DRN-5374672

The complaint

Mrs L has complained about a transfer of their Zurich Assurance Ltd personal pension to a small self-administered scheme ("SSAS") in 2014. Mrs L's SSAS was subsequently used to invest in commercial property overseas through The Resort Group ('TRG'). The investment now appears to have little value. Mrs L says she has lost out financially as a result.

Mrs L says Zurich failed in its responsibilities when dealing with the transfer request. She says that it should have done more to warn her of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance she says was required of transferring schemes at the time. Mrs L says she wouldn't have transferred, and therefore wouldn't have put her pension savings at risk, if Zurich had acted as it should have done.

What happened

I issued a provisional decision on 12 June 2024 setting out the background to the complaint and my provisional findings. Below I have included the key parts from that decision – which form part of this decision:

'Mrs L signed a letter of authority allowing Consumer Money Matters to obtain details, and transfer documents, in relation to her pension. Mrs L says this followed an unsolicited approach. Consumer Money Matters wrote to Zurich, enclosing Mrs L's letter of authority. It requested information on Mrs L's pension and discharge forms to allow a transfer. Zurich sent Consumer Money Matters the requested information on 30 May 2014. Consumer Money Matters wasn't authorised to give financial advice (although regulated as an AR of Cavere Ltd as an introducer). Mrs L says she was attracted by the prospect of better returns that could provide a comfortable retirement.

On 18 July 2014, a company was incorporated with Mrs L as director. I'll refer to this company as 'L LTD'. On 20 August 2014, Mrs L signed documents to open a SSAS with Cantwell Grove. L LTD was recorded as the SSAS's principal employer. The SSAS documents also recorded that the SSAS was to be used to invest around £23,000 in TRG.

On 20 August 2014, Cantwell Grove wrote to Zurich and enclosed the completed transfer forms, a copy of the schemes Trust Deeds and rules, the HMRC registration, Key scheme details including the proposed investments which were a discretionary managed service provided by Central Markets Investment Management ('CMIM') and a commercial property investment provided by TRG. It said CMIM would provide advice to the trustees of the SSAS under section 36 of the Pensions Act 1995 on whether the investments were appropriate for the SSAS. I want to note here that Central Markets was never actually involved. Evidence shows it was a firm called Broadwood Assets who later went onto give the section 36 advice.

Also included in Cantwell Grove's correspondence was confirmation from Mrs L that she:

- *Was not seeking to access her pension benefits before the age of 55.*

- *Had not received a cash or any other incentive to transfer.*

- *Understood that there had been a significant rise in pension liberation fraud.*

- *Was transferring to gain access to investment opportunities that were in no way connected to pension liberation*

- *Had received detailed information about the SSAS, how it operates and the risks involved with transferring.*

Following receipt of the above letter, Zurich wrote to Mrs L on 26 August 2014 acknowledging her transfer request. Alongside her address the letter heading included the logo 'Scorpion' – Predators Stalk Your Pension', and the first paragraph of the letter stated:

'Thank you for asking us to transfer your pension benefits to L LTD.
Before we consider your request further, we would like to help ensure you are not being misled into transferring when it is not in your best interest to do so.'

Enclosed with the letter was the Scorpion Pensions Regulator's leaflet and the letter pointed out that new pension schemes were being arranged with the view to encouraging people to take pensions before age 55. It also said in relation to these liberation scams – 'your fund may be invested in assets which are often high risk, located overseas and may not be subject to regulatory controls. If these investments fail, you may not have any means of obtaining compensation.'

The letter also explained the importance of seeking independent financial advice from a regulated UK authority. This letter concluded by explaining that after considering the content of the letter and enclosures, if Mrs L wished to proceed with the transfer, she should sign the enclosed transfer form and return this to Zurich. It explained that this could take some time as it was doing enhanced due diligence checks with HMRC to check the registration of the scheme.

Mrs L signed this on 5 September 2014. Zurich then wrote to Mrs L again on 15 September and explained that before the transfer could take place, it had to be satisfied that HMRC would consider the transfer an authorised payment and that the L LTD SSAS was still registered with HMRC. It explained that these checks were being done to provide greater protection to individuals. And once it was satisfied that HMRC would consider the transfer to be an authorised payment and that the L LTD SSAS was still registered with HMRC, it would proceed to transfer.

It also explained its confirmation that the transfer could proceed should not be taken as any form of endorsement from it or HMRC. And that she should still carry out her own checks before proceeding with the transfer. It re-iterated the importance of getting advice from a regulated UK financial adviser specialising in pensions. And it explained how Mrs L could go about this. I've included screenshots of the key information provided in this letter to Mrs L below:

As a result of increased pension liberation activity, the pensions industry is acting cautiously and making more checks before proceeding with (or declining) transfer requests. Inevitably this slows down the transfer process, which is regrettable, but it is designed to provide greater protection to individuals so that their pension savings are available to provide them with pension income in later li
Unfortunately many individuals have already been caught out as a result of pension liberation fraud and have either suffered substantial tax charges and/or have lost out financially through expensive scheme /scheme administrator charges and/or unregulated investments, or all of these.

> In the meantime, if you have not yet been advised regarding your proposed transfer by a UK regulated financial adviser specialising in pensions, we strongly recommend that you now obtain such regulated advice. If you wish to discuss your pension with an Independent Financial Adviser (IFA) or would like more information about the IFA's nearest to you, you can contact the IFA trade body, IFA Promotion Limited, via their website: http://www.unbiased.co.uk/, by email: ifacontact@unbiased.co.uk or by telephone: 0330 303 0025. You can check if a financial adviser is regulated with the relevant authority, the Financial Conduct Authority (FCA), by checking the Financial Services Register, which is hosted on the FCA's website (http://www.fca.org.uk/), at http://www.fsa.gov.uk/register/home.do.

By 14 October 2014 Zurich was satisfied the transfer could take place. And it sent a cheque of approximately £26,000 to Cantwell Grove. Mrs L was aged 47 at the time.

On 31 October Mrs L then received advice as a trustee of the SSAS by Broadwood Assets, an unregulated adviser, to invest in commercial property in Cape Verde through TRG. A significant proportion of the transfer value was invested in a fractional hotel investment in Cape Verde and I understand the investment is now illiquid and essentially of nil value.

In October 2019, Mrs L complained to Zurich. Briefly, her argument is that Zurich ought to have spotted, and told her about, a number of warning signs in relation to the transfer, including (but not limited to) the following: the SSAS was newly registered, there wasn't a genuine employment link to the sponsoring employer, the catalyst for the transfer was an unsolicited call and she had been advised by an unregulated business.

Zurich didn't uphold the complaint. It said Mrs L had a legal right to transfer and that none of the information it had about the transfer at the time gave it cause for concern. It was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

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

What I've provisionally decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The relevant rules and guidance

Before I explain my reasoning, it will be useful to set out the environment Zurich was operating in at the time with regards to pension transfer requests, as well as any rules and guidance that were in place. Specifically, it's worth noting the following:

- *The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme if certain conditions are satisfied (and a member may also have a right to transfer under the terms of the contract). This came to be exploited, with people encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren't entitled to – for instance, because they were below minimum retirement age.*

- *On 10 June 2011, the Financial Services Authority (FSA) issued a warning about the dangers of "pension unlocking" and specifically referred to consumers transferring to access cash from their pension before age 55. (As background to this, the normal minimum pension age had increased to 55 in April 2010.) The FSA said that receiving occupational pension schemes were facilitating this. It encouraged consumers to take independent advice. The announcement acknowledges that some advisers promoting these schemes were FSA authorised.*

- *At around the same time, TPR published information on its website about pension liberation, designed to raise public awareness and remind scheme operators to be vigilant of transfer requests. The warnings highlighted that websites and cold callers were encouraging people to transfer in order to receive cash or access a loan.*

- *TPR launched its Scorpion campaign on 14 February 2013. The aim of the campaign was to raise awareness of pension liberation activity and to provide guidance to scheme administrators on dealing with transfer requests in order to help prevent liberation activity happening. The FSA, and the Financial Conduct Authority (FCA) which had succeeded the FSA, endorsed the guidance. The guidance was subsequently updated, including in July 2014. I cover the Scorpion campaign in more detail below.*

- *In August 2014 the FCA 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 highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.*

- *Zurich was subject to the FCA Handbook and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA/FCA rules governing pension transfer requests, but the following have particular relevance:*

  – *Principle 2 – A firm must conduct its business with due skill, care and diligence;*

  – *Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;*

  – *Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and*

  – *COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.*

The Scorpion guidance

The Scorpion campaign was launched on 14 February 2013, and was initially focused just on pension liberation – namely, the access to pension funds in an unauthorised manner (such as before normal minimum pension age). However, it's the update to that guidance on 24 July 2014 that's most relevant to this complaint. It widened the focus from pension liberation specifically, to pension scams – which it said were on the increase.

The materials in the Scorpion campaign comprised:

- *An insert to be included in transfer packs (the 'Scorpion insert'). The insert warns readers about the dangers of pension scams and identifies a number of warning signs to look out for.*

- *A longer booklet issued by TPAS which gives more information, including example scenarios, about pension scams. Guidance provided by TPR said this longer leaflet was intended to be used in ongoing communications with members so that could become aware of the scam risks they were facing.*

- *An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "watch out for" various warning signs of a scam. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where a transferring scheme still had concerns, they were encouraged (amongst other things) to contact the member to establish whether they understood the type of scheme they were transferring to and – where a member insisted on transferring – directing the member to Action Fraud or TPAS.*

In addition to widening the focus beyond just pension liberation scams, the July 2014 action pack had a different set of warning signs that could potentially prompt a transferring scheme to conduct further due diligence. I don't consider these warning signs necessarily superseded the warning signs that had been highlighted previously. I consider them to have been additive, giving schemes further prompts for action.

TPR issued the guidance under the powers at s.12 of the Pension Act 2004. Thus, for the bodies regulated by TPR, the status of the guidance was that it provided them with information, education and/or assistance, as opposed to creating any new binding rule or legal duty. Correspondingly, the communications about the launch of the guidance were predominantly expressed in terms that made its non-obligatory status clear. So, the tenor of the guidance is essentially a set of prompts and suggestions, not requirements.

The FSA's endorsement of the Scorpion guidance was relatively informal: it didn't take the form of Handbook Guidance, because it was not issued under s.139A of the Financial Services and Markets Act (FSMA), which enabled the FSA to issue guidance provided it underwent a consultation process first. Nor did it constitute "confirmed industry guidance", as can be seen by consulting the list of all such FSA/FCA guidance on its website.

I take from the above that the contents of the Scorpion guidance was essentially informational and advisory in nature and that deviating from it doesn't necessarily mean a firm has broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's statutory rights.

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

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

<u>What did personal pension providers need to do?</u>

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. And where the recommendations in the guidance applied, absent a good reason to the contrary, it would normally have been *reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations. With that in mind, I take the view that personal pension providers dealing with transfer requests needed to heed the following:*

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

2. *The Scorpion insert provided an important safeguard for transferring members, allowing them to consider for themselves the scam threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. So, all things considered, I think the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party – an unregulated introducer, say.*

3. *I also think it would be fair and reasonable for personal pension providers – operating with the regulator's Principles and COBS 2.1.1R in mind – to ensure the warnings contained in the Scorpion insert were provided in some form to a member before a transfer even if the transfer process didn't involve the sending of transfer packs.*

4. *The Scorpion guidance asked firms to look out for the tell-tale signs of scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The guidance points to the warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. Therefore, whilst using the action pack wasn't an inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.*

5. *The considerations of regulated firms didn't start and end with the Scorpion guidance. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn't involve anything specifically referred to in the Scorpion guidance – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's principles and COBS 2.1.1R.*

<u>The circumstances surrounding the transfer and Mrs L's recollections</u>

In March 2013 Mrs L signed a letter of authority to allow Consumer Money Matters to request information about her pension with Zurich. Mrs L has said she believed the unsolicited contact to have come from Choices Wealth but the evidence points to it being Consumer Money Matters who started the process. She said this led to a meeting with a firm Mrs L believes was Broadwood Assets who she thought were representatives of Cantwell Grove. She's said the adviser visited her at her home and recommended she transfer to the SSAS and invest in TRG.

Mrs L's recollections are understandably vague given the length of time that has passed and the number of parties involved. From our knowledge of other cases, I think it's unlikely Broadwood Assets were involved in the advice to transfer her pension into the SSAS. It later, after the transfer, gave her the advice as a Trustee of the SSAS and in this letter it was very careful to set out that it was only advising Mrs L on the appropriateness of the investment within the SSAS and it made clear it had not advised her on the establishment of the SSAS. I *think its most likely that Mrs L's recollection that Broadwood Assets was involved in the initial process of transferring the pension and setting up the SSAS has come from their later involvement.*

We know from other cases that Consumer Money Matters, who weren't regulated to give transfer advice, regularly contacted consumers to initiate a pension review. However, after their initial contact, they often referred customers to other unregulated parties including Choices Wealth Limited who then took over and gave the advice regarding the transfer and setting up of the SSAS. Usually once the transfer had proceeded another firm (in this case Broadwood Assets) would then advise the customers as trustees of the SSAS about the appropriateness of their investment for a SSAS. Choices Wealth also had links to TRG through two of its directors. So I think its contact with Mrs L was likely with the intention of getting her to transfer her pension to invest in TRG.

On similar cases where testimony hasn't been clear we have been able to work out who the adviser was working for through the fact they've witnessed documents related to the transfer and setting up of the SSAS. Unfortunately on this case I've been unable to ascertain who the witness was working for. But given the evidence on this case and what we know about other similar cases I think it was likely Choices Wealth Limited.

As part of the transfer process, Zurich did send Mrs L the Scorpion leaflet. It asked if she still wanted to proceed with the transfer to return the enclosed transfer confirmation form. Which Mrs L did. After the transfer occurred, she then received advice from an unregulated firm – Broadwood Assets (who were clear about that fact) to invest in a commercial property in Cape Verde. Unfortunately, it appears the investment through TRG has stopped producing returns, has no resale potential and essentially now has a nil value.

<u>What did Zurich do and was it enough?</u>

The Scorpion insert:

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

Having reviewed the evidence it's clear that Zurich did send a Scorpion leaflet to Mrs L. I'd asked Zurich for evidence of the version it sent to Mrs L. And it told me it had processes in place to update the scorpion leaflets sent to its members when updated versions became available. And as TPR revised the leaflet on 24 July 2014, it believed it would have sent that version in late August and to Mrs L but it cannot be certain. However, looking at the letter in question it used the logo for the 'Predators stalk your pension' leaflet which is the February 2013 leaflet and so I think it is most likely the leaflet enclosed. This leaflet primarily warned about liberation but in any event my findings aren't centred on which leaflet was sent but rather other failings on Zurich's part.

Zurich also gave Mrs L related warnings within their letters to her about liberation and scams. In particular it repeatedly mentioned the risk of liberation and the importance of receiving regulated advice as evidenced above in the background to the complaint. It also made reference to high-risk overseas investments where a customer could lose all of their funds. In Zurich's letter of 26 August 2014 it said in relation to the heading 'Pension Liberation – the impact on you?... Your fund may be invested in assets which are often high risk, located overseas and may not be subject to regulatory controls. If these investments fail, you may not have any means of obtaining compensation'.

<u>Due Diligence</u>

However, I do think Zurich ought to have done more in this case. In light of the Scorpion guidance, I think firms ought to have been on the look-out for the tell-tale signs of a pension scam and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk.

Given the information Zurich had at the time, two features of Mrs L's transfer would have been a potential warning sign of a scam: Mrs L's SSAS was recently registered (it had been registered eight days before the transfer request) and one of the proposed investments was non-standard and overseas. Zurich should therefore have followed up on it to find out if other signs of a scam were present. Given these warning signs, I think it would have been fair and reasonable – and good practice – for Zurich to look into the proposed transfer and the most reasonable way of going about that would have been to turn to the check list in the action pack to structure its due diligence into the transfer.

The check list provided a series of questions to help transferring schemes assess the potential threat by finding out more about the receiving scheme and how the consumer came to make the transfer request. Some items on the check list could have been addressed by checking online resources such as Companies House and HMRC. Others would have required contacting the consumer. The check list is divided into three parts (which I've numbered for ease of reading and not because I think the check list was designed to be followed in a particular order):

1. *The nature/status of the receiving scheme*

Sample questions: Is the receiving scheme newly registered with HMRC, is it sponsored by a newly registered or dormant employer, an employer that doesn't employ the transferring member or is geographically distant from them, or is the receiving scheme connected to an unregulated investment company?

2. *Description/promotion of the scheme*

Sample questions: Do descriptions, promotional materials or adverts of the receiving scheme include the words 'loan', 'savings advance', 'cash incentive', 'bonus', 'loophole' or 'preference shares' or allude to overseas investments or unusual, creative or new investment techniques?

3. *The scheme member*

Sample questions: Has the transferring member been advised by an 'introducer', been advised by a non-regulated adviser or taken no advice? Has the member decided to transfer after receiving cold calls, unsolicited emails or text messages about their pension? Have they applied pressure to transfer as quickly as possible or been told they can access their pension before age 55?

Opposite each question, or group of questions, the check list identified actions that should help the transferring scheme establish the facts.

I don't think it would always have been necessary to follow the check list in its entirety. And I don't think an answer to any one single question on the check list would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the check list to establish whether a scam was a realistic threat. Given the warning sign that should have been apparent when dealing with Mrs L's transfer request, and the relatively limited information it had about the transfer, I *think in this case Zurich should have addressed all three parts of the check list and contacted Mrs L as part of its due diligence.*

Zurich was obviously doing some due diligence checks with HMRC to check whether it was still registered. These checks were aimed at ruling out pension liberation. However, the Scorpion guidance had been updated in July 2014 focusing not exclusively on Pension Liberation but wider scams and the FCA had given warnings about the increased use of SIPPS and SSAS for unregulated investments and customers losing their pensions this way.

I think it ought to have made further enquiries to establish whether Mrs L might be at risk of any other scam activity. Had it done so, I think Zurich would have found out that Mrs L had been contacted by an introducer via unsolicited methods and had been advised by unregulated advisers to transfer her pension.

If Zurich had done everything it should have done, I think it would have taken the following action:

- *Check the receiving scheme was registered – which it did do.*
- *Send the Scorpion insert to Mrs L before the transfer– which it did do (although seemingly not the updated version)*
- *Looked out for the tell-tale signs of a scam and do further due diligence – I think Zurich did do some further due diligence and provided some warnings but I think it ought to have gone further.*

I don't think it followed the action pack through as it should've done, and had it done so I think it ought to have contacted Mrs L. In doing so it would've repeated the warnings in the Scorpion leaflet that were relevant to Mrs L's case and attempted to discover more about how the transfer request had come about and Mrs L's motives.

Had it done so it would've found out that Mrs L had been advised to transfer by unregulated advisers. Whilst Mrs L's recollections about which firm this was are vague many years after the event. I think at the time she likely would've recalled which unregulated firm she had been speaking to. And on the balance of probabilities and Mrs L's subsequent testimony I think she would've told Zurich it was Choices Wealth Limited that was advising her.

The check list recommends that in order to establish whether its member has been advised by a non-regulated adviser, the ceding firm should "check whether advisers are approved by the FCA at www.fca.gov.uk/register". In other words, they should consult the FCA's online register of authorised firms. Zurich should have taken that step, which is not difficult, and it would quickly have discovered that Mrs L's adviser was indeed unauthorised.

Being advised by an unauthorised firm to transfer benefits from a personal pension plan would have been a breach of the general prohibition imposed by FSMA, which states no one can carry out regulated activities unless they're authorised or exempt. Anyone working in this field should have been aware that financial advisers need to be authorised to give regulated investment advice in the United Kingdom – indeed, the Scorpion insert itself makes this point.

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

Causation

Overall, I'm not satisfied Zurich fulfilled its obligations under PRIN and COBS, nor followed good practice in relation to Mrs L's transfer. So I don't think it acted fairly and reasonably. I think Zurich should have provided more specific information to Mrs L about the risks of the transfer along the lines I've set out above. I've therefore gone on to consider whether this failing caused Mrs L harm or loss.

I've considered the possibility Mrs L would have gone ahead with the transfer even if Zurich had done all it should. She didn't act upon the letter Zurich sent to her in August 2014 which highlighted the issue of pension liberation, and which strongly recommended she seek regulated advice. Nor did she act upon the Scorpion insert, although I acknowledge it might have only covered liberation warnings which Mrs L wasn't planning to do and the accompanying letter warning about overseas investments.

However, when I take everything into consideration, I'm persuaded that Mrs L would not have gone ahead with the transfer if Zurich had done everything it should. The letter from Zurich in August 2014 didn't explain why Mrs L should seek regulated advice nor – importantly – did it identify that the adviser involved in her transaction was unregulated. It didn't highlight to Mrs L that one of the parties advising her was most likely breaking the law and exposing her to further risk. And Zurich never made these points to Mrs L.

Had it done so, I don't think Mrs L would have ignored this information. Being in possession of all the facts and information, it's likely that Mrs L would have acted differently. As explained above, this information should have followed contact with Mrs L asking her more about her transfer request, so would have seemed to her (and indeed would have been) specific to her individual circumstances. It would have been given to her in the context of Zurich raising concerns about the risk of her losing her pension monies as a result of untrustworthy advice.

This would have made her aware she, specifically, had exposed her pension to serious risk by following the advice of an unregulated adviser.

It's my view that Mrs L wouldn't have transferred her pension and lost most of its value but for the failings on Zurich's part which I've described above.

I've therefore gone on to consider what is fair compensation in the circumstances here.

The Law Reform (Contributory Negligence) Act 1945 allows for the apportionment of liability in the case of contributory negligence. It says that where any person suffers damage as the result partly of her own fault and partly of the fault of any other person, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage.

In this case, I think Mrs L's failure to act on what she knew (or reasonably should have known) contributed to the loss she says she's suffered.

As I explained earlier in this decision, Zurich's letter of 26 August 2014 strongly recommended Mrs L seek regulated advice if she wasn't already in receipt of this. This recommendation was made more in line with the principal risk Zurich was on the lookout for – which was that unregulated third parties might cold call Mrs L in an attempt to liberate her pension – rather than a wider warning about scams. However, it also mentioned one of the warning signs was investing in high-risk overseas investments that may not be subject to regulatory controls. And that if these investments fail, she may have no recourse to compensation. This was a warning from a trusted source about how she could protect herself from an inappropriate transfer. The letter explained how to find a regulated adviser *and how to check if an adviser was regulated.*

Shortly after Zurich's letter Mrs L received a letter from Broadwood, which also suggested she might want to take regulated financial advice. The Broadwood letter would have been reassuring on some points: it said the proposed transfer wouldn't facilitate pension liberation and the TRG investment was legitimate and well-resourced. But it also clearly explained that:

- *Broadwood wasn't a regulated adviser;*
- *the proposed transfer involved risky investments which were highly illiquid, with no UK regulatory or compensatory protection and which were unsuitable for a cautious investor;*
- *if Mrs L preferred advice on the suitability of the investment for her personally then she should seek regulated financial advice.*

Mrs L says she was an inexperienced investor. At the time she received the Broadwood letter, I think she would have recognised herself as someone who was a "cautious investor". Therefore, the Broadwood letter should have been a strong warning to her that she should get regulated advice to ensure the investment was suitable for her before going ahead, especially given Zurich had recommended her getting regulated advice on multiple occasions. And she already knew – from Zurich's letter – how to check whether the unsolicited advice she'd already received (more likely than not from Choices Wealth) was regulated. Yet Mrs L didn't check. She could easily have done so. This would have been a reasonable step I'd expect someone in her position to take and would probably have led to the unregulated advice being uncovered and the transfer being aborted.

None of the other parties Mrs L has mentioned or which were involved in this transfer process (Consumer Money Matters, Cantwell Grove, Broadwood Assets and Choices Wealth) were regulated to give pensions advice and the evidence doesn't suggest they claimed to be. So, there's no reason to think their involvement would have reassured Mrs L that she was getting regulated advice.

Therefore, when considering fair compensation in this case, I think it would be reasonable to attribute some responsibility for the loss Mrs L has suffered to her own failure to act. Essentially, I think both Zurich and Mrs L should have done more during the process of the transfer to guard against the risk of a scam and that if either of them had done as they reasonably should, Mrs L's losses would have been avoided.

But Zurich was the professional party; it should have been more familiar with the risks than Mrs L and should (as I have found above) have given specific warnings about the likelihood Mrs L had already been drawn into a scam. I think its failings were worse than those of Mrs L who was financially inexperienced and who likely would have received encouraging messages from self-interested parties promoting and facilitating the transfer and TRG investment. This doesn't entirely justify why she ignored all warnings and the information about how to check her adviser was regulated. But in my view it diminishes her blameworthiness. So, while this isn't an exact science, in the circumstances of this complaint, I propose to reduce Mrs L's compensation by 30%. I think this is a fair way to account for Mrs L's own contribution to the loss she's suffered.'

Following my provisional decision both parties responded to make further arguments. I'll only summarise the key points here.

Mrs L's representatives argue that the compensation shouldn't be reduced based on Mrs L's contributory negligence. It argues that Mrs L wouldn't have been able to work out that she had been advised by an unregulated firm. It says this wouldn't have been easy for her as a number of parties had been involved and/or listed on the paperwork.

Zurich responded in detail, setting out why it didn't agree with my provisional decision. Given the informal nature of our service, I won't set these points out in full. Its over-arching view was that I was wrong in my conclusion that it ought to have done more due diligence and given further warnings to Mrs L. And I was wrong that these warnings would've changed Mrs L's mind about transferring. The key arguments made were:

- It wasn't clear why I'd reached a different opinion to our Investigator.
- It has wrongly been concluded that the most up to date version of the Scorpion leaflet wasn't sent.
- There was no mandatory requirement for Zurich to use the checklist in the 2014 guidance.
- Based on the facts presented at the time, Zurich took comfort in the fact a regulated party (Central Markets) would provide the investment advice.
- It made no material difference that Central Markets was noted as providing advice under section 36 advice as Mrs L was the sole trustee and member so the advice would have covered the same ground.
- It could not have known Choices Wealth was involved, the documentary evidence suggests it was Consumer Money Matters and more weight should be given to this as it was said Mrs L's recollections were vague.
- The facts apparent at the time wouldn't have raised enough suspicions to do any more.
- Mrs L was given sufficient warnings but chose to proceed despite these.
- Zurich wrote to Mrs L three times, provided a copy of the Scorpion Leaflet, and advised her multiple times to obtain regulated advice (notwithstanding that it had been informed that she would receive advice from a regulated firm on the suitability of her investments into the SSAS).
- Mrs L had the right to transfer her pension and it didn't agree with my finding that she'd have been dissuaded from doing so by further warnings.

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.

And having done so I have not changed my view on matters. I don't think anything said by either party shows that the conclusion within the provisional decision was not fair and reasonable. I'll explain why.

Firstly, I'll comment on the arguments made by Mrs L's representatives as to why Mrs L shouldn't have her compensation reduced due to her contributory negligence.

Is the reduction for contributory negligence fair?

The representatives have argued that a number of parties were involved, and it wasn't fair to expect Mrs L to have been able to work out who was advising her and to check whether they were regulated. Whilst there is a lack of documentary evidence about who advised Mrs L and her testimony isn't definite about who it was, (likely due to the time that has passed) none of the parties suspected of, or shown to be, involved was regulated. So I'd expect acting reasonably in this situation, Mrs L would've looked up any party she thought were involved/had advised her to transfer and she would've seen that they weren't regulated.

Comment has been made to the fact that on the paperwork sent to Zurich by Cantwell Grove, a regulated firm was listed as providing the investment advice and Zurich had sent copies of the correspondence to Mrs L existing (and regulated) financial adviser. But there's no evidence Mrs L had any contact with these firms regarding the transfer, so I don't think that would've caused her any confusion. I think on the balance of probabilities, Mrs L at the time would've known which firm(s) she had been talking to about transferring her pension to Cantwell Grove and to invest in TRG. And Zurich provided her with the instructions on how to check whether they were regulated. Had she done this I think she would've seen that Choices Wealth Limited – who Mrs L's representatives said most likely advised her and I agree with this – were not regulated.

Consumer Money Matters – the firm that requested transfer information from Zurich and who Mrs L signed a letter of authority for weren't regulated either, other than as an introducer to a firm who weren't regulated to provide pensions advice in any event. I accept that this may have been confusing for a lay person but I think its more likely Choices Wealth were the firm Mrs L would've entered into the register. And secondly if Mrs L was confused about Consumer Money Matters' status she could've, and acting reasonably should've, asked Zurich. Looking at the current FCA register, there are clear warnings to check the specific activities a firm are regulated to provide but I can't be sure what the register looked like at the time. But we know it wouldn't have said that they or Cavere (the firm it was an Appointed Representative as an introducer for) were regulated to provide pensions advice. Zurich offered (in the letter pointing out that she should check for a regulated firm) to answer any questions she had. If she had asked Zurich, it would've been able to determine that Consumer Money Matters wasn't regulated to carry out pension's advice.

In conclusion of this point, I think Mrs L would've been able to find out, had she checked, that the firm advising her, likely Choices Wealth, wasn't regulated to provide advice. And therefore, I see no reason to change my view about the contributory negligence part of the redress I awarded in my provisional decision.

Zurich's arguments that I should reconsider my decision to uphold the complaint.

As Zurich will be aware I've reviewed the complaint afresh after the investigator was unable to resolve it. And this can result in a change of outcome. The view the investigator issued in comparison to my provisional decision, which Zurich have received a copy of both, when read together its clear where the differences lie and why I've reached a different decision to that of the investigator. And I think the provisional decision as a standalone document clearly explains why I reached the outcome that I did. So, I don't think I need to comment further on this point.

Zurich argues that it did in fact send the up-to-date version of the Scorpion leaflet. But as I explained in the provisional decision, my decision does not turn on whether the 2013 or 2014 leaflet was sent. I see no reason to change my view on this matter as the evidence from the time suggests on the balance of probabilities it was the 2013 insert sent and it's a largely irrelevant point in deciding the outcome of this complaint. In the provisional decision, I went on to explain that Zurich gave further warnings in any event in its letters (similar to that that would've been given in the 2014 insert). So again, I don't think I need to discuss this point in more detail as its not important to the outcome of the complaint.

As I explained in my provisional findings, businesses 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 rights. The Scorpion guidance though gave ceding businesses an important role to play in preventing consumers from falling victim to pension scams. And it asked businesses to look out for the tell-tale signs of scams and undertake further due diligence and take appropriate action. This is where I think Zurich failed in its responsibilities. There was no mandatory requirement for Zurich to do this as I clearly set out in my provisional decision, but I also set out why I felt that it ought to have followed the substance of the guidance when it received this transfer request. I see no reason to depart from the findings I made in my provisional decision on this matter.

Zurich has said it thinks it was reasonable for it to believe, given that there were FCA regulated businesses named in the documents, that Mrs L had or would receive regulated advice. But I don't agree. Whilst Central Markets, an FCA regulated firm, was said to be providing advice under section 36 of the Pension's Act 1995, its role was clearly defined as giving the section 36 advice (in fact the unregulated Broadwood Assets provided this but this doesn't affect the over-riding point – so hindsight in my provisional findings hasn't been applied as Zurich has suggested).

Zurich has argued that as Mrs L was the only trustee – this is essentially the same as personal advice. But this misses the point, Zurich should have known that section 36 advice, given to Mrs L as a trustee of the SSAS about the investments made within it, was not regulated financial advice about the suitability of the transfer out of her personal pension. There was no suggestion by Cantwell Grove that Mrs L was receiving regulated transfer advice.

Therefore, whilst I agree Zurich was entitled to rely on the statement about the involvement of Central Markets, I don't think the statement should have reassured Zurich that Mrs L was getting regulated financial advice, and certainly not the type of advice that Zurich – and the Scorpion guidance itself – recommended she should be getting.

Zurich has made a point of questioning my finding about Choices Wealth Limited being the firm that advised Mrs L, favouring that in fact Consumer Money Matters were likely the advisers as that is what the documentary evidence suggests (Consumer Money Matters requested the transfer paperwork). I explained in the provisional decision, why on the balance of probabilities that I felt Choices Wealth likely gave the advice. But regardless, I'm not sure what difference Zurich thinks this will make to the outcome of my decision. Consumer Money Matters weren't regulated to provide pensions advice either, it was an Appointed Introducer of Cavere at the time, but it doesn't appear they were regulated to provide pension transfer advice in any event. And even if they had the right permissions, that doesn't mean Consumer Money Matters could provide advice. So whether it was Consumer Money Matters or Choices Wealth that Mrs L would've said, Zurich wouldn't have found either firm to be regulated advisers. I find it highly unlikely that Mrs L would set up her own company to transfer to a SSAS and invest overseas without someone advising her to do so. There is no evidence of a regulated adviser being involved and Mrs L's testimony and what we know of how the parties involved worked, suggests that it was Choices Wealth who provided the transfer advice to move to Cantwell Grove to take up the opportunity to invest in TRG.

Zurich says it gave Mrs L numerous warnings and told her to take advice from an independent adviser and how to check if an adviser was regulated. However, it didn't tell her that the adviser she was dealing with was unregulated and that the circumstances of her transfer showed warning signs of a potential scam. If Zurich had warned Mrs L that the advice she was receiving was unregulated (as it should've discovered). And that the consequences of this were she would be without protection, there was an increased risk of falling foul of a scam and that this was unlawful, this would have carried much greater weight. And this would've been given as a warning directly related to Mrs L's experience and the circumstances of the transfer. Rather than the more generic warnings that Zurich actually gave – and that she didn't act on.

I think this would have been appropriate given Zurich's responsibilities under PRIN and COBS 2.1.1R. And, while I agree Zurich didn't have responsibility to advise Mrs L, I don't think any such warnings would reasonably have caused it to think it was running the risk of advising her, that it was replicating the responsibilities of the receiving scheme or that it was putting in place unnecessary barriers to exit.

Zurich has also said it disagrees with my conclusion that Mrs L would have acted differently if she'd been given further warnings, noting she had a right to transfer. But as I've explained, I disagree. Of course nobody can be certain how Mrs L would've reacted. I've had to reach my decision on this aspect on the balance of probabilities, and for the reasons set out in my provisional decision and below I still think she would have reconsidered the transfer.

I think clear warnings of the type that were appropriate for the circumstances here, given directly to her and adapted so that they will have seemed and were directly relevant to Mrs L's transfer, would have caused her to rethink the transfer. I think Zurich a trusted institution and well known pension provider, telling an inexperienced investor as Mrs L appears to have been, that the people talking to her were acting unlawfully and weren't regulated to provide her advice (and what this meant). And that there were warning signs it had discovered that were relevant to scam activity would've held more weight with her than what she was being told by people that had contacted her out of the blue to persuade her to transfer her pension.

I think she likely trusted what the adviser, Choices Wealth, had told her. But if she'd been given reason to think that it was not acting in her best interests, such as additional warnings about unregulated advisers – I think she'd have chosen not to go ahead.

So, I still think if Zurich had done what I think it should fairly and reasonably have, I don't think Mrs L would have transferred. And as a result, I remain of the opinion that the complaint should be upheld.

Zurich has asked for full details of the current holdings in Mrs L's SSAS and an explanation of my suggestion that the TRG investment be attributed a nil value. I'd expect up to date information about the current status of the SSAS and the holdings within it to be obtained as part of calculating redress in any event.

But on why I've suggested that the TRG investment be given a nil value, our Service has seen a significant number of other complaints where consumers have invested in TRG through SSASs and other occupational pension arrangements. In the majority of these the investments in TRG all experienced problems from 2019 onwards, with the payment of returns to the pension tending to cease at that time.

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. Based on this, I still consider the assumption of a nil value for the investment with TRG to be appropriate. I also said Zurich can ask Mrs L for an undertaking to repay anything she might receive from the TRG investment in future. This is to avoid any overcompensation.

Zurich has asked why I've assumed Mrs L will likely be a basic rate taxpayer in retirement. It has seen the same evidence as us that Mrs L is (or was) a care assistant earning approximately £10,000 a year. It also knows the value of this pension (I think its highly unlikely she has significant pension pots elsewhere) and therefore I think it is a pretty safe assumption that she will likely be a basic rate taxpayer in retirement. For similar reasons I think its also safe to assume she won't exceed the maximum pension commencement lump sum figure.

Putting things right

Fair compensation

My aim is that Mrs L should be put as closely as possible into the position she would probably now be in if Zurich had treated her fairly, taking into account that Mrs L shares responsibility for her loss.

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

To compensate Mrs L fairly, Zurich should subtract the actual value of the L LTD SSAS from the notional value if the funds had remained with Zurich. If the notional value is greater than the actual value, there is a loss. Zurich should then pay 70% of that loss.

Actual value

This means the L LTD SSAS value at the date of my Final Decision. To arrive at this value, any amount in the L LTD SSAS bank account is to be included, but any overdue administration charges yet to be applied to the L LTD SSAS should be deducted. Mrs L may be asked to give Zurich her authority to enable it to obtain this information to assist in assessing her loss.

My aim is to return Mrs L to the position she would have been in but for the actions of Zurich. This is complicated where an investment is illiquid (meaning it cannot be readily sold on the open market), as its value can't be determined. On the basis of the evidence I have, that is likely to be the case with the following investment(s): TRG. This is because it has a nil value, and is unsaleable. And I don't think it's realistically possible for Zurich to only acquire a part of the investment from the L LTD SSAS as I'm only holding it responsible for 70% of the loss. Therefore as part of calculating compensation:

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

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

Notional value

This is the value of Mrs L's funds had she remained invested with Zurich up to the date of my Final Decision.

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

Payment of compensation

There doesn't appear to be any reason why Mrs L needed a pension arrangement that wasn't privately held, administered by an established provider and under FCA regulation. So I don't think it's appropriate for further compensation to be paid into the L LTD SSAS.

If Zurich is open to new business, it should set up a **new** pension plan with a value equal to 70% of the amount of any loss on the date of my Final Decision. The new plan should have features, costs and investment choices that are as close as possible to Mrs L's original pension.

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

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

To make this reduction, it's reasonable to assume that Mrs L is likely to be a basic rate taxpayer in retirement. So, if Mrs L has yet to take her 25% tax-free cash from the L LTD SSAS, 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 her in cash.

Alternatively, if Mrs L has already taken her 25% tax-free cash from the L LTD SSAS, the full 20% reduction should be applied to the compensation amount if it's paid direct to her in cash.

If payment of compensation is not made within 28 days of Zurich receiving Mrs L'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 my Final Decision to the date of payment.

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

Details of the calculation should be provided to Mrs L in a clear, simple format.

My final decision

For the reasons explained above, I uphold the complaint and require Zurich Assurance Ltd to put things right as set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 9 April 2025.

Simon Hollingshead
Ombudsman