

The complaint

Mr D has complained, with the help of a professional third party, about the transfer of his Zurich Assurance Ltd personal pension to a Qualifying Recognised Overseas Pension Scheme ("QROPS") in October 2015.

Mr D says Zurich failed in its responsibilities when dealing with the transfer request. He says that it should have 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 D says he wouldn't have transferred if Zurich had acted as it should have done. And he said he wouldn't have incurred losses which he believes he now has.

What happened

On 14 May 2015, Mr D signed a letter of authority giving Zurich permission to provide information about his pension to Capital Facts Limited ('CFL'). CFL was not authorised or regulated by the Financial Conduct Authority ('FCA').

CFL sent a copy of this letter to Zurich on 19 May 2015 and asked for information about Mr D's pension, including QROPS discharge forms. Zurich initially replied to CFL on 5 June 2015 with its standard transfer pack. It sent a further response on 8 June 2015, enclosing the relevant forms for transferring to a QROPS.

On 20 July 2015, Optimus Pension Administrators Limited ('OPAL') wrote to Zurich. OPAL was registered in the Isle of Man. OPAL's letter requested the transfer of Mr D's pension benefits to the Optimus Retirement Benefits Scheme No.1 – a QROPS based in Malta. The letter said Integrated Capabilities (Malta) Limited was the registered scheme administrator and OPAL carried out certain administrative functions on their behalf. OPAL enclosed Zurich's overseas transfer form and confirmed the receiving scheme was recognised by HMRC. Evidence was included showing the scheme had been registered in July 2014 and recognised by HMRC as a QROPS from August 2014.

On 4 September 2015, Zurich wrote to Mr D directly. The letter acknowledged receipt of his application to transfer but said before considering the request further, Zurich wanted to ensure he wasn't being misled. It said that a leaflet from the Pensions Regulator ('TPR'), providing information about warning signs to look out for, was enclosed – often referred to as the Scorpion leaflet because of the imagery it contains. And the Scorpion campaign logo was present on the letter itself.

The letter summarised that pension benefits couldn't be accessed before age 55 or in a way that went against pension regulations. And to protect customers Zurich said it wouldn't transfer pensions to a receiving scheme where it believed the payment would be treated as unauthorised. It said the potential consequences of transferring to a pension liberation arrangement included significant tax penalties, high charges, fees or commission, lower income at retirement and the fund *"may be invested in assets which are often high risk, located overseas and may not be subject to regulatory controls"*.

Zurich said Mr D should carry out his own checks before proceeding, including thinking about if he'd received advice from a UK regulated adviser – and how to check this – and what he knew about the proposed investments. It said if Mr D hadn't taken advice from a UK regulated adviser, Zurich strongly recommended that he do so. And it provided a link to a trade body that could assist in finding independent financial advisers close to where he lived. It concluded by saying that if, after reading the letter and Scorpion insert, Mr D still wanted to proceed, he needed to complete a form that was enclosed.

The form referred to was titled 'Transfer request – confirmation'. This asked a number of questions about the proposed transfer. This form was signed by Mr D on 12 September 2015 and returned to Zurich in early October 2015. Amongst the answers Mr D gave he said he hadn't received advice, hadn't been pressured and hadn't been told he'd receive cash payments bonuses or loans for transferring or that he could access his pension before age 55. Mr D said he'd first heard of the QROPS *"Through the advisor 'First Pensions Review'"* and he had been cold called by a *"third party company"*. Mr D said all contact had been by phone and in person. He said he didn't intend to move overseas but was aware payments from the new pension would still be liable to UK tax charges. And Mr D said he was transferring because of projections he was shown indicating he'd receive a better pension return, which could be passed on in the event of his death.

Zurich wrote to OPAL, on 23 October 2015, apologising for the delay in responding to the transfer request. It said it enclosed a cheque for the transfer value of the pension, £53,030.95. Mr D was 53 at the time. Zurich also wrote to Mr D and CFL confirming the transfer had been actioned.

A statement for Mr D's QROPS from 2017 indicates 36% of his pension was invested in a fund based in Luxembourg, 54% was invested in overseas property via the Resort Group ('TRG') and the remaining 10% was held in cash. The statement said that Strategic Wealth Limited ('SWL') was Mr D's appointed adviser.

In June 2020, Mr D complained to Zurich. He said he'd been cold called by CFL and offered a free pension review. He was then visited by an agent of First Review Pension Services ('FRPS'). This unregulated business advised him to transfer. Mr D said Zurich had provided information and forms to unregulated businesses which had facilitated the transfer. And he said Zurich hadn't undertaken sufficient due diligence or acted in his interests by proceeding with the transfer, which had led to him incurring a loss.

Zurich didn't uphold the complaint. It said Mr D had a legal right to transfer and HMRC confirmed the receiving scheme was recognised. It also said that it had done appropriate due diligence on the transfer and provided Mr D with important information and warnings in its letter of 4 September 2015. So, Zurich was satisfied it had acted appropriately given the requirements of the time.

I issued a provisional decision in January 2025 explaining that I didn't intend to uphold Mr D's complaint. Below are extracts from my provisional findings, explaining why, which form part of my final decision.

The relevant rules and guidance

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 how personal pension providers deal with 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.*

In February 2013, TPR issued its Scorpion guidance to help tackle the increasing problem of pension liberation, the process by which unauthorised payments are made from a pension (such as accessing a pension below minimum retirement age). In brief, the guidance provided a due diligence framework for ceding schemes dealing with pension transfer requests and some consumer-facing warning materials designed to allow members decide for themselves the risks they were running when considering a transfer.

The Scorpion guidance 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 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. So, the content of the Scorpion guidance was essentially informational and advisory in nature. Deviating from it doesn't therefore mean a firm has necessarily 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 right to transfer.

That said, the launch of the Scorpion guidance in 2013 was an important moment in so far as it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing those requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance's specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

In those circumstances, I consider firms which received pension transfer requests needed to pay regard to the contents of the Scorpion guidance as a matter of good industry practice. It means February 2013 marks an inflection point in terms of what was expected of personal pension providers dealing with transfer requests as a matter of fulfilling their duties under the regulator's Principles and COBS 2.1.1R.

The Scorpion guidance was updated in July 2014. It widened the focus from pension liberation specifically, to pension scams more generally – which included situations where someone transferred in order to benefit from "too good to be true" investment opportunities such as overseas property developments. An example of this was given in one of the action pack's case studies.

There was a further update to the Scorpion guidance in March 2015, which is relevant for

this complaint. This guidance referenced the potential dangers posed by “pension freedoms” (which were about to give people greater flexibility in relation to taking pension benefits) and explained that pension scams were evolving. At the same time, a broader piece of guidance was initiated by an industry working group covering both TPR and FCA regulated firms: the Pension Scams Industry Group (‘PSIG’) Code of Good Practice. The intention of the PSIG Code was to help firms achieve the aims of the Scorpion campaign in a streamlined way which balanced the need to process transfers promptly with the need to identify those customers at material risk of scams.

The March 2015 Scorpion guidance

The March 2015 update to the Scorpion guidance asked schemes to ensure they provided their members with “regular, clear” information on how to spot a scam. It recommended giving members that information in annual pension statements and whenever they requested a transfer pack. It said to include the pensions scam “leaflet” in member communications.

In the absence of more explicit direction, I take the view that the member-facing Scorpion warning materials were to be used in much the same way as previously, which is for the shorter insert (which had been refreshed in March 2015) to be sent when someone requested a transfer pack and the longer version (which had also been refreshed) made available when members sought further information on the subject.

When a transfer request was made, transferring schemes were also asked to use a three-part checklist to find out more about a receiving scheme and why their member was looking to transfer.

The PSIG Code of Good Practice

The PSIG Code was voluntary. But, in its own words, it set a standard for dealing with transfer requests from UK registered pension schemes. It was “welcomed” by the FCA and the Association of British Insurers (amongst others). And several FCA regulated pension providers were part of the PSIG and co-authored the Code. So much of the observations I’ve made about the status of the Scorpion guidance would, by extension, apply to the PSIG Code. In other words, personal pension providers didn’t necessarily have to follow it in its entirety in every transfer request and failure to do so wouldn’t necessarily be a breach of the regulator’s Principles or COBS. Nevertheless, the Code sets an additional benchmark of good industry practice in addition to the Scorpion guidance.

In brief, the PSIG Code asked schemes to send the Scorpion “materials” in transfer packs and statements, and make them available on websites where applicable. The PSIG Code goes on to say those materials should be sent to scheme members directly, rather than just to their advisers.

Like the Scorpion guidance, the PSIG Code also outlined a due diligence process for ceding schemes to follow. However, whilst there is considerable overlap between the Scorpion guidance and the PSIG Code, there are several differences worth highlighting here, such as:

- The PSIG Code includes an observation that: “A strong first signal of [a scam] would be a letter of authority requesting a company not authorised by FCA to obtain the required pension information; e.g. a transfer value, etc.” This is a departure from the Scorpion guidance (including the 2015 guidance) which was silent on whether anything could be read into the entity seeking information on a person’s pension.*
- The Code makes explicit reference to the need for scheme administrators to keep up to date with the latest pension scams and to use that knowledge to inform due diligence*

processes. Attention is drawn to FCA alerts in this area.

- Under the PSIG Code, an 'initial analysis' stage allows transferring schemes to fast-track a transfer request without the need for further detailed due diligence, providing certain conditions are met. No such triage process exists in the 2015 Scorpion guidance – following the three-part due diligence checklist was expected whenever a transfer was requested.
- The PSIG Code splits its later due diligence process by receiving scheme type: larger occupational pension schemes, SIPPs, SSASs and QROPS. The 2015 Scorpion guidance doesn't distinguish between receiving scheme in this way – there's just the one due diligence checklist which is largely (apart from a few questions) the same whatever the destination scheme.

TPR began referring to the Code as soon as it was published, in the March 2015 version of the Scorpion action pack. Likewise, the PSIG Code referenced the Scorpion guidance and indicated staff dealing with scheme members needed to be aware of the Scorpion materials.

Therefore, in order to act in the consumer's best interest and to play an active part in trying to protect customers from scams, I think it's fair and reasonable to expect ceding schemes to have paid due regard to both the Scorpion guidance and the PSIG Code when processing transfer requests. Where one differed from the other, they needed to consider carefully how to assess a transfer request taking into account the interests of the transferring member. Typically, I'd consider the Code to have been a reasonable starting point for most ceding schemes because it provided more detailed guidance on how to go about further due diligence, including steps to potentially fast-track some transfers which – where appropriate – would be in the interest of both parties.

The considerations of regulated firms didn't start and end with the Scorpion guidance and the PSIG Code. 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 either the Scorpion guidance or the Code – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's principles and COBS 2.1.1R.

The circumstances surrounding the transfer: what does the evidence suggest happened?

Mr D says he was cold called by CFL and offered a free pension review. He says the matter was then passed to FRPS who met with him at his home several times. Mr D's testimony about this has been consistent throughout his complaint. And I think it is also supported by information from the time. In the questionnaire that Zurich asked him to complete, it was recorded that he was "cold called by a third party" and he heard about the QROPS "through the advisor First Pensions Review". On balance I think this was likely a reference to FRPS – which we know from other complaints appears to have been established to facilitate investment in TRG, which happened here.

Mr D has said he hadn't considered transferring his pension prior to being approached by CFL. And given how long he'd held his pension and as I've seen nothing to suggest he'd applied to transfer it previously; I don't have any reason to doubt this. Mr D doesn't appear to have had any prior connection with the QROPS. And he hasn't indicated he intended to move overseas – either to Malta, where the QROPS was registered, or anywhere else. And I think it is unlikely he'd have sought to transfer his benefits to the QROPS on his own. So, on balance, I think it was the unsolicited contact he received that led to the transfer.

I also think it is likely that Mr D was advised to transfer. He's said he was told his pension would be invested in a diversified portfolio that would provide better returns than his existing pension. And again, the information in the questionnaire he signed for Zurich supports this. It said his reason for applying to transfer was a possibly better pension due to projected better returns. So, the person Mr D was speaking to appears to have made a comparison of the prospective benefits of the two schemes and suggested the new scheme was more beneficial. Which I think represented advice to transfer.

I am conscious though that the form Mr D signed at the time of the transfer said he had not been advised. When they complained to Zurich on Mr D's behalf, the representative said Mr D had given the answers in the questionnaire – as they sought to highlight the potential inconsistencies in what Mr D had written not having been questioned at the time as part as the reasons for the complaint. However, when we queried this as part of our investigation Mr D's representatives have said that the form was completed by FRPS, that the adviser said this was for expediency and that Mr D just signed it where indicated by labels FRPS applied. These arguments contradict one another.

The form was sent directly to Mr D by Zurich. So, he'd have seen this, and had the opportunity to review it, before FRPS. It also means he'd have had to provide this to FRPS for it, as the representative has argued, to simply indicate where he needed to sign. And even if this were what had happened, I think it is unlikely, having had the chance to review the questions first, that he'd have just signed the form without checking that the answers given were in line with his understanding. Also if, as I think the representative is suggesting, FRPS' intention by completing this was to not provide Zurich the full picture, I don't think it'd have said Mr D had heard about the QROPS "through the advisor" or mentioned itself next to this. Nor do I think it'd have misquoted its own name, as was the case in the form.

Taking all of this into account, on the balance of probabilities, I think it was likely Mr D that completed the form that Zurich sent to him. And I think it is likely that he believed FRPS was recommending that he transfer.

Mr D has said that he has suffered a loss as a result of the transfer. I note that the receiving scheme is still recognised on HMRC's list. And I haven't been provided anything to indicate that there are issues with the portion held in cash or invested in the fund based in Luxembourg. I am aware though, from other complaints, that the investment with TRG is likely to have issues. In other complaints we've seen, while TRG investments were initially providing returns, these tend to have ceased around 2019. We've also seen several complaints where consumers have been told it is their responsibility to attempt to sell the investment – but they have been unable to do so, and there is no recognised secondary market for re-sale of the investment.

What did Zurich do and was it enough?

The Scorpion insert:

For the reasons given above, my view is that personal pension providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information.

Zurich wrote directly to Mr D on 4 September 2015. I'm satisfied the letter was received as the enclosed form was subsequently completed and returned to Zurich. The letter included imagery from the Scorpion campaign as well as some of the reasons for the campaign. It also referred to TPR having issued a leaflet about this, and that leaflet being enclosed (alongside the form Mr D was required to complete, which we know he received).

On balance therefore I'm satisfied that Zurich did provide Mr D with the Scorpion leaflet and that he received this.

Due diligence:

As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've considered Mr D's transfer in that light. But I don't think it would make a difference to the outcome of the complaint if I had considered Zurich's actions using the 2015 Scorpion guidance as a benchmark instead.

As I mentioned previously, the PSIG code provided for certain applications to be fast tracked where businesses triaged them following a prescribed initial analysis. But I'm satisfied that Mr D's application was not one that should've been fast track approved and that further investigation was appropriate.

Mr D had confirmed in the questionnaire that Zurich sent to him that he'd been cold called. And the transfer involved moving money overseas – as the funds were being moved to a QROPS. So, Zurich was aware that the scheme, agents or its representatives had made first contact with Mr D and the transfer involved potential overseas investment. These were two things that the PSIG Code said should prompt further investigation.

The nature of that investigation depends on the type of scheme being transferred to. The QROPS section of the Code (Section 6.4.4) has the following statement:

"The key items to consider are the rationale for moving funds offshore, and the likelihood that the receiving scheme is a bona fide pension scheme, as if HMRC determine retrospectively that it is not, there may be a scheme sanction charge liability regardless of whether the receiving scheme was included on the list or not."

In order to address those two items – the rationale for moving funds offshore and the legitimacy of the QROPS – the Code suggests the transferring scheme should broadly follow the same due diligence process as for transfers to a small self-administered scheme ('SASS'), which outlined four potential areas of concern with a series of example questions provided, to help scheme administrators assess the potential risk facing a transferring member.

Not every question would need to be addressed under the Code. Indeed, the Code makes the point that it is for scheme administrators to choose the most relevant questions to ask (including asking questions not on the list if appropriate). But the Code also makes the point that a transferring scheme would typically need to conduct investigations into a "wide range" of issues to establish whether a scam was a realistic threat.

Zurich has provided evidence to show that it checked that the QROPS was recognised by HMRC before agreeing to the transfer. It also received information alongside the application confirming the receiving scheme's registration with the relevant body in Malta. So, in the circumstances of this transfer, I think Zurich did sufficient investigation into the legitimacy of the receiving scheme.

Zurich also asked Mr D to answer a set of questions when it wrote to him in September 2015, before it proceeded with the transfer. It is worth noting that the code didn't mandate that Zurich had to ask for information in a particular way. So, I think asking for information in writing was fair.

The questions Zurich asked Mr D to answer were largely in line with those that the relevant part of the PSIG code suggested. Zurich asked Mr D how he'd become aware of the

receiving scheme, if he'd been advised, whether he'd received promotional material or been promised guaranteed returns, what he wanted to achieve by transferring (his reasons) and if he'd been pressured.

Zurich received answers to these questions, and the form was signed by Mr D. As I've already said, despite the conflicting arguments about who completed this form, I'm satisfied on balance that it was likely Mr D. But regardless, I think Zurich was entitled to believe that the answers reflected Mr D's thoughts, given he signed the form.

So, overall, I think the enquiries that Zurich made were largely in line with the expectations at the time around the level of due diligence to be conducted. That being said, I don't think Zurich did enough here once it received the answers from Mr D.

One of the things Mr D was asked was "If you have received advice in relation to the transfer please confirm the name of the adviser / company who provided the advice". In response, Mr D wrote "none". But in answer to the next but one question "How did you hear about the Optimus Retirement Benefit Scheme No. 1?" Mr D wrote "Through the Advisor First Pensions Review". These answers were on the same page of the questionnaire, close together. And in my view they presented a contradiction that Zurich should've picked up on.

On the one hand Mr D was saying there wasn't a named advisor. But he was then naming a specific advisor as the business that had introduced the QROPS to him. Capital Facts which had contacted Zurich was not regulated by the FCA. Neither was 'First Pensions Review' / FRPS. So, given the information it had, and that Mr D had indicated when detailing his motivation to transfer that he'd been shown projections indicating the new scheme was potentially better for him, I think Zurich should have clarified with Mr D whether or not he had received advice and which business had given him advice.

Mr D's annual statement for the QROPS from 2017 refers to SWL being his appointed advisor. I understand SWL was a business based in Gibraltar which had passporting rights to provide financial advice in the UK. I'm also aware that there was a business called Strategic Wealth UK Ltd which was FCA regulated that appears to have had some link to SWL. But I haven't seen anything from the point of the transfer which indicated that SWL was involved with the advice to transfer. So, I'm not presently in a position to conclude Mr D would likely have identified SWL as his advisor when asked, given he didn't mention them in response to Zurich's questions at the time.

It's possible that further evidence may come to light – some consumers have been able to provide suitability reports that SWL sent them, which suggested they would have thought they were getting advice from a firm on the FCA register. But I've not seen that evidence in this case and so I've made my decision on the basis of the evidence I currently have.

On balance, I think if Zurich had clarified further with Mr D, he'd have likely said that FRPS had advised him insofar as it led him to believe that the QROPS was a better prospect for him than his existing Zurich pension. As I've said, I think the reference to 'First Pensions Review' in the questionnaire he completed was FRPS. And he'd already referred to this business as an advisor.

FRPS wasn't authorised or regulated by the FCA to provide financial advice. So FRPS advising Mr D to transfer a personal pension would have been a breach of the general prohibition imposed by FSMA, which states no one can carry out regulated activities unless they're authorised or exempt. Anyone working in this field should have been aware that financial advisers need to be authorised to give regulated investment advice in the United Kingdom – indeed, the Scorpion insert itself makes this point. I think Zurich should have been concerned by FRPS's involvement and ought to have informed Mr D of these

concerns.

What I have to decide is, whether I think that would have made a difference here.

As I've said, I'm satisfied that Zurich provided Mr D the Scorpion insert. And I think this would've been the March 2015 version, given when it was sent. The front page made the statements "Pension scams. Don't get stung". It then explained "Scammers don't care whether you're an inexperienced investor or have never put your money anywhere other than a bank. They will try to flatter, tempt and pressure you into transferring your pension fund into an investment with guaranteed returns. Once the transfer has gone through, it's too late. Remember, the only people who benefit from scams are the scammers themselves." It then went on to explain how to spot warning signs by setting out some of the most common tactics used by scammers. The things listed were:

- Being cold called, receiving a text message, a website pop-up or a doorstep caller offering a 'free pension review', 'one-off investment opportunity' or 'legal loophole'.*
- Convincing marketing materials that offered returns of over 8%.*
- Pension access before age 55.*
- Documents being delivered by courier for immediate signing.*
- The overseas transfer of funds.*
- The suggestion to put money into a single investment (noting in most circumstances advisers will suggest diversification).*

At least two of those warnings applied to Mr D's circumstances. He has said he was cold called and offered a free pension review. And the transfer involved moving his funds overseas to a QROPS. I also note, in the questionnaire he completed, he said he'd received promotional materials. And from what we know about how FRPS tended to conduct sales from other complaints that we've considered, it's likely to have used convincing marketing materials.

After listing the signs of a scam, the leaflet went on to explain steps that could be taken. These were to not be rushed into a decision, call TPAS before signing anything and making a report to Action Fraud if an offer had already been accepted. It concluded by saying "arm yourself with the facts and stop a lifetime's savings being lost" and provided a link to the pension scams website, to find out more. Additional information given for individuals, via this website, included to make sure their adviser was approved by the FCA.

Zurich's letter enclosing the Scorpion leaflet also included warnings about the risks that Mr D could face, including that he could find himself with much less or no income when he retired. And it listed some things that Mr D should consider about the transfer and whether it was appropriate. These included checking if his adviser was regulated by the FCA, with a link to a website where this information could be checked. It also said that if Mr D's financial adviser was not regulated, this meant he'd lose regulatory protection and strongly recommended that he seek regulated advice.

It doesn't appear though that Mr D took any of the suggested actions in the Scorpion insert or Zurich's letter, even though there were several parallels he should have drawn between his circumstances and the warnings given.

I think most people acting rationally would generally be somewhat wary of being approached

out of the blue to talk about such a significant financial product as their existing pension provisions, particularly after receiving a leaflet warning about this scenario. And even if the person Mr D spoke to might have seemed persuasive and genuine, the Scorpion insert warned that scammers commonly tried to tempt people into a transaction. I think these warnings ought to have resonated more with him, rather than, as he suggests, him assuming everything was ok.

I believe the information in the Scorpion insert at that time gave stark warnings about the risks of falling victim to a scam. The document was clearly headed as referring to pension scams. It reiterated the point that scammers are acting for themselves and not in a consumer's interest. It listed the warning signs to look out for and referred to these as being common tactics of scammers. And it said what consumers should do before signing anything. These are strong warnings that were relevant to Mr D's circumstances. And they were further supplemented by the warnings in Zurich's letter, which was addressed directly to Mr D.

Given Mr D thought FRPS was recommending the transfer and he didn't heed or act on strong, easy to understand and relevant warnings about the scam risk he was potentially facing, I don't think it would be reasonable to say a further warning from Zurich about the adviser involved, which would likely have been along similar lines to the information already highlighted, would have prompted Mr D to reconsider his transfer. The contemporaneous evidence doesn't, in my view, support that argument.

Responses to my provisional decision

I gave both parties an opportunity to make further comments or send further information before I reached my final decision.

Zurich said it accepted my provisional decision and had no further comments.

Mr D's representative said they did not accept my findings. In summary they said Zurich had aided unauthorised businesses by providing transfer documents. Those businesses had acted in breach of FSMA, and I needed to decide if Zurich's actions were unlawful and if it had acted in breach of the FCA principles.

The representative also said that Zurich had failed to consider inconsistencies in the information Mr D had provided and hadn't acted on warning signs of a scam. And they said I was wrong to speculate on what Mr D would have done and my decision needed to focus on failings by Zurich.

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.

Some of the comments from Mr D's representative suggest a potential misunderstanding of the role of the Financial Ombudsman Service. So, I think it would be useful to clarify. We are an alternative dispute resolution service and an informal alternative to a court of law. In considering the complaint I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. But my decision is based on what I consider to be fair and reasonable in the individual circumstances of Mr D's complaint.

The representative has said that I was wrong to assume what Mr D would have done and I should only consider Zurich's actions and failings. But I don't agree. The complaint I'm

considering is about Zurich. And I must look at what it has done (which also means I can't hold it responsible for the actions of other businesses such as CFL and FRPS). But my role isn't just to look at whether Zurich has done something wrong. Because a business not doing everything that it should have does not automatically mean that a complaint should be upheld. Rather I have to think about whether any mistake that has happened has caused Mr D to be in a position he otherwise wouldn't have been and incur a loss that is attributable to Zurich. And that involves considering the circumstances more widely and what impact this would've had on any decisions or actions taken by Mr D. So, I don't agree that it is unfair or incorrect for me to consider how I think Mr D would've acted. And, as what would've happened is unknown, I've reached my conclusions about this on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available information.

The representative has said Zurich was wrong to provide information to CFL (an unauthorised business) and to proceed with the application to transfer. But it was not a requirement that a party requesting information about a pension needed to be FCA authorised. Mr D had signed a letter of authority giving Zurich permission to disclose information to CFL. So, Zurich had no reason to deny the request for information and I don't agree that it providing the requested information was an error on its part.

There was also no requirement for the scheme administrator of the QROPS – Integrated Capabilities (Malta) Limited – to be FCA regulated. Nor did the business it delegated some administrative tasks to – OPAL. The forms requesting the transfer, submitted by OPAL, were also signed by Mr D. So, this was a valid request from the policy holder to exercise his right to transfer. And so again, I'm satisfied that Zurich was correct to consider this request. And I don't think either of these actions were illegal or constituted a breach of FSMA by Zurich.

Mr D's representatives have said that Zurich didn't act on warning signs of a potential scam. Zurich was aware from the request that the proposed transfer involved moving Mr D's pension funds overseas. At the time the request was made, this was a warning sign which the Scorpion action pack for businesses highlighted. This prompted Zurich though to issue its letter to Mr D on 4 September 2015. In that letter it highlighted potential risks and included the Scorpion insert. By sending this letter, I'm satisfied that Zurich did act on warning signs it was aware of. And it also asked Mr D for more information, with the questions being in line with what the PSIG Code suggested it should explore. So, it did broadly what I'd have expected it to.

As I said in my provisional decision, I don't think Zurich did enough with the information that it then received from Mr D, which contained some inconsistencies. Which I think was an error. But what I have to decide is whether I think that has led Mr D to be in a position he wouldn't otherwise have been.

Mr D had received the Scorpion insert which set out warning signs of a potential scam. At least two of which appeared to be present in his circumstances. The insert had also included directions on what action Mr D could take next and links to further information, which included a recommendation to check that he'd received regulated advice. And Zurich's covering letter also said he ought, as a minimum, to check he'd received regulated advice and provided information on how to do this. And it went on to say how Mr D could obtain regulated advice, if he hadn't done so. Mr D has been clear that he understood FRPS advised him. And FRPS was unregulated. But these warnings didn't prompt him to act differently. So, for the reasons I explained in my provisional findings, on balance I don't think any further warnings from Zurich would've led to him not going ahead with the transfer, given he'd already disregarded clear and easy to understand warnings.

As a result, while I know this will come as a disappointment to Mr D, I don't think Zurich has

caused him to be in a position he wouldn't otherwise have been in or that it is responsible, in this case, for any losses incurred. So, I don't require Zurich to take any action here.

My final decision

For the reasons I've explained, I don't uphold Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 17 March 2025.

Ben Stoker
Ombudsman