DRN-5343820

The complaint

Mr G is represented by a claims management company (CMC). He has complained about a transfer from his Standard Life group personal pension to a small self-administered scheme ("SSAS") in July 2015. The Standard Life brand is now owned by Phoenix Life, but I'll continue to refer to Standard Life where it is meant historically in this decision. The aim of the transfer appears to have been to invest part of the pension funds in a UK-based airport car parking scheme, which has performed very badly. Mr G says he has lost out financially as a result.

Mr G says Standard Life failed in its responsibilities when dealing with the transfer request. He says it should have done more to warn him about the potential dangers of transferring his pension, and undertaken greater due diligence on the transfer, in line with the guidance he says was required of transferring schemes at the time. Mr G says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Standard Life had acted as it should have done.

What happened

At the time of the transfer Mr G was aged 50 and working as a support engineer. In addition to his unmortgaged property worth £400,000 he had pensions worth £204,000 and £60,000 in savings. He wasn't in debt. He considers he was an unsophisticated investor with a low risk profile and little or no investment experience. His Standard Life personal pension was part of an employer's arrangement and continuing to receive employer contributions. He had a separate group personal pension with another provider which was also receiving employer contributions at the same time.

During the two-year period leading up to the transfer, Standard Life received information requests from multiple different FCA-regulated financial advisers, to which it responded on each occasion providing the information requested.

On 10 February 2015 Standard Life received a recent letter of authority requesting information from a further firm, Moneywise Financial Advisors, who were also FCA regulated. Standard Life responded to this firm's address in Scotland on 16 February 2015, and that firm's details remained logged against Mr G's plan in accordance with the letter of authority.

Standard Life's response contains a bullet list of enclosures, one of which was *"Pension liberation fraud leaflet…This leaflet from the Pensions Advisory Service* [TPAS] *warns of the dangers of early pension release. You can get more information online from their website www.pensionsadvisoryservice.org.uk"*.

On 31 March 2015 Mr G had incorporated a new company to act as the sponsoring employer to his proposed SSAS, describing its nature of business as "pension funding" rather than as a dormant company. This company didn't provide Mr G (its sole director and shareholder) with any income, and seems to have existed only to allow a SSAS to be opened. This is in common with the vast majority of SSAS's set up in this way: there is no evidence to indicate an intention to use the company for an actual business purpose, and I have no reason to think such evidence will exist.

Mr G then applied to set up the SSAS with Rowanmoor Group Plc on 8 May 2015. He signed an interim trust deed for the scheme on 2 June, and an international law firm then produced a definitive deed and rules on 17 June, noting that both Mr G and Rowanmoor Trustees Limited were trustees of the scheme.

On 24 June 2015 Standard Life received a request on the Origo Options electronic transfer system to transfer Mr G's policy to Rowanmoor. Origo is an electronic-based system that reduces the need for paper-based correspondence during pension transfers, so it's often used by providers to accelerate the transfer process. Phoenix Life has told this service that it didn't retain printouts of what the Origo transfer requests said in 2015 and it can no longer obtain them from Origo itself, as this is outside Origo's data retention period.

The transfer of £22,717 was completed on 15 July 2015. Standard Life issued the transfer certificate to Moneywise's Scotland address as well as to Mr G. A cheque for £181,800 was sent by Mr G's other pension provider on 23 July, with a setup fee of £2,064 paid to Rowanmoor and a £1,100 fee paid to Wealth Consultants (Scotland) Ltd – a different advising firm which was unregulated (and now dissolved). It's not clear that Mr G had any direct dealings with this firm, but it traded from the same address as the sponsoring employer to his SSAS.

On 26 November 2015 Park First emailed Mr G – apparently in response to an enquiry he'd made – to confirm that "*of the clients that have come out of the guaranteed rent they have all received over 10% return.*"

The first investment made by the SSAS was a payment of £84,804 to The Hetherington Partnership in December 2015. This firm of solicitors appears to have been arranging the Park First investment and directly handling client funds in the process. Its partners were struck off by the Solicitors Disciplinary Tribunal in 2021 for facilitating inappropriate investments in storage pods and parking spaces.

On 11 March 2016 the SSAS entered into a lease for five plots with Park First Limited at a site near Glasgow airport valued at £100,000. Mr G's CMC says that the reason for the lower purchase price was that income of 8%pa had been guaranteed for the first two years, so this was simply deducted at the outset but £804 of solicitors' costs were incurred.

Subsequently £110,000 was paid across to a discretionary fund manager, in June 2016. A fee of £4,000 that month was paid to Money Advice Partnership Ltd, another FCA-regulated firm, suggesting this was for a service in connection with making this investment. A further fee of £1,100 was paid to Money Advice Partnership's new name (Opes Financial Planning Ltd) in August 2017. (This firm was dissolved in 2023 and is now in default to the Financial Services Compensation Scheme - FSCS.)

In December 2017, the FCA announced its view that Park First was a collective investment scheme operating without authorisation. It obtained Park First's agreement to either offer investors the opportunity to buy back their investment or move into a new leaseback scheme that didn't contravene the restrictions on operating a collective investment. Four companies in the Park First Group went into administration in July 2019, having been unable to make the commitments they had entered into in these arrangements. This appears to include both the companies that were offering the buy back and lease back options for Glasgow airport (Mr G's investment). The car parks would continue to operate, but during the administration no distributions would be made to investors.

The FCA then launched legal proceedings against Park First Limited in October 2019, seeking compensation orders in favour of investors. From what I can establish that matter is still ongoing.

In April 2021 Mr G's CMC complained to Standard Life, highlighting in particular that it failed to send the TPAS leaflet directly to Mr G and failed to demonstrate it had carried out appropriate due diligence on his proposed SSAS. It also believed Standard Life had breached the FCA's Principles for Businesses (PRIN) in not having regard for Mr G's interests.

Phoenix Life didn't uphold the complaint. It considered there were no warning signs that Rowanmoor was acting inappropriately (given that Standard Life had appointed Rowanmoor to manage its own book of SSAS business) and so that didn't warrant further due diligence. It also thought that Mr G's CMC was applying the current standards of due diligence to a transfer that had taken place nearly six years previously, and that it had misunderstood that Standard Life was responsible for assessing the suitability of Mr G's investment decisions.

Our Investigator was unable to resolve the dispute informally, so the matter was passed to me to decide. I issued a provisional decision on 28 December 2023 and then a further one on 18 March 2024. Since then, Mr G's CMC submitted further evidence and arguments that it would like me to take into account. Phoenix Life has said it is prepared to settle this complaint on receipt of my Final Decision.

I'd like to apologise to both parties for the time this has taken, but I've been progressing this complaint at the same time as Mr G's parallel complaint against Zurich Assurance on which other objections were also raised.

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.

<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 Standard Life 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, The Pensions Regulator (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 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.

In a similar vein, in 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.

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 was about to give people greater flexibility in relation to taking pension benefits) and explained that pension scams were evolving. In particular, it highlighted that single member occupational schemes were being used by scammers. 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. (I noted the contents of some of those alerts earlier in my decision.)

- 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.

<u>The circumstances surrounding the transfer: what does the evidence suggest happened?</u>

Mr G had a detailed discussion with our Investigator about what he recalls of the transfer. I've previously given several summaries of what was discussed in this call, but due to the potential significance of one regulated firm Mr G mentioned – Moneywise Financial Advisors Limited – in the discussion below I'm going to stick closely to quotes of what Mr G actually said.

Firstly, I would like to emphasize that Moneywise wasn't mentioned in the complaint Mr G's CMC brought to Standard Life, or this service. That referred consistently to dealing with "Mr P" throughout. It enclosed a copy of TPR's checklist which the CMC had retrospectively completed with Mr G, which named Mr P in person as the adviser (and referring to the involvement they had discovered of an unregulated firm – Wealth Consultants (Scotland) Ltd). It noted that Mr G thought Mr P was regulated, but didn't elaborate on that.

During a phone call with our Investigator, Mr G was asked to give his recollections of what happened. For the first six minutes of that recollection, he mentioned Mr P by name multiple times. His recollection began by explaining, *"I started obviously getting contact with this chap called* [Mr P] *who I thought was an IFA and stuff and he suggested that I should take my pension out of Zurich* [and Standard Life] *and go into a SSAS and SIPP."* Mr G added that *"I think he* [Mr P] *just got introduced as an IFA."*

Mr G agreed that he had been getting a lot of phone calls about his pension at the time. Some earlier advisers (this may relate to those from whom Standard Life had received information requests, mentioned above) advised him to 'potentially' move his pensions, but the advice process wasn't completed with those firms because of a lack of persistence on their part, and as he was busy with work. By 2015 he was aware the Chancellor had announced "pension freedoms", giving him a reason to look at other pension options.

Mr G's recollections appear to corroborate a complaint he made to Zurich about its high charges in November 2014. Mr G told our Investigator that he believed the government was telling people to *"look after your pensions because they're all a bit dodgy in the sense that these big firms were charging too much money…you should look for other sources that may be better."*

Mr G went on, *"It was only* [Mr P] *that persisted over a period of time and kept on coming back to me and stuff."* Mr P suggested to him that he could receive guaranteed returns of 8%pa for a couple of years, potentially increasing to 10-12%pa. This was from a car park investment in the UK which his SSAS would physically own, appreciate in value and could be sold on when he needed to access the capital. He was given information including Chartered Surveyors' reports showing that Park First had a successful track record developing properties in the UK and would be a solid investment, which he thought *"sounded good"*.

When our Investigator asked Mr G if Mr P had a company that he was part of, or was it just Mr P that he dealt with, Mr G responded, *"I think… it got a bit confusing. I only dealt with him, but there was a company – I think they were called Moneywise – they were an IFA firm. He said he was doing it on behalf of them or with them as an employee, but as the years went on he seemed to change who he was with all the time. I couldn't quite work out who he was with in the end to be honest with you."*

I mention this here given that I suggested in previous decisions that Mr G thought Mr P was an employee of Moneywise. I'm mindful that the quote above was Mr G's recollection many years after the event, and even then he says he was also confused in 2015 as to Mr P's role. And in that recollection he wasn't sure if Mr P had told him he worked for, or on behalf of, Moneywise.

When our Investigator asked Mr G whether he had dealt with Moneywise directly at all, Mr G said, *"Not really, I think I phoned them up once just to see if they knew of* [Mr P]*, and they said they had. But again that sort of fizzled out and I understand not many years later they got struck off by yourselves anyway."*

On being asked if these people told him they were regulated, Mr G responded, *"No, it was just the fact that they were sort of IFA affiliated and stuff, and they were proper registered companies. I naively took that to be the case. I rang Moneywise once and asked to talk to their director or whoever was the main chappy there, and they were IFA registered at the time. But I think as I said they got struck off, and Mr P I believe fizzled out with them anyway."* At another point, he said of Mr P: *"Obviously at the time I thought he was working for an IFA company."*

Mr G now thinks Mr P leaned heavily on the pensions freedoms and press reports at the time about large pension providers taking excessive fees, to encourage him to 'take control' of his pension and transfer it. Mr P lived locally to Mr G and visited Mr G's home with the paperwork already marked up for him to sign. On another occasion Mr G visited Mr P's home. He only became aware after the event that Mr P had referred him to Wealth Consultants (Scotland) Ltd, a company which traded from the same address as the sponsoring employer to his SSAS.

For clarity, FCA (rather than our service) had entered a restriction against Moneywise's entry on its register from 25 June 2014. This said (amongst other things) that Moneywise was no longer permitted to place non-standard investments into SIPPs. However this pre-dates Moneywise's request to Standard Life for information on Mr G's policy (10 February 2015) and the SSAS application (8 May 2015) by many months. I think 'struck off' is likely a reference to winding up proceedings at Companies House beginning in March 2016, Moneywise's default to the Financial Services Compensation Scheme in October 2016 or the consequent loss of its remaining FCA permissions in October 2017.

This shows Mr G had some awareness of Moneywise's fate and therefore its possible connection to his pension transfer. But I don't consider that observation alone can have the effect of making any more certain whether Moneywise *actually* advised him. When Zurich transferred Mr G's pension it told Mr G that it was sending confirmation of that to Moneywise, seemingly reiterating its involvement to Mr G – even though, confusingly, Zurich had received a letter of authority from a *different*, regulated adviser in the intervening period.

Mr P had sent Mr G a copy of his CV on 28 November 2014, signing his email as a senior consultant for First Review Pension Services (FRPS). He'd been working for that firm since September 2013. FRPS is known to have previously formed links to Moneywise, with a view to securing its regulated advice on transfers – it seems originally to SIPPs – in order to invest in overseas property in Cape Verde (with which FRPS was commercially associated).

On 9 April 2015 Mr P wrote to Mr G from a private email address, updating him on progress with a proposed SSAS and SIPP application. 50% was stated to be invested in five parking bays and the remaining 50% into 'liquid based Corporate Bond based investments'. Mr P signed off the email as 'Director' of his own consultancy, Vison Administration Services.

By 29 April 2016 Mr P was arranging a meeting with a different FCA regulated adviser - Money Advice Partnership - to *"formulate the most appropriate advice for the reinvestment of…£100K held within your Rowanmoor SSAS".* As we know, this firm did go on to advise Mr G on the discretionary portfolio within his SSAS under this and its subsequent name.

The definitive deed and rules for Mr G's SSAS and the ParkFirst lease were both witnessed by Mr P, who described himself as a Pension Consultant. But no company name was given here. Clearly Moneywise did know who Mr P was and was able to confirm that to Mr G. But Mr G doesn't recall them saying Mr P was their employee. Whilst I've taken Mr P's recollections into account, I'm not persuaded these mean that at the time of these events in 2015 Mr G would have considered Mr P was advising him in the capacity of Moneywise.

All of the wider evidence suggests it is more likely that Mr P was advising on and arranging the SSAS transfer for Mr G in the capacity of FRPS and/or Vision Administration Services. We don't have any evidence of him signing off his emails as Moneywise, whose involvement Mr G says "fizzled out".

Mr P may have been considering referring Mr G to Moneywise for advice on a SIPP, which was initially under discussion. As Standard Life received a Moneywise letter of authority, it's reasonable to conclude Mr G's case at least initially followed this same sales strategy. But I have no evidence that Mr G was advised by Moneywise to transfer to a SIPP. It could not have given that advice for the purposes of a Park First investment in any case, due to the restriction against it on the FCA register. And of course, neither the Zurich nor Standard Life pensions were actually transferred into a SIPP.

In summary, I'm satisfied Mr G believed he was being *advised* to transfer his Standard Life personal pension to the SSAS by Mr P, who described himself as an IFA. At one point Mr P told him he was acting either for, or on behalf of Moneywise, who Mr G also knew was an IFA; however Mr P changed which firms he worked with frequently. At the time of Mr G's transfer to the SSAS, Mr P appears to have been working for FRPS and/or Vision Administration Services.

Mr G has given consistent and fairly detailed testimony, given the time that has passed, of what they discussed. His existing pensions hadn't involved esoteric investments, and I've seen nothing to suggest he had prior experience of such investments. So he wasn't a sophisticated investor who was capable of making his own decision to transfer to a SSAS to invest in parking spaces without such advice.

<u>What did Standard Life do and did it do 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.

Mr G's transfer request came in via the Origo Options system, which wouldn't always necessitate a transfer pack being requested beforehand. However in this case one was requested by Moneywise only a few months earlier. Standard Life responded to Moneywise on 16 February 2015 in accordance with Mr G's letter of authority, as in fact it did to three other authorised firms in the period leading up to Mr G's transfer. Its reply detailed the transfer value and set out the process for transferring, enclosing the Scorpion insert.

Even though none of the regulated firms Standard Life sent transfer packs to seem to have subsequently advised Mr G, it seems that they may have intended to do so. And that would involve assessing what was the suitable course of action they thought Mr G should take. One of the key messages in the leaflet was for Mr G to protect *himself* against scams by going to a regulated firm. But he had already done that.

So arguably on that basis, it would have seemed unnecessary to those firms to pass the insert on to Mr G. But because of the number of regulated firms that Standard Life (and Zurich) had sent transfer packs to, I accept that it's somewhat more possible that one of these regulated firms might have *chosen* to forward the insert on to Mr G. Even if they had done so, another key part of the message was that the initial contact about a scam would be unsolicited. I find it unlikely that the only reason seven regulated firms (including those who contacted Zurich) had dealt with Mr G was that each one made an unsolicited approach.

In response to my last provisional decision, Mr G's CMC disputed this. They said that the volume of letters of authority on Mr G's case wasn't unusual and was driven by the *"greed of unscrupulous firms".* It suggests that the fate of a number of these regulated firms (defaulting to FSCS), and an FCA fine in the case of one, suggests that Mr G would have been extremely unlucky to have sought out advice from each one.

I understand the point being made here. But Mr G is candid in his testimony that he was attracted by the publicity around pension freedoms and wanted to change his pension arrangements. That's shown by his willingness to make a complaint to Zurich at the time: it wasn't necessary to do so simply in order to transfer, so evidently he was more engaged in rectifying issues with the charges on that plan (and if necessary transferring it) than many other individuals I've seen.

I'm not saying that Mr G wasn't referred from one regulated adviser to another, given the previous information requests made to Standard Life and Zurich. It may be that 'Mr P' had connections with some other of these firms in the past in a similar way to his connection with Moneywise. On balance, I find it more likely that rather than seeing Mr P's approach as entirely unsolicited, Mr G saw this as furthering the potential he was investigating of making a transfer after he had tried to sort out the issues with Zurich's charges. I'm therefore wary of basing my findings to any significant degree on Mr G feeling he'd been cold-called.

Taking that into account, I think the Scorpion leaflet would have had a limited impact, *if* it had been sent to one of these regulated firms and then, again, *if* it was passed on to Mr G. He told our Investigator that had he seen this, he would have been a little more aware of the frequency of scam activity – and I think that's right. But crucially and in the absence of any further assistance from Standard Life (which I'll discuss next), Mr G took the steps he thought necessary to check Moneywise had heard of Mr P. The July 2014 version of the insert *doesn't* explain how consumers can go one stage further in checking the FCA register themselves.

So in conclusion, I don't think Standard Life's failure to send the Scorpion insert to Mr G directly had a material impact on his decision to transfer to the Rowanmoor SSAS.

Due diligence:

As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mr G'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 Standard Life's actions using the Scorpion guidance as a benchmark instead.

I've firstly looked at what due diligence Standard Life carried out in this case to consider whether it was sufficient. Phoenix Life explained to this service that it knew Rowanmoor was a professional company established in 1979 and its FCA-regulated subsidiary was at the time one of the UK's largest independent providers of Self-Invested Personal Pensions (SIPPs). Its unregulated SSAS arm was also the same administrator Standard Life had appointed for its *own* branded SSASs at the time - before that business was subsequently sold to Rowanmoor. It concluded as a result that there were no grounds to suspect pension liberation was at play.

Phoenix Life's complaint investigation notes read: *"I have gone to DD* [due diligence] *team to check what dd would have been done at the time which I believe would have been a check of the* [Pension Scheme Tax] *reference…* [DD] *has come back to confirm no further checks would have been done for case on Options no paperwork and Rowanmoor trusted partner and administrator."*

It told our investigator that it was justified in proceeding without further checks because the PSIG Code allowed a transfer to automatically proceed if it satisfied the question *"Is this a recognised 'club' or group transfer (e.g. Public Sector Transfer Club, known group or recipient)?".* In terms of the recipient there is some overlap with PSIG's alternative question: *"Has your organisation currently identified the administrator/scheme as not presenting a risk of pension scam activity…?"*. So I'll consider both questions. I understand the points being made here are twofold:

(i) Standard Life used Rowanmoor Group plc as the administrator for its own branded SSASs at the time, so it was familiar with Rowanmoor's long-established and well-respected position in the industry
(ii) It received the transfer request through the Options system, and it considers the providers using that system could be described as a club or group.

Phoenix Life has said the first point allowed it to conclude that there were no grounds to suspect pension liberation was at play. That isn't in dispute anyway in this case, as I've seen no evidence that Mr G was liberating his pension. However, Phoenix Life's comments don't specifically address the risk of pension scams which had been at the forefront of the TPR guidance since July 2014 (and subsequently PSIG Code).

I accept that at the time of the transfer Rowanmoor was a long established SSAS provider and had some repute in the industry. Rowanmoor Trustees Limited also had legal and fiduciary duties as a professional trustee. There's an argument, therefore, that Standard Life could have taken comfort from this. I disagree. The Scorpion guidance gave ceding schemes an important role to play in protecting customers wanting to transfer a pension. It would defeat the purpose of the Scorpion guidance for a ceding scheme to have delegated that role to a different business – especially one that had a vested interest in the transfer proceeding.

An important aspect in this is the fact that there is little regulatory oversight of SSASs like this; they don't have to be registered with TPR. And TPR had specifically highlighted that scams were now focusing on single-member schemes in its 2015 update to the Scorpion action pack. In the absence of that oversight, Standard Life was assuming, in effect, that Rowanmoor would want to maintain its standing in the industry and the trustee subsidiary would comply with its legal and fiduciary duties. In the context of guarding against pension scams – and an environment where providers and trustees clearly didn't always act as they should have done – I don't consider this to have been a prudent assumption.

The fact that a different part of the Rowanmoor Group (Rowanmoor Personal Pensions) was regulated by the FCA doesn't change my thinking on this. The key point is that Rowanmoor Trustees Limited *wasn't* FCA-regulated, so I see no reason why Standard Life could have been sure it would operate with FCA regulations and Principles in mind – or why its actions would have come under FCA scrutiny.

The example PSIG gave of a recognised club or group was an association of pension *schemes*: the Public Sector Transfer Club. This was mostly large schemes in the public sector who would be making transfers between each other on a regular basis. It would be relatively unusual to be making a transfer to a scheme which had recently joined that club, and understandably some comfort could be drawn from that. A recently established SSAS which could contain very different investments to other SSAS's with the same provider, was somewhat different to this.

Origo Options was a platform for processing transfers that potentially any scheme administrator could join. Phoenix Life hasn't made any comment about what due diligence Origo did before accepting new members. And I think that points to the problem here, which is that it relied on due diligence conducted by a third party even though it doesn't appear to have really known what that due diligence involved.

For these reasons, I'm not persuaded Standard Life would have been able to fast-track Mr G's transfer in the initial triage stage of the PSIG Code through considering the receiving scheme/administrator as being free of scam risk. So, the PSIG triage process should have instead led to it asking Mr G further questions about the transfer as per Section 6.2.2 ("Initial analysis – member questions"). I won't repeat the list of suggested questions in full. Suffice to say, at least one of them would have been answered "yes":

- "*Have you been promised a specific/guaranteed rate of return?"*

Under the Code, further investigation should follow a "yes" to any question. The nature of that investigation depends on the type of scheme being transferred to. The SSAS section of the Code (Section 6.4.3) points to the following as being potential areas of concern:

a) Employment link: a lack of an employment link to any member of the SSAS.
b) Geographical link: a sponsoring employer that is geographically distant from the member.
c) Marketing methods: a SSAS being marketed through a cold call or an unsolicited approach.
d) Provenance of receiving scheme: a SSAS registered within the previous six months or a recently registered sponsoring employer or administrator operating from 'virtual' offices, or using PO Boxes for correspondence purposes.

Underneath each area of concern, the Code set out a series of example questions to help scheme administrators assess the potential risk facing a transferring member. In my last provisional decision, I took my cue from the areas of concern and questions posed in the Scorpion checklist itself. But as I've already noted above, the PSIG Code offered the advantage of a more streamlined process to Standard Life. To reiterate, I don't think following either piece of guidance would lead to a different result.

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 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. With that in mind, and given the relatively limited information it had about the transfer, I think in this case Standard Life should have addressed all four sections of the SSAS due diligence process and contacted Mr G to help with that.

What should Standard Life have found out?

Investigations under part (a) would have revealed that Mr G had been advised to set up the sponsoring employer a few months earlier solely in order to establish the SSAS – i.e. it wasn't going to employ him in any meaningful way. He was actually remaining in his current employment, which Standard Life knew about as contributions from that employer were still being made to the personal pension.

Part (b) would have identified that the sponsoring employer's registered address was in Scotland; whereas Mr G was in the south of England. This registered office was also being used by a number of other companies with similar names to Mr G's (incorporating part of his address and year of birth). It was the hallmark of precisely the type of SSAS scam that TPR warned was on the rise in its 2015 update to the Scorpion action pack.

Whilst I don't think Mr G would necessarily have considered himself to have been cold-called under part (c) for the reasons I gave previously, and he wasn't being encouraged to invest overseas, he clearly would have been able to recall at the time that that he was investing in parking spaces, that being the only specific investment mentioned to him by Mr P by that point. As this was a relatively new investment innovation, I think it's clear that was what TPR alluded to in its guidance highlighting *"unusual, creative or new investment techniques".*

Standard Life should have recognised that this type of investment was at greater risk of being a scam in addition to the specified (and high) rates of return being promised (which in effect would have triggered these investigations in the first place). I also think it unlikely that Mr G would have been unable to outline in any great detail what other investments were potentially being contemplated for the rest of his SSAS. Mr P's email in April 2015 only referred to 'liquid based Corporate Bond based investments' and such investments evidently weren't ready to be made as soon as the Park First one was after Mr G transferred.

I'm fortified in these conclusions by an archived version of the FCA "Scamsmart" website from that time[1], which contains a list of investments *already* known to be susceptible to scams under the *"What are you considering investing in?"* drop-down box. Amongst other investments such as land for development, forestry, student accommodation, hotels, storage units and precious metals, it lists 'parking'.

The FCA's activity in this area is also notable in terms of its Protect Your Pension Pot[2]

---

[1] https://web.archive.org/web/20150612140532/http://scamsmart.fca.org.uk/warninglist/

[2] https://webarchive.nationalarchives.gov.uk/ukgwa/20140901182707/http://www.fca.org.uk/consumers/financial-services-products/pensions/protect

website launched to warn consumers about companies offering pension reviews in late April 2014, resulting in a consumer factsheet being made available that August. The introduction of this website was communicated to firms in the FCA's 'regulation round up' of 1 September 2014[3].

The website highlights that *"These reviews are designed to persuade you to move money saved in your existing personal or occupational pension to a self-invested personal pension (SIPP) or a small self-administered scheme (SSAS). The pension pot is then typically invested in unregulated investments like overseas property developments, forestry or storage units known as store pods."* It links to the wider range of scam investments (including car parks) listed on the FCA's 'Scamsmart' website. And the consumer factsheet says *"Does your new arrangement require you to set up a limited company?"* and *"Have you been promised guaranteed returns and/or a cash sum from your pension?"*

All of this shows that from September 2014, wider information was available to Standard Life – from its own regulator and another – about people being encouraged to set up limited companies and SSASs in order to make unregulated and potentially scam investments. As I've mentioned above, the use of single-member schemes was further alluded to in TPR's March 2015 update directed at firms. So I think it's fair and reasonable to say that by the time Mr G transferred, Standard Life ought have been abreast of these developments. It would otherwise have been difficult for it to adhere to Principles 2 and 6 in particular.

Clearly Standard Life also ought to have asked Mr G who was providing him with this advice. I've taken into account the wider evidence discussed earlier in this decision, not only of Mr P's personal involvement whilst working under several different guises, but also of how he described this involvement in writing to clients.

If asked by Standard Life at the time, I think Mr G would more likely have named Mr P specifically as being the party who was advising him to transfer his Standard Life personal pension to the SSAS, rather than a company. But in the event that Mr G had given the name of a company, I don't think that would likely have been Moneywise either, for the reasons I've already given. To reiterate, there's no evidence Moneywise actually gave Mr G any advice. In fact it looks that Mr G called Moneywise to ask if they knew Mr P because he hadn't heard from them himself.

We also don't know when Mr G's call to Moneywise took place. Standard Life received Mr G's transfer request in late June 2015, so it would only have been contacting him after that date. If Mr G hadn't yet called Moneywise to check they knew who Mr P was, it doesn't follow that he would have been able to confidently say Moneywise was involved at all. And in any event, I think it's more likely that Moneywise had been involved earlier in the process but their involvement had, as he says, "fizzled out". So if Mr G had mentioned any company by name, it's more likely to be one of the other entities we know Mr P worked directly for. The most likely one by this point seems to be Vision Administration Services.

To complete the picture, Standard Life's enquiries under part d) would have revealed that the SSAS was registered very recently and certainly within the previous six months – a further sign of potential scam activity.
The FCA register allows both the names of individuals and firms to be checked. I'm not suggesting that in every case a ceding scheme would need to insist on checking the name of the individual, where the member was clear on which firm had advised them. However by the time Standard Life should have contacted him, I think Mr G would at least have been confused about whether Mr P was representing a particular firm or acting on his own. At most and if it was mentioned at all, I think Moneywise would only have been presented as

[3] https://www.fca.org.uk/publication/publications/rru-sept-2014.pdf

having a possible involvement – with also the possibility of Vision Administration Services also being involved.

All of the warning signs I've highlighted above – essentially making it more likely that Mr G could be the victim of the sort of scam that is normally perpetrated by unregulated advisers, would have played into this. In other words, I think Standard Life had good reasons to be particularly vigilant in this case.

Had it properly scrutinised the register in light of what Mr G would have told it about Mr P, Standard Life would have discovered that someone of Mr P's distinctive name hadn't been on the FCA register since 2003, and wasn't linked to Moneywise as an adviser. Mr G wouldn't have been able to give the name of anyone else on that register who was actually advising him on this transfer, when Standard Life should have known that giving advice on a regulated personal pension required the person doing so to be authorised by the FCA. (I say this noting that a regulated advisory firm did come on the scene later on, but after the Standard Life transfer and Park First investment had been made.)

Moneywise had only one person authorised to provide advice (who was not Mr P), and no appointed representatives, and a restriction I've previously sent evidence to Phoenix Life of, on its ability to arrange non-standard investments in SIPPs. Whilst this restriction says nothing about SSASs, that's because those products fall outside the regulatory perimeter. So that would still leave doubt about why this restriction (on the products FCA *does* regulate) was present in the first place.

My overall point therefore is that given Mr G was unlikely to have mentioned Moneywise at all when asked (or at most only in a tentative way), in the particular circumstances of this case Standard Life ought to have remained concerned about the much clearer involvement of Mr P who was unregulated, and the many other warning signs of a scam.

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 advice in the UK. The PSIG Code (and the Scorpion guidance) make much the same point. Indeed, the PSIG Code says firms should report individuals appearing to give regulated advice that aren't authorised to do so.

My view is that Standard Life should therefore have been concerned by Mr P's involvement because it pointed to a criminal breach of FSMA. On the balance of probabilities, I'm satisfied such a breach occurred here.

Yet Standard Life did nothing at all here in terms of direct engagement with Mr G. Its failure to establish these risks and warn Mr G accordingly meant it didn't meet its obligations under Principles 2, 6 & 7 and COBS 2.1.1R. Instead, Phoenix Life suggests that as Mr G had a statutory right to transfer, it couldn't deny Mr G that right – but I think that was putting the cart before the horse.

Standard Life would have been disregarding these Principles and rules to put its resources into establishing that he had a statutory right to transfer (as a result of his earnings from a different, genuine, employer to that which he'd established) – if it did so in the face of information it ought to have discovered that showed Mr G was at very real risk of a scam. Mr G would actually have to stop the contributions from that employer – an unusual step when the SSAS's sponsoring employer wasn't actually a change of employment for Mr G, as Standard Life would have found out – purely in order to make the transfer.

This reads as if, in the face of information Standard Life ought to have discovered that showed Mr G was at very real risk of a scam, it would have still been putting all its resources into establishing that he had a statutory right to transfer and so there was no point intervening. That would make little sense, and Standard Life would have been disregarding these Principles and rules to do so.

<u>What should Standard Life have told Mr G – and would it have made a difference?</u>

Had it done more thorough due diligence, there would have been a number of warnings Standard Life could have given to Mr G in relation to a possible scam threat as identified by the PSIG Code (and the Scorpion action pack). These included the non-genuine nature of the sponsoring employer used to recently establish a single-member scheme; the unusual investment technique promising him a guaranteed, high rate of return; an apparent lack of diversification; and the fact his current employer was actively contributing to the personal pension and that would no longer continue if the plan was transferred.

Standard Life should also have been aware of the close parallels between Mr G's transfer and the warnings the FCA gave to consumers in 2014 (and subsequently passed on to firms) about transferring to SSASs in order to invest in unusual investments – with car parking being specifically listed in its 'Scamsmart' campaign. But the most egregious oversight was Standard Life's failure to uncover the threat posed by a non-regulated adviser. Its failure to do so, and failure to warn Mr G 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 Standard Life to have informed Mr G that the person he had been advised by was unregulated and could put his pension at risk. Standard Life should have said only authorised financial advisers are allowed to give advice on personal pension transfers, so he risked falling victim to illegal activity and losing regulatory protections. That seems to me a far more straightforward course of action for Standard Life to take than to make assumptions because of the possibility Moneywise, if Mr G had mentioned them at all, was still involved. Indeed, I think all the warnings Standard Life could have given Mr G would have played into the reasons he spoke to Moneywise (at some point in 2015). He would quickly have realised that all the advice had been from Mr P rather than Moneywise, and he would not have any regulatory protection as a result.

I don't think this would have been a disproportionate response given the scale of the potential harm Mr G was facing and Standard Life's responsibilities under PRIN and COBS 2.1.1R. And I don't think any such warnings would reasonably have caused Standard Life to think it was running the risk of advising Mr G, that it was replicating the responsibilities of the receiving scheme or that it was putting in place unnecessary barriers to exit.

I'm satisfied any messages along these lines would have changed Mr G's mind about the transfer. The messages would have followed conversations with Mr G so would have seemed to him (and indeed would have been) specific to his individual circumstances and would have been given in the context of Standard Life raising concerns about the risk of losing pension monies as a result of untrustworthy advice. This would have made Mr G 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 G would have been any different. And in my view Mr G's case is strengthened further by his testimony that he *did* try to check whether Mr P's advice was reputable by contacting Moneywise. I think that shows that he placed importance on getting proper, regulated advice, and therefore that his confidence in that advice would have been seriously shaken by what Standard Life told him.

I've taken into account that Mr G had been impressed with the surveyor's report about the investment. He clearly thought (and told our Investigator) that it looked like a good investment at the time. But I remain of the view that most reasonable people would consider the benefits of a transfer as being illusory once they had been informed of the specific risks the transfer entailed – not least the risk of falling victim to scam activity. I've seen no persuasive reason to think Mr G would be any different. And the cost of Mr G having to dissolve the sponsoring employer would be minimal compared with the significant loss from both his ceding schemes if he proceeded.

I've also found in the parallel complaint against Zurich that neither scheme warned Mr G about this transfer in anything like the terms they should have done. And this has led to the losses Mr G suffered. I'm therefore upholding this complaint.

<u>What losses is Standard Life responsible for?</u>

I consider that if Standard Life had acted as it should, Mr G wouldn't have proceeded with the transfer to the SSAS or suffered the investment losses that followed. However I've considered whether, given the interest Mr G was showing in at least transferring away from his Standard Life plan to another with more transparent charges, would he always have made a transfer somewhere else (albeit, for the reasons I've set out above, not invested in the Park First scheme)?

I also have to be mindful that Mr G only invested less than half of the total proceeds (from Zurich and Standard Life) in Park First. There doesn't appear to have been a clear plan at the time of the transfer on what to do with the remainder, other than a reference Mr P made to liquid corporate bonds (which ultimately doesn't seem to be what Mr G invested in).

The reason for the appointment of Money Advice Partnership as the new, regulated, advising firm was because Mr P went on to work for that firm and organised a further discretionary manager investment (rather than the corporate bond idea originally planned). Both the size of the fee paid from the SSAS to this firm, and Rowanmoor's apparent wish for there to be a trustee adviser involved (for good reason – it was required by law to ensure the trustees obtain and consider advice before making investments) seem to suggest advice would have been given.

Mr G's CMC said in response to my latest provisional decision that there was an unregulated firm, MAPGPI trading from the same address as Money Advice Partnership Ltd. It hasn't explicitly said that MAPGPI advised he invest with the discretionary manager rather than Money Advice Partnership, but I realise that may be its point. Given that the recommendation to use the discretionary manager ultimately involved underlying regulated investments, I find it more likely that Money Advice Partnership, the regulated firm, gave that advice. In the end the best indication for that is the entry on Rowanmoor's bank statements which shows the payment for the advice going to Money Advice Partnership Ltd and not a firm of any other name.

In any event, this investment was far more mainstream than the Park First investment, may not necessarily have been a cause of further loss, and I note wasn't specifically complained about in Mr G's complaint. So I accept that the subsequent advising firm should have been expected to be responsible for the suitability (or otherwise) of its own recommendations for the non- Park First part of the SSAS.

If Mr G doesn't think the portfolio was suitable, he may be entitled to complain to FSCS in respect of the adviser or to the FCA regulated discretionary manager who managed it for him. All I can say at present is that these subsequent actions of employing a discretionary manager with the majority of Mr G's SSAS, coupled with Mr G's dissatisfaction with Zurich's charges, underline that there would likely always have been a transfer from the Standard Life plan at some point.

But at the same time, this doesn't reasonably alter the findings I've already made that Standard Life caused (in proportion) Mr G's losses on the Park First investment through its actions in 2015. I say this because I'm not persuaded that by the time of its involvement, Money Advice Partnership would have been able to make alterations to the commitment Mr G had already made to the Park First investment, which has proven to be illiquid.

My conclusion therefore is that on the balance of probabilities, Mr G would still have transferred from Standard Life in around 2015/16; but had it not been for Standard Life's failings, he would never have made this particular SSAS transfer in order to invest in Park First. So the only loss for which Phoenix Life could reasonably be held responsible would be its proportion, compared with Zurich's, of the £84,804 invested in Park First.

<u>The blameworthiness of other parties involved at the time of Mr G's transfer itself</u>

I have given thought to whether Mr G should bear some responsibility for the losses he incurred. I take into account that under The Law Reform (Contributory Negligence) Act 1945 the courts are able to reduce a defendant's liability for negligence, where the claimant shares responsibility for the damage they've suffered. But my view here is that Mr G doesn't bear responsibility for the losses he suffered.

He transferred his pension because he listened to someone who was promising significantly higher returns than he was achieving. He's admitted he had some doubts at the time about whether to move in this new investment direction. However by the point of making his transfer, I think Mr G had taken reasonable steps to contact Moneywise, a regulated firm, about Mr P. Crucially he hadn't been told by anyone (including Zurich or Standard Life) how to check Mr P's regulatory status himself on the FCA register.

My view is that Mr G wouldn't reasonably have known that his actions were exposing him to undue risk that was inconsistent with investing for the purposes of improving his pension provision. I'm satisfied his actions were in keeping with those a reasonable person would take. I therefore don't intend to reduce Mr G's compensation for contributory negligence.

There isn't anything inherently unusual (in financial services in particular) for different parties to have caused the same loss. The Financial Ombudsman Service was established to, wherever possible, resolve disputes quickly on a fair and reasonable basis with minimum formality, but we only cover regulated financial services. In disputes like Mr G's where the complaint has arisen precisely because various parties acted at or outside the regulatory perimeter, there are likely to be parties that don't come within our jurisdiction. It may result in our making an award where all of the cost of the wrongdoing is met by the respondent in the complaint we're considering (in circumstances where its actions could have entirely avoided the loss our award is being made for, as is the case here).

When considering the regulatory framework as part of which this Service operates, and the significant responsibilities expected of those who are regulated by the FCA – which underline the reasons why I've upheld Mr G's complaint against Phoenix Life – I don't think this is an unfair or unreasonable outcome.

In effect, what I'm saying is that if Standard Life had carried out appropriate enquiries, it ought to have appreciated that it was the only FCA regulated firm with any clear involvement in this transaction, and it was held to a correspondingly high standard. And it could still have protected itself from losses that its client was at risk of suffering, including at the hands of a professional pension scheme trustee (as highlighted in the Scorpion guidance itself) by taking reasonable steps to act in Mr G's best interests.

There's no expectation, even in law, that the complainant must complain to all the parties who it could potentially be argued caused the same loss. Any complaint about Moneywise or

Rowanmoor would fall to be dealt with by the FSCS and Pensions Ombudsman (or the courts) respectively, rather than this service.

Our rules require me to determine the complaint in front of me. For the reasons given here, I'm satisfied that it is fair and reasonable for Phoenix Life to compensate Mr G in full for its proportion (compared with Zurich's) of his losses on the Park First investment alone. I will however make my award against Phoenix Life conditional upon Mr G re-assigning to Phoenix Life any rights to take further action against either Moneywise or Rowanmoor (in respect of that proportion of the contribution to the Park First investment that was funded by Standard Life's transfer).

Putting things right

My aim is that Mr G should be put as closely as possible into the position he would probably now be in if Standard Life had treated him fairly.

Mr G transferred to a SSAS and made an investment in Park First that I don't consider he would have made from the proceeds of this pension transfer, had it not been for Standard Life's shortcomings. I therefore think that Phoenix Life should compensate him for the typical growth he would have made in an alternative, mainstream investment(s) likely to be recommended by a competent, regulated financial adviser – rather than the Park First investment.

To compensate Mr G fairly, Phoenix Life must subtract:

- the proportion of the actual value of the Park First investment which originates from the transfer of Mr G's Standard Life pension; from
- the notional value of the sum that was originally transferred from Standard Life if it had performed in line with the FTSE UK Private Investors Income Total Return index, after a deduction (set out below) to adjust for the amount that was reinvested by Money Advice Partnership in 2016.

If the notional value is greater than the actual value, there is a loss.

Actual value

This means the proportion of the actual amount payable from the Park First investment originating from Mr G's Standard Life transfer (the **"relevant proportion"**) as at the date of this Final Decision. The relevant proportion is defined as the amount received from Standard Life divided by the total amount received in the SSAS, which is £22,717 / (£181,800 + £22,717) = 11.11%.

Finding the actual value is complicated where an investment is illiquid (meaning it cannot be readily sold on the open market). I consider that is the case for Mr G's Park First investment. I also consider there is no reasonable prospect for Phoenix Life to be able to buy only a *part* of this investment out of the SSAS (the part which its pension transfer funded) in order to resolve the issues with illiquidity for Mr G. Therefore, as part of calculating compensation, Phoenix Life should give the Park First investment a nil value – so the actual value formed from the Standard Life transfer is also nil.

Phoenix Life may ask Mr G to provide an undertaking in return, to account to it for the **relevant proportion** of the net amount of any payments his SSAS may receive from the Park First investment after the date of this Final Decision, by withdrawing them from the SSAS. Phoenix Life will need to meet any costs in drawing up the undertaking. If Phoenix Life asks Mr G to provide this undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

Mr G will be expected to provide all information to Phoenix Life relating to the sums his SSAS has received to date from the Park First Joint Administrators, and any sums he receives in the future.

Notional value

This is what the sum originally transferred from Standard Life (£22,717) would have been worth, had it performed up to the date of this Final Decision in line with the FTSE UK Private Investors Income Total Return index.

In order to arrive at this value, the **relevant proportion** (11.11%) of the total amount remaining in the SSAS bank account at the point Money Advice Partnership took their fee and proceeded to reinvest it (£117,215.68) should be removed from the calculation and cease to participate in the benchmark return from that point onwards. This means 11.11% of £117,215.68 = £13,022.66 should be removed from the calculation on 3 June 2016.

I've chosen this index because it provides a mix of growth based on investment in shares and lower risk investments such as bonds, appropriate for a medium risk investor. I note that Mr G says in his complaint that he had a low risk outlook, but when considering all of the evidence as a whole I'm satisfied that his existing investments with Standard Life and Zurich were overall of a broadly medium risk profile – and this index is most appropriate for someone of that attitude to risk.

This doesn't mean that whatever investments Mr G would have chosen instead of the Park First investment would have performed exactly in line with this index. It's being used as a proxy for the likely growth Mr G might have achieved, given that I can't be sure precisely where he would have invested.

It isn't always possible for the method of redress in a case like this to be completely precise, given the intervention of a different regulated firm. I consider that this method provides fair redress and recognises the main cause of Mr G's loss. It also takes into account that the ceding schemes shouldn't be responsible for any further losses (or gains) caused by the separate advice Mr G received on that part of his SSAS other than the Park First investment (£117,215.68) from June 2016, nor for the fee Mr G paid that adviser or the ongoing SSAS (or other) fees after that adviser was involved with the SSAS.

Phoenix Life may also treat **the relevant proportion** of any income/liquidation payments that have already been received into the SSAS from Park First as notional withdrawals 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 Rowanmoor SSAS given Mr G's dissatisfaction with the outcome of the investment it facilitated. Nor do I think it's appropriate for Phoenix Life to reinstate Mr G's former pension plan given my conclusion that Mr G would likely always have transferred away from Phoenix Life (but to make different investments).

Phoenix Life may therefore either:

1. Set up a pension with a new FCA-regulated provider of Mr G's choice for a value equal to the amount of any loss. Its payment into the new plan should allow for the effect of charges and tax relief (if applicable). Phoenix Life shouldn't set up a new plan if its payment will result in Mr G incurring tax charges for exceeding the annual allowance; *or*

2. Pay the amount of any loss directly to Mr G. But if this money had been in a pension, it would have provided a taxable income. 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 during Mr G's retirement. (This is an adjustment to ensure that Mr G isn't overcompensated – it's not an actual payment of tax to HMRC.)

To make the reduction for any cash payment, I said in my last provisional decision that it's reasonable to assume that Mr G is likely to be a basic rate taxpayer in retirement, which hasn't been challenged by him or his representative. So, if the loss represents further 'uncrystallised' funds from which Mr G 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 G 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.

My award is conditional upon Mr G re-assigning to Phoenix Life any rights he has to take further action against Moneywise and Rowanmoor (in respect of **the relevant proportion** of the Park First investment that was funded by Standard Life's transfer).

If payment of compensation is not made within 28 days of Phoenix Life receiving Mr G's acceptance of my Final Decision, interest should 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 Phoenix Life deducts income tax from the interest, it should tell Mr G how much has been taken off. Phoenix Life should give Mr G a tax deduction certificate in respect of interest if Mr G asks for one, so he can reclaim the tax on interest from HMRC if appropriate. Details of the calculation must be provided to Mr G in a clear, simple format.

My final decision

I uphold Mr G's complaint and require Phoenix Life Limited to calculate and pay him redress as set out in the steps above.
Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 19 March 2025.

Gideon Moore
Ombudsman