews and Services to clients.'

On 10 December 2013 Zurich responded and sent a transfer claim form and plan information to Wise Review Limited. Zurich says a copy of the Scorpion leaflet 'Predators Stalk Your Pension' was enclosed.

In January 2014 a limited company was incorporated with Mr T as the sole director. I'll refer to this company as T Limited. On 4 February 2014 Mr T, on behalf of T Limited and as a trustee, signed a trust deed and rules establishing a SSAS. T Limited was the sponsoring employer and Bespoke Pension Services Limited (BPS) was the SSAS administrator.

We've seen a letter from Broadwood Assets Limited (Broadwood). It's undated but Mr T signed it on 9 February 2014 to confirm he'd read and understood it. Broadwood said Mr T was considering an investment in Cape Verde, an overseas commercial property development with TRG and that, under section 36 of the Pensions Act 1995, as a trustee, he was required to take and consider appropriate advice on whether his proposed investment was satisfactory for the aims of the scheme. Broadwood had been appointed to give that *advice. Broadwood hadn't advised on the establishment of the SSAS and its opinion on the investment was provided to Mr T in his capacity as a trustee only, and not in his personal capacity as a member of the SSAS. Broadwood also said it wasn't providing advice that would be deemed regulated under the Financial Services and Markets Act 2000 (FSMA) and Broadwood wasn't regulated or authorised by the Financial Conduct Authority (FCA). If Mr T preferred to obtain regulated advice on the suitability of the proposed investment for him as an individual and a member of the SSAS, Broadwood recommended he seek that from an independent financial adviser.*

Broadwood said TRG investment was a legitimate, credible and substantive arrangement that didn't facilitate pension liberation and was suitable to be held in a SSAS. Broadwood set out a number of risk factors. And it didn't believe the investment was suitable for a cautious investor due to the loss of consumer and regulatory protections. Broadwood concluded the investment was suitable for more adventurous investors, ideally diversified across alternative holdings according to Mr T's attitude to risk (taking into account his duty to act prudently) and his capacity to withstand loss.

On 5 August 2014 BPS wrote to Zurich saying Mr T wanted to transfer to the SSAS and confirming the SSAS was able to accept the transfer. BPS enclosed the following:

- *A letter from HMRC showing the SSAS had been registered on 6 February 2014 and giving the Pension Scheme Tax Reference (PSTR) number.*
- *A copy of the February 2013 longer booklet produced by The Pensions Advisory Service (TPAS) warning about the risks of pension liberation and scams and known as the Scorpion booklet (I mention the Scorpion campaign further below). The first page was signed by Mr T on 6 February 2014 underneath a printed statement which read, 'I can confirm I have read this document. I am not party to any such pensions liberation activity in anyway whatsoever.'*
- *A letter signed by Mr T dated 6 February 2014 (to which I've referred further below) confirming he wanted to transfer and giving his reasons.*
- *Confirmation that Mr T was employed by T Limited, the SSAS sponsoring employer – an agreement dated 28 January 2014 showing he'd been appointed as the managing director of T Limited.*
- *The SSAS trust deed and rules dated 4 February 2014 which had been drafted by a large London law firm.*
- *A letter from that firm confirming they'd drafted the trust deed and rules which conformed to the Finance Act 2004 as a registered pension scheme and hadn't been drafted in a way which knowingly allowed the scheme to be operated other than as a registered pension scheme.*
- *A copy of BPS' 'Policy on Pension Liberation'.*

The letter from Mr T dated 6 February 2014 included the following:

'The purpose of this letter is to provide you with additional confirmation of the basis upon which I have made this request and to seek to provide a record of the fact that I am aware of the issues relating to pensions liberation. Indeed I have carefully considered my decision to request a transfer to the scheme and have not made it lightly.

I confirm that the scheme is a registered pension for HMRC purposes [PSTR number given] and that the trust deed and rules governing it only allow standard benefit options such as annuities and drawdown in accordance with the applicable legal requirements.

From guidance and information I have received in connection with this decision I appreciate that there has recently been a significant rise in cases of 'pensions liberation' fraud. As a *result there is increased concern and scrutiny around transfer requests being made, to ensure members fully understand the implications of making a transfer.*

I therefore wish to confirm that the transfer request is being made in order that I can take advantage of investment opportunities available under the scheme, none of which are in any way connected with pension liberation. I have received detailed information about the Scheme, how it operates, who administers it and the risks associated with making a transfer out of my existing pension arrangement.

In making this transfer I am not seeking to access my pension benefits before age 55 and I am aware of the potentially significant tax liabilities that would arise were I to attempt to do so. Indeed the trust deed and rules of the Scheme do not permit benefits to be taken prior to age 55, except in circumstances of ill health which meet HMRC requirements. I also confirm that I have not been offered any cash or other incentive by any person as part of my decision to transfer my pension to the Scheme.

On this basis I would be grateful if you could please proceed to transfer my pension to the Scheme as requested as soon as possible.'

BPS's letter also included transfer forms and bank details for the transfer payment. BPS confirmed they were a co signatory to the account and the trustees were unable to move any funds without BPS's authority which protected the fund against any risk of pension liberation.

Zurich wrote to Mr T on 14 August 2014 confirming receipt of the transfer claim form and saying that, before proceeding, they needed to be satisfied HMRC would consider it an authorised payment as any unauthorised payment would result in considerable tax charges for Mr T and possibly Zurich too. Zurich said, as a result of increased pension liberation activity, the pensions industry was acting cautiously and making more checks before proceeding with (or declining) transfer requests. Although that slowed down the transfer process, it was designed to provide greater protection to individuals. Zurich said it needed to check the SSAS was still registered and so enquiries were being made of HMRC, which might take some time. If the receiving scheme was still registered, not subject to a deregistration notice and HMRC didn't have any information to indicate there was a significant risk that the scheme was set up, or was being used, to facilitate pension liberation, Zurich would be able to transfer Mr T's pension, assuming he still wanted to do that (and unless, in the meantime, Zurich had become aware of any adverse information about the scheme).

The letter also said confirmation that Zurich was able to transfer the pension shouldn't be taken as any endorsement by Zurich (or HMRC) of the receiving scheme or product. Mr T should still carry out his own checks to satisfy himself the proposed transfer was appropriate. And, in the meantime, if Mr T hadn't yet been advised about the proposed transfer by a UK regulated financial adviser specialising in pensions, Zurich strongly recommended he now obtain such advice. Zurich set out how he could find an independent financial adviser (IFA) and that he could check a financial adviser is registered on the FCA's register, the website address for which was given.

Zurich wrote to BPS on 22 September 2014 saying Zurich had received the required information from HMRC to process the transfer and enclosing a cheque for £29,307.14.

Mr T later became concerned about his SSAS and TRG investment. I understand that initially the investment produced some returns but eventually these dried up. The development of the resort didn't proceed smoothly and there are issues with the legal title to the land. Mr T's investment – a fractional share of hotel accommodation at the resort in Cape Verde – is illiquid and there's no market for sale.

In October 2020 Mr T 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, as was the sponsoring employer, T Limited; there wasn't a genuine employment link to the sponsoring employer; the catalyst for the transfer was an unsolicited call; Mr T had been advised by an unregulated business; and the proposed investment was in unregulated, overseas, high risk and non diversified assets.

Zurich didn't uphold the complaint. It had received on 4 December 2013 a LOA from Wise Review Limited and a request for plan information and a transfer claim form. Zurich sent information and transfer documentation to Wise Review Limited on 10 December 2013 with a copy of the 'Predators Stalk Your Pension' leaflet. The correspondence from Wise Review Limited confirmed they were appointed representatives of Sorensen, a regulated firm. The FCA register shows We Review Limited, who were appointed representatives of Sorensen, were intrinsically linked to Wise Review Limited with the same correspondence and email address. So, even if Mr T didn't receive any advice from a FCA authorised firm, he had access to such advice.

Zurich received BPS's letter on 6 August 2014 which included confirmation the SSAS was registered with HMRC and a copy of the trust deed and rules. And a copy of the 'Predators stalk your pension' booklet signed by Mr T confirming he'd read it. There was also a letter signed by Mr T confirming he'd not been offered cash or any other incentive, he was transferring to take advantage of investment opportunities and he'd received detailed information about the SSAS, how it operated, who administered it and the risks associated with transferring out of his existing arrangement.

Zurich said it had also carried out its own checks. It referred to its letter to Mr T dated 14 August 2014 which set out warnings to Mr T, prompted him to seek regulated financial advice, how he could find an adviser and check if they were regulated. A response was received from HMRC on 17 September 2014 confirming the SSAS remained registered and there was no indication it had been set up to facilitate pension liberation. Zurich also had evidence that Mr T had read and understood information provided to him about pension liberation. Zurich had contacted Mr T directly which was on top of the information provided to Mr T by the SSAS administrator. It was highly doubtful any further contact with Mr T would've changed his mind.

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

At the same time as Mr T's transfer request was made to Zurich, he also made a request to transfer a personal pension held with another provider. That transfer was completed in August 2014. In deciding Mr T's complaint against Zurich, I've taken into account all the information he had from all sources, including in connection with the other transfer. I've also considered the comments made on Mr T's behalf in response to the investigator's view that this complaint shouldn't be upheld.

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.

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

Personal pension providers are regulated by the 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 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 was updated on 24 July 2014 (which was before Mr T's transfer). It widened the focus from pension liberation specifically, to pension scams – which it said were on the increase. I cover the Scorpion campaign in more detail below.

In late April 2014 the FCA had also started to voice concerns about the different types of pension arrangements that were being used to facilitate pensions scams. In an announcement to consumers entitled "Protect Your Pension Pot" the increase in the use of SIPPs and SSASs in pensions scams was highlighted, as was an increase in the use of unregulated and/or illiquid investments. The FCA further published its own factsheet for consumers in late August 2014. It highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.

<u>The Scorpion guidance</u>

The materials in the Scorpion campaign comprised:

- *An insert to be included in transfer packs (the 'Scorpion insert'). The insert warns readers about the dangers of pension scams 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 scams. Guidance provided by TPR said this longer leaflet was intended to be used in ongoing communications with members so that could* *become aware of the scam risks they were facing.*

- *An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "watch out for" various warning signs of a scam. 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 a transferring scheme still had concerns, they were encouraged (amongst other things) to contact the member to establish whether they understood the type of scheme they were transferring to and – where a member insisted on transferring – directing the member to Action Fraud or TPAS.*

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 transfer 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. In deciding how to apply the guidance, they needed to consider the guidance as a whole, including the various warning signs to which it drew attention, the case studies that highlighted different types of scam, and the checklist and various suggested actions ceding schemes might take. 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:*

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

2. *The Scorpion insert provided an important safeguard for transferring members, allowing them to consider for themselves the scam 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.*

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 scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The guidance 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>The circumstances surrounding the transfer – what does the evidence suggest happened?</u>

At the time of the transfer Mr T was 58, and says he was working as a self employed courier/driver earning less than £25,000 pa. He wasn't a high net worth individual or a sophisticated investor and he had no experience in pensions or investments. He had no savings or investments save for two buy to let properties and a minimal amount in British Gas and Santander shares. His attitude to investment risk was low.

He received a cold call, offering a free review of his pensions. He was told his pensions were just 'sitting there' and 'doing nothing' in terms of providing for his retirement and it was recommended that he take steps to 'invest' them. Mr T thought it would be a good idea to explore other options and he signed a LOA given to him by Wise Review Limited. They were stated to be an authorised representative of Sorensen, a FCA regulated firm. But that wouldn't have been supported by a review of the FCA register. There's also nothing to suggest that the earlier FCA authorised firm (Portal) went on to give Mr T advice. So, at no time did Mr T receive any advice from a FCA authorised IFA.

Zurich provided information to Wise Review Limited and Mr T met with a reviewer at his home. The reviewer wasn't FCA authorised or regulated, the significance of which Mr T didn't understand. At the meetings, it was reiterated to him that his Zurich pension wasn't performing very well. He was told he could achieve better returns by transferring his pension, together with another fund held with another provider, to a new scheme and investing in a hotel resort development offered by TRG in Cape Verde. He was told he'd make around a 15% pa return on the investment and it would significantly out-perform his Zurich pension. And that by retirement he'd have achieved much better pension savings than with Zurich. No risk assessment was undertaken by the adviser, but Mr T was told the investment was safe because it was "backed by HMRC".

Persuaded by what he'd been told by the reviewer who he believed was acting in his best interest, Mr T agreed to go ahead with the transfer. He signed and returned the documentation given to him by the reviewer. The paperwork was then provided to BPS who then set up the SSAS expressly for the transfer and liaised with Zurich to facilitate the transfer. Mr T wasn't informed about the complex structure of a SSAS or the need to take on responsibilities as a company director and trustee.

Throughout the transfer process, there was no, or no effective, direct contact between Zurich and Mr T. T Limited was a newly set up, dormant company, established in January 2014 solely for the purpose of holding Mr T's pension fund – it wasn't an active employer of Mr T. In addition, the SSAS had only been very recently registered with HMRC. As planned, the funds were invested in a fractional hotel investment operated by TRG. The investment is entirely illiquid and incapable of sale on the open market and thus reasonably considered to be of nil value. The balance of the money Mr T transferred in was held in cash.

I don't have any reason to think that what's been said about what happened isn't a reasonably accurate account. Mr T having been cold called by Wise Review Limited fits with the LOA that Zurich received. Although, as I've noted above, Zurich had earlier received a LOA and request for information from a different (and regulated) firm. I think that tends to suggest Mr T was interested in transferring so he might've been predisposed to transferring away from Zurich. But, even against that background, I still need to consider whether, in dealing with the transfer that actually went ahead, Zurich did all it should've done and, if not, what would've happened if Zurich had acted differently.

I accept what's been said about Mr T not being an experienced investor or having any real knowledge about pensions. I don't see that he'd have come up with the idea of transferring to a SSAS to invest in TRG – an overseas property development – on his own. A SSAS is a relatively complex and unusual pension vehicle for an investor in Mr T's circumstances. And TRG wasn't what might be termed a mainstream investment. I think he'd only have been interested in doing that – or been aware that sort of pension arrangement and investment was available to him – if it had been suggested to him and put on the basis that he'd be better off in retirement as a result. Essentially that means he was advised to transfer away from Zurich to a SSAS to invest in TRG.

As to whether any warnings were given to Mr T, it's clear he did see the longer February 2013 Scorpion booklet – he signed a copy to say he'd read it which BPS submitted in support of the transfer request. And there's also Zurich's letter of 14 August 2014. I've also mentioned above the letter from Broadwood.

<u>What did Zurich 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.

Zurich says it enclosed the 'Predators Stalk Your Pension' leaflet with its letter to Wise Review Limited dated 10 December 2013 enclosing plan information and transfer forms. But there's nothing to evidence that – the information sent doesn't refer to the leaflet or list it as an enclosure.

And it seems that, in any event, Zurich would've sent the insert to Wise Review Limited, rather than direct to Mr T. Sending the insert to the customer who'd asked to transfer their pension was a simple and inexpensive step for providers to take and one which wouldn't have got in the way of efficiently dealing with transfer requests. It would've defeated the purpose of the insert if, instead of sending it to their member, providers sent the insert to the member's representative in the hope that the intermediary would then share it with the client. From what I've seen, I'm not satisfied that Zurich did provide Mr T with a copy of the Scorpion insert.

But it's clear Mr T did see the longer 2013 Scorpion booklet anyway – BPS's transfer request was supported by a copy signed by Mr T to confirm he'd read it. If Zurich had sent the Scorpion insert when it received the information requests from Wise Review Limited in December 2013, it would've been the February 2013 insert, the longer version of which Mr T saw anyway.

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 a pension scam and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk.

Zurich's due diligence centred on HMRC's position in connection with the SSAS – was it still registered, not subject to a deregistration notice and if HMRC had any reason to believe the SSAS was linked to pension liberation activity. I think Zurich's responsibilities were wider than that. Indeed HMRC had said itself at around that time that the process it made available for querying the status of a scheme wasn't a substitute for the ceding scheme carrying out proper due diligence.

Given the information Zurich had at the time, one feature of Mr T's transfer would've been a potential warning sign of a scam: Mr T's SSAS was recently registered – it had been registered on 6 February 2014, just six months before the transfer request was made on 5 August 2014. Zurich should therefore have followed up on that to find out if other signs of a scam were present.

Give this warning sign, I think it would've 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?

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 a scam was a realistic threat. Although BPS included quite a lot of information with the transfer request, much of it was generic, rather than specific to Mr T's transfer request. And, given the warning sign that should have been apparent when dealing with Mr T'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 T as part of its due diligence.

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

I've set out above what we've been told about what happened. I think it's reasonable to assume, had enquiries been made of Mr T, he'd have told Zurich similar to what he said when his complaint was made.

Enquiries under part 1 would've revealed that the receiving scheme was only recently registered with HMRC – just six months before the transfer request was made. T Limited had only been incorporated for about that time too and was shown on Companies House as a dormant company. And although an agreement was supplied showing that Mr T had been appointed as T Limited's managing director, I think Mr T would've told Zurich that he wasn't actually working for T Limited and that the company had been set up just to facilitate the SSAS.

If Zurich had asked Mr T the sort of questions suggested in part 2, about how the scheme had been promoted, Mr T hadn't been offered any cash or other incentive But he's said he was told that investing in TRG – an overseas property development – would generate returns of about 15% pa. That too would've been a potential warning sign.

And, if Zurich had made enquiries under part 3, I think Mr T would've said he'd been dealing with Wise Review Limited who'd contacted him by way of an unsolicited call offering a free pension review. And that he'd met with someone from Wise Review Limited who'd suggested to him he'd be better off if he transferred to a SSAS to invest in TRG. So essentially he was acting on advice from Wise Review Limited.

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 approved by the FCA at www.fca.gov.uk/register". In other words, they should consult the FCA's online register of authorised firms. Zurich should've taken that step, which isn't difficult, and it would quickly have discovered that Mr T's adviser 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 guidance itself makes this point.

I don't ignore the request for information, with enclosed LOA, which Zurich received in December 2013 from Wise Review Limited. In my view, the LOA and covering letter were somewhat misleading. The LOA heading indicated that Wise Review Limited was an introducer and Sorensen was shown. And, at the foot of the LOA, it said Wise Review was an appointed introducer to Sorensen who were authorised and regulated by the FCA (the registration number was given, along with Sorensen's registered office address and contact details). Wise Review's covering letter also said it was an introducer appointed representative to a number of financial services businesses. So the impression was that Wise Review Limited was an introducer appointed representative of Sorensen, a FCA regulated firm. If that was the case Wise Review Limited would've been shown as such on the FCA register. But Wise Review Limited didn't appear on the register.

Zurich has referred to We Review Limited, which Zurich says was 'intrinsically linked' to Wise Review Limited, with the same correspondence and email address. At the time We Review Limited was an appointed representative of Sorensen and shown on the FCA register as such. I agree there were some links but, from what I've seen, Wise Review Limited and We Review Limited were separate companies. Wise Review Limited wasn't a registered trading name of We Review Limited.

Information from Companies House indicates there was a controlling director in common and both companies operated from the same premises. Both entered administration in 2014 and appointed the same administrator. Administrators' statements for both companies referred to them as being part of the same group. The statement specific to Wise Review Limited described the nature of its business as being an 'introducer of pension transfer leads to various pension providers and intermediaries'. And the corresponding statement for We Review Limited said it was 'an appointed representative of a particular pension provider' (which the FCA register confirms was Sorensen at the time) and that it received leads and conducted financial reviews for Wise Review Limited.

But the upshot is that Wise Review Limited wasn't regulated. If Zurich had searched the FCA's online register, which, as I've said, would've been an easy step to take, Zurich would've seen that Wise Review Limited didn't appear, whether as an introducer appointed representative for Sorensen or otherwise.

As I've noted, from how Wise Review Limited presented itself, it would've appeared to be acting for and on behalf of Sorensen, a regulated firm. Zurich might say it was entitled to rely *on that and so would've reasonably assumed Mr T had received regulated advice in connection with the transfer to the SSAS. But Zurich should've known that, as an introducer appointed representative of a regulated firm, Wise Review Limited could only carry out a limited range of activities, such as undertaking introductions and distributing financial promotions on behalf of its principal. Wise Review Limited wasn't authorised to give regulated advice itself. So, if Mr T had told Zurich, as I think he would've done, that he'd been advised by Wise Review Limited, that ought to have rung alarm bells in any event.*

My view is that Zurich should've been concerned by Wise Review Limited's involvement because it pointed to a criminal breach of FSMA. On the balance of probabilities, I'm satisfied such a breach occurred here.

<u>What should Zurich have told Mr T – and would it have made a difference?</u>

Had it done more thorough due diligence, there'd have been a number of warnings Zurich could've given Mr T in relation to a possible scam threat as identified by the action pack. Zurich's failure to uncover the threat posed by a non-regulated adviser and Zurich's failure to warn Mr T accordingly, meant it didn't meet its obligations under PRIN and COBS 2.1.1R.

With those obligations in mind, it would have been appropriate for Zurich to have informed Mr T that the firm he'd 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 Mr T risked falling victim to illegal activity and losing regulatory protections.

It's impossible to say now with certainty what would've happened and what Mr T might've done differently if Zurich had given him that warning. But I'm satisfied any messages along those lines – from his existing, trusted and reputable pension provider – would've carried weight with Mr T. In my view he'd have taken seriously any indication from Zurich that the firm he was dealing with may not be acting in his best interests. I can't see that he'd have simply ignored such warnings. On balance I think they'd have changed his mind about the transfer. The messages would have followed conversations with him and so would've seemed to him (and indeed would have been) specific to his individual circumstances and would've been given in the context of Zurich raising concerns about the risk of losing accumulated pension savings as a result of untrustworthy advice. This would've made Mr T aware that there were serious risks in using an unregulated adviser.

I think the gravity of any messages along these lines would prompt most reasonable people to rethink their actions. I've seen no persuasive reason why Mr T would have been any different. Had Zurich told Mr T all that, I don't think he'd have ignored that sort of information. It would've been after contact from Zurich asking Mr T for more details about his transfer request and how it had come about. So what Zurich said would've seemed to Mr T (and indeed would've been) specific to his individual circumstances and in the context of Zurich raising concerns about the risk that Mr T might lose his accumulated pension savings as a result of untrustworthy advice. Mr T would've been aware that there were serious risks in following advice from an unregulated adviser.

Mr T had already taken various steps to facilitate TRG investment, including setting up T Limited and the SSAS. And a transfer from another provider had already been completed by the time Zurich wrote to Mr T on 14 August 2014. But I'm not persuaded that Mr T was so committed that he couldn't or wouldn't have stopped the transfer from Zurich. I think, if he'd have realised that what he was doing in setting up a SSAS so he could invest in TRG, was based on unsolicited advice which was probably unlawfully given and which was unlikely to be in his best interest, he'd have changed his mind about the transfer from Zurich and decided against proceeding. I don't think Zurich, as the ceding scheme, did enough to *protect its member, Mr T. Had Zurich acted as it should've done, Mr T wouldn't have gone ahead with the transfer. Hence I'm upholding his complaint.*

Fair compensation

I've gone on to consider what is fair compensation in the circumstances of this particular case. In particular I've thought about whether Mr T should bear some responsibility for the losses he's incurred. I take into account that the courts are able to reduce a defendant's liability for negligence, where the claimant shares responsibility for the damage they've suffered. More specifically, the Law Reform (Contributory Negligence) Act 1945 allows for the apportionment of liability in the case of contributory negligence. It says that where any person suffered damage as the result partly of his own fault and partly due to the fault of any other person, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable should be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage.

In terms of the information and any warnings Mr T was given I note he was shown a copy of the February 2013 longer Scorpion booklet. I'm not sure if he didn't read it at all and simply signed to say he had. Or, and perhaps more likely, if he only paid it limited attention because it was given to him as part of a large amount of documentation to sign and which he was taken through very quickly and given insufficient time to read and digest.

But the central theme was pension liberation fraud – that is, 'cashing in' a pension early – before age 55 – and the offer of loans and cash incentives and the serious tax consequences that could result. That didn't feature in Mr T's case. He was 58 at the time and he didn't receive any cash or other incentive. The warning signs referred to in the booklet did include unsolicited calls and transfers overseas were also highlighted – although the scheme itself wasn't overseas the investment was based overseas. And the 'Five steps to avoid becoming a victim' did suggest checking out any company online, including that they were registered with the FCA. But that was all against the background that there might be a risk of early pension liberation fraud and which, as I've said, Mr T wasn't seeking to do. Given that was the focus, I don't think the booklet would've really resonated with Mr T or prompted him into checking out Wise Review Limited's regulatory status.

There's also the letter Mr T signed on 6 February 2014. Although it was a pre prepared template it was only a page long so it's not unreasonable to say Mr T should've read it before signing it. But again its focus was pension liberation which wasn't the motivation for Mr T's transfer so he may have thought it wasn't relevant to his situation and that he could simply sign it.

Mr T had also signed the letter from Broadwood on 9 February 2014. It did say TRG investment was risky and not suitable for a cautious investor which Mr T says he was. So, arguably, that should've put him on notice that what he'd been told he should do would expose his pension savings to risk. But, on the other hand and to some extent, what Broadwood said would've reassured Mr T – Broadwood said that the proposed transfer wouldn't facilitate pension liberation and TRG investment was legitimate and well-resourced. The letter did mention getting regulated advice if he preferred to do so and said Broadwood's advice wasn't regulated, nor was Broadwood itself authorised or regulated by the FCA. But this was explained in the context of whether Mr T wanted advice as an individual rather than as a trustee. There was nothing to suggest there might be any issue with any advice Mr T may have been given by any other party, such as Wise Review Limited, or that there could be concerns that went wider than pension liberation, by which I mean the early access to funds as discussed in the leaflet Mr T had already seen. Or that he should check the regulatory status of any adviser he'd been dealing with and how he could do that. So I don't *think Broadwood's letter was enough on its own to have prompted Mr T to question what he'd been told.*

But there's also the letter Zurich sent to Mr T on 14 August 2014. It seems, from the letter, that Zurich's focus remained on combatting pension liberation fraud. The letter referred to increased pension liberation activity and stressed the serious tax consequences that could result if HMRC – on whom Zurich's further enquiries centred – wasn't satisfied with the receiving scheme. But, as I've said, by then, the Scorpion campaign had widened to include pension scams more generally.

But Zurich did go on to say that Mr T should still carry out his own checks to satisfy himself the proposed transfer was appropriate and, if he hadn't yet had advice from a UK regulated financial adviser specialising in pensions, Zurich strongly recommended he get such advice. And details of how Mr T could find a regulated adviser were set out. But the letter didn't explain why Mr T should seek regulated advice. Neither – and importantly – did it identify that the adviser he'd been dealing with was unregulated. Nor did it highlight to Mr T that the party who'd been advising him was most likely acting unlawfully.

But, that said, in this case I think Mr T's failure to act on what he knew (or reasonably should've known) contributed to the losses he's suffered. In particular, Zurich's letter of 14 August 2014 went some way to telling Mr T how to protect himself – by strongly recommending that he seek regulated advice if he hadn't already done so. As I've recognised, Zurich's focus was perhaps still on the threat of pension liberation – that is early access to pension savings – rather than on pension scams more widely. And, as I've said, Mr T wasn't liberating his pension and so may have thought that he wasn't at risk. But the letter was still a warning from Mr T's existing provider – and a respected and major player in the pensions field – as to what steps he could take to protect himself from an inappropriate transfer. Namely that he should take regulated advice, with details of how to find an adviser and check that they were regulated given. I think Zurich's letter should've resonated with Mr T and prompted him to check out the regulatory status of those he'd been dealing with. If he'd have done that – and checking the FCA's register is quick and easy – he'd have seen that Wise Review Limited didn't appear and so he'd have known they were unregulated.

Mr T had also already earlier received Broadwood's letter. As I've said, that letter didn't entirely fit with what Mr T says about being a cautious investor. It said TRG investment carried risks – some of which were set out – and wasn't suitable for a cautious investor and, if Mr T preferred advice on the suitability of the investment for him personally, then he should seek regulated financial advice. I think, once Mr T got Zurich's letter of 14 August 2014, that would've put into context what Broadwood had earlier said. Admittedly Mr T had signed Broadwood's letter in February 2014 and it wasn't until August 2014 that Zurich wrote to him. But it was all broadly to do with the same thing – transferring to a SSAS to invest in TRG – so I think Mr T would've recalled that he'd had a letter from Broadwood. But, even if he didn't, I still think Mr T should've paid attention to Zurich's letter of 14 August 2014.

So, in the circumstances, when considering fair compensation in this case, I don't think it's unreasonable to attribute some responsibility for the loss Mr T has suffered to his own failure to act and to take reasonable steps to protect himself. Essentially I think both he and Zurich could've and should've done more during the transfer process to guard against the risk of a scam and that, if either of them had done as they reasonably should, Mr T's losses would've been avoided. But Zurich was the professional party, operating a regulated pensions business in which dealing with members' transfer requests was an inherent feature, so it should've been more familiar with the risks than Mr T and given him specific warnings. So I think Zurich carried more responsibility than Mr T. While this isn't an exact science, in the circumstances of this complaint, I propose to reduce Mr T's compensation by 30% which I think is a fair way to account for his own contribution to the losses he's suffered.'

Taking that into account, I set out how Zurich needed to put things right for Mr T.

Mr T accepted my provisional decision. Zurich didn't and made further comments. In summary Zurich said:

- My provisional findings were based on the same evidence as the investigator had access to in reaching their decision in 2022 to reject the complaint. We'd changed our process for handling complaints such as Mr T's and I'd reached a markedly different decision.
- The premise for my decision was that Mr T would've decided to stop the transfer had Zurich warned him that the person he was dealing with was unregulated. Zurich acknowledged I'd taken into account that Mr T didn't heed the warnings he was sent by reducing the redress by 30%. But he didn't heed any of the warnings he was sent. Although I'd said he had a low attitude to investment risk he was prepared to take a high risk with his pension investments.
- He'd only just (in September 2013) appointed a regulated financial adviser (Portal) as his servicing adviser on his Zurich policy. That adviser asked for information, including retirement options. Mr T was 58 at the time and so able to claim his retirement benefits. It's unclear why, having gone through the process of appointing a regulated financial adviser, he didn't consult that adviser before proceeding, even after warnings that he should seek regulated financial advice. Instead it seems he was willing to transfer so any further warnings wouldn't have resonated with him.
- I hadn't commented on the statutory position – it's clear Mr T had a statutory right to transfer. Nor had I said Zurich should've blocked the transfer. Instead I'd concluded that Zurich's warnings didn't go far enough. But it was Mr T's own actions that led to the situation he now finds himself in. He'd made a clear decision to transfer to take advantage of alternative investments and it was only now when those investments had failed that he'd complained.
- A recent determination by the Pensions Ombudsman (TPO), where the investment was made in TRG, concluded that it wasn't a scam just a failed investment. In that case TPO concluded that the warnings given by Zurich were sufficient. TPO and this service have different remits but the stark difference in outcomes is concerning for both customers and firms.

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 very carefully Zurich's comments. But I haven't been persuaded to depart from the views I set out in my provisional decision. I've repeated what I said above and it forms part of my decision, together with the following further comments I've made in response to the points Zurich made.

I don't disagree that our approach to complaints such as Mr T's has evolved in the light of the evidence and arguments we've been seeing on a large number of complaints. And, as both parties will be aware, ours is a two stage decision process. Sometimes an ombudsman will take a different view from the investigator and based on the same evidence. Further evidence may also be gathered after the complaint has been referred to an ombudsman. Here we made further enquiries about if Mr T had received any advice under section 36 of the Pensions Act 1995. And that resulted in Broadwood's letter, which Mr T signed on 9

February 2014, being produced and which I've taken into account in reaching my conclusions.

As to whether TPO would've reached the same decision, TPO and this service are different organisations and, as Zurich recognises, our terms of reference aren't the same. So a different outcome on similar facts may result. Zurich hasn't provided a copy of the determination it referred to, which it said was recent but doesn't appear to be one TPO has published. But I'd point out that sometimes complaints which appear very similar won't be identical. Sometimes a business or consumer will point to other cases we've decided as being the same as their complaint but, on closer examination, it's apparent there are differences.

In my provisional decision I didn't expressly mention Mr T's statutory right to transfer. I don't think there's any dispute Mr T had that right. And he likely had a contractual right too. So I don't think Zurich was required to block the transfer. But, even so, I don't think Zurich was therefore obliged to simply grant it without doing anything else. It still had a wider duty to enquire into the transfer and how Mr T had come to decide he wanted to make it.

Zurich says this wasn't a pension scam, simply a failed investment. And the receiving scheme was (and remains) a genuine scheme. I don't necessarily disagree about the status of the scheme or the investment itself, but there are concerning features about the way the transfer was promoted to Mr T – the most concerning of which was the unlawful advice Mr T seems to have received. These are features Zurich would've been expected by the Scorpion guidance to pick up on at the time, had it carried out appropriate due diligence into Mr T's transfer. So I don't think that means it's unreasonable for me to conclude that Zurich is responsible for Mr T's losses.

His complaint is similar to the type of claim that in legal proceedings would be treated as a claim for damages for negligent failure to give him the information or advice to which he was entitled. In that kind of case, the court asks itself whether there is a sufficient connection between the harm for which the claimant seeks damages as compensation and the subject matter of the defendant's duty of care. The court looks to see what risk the defendant's duty was supposed to guard against and whether the claimant's loss represents that particular risk coming to fruition.

Here the Scorpion guidance was initially directed towards protecting consumers from the risks of pension liberation scams and later (and by the time Mr T's transfer was made) widened to pension scams more generally. The loss was suffered because Mr T accepted unsuitable advice from someone who wasn't authorised to act as a financial adviser. And the circumstances that gave rise to Mr T's complaint were very similar to those of a pension scam: the transfer followed unsolicited contact from an unregulated firm and the investment (TRG) within the new, recently set up scheme (the SSAS), involved transferring funds overseas. The Scorpion action pack highlighted these as pension scam risks and recommended checking the FCA's register that advice was only given by an authorised person. I'm satisfied there's sufficient connection between the harm Mr T seeks to be compensated for and the risk that Zurich had to guard against. So, if Mr T wouldn't have proceeded if Zurich had done all it should've, it's fair and reasonable for Zurich to compensate him for his losses.

Zurich's position is that Mr T was sent repeated warnings and did nothing to heed them. So Zurich doesn't agree that he'd have made a different decision, had he been told the firm he was dealing with was unregulated. I don't think it's correct to say Mr T was given repeated warnings about issues that were similar enough to the steps he was taking. The warnings he saw consisted of the February 2013 longer Scorpion booklet, Broadwood's letter (both of which Mr T appears to have seen in February 2014) and Zurich's letter of 14 August 2014. I explained in my provisional decision why I didn't think those warnings were sufficient to warn Mr T about the untrustworthy advice he was getting to make the investment within the SSAS.

To recap, the focus of the Scorpion booklet (and the letter Mr T signed on 6 February 2014) was early access pension liberation which I'm satisfied Mr T wasn't seeking to do – he was 58 at the time and could legitimately access his pension benefits. So I can't see the booklet (which I accept he read as he signed to say he'd done so) would've really resonated with him. And I maintain that Broadwood's letter wasn't sufficient, on its own, to prompt Mr T to question what he'd been told about the returns he hoped to make. The letter focused on TRG investment and did say it wasn't suitable for a cautious investor. However the message also gave some encouragement that if Mr T was prepared to take more risk and consider diversification within his SSAS, this would be an appropriate investment for his SSAS. There was nothing to indicate that the advice Mr T had received might be questionable or given unlawfully. So the letter didn't prompt him to check out the regulatory status of the adviser he'd been dealing with.

I recognised that Zurich's letter of 14 August 2014 did go some way to telling Mr T what he needed to know – that he should carry out his own checks to satisfy himself that the proposed transfer was appropriate and, if he hadn't yet had any advice from a UK regulated financial adviser specialising in pensions, Zurich strongly recommended that he get such advice. As Zurich has pointed out, a regulated firm had recently been associated with Mr T's plan. But Zurich had no way of knowing, without asking Mr T, whether Portal's enquiries had gone anywhere and it had gone on to advise him. Mr T would have explained he was dealing with Wise Review Limited rather than Portal. But Mr T didn't know that Wise Review Limited's adviser wasn't FCA authorised or regulated. If he'd known that, I think it would've put things in a different light and made him think about whether what had been recommended was likely to be in his best interest and something a regulated adviser would endorse. So for its own part here, Zurich also didn't identify that Mr T had been dealing with an unregulated adviser or highlight to Mr T that the adviser was most likely acting unlawfully.

So I don't think it follows, although Mr T remained prepared to proceed despite the Scorpion booklet, Broadwood's February 2014 letter and Zurich's letter of 14 August 2014, that he'd have ignored further and, in my view, more pertinent and serious warnings. I explained in my provisional decision why this meant that, had either Mr T or Zurich acted as they ought to have done, leading to the discovery of this unlawful and untrustworthy advice, Mr T wouldn't have remained happy to proceed.

But I maintain that Mr T should bear some responsibility for his losses due to his failure to act on the warnings – and in particular Zurich's letter of 14 August 2014 – that he did get. I maintain a reduction of 30% to Mr T's compensation is fair and reasonable to account for his own contribution to the losses he's suffered. The redress I've set out below is on that basis and follows what I said in my provisional decision and neither party having disputed the assumptions I said I'd make as to Mr T being a basic rate taxpayer in retirement and giving TRG investment a nil value as at the date of my final decision.

Putting things right – fair compensation

My aim is that Mr T should be put as closely as possible into the position he'd probably now be in if Zurich had treated him fairly, taking into account that Mr T shares responsibility for his loss.

The the SSAS only seems to have been used in order for Mr T to make an investment that I don't think he would have made from the proceeds of this pension transfer, but for Zurich's actions. So I think that Mr T would have remained in his pension plan with Zurich and wouldn't have transferred to the the SSAS.

To compensate Mr T fairly, Zurich must subtract the proportion of the actual value of the the SSAS which originates from the transfer of the Zurich pension, from the notional value if the funds had remained with Zurich. If the notional value is greater than the actual value, there is a loss. Zurich must then pay 70% of that loss.

Actual value

This means the proportion of the the SSAS value originating from Mr T's Zurich transfer (the **"relevant proportion"**) at the date of my Final Decision. To arrive at this value, any amount in the the SSAS bank account is to be included, but any overdue administration charges yet to be applied to the the SSAS should be deducted. Mr T may be asked to give Zurich his authority to enable it to obtain this information to assist in assessing his loss, in which case I expect him to provide it promptly.

My aim is to return Mr T to the position he would have been in but for the actions of Zurich. This is complicated where an investment is illiquid (meaning it cannot be readily sold on the open market), as its value can't be determined. On the basis of the evidence I have, that is likely to be the case with the following investment(s): TRG. This is because there's no market for the investment. And I don't think it's realistically possible for Zurich to only acquire a part of the investment from the the SSAS as I'm only holding it responsible for 70% of the loss originating from a transfer in of the Zurich funds. Therefore as part of calculating compensation:

- Zurich must give the illiquid investment(s) a nil value as part of determining the actual value. In return Zurich may ask Mr T to provide an undertaking, to account to it for 70% of the relevant proportion of the net proceeds he may receive from those investments in future on withdrawing them from the the SSAS. Zurich will need to meet any costs in drawing up the undertaking. If Zurich asks Mr T to provide this undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

- It's also fair that Mr T should not be disadvantaged while he is unable to close down the the SSAS. So to provide certainty to all parties, if these illiquid investment(s) remain in the scheme, I think it's fair that Zurich must pay an upfront sum to Mr T equivalent to 70% of the relevant proportion of five years' worth of future administration fees at the current tariff for the the SSAS, to allow a reasonable period of time for the the SSAS to be closed.

Notional value

This is the value of Mr T's funds had he remained invested with Zurich up to the date of my Final Decision.

Zurich should ensure that the relevant proportion of any pension commencement lump sum or gross income payments Mr T received from the the SSAS are treated as notional withdrawals from Zurich on the date(s) they were paid, so that they cease to take part in the calculation of notional value from those point(s) onwards.

Payment of compensation

I don't think it's appropriate for further compensation to be paid into the the SSAS given Mr T's dissatisfaction with the outcome of the investment it facilitated.

Zurich should reinstate Mr T's original pension plan as if its value on the date of my Final Decision was equal to 70% of the amount of any loss established from the steps above (and it performs thereafter in line with the funds Mr T was invested in).

Zurich shouldn't reinstate Mr T's original plan if it would cause a breach of any HMRC pension protections or allowances – but my understanding is that it might be possible for it to reinstate a pension it formerly administered in order to rectify an administrative error that led to the transfer taking place. It is for Zurich to determine whether this is possible.

If Zurich is unable to reinstate Mr T's pension and it is open to new business, it should set up a **new** pension plan with a value equal to 70% of the amount of any loss on the date of my Final Decision. The new plan should have features, costs and investment choices that are as close as possible to Mr T's original pension.

If Zurich considers that the amount it pays into a **new** plan is treated as a member contribution, its payment may be reduced to allow for any tax relief to which Mr T is entitled based on his annual allowance and income tax position. However, Zurich's systems will need to be capable of adding any compensation which doesn't qualify for tax relief to the plan on a gross basis, so that Mr T doesn't incur an annual allowance charge. If Zurich cannot do this, then it shouldn't set up a new plan for Mr T.

If it's not possible to set up a new pension plan, Zurich must pay the amount of 70% of any loss direct to Mr T. But if this money had been in a pension, it would have provided a taxable income during retirement. Therefore compensation paid in this way should be notionally reduced to allow for the marginal rate of income tax that would likely have been paid in future when Mr T is retired. (This is an adjustment to ensure that Mr T isn't overcompensated – it's not an actual payment of tax to HMRC.)

To make this reduction, it's reasonable to assume that Mr T is likely to be a basic rate taxpayer in retirement. So, if the loss represents further 'uncrystallised' funds from which Mr T was yet to take his 25% tax-free cash, then only the remaining 75% portion would be taxed at 20%. This results in an overall reduction of 15%, which should be applied to the compensation amount if it's paid direct to him in cash.

Alternatively, if the loss represents further 'crystallised' funds from which Mr T had already taken his 25% tax-free cash, the full 20% reduction should be applied to the compensation amount if it's paid direct to him in cash.

If payment of compensation is not made within 28 days of Zurich receiving Mr T's acceptance of the Final Decision, interest must be added to the compensation at the rate of 8% per year simple from the date of the Final Decision to the date of payment.

Income tax may be payable on any interest paid. If Zurich deducts income tax from the interest, it should tell Mr T how much has been taken off. Zurich should give Mr T a tax deduction certificate in respect of interest if Mr T asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

This interest is not required if Zurich is reinstating Mr T's plan for the amount of the loss – as the reinstated sum should, by definition, mirror the performance after the date of my Final Decision of the funds in which Mr T was invested. However, I expect any such reinstatement to be achieved promptly.

Details of the calculation must be provided to Mr T in a clear, simple format.

My final decision

I uphold the complaint. Zurich Assurance Ltd must redress Mr T as I've set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr T to accept or reject my decision before 13 March 2025.

Lesley Stead
Ombudsman