DRN-5377915

The complaint

Mr G is represented by a claims management company (CMC). He has complained about a transfer from his Zurich Assurance Ltd group personal pension to a small self-administered scheme ("SSAS") in July 2015. 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 Zurich failed in its responsibilities when dealing with the transfer request. 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 Zurich had acted as it should.

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 Zurich group personal pension was part of an employer's arrangement and continuing to receive employer contributions. He had a separate 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, Zurich received information requests from seven different FCA-regulated financial advisers, to which it responded on each occasion providing the information requested. The fourth of these phoned Zurich in November 2014 to further request details of the charges applying to his plan. Mr G also called shortly afterwards with a similar request. Zurich then wrote to Mr G explaining that his plan included capital units funded by his earlier contributions which attracted a higher annual management charge, plus accumulation units which Zurich explained may be incurring lower costs than a modern low-charge stakeholder pension.

Apparently prompted by one of these advisers, Mr G proceeded to complain to Zurich by phone about the charges on his plan. Zurich's notes of the call say *"he wants to know what the hidden charges are on this plan he said it is a well known fact that all companies like yourself have hidden charges and he wants to know what they are."* Mr G made further reference to a number of advisers telling him that Zurich had *"really high charges and …they would expect there to be a hidden charge"* – a 2% figure was given. He also said 'the government' had observed this and had 'changed the rules' as a result, which I take to refer to the announcement earlier that year of further 'pension freedoms' from April 2015.

When Zurich responded to Mr G's complaint on 11 December 2014, it agreed it had provided conflicting information to him and his adviser by phone in the previous month, specifically around an additional fund management charge (unrelated to capital and accumulation units) which it hadn't disclosed. However it was satisfied it had set out all of the charges that applied adequately in writing.

Whilst this exchange was ongoing, Zurich actually responded to a further information request from a different FCA regulated firm, and subsequently on 2 February 2015 it received a recent letter of authority requesting information from a further firm, Moneywise Financial Advisors, who were also FCA regulated. This resulted in Moneywise being logged by Zurich as Mr G's adviser. Zurich says that it provided the requested information to Moneywise on 16 February. It also responded to a later request for information from a seventh FCA-regulated firm on 10 April 2015.

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 25 June 2015 Zurich received a further request for policy transfer information from Rowanmoor directly. It responded on 29 June with a transfer pack including the necessary discharge form for Mr G to complete. On 14 July Zurich then received a paper transfer request from Rowanmoor. Rowanmoor had also provided a copy of the trust deed & rules for Mr G's SSAS, HMRC approval letter and the part of the Rowanmoor application form showing the transferring scheme details.

A transfer of £181,800 after a 2.5% transfer penalty was paid across to Rowanmoor on 23 July 2015. Zurich issued the transfer certificate to Moneywise's registered address in Scotland, telling Mr G it was copying it to Moneywise. £22,717 had been sent by Mr G's other pension provider on 15 July. From these proceeds a setup fee of £2,064 was 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 SSAS then made 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, including both 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 Zurich, 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 Zurich had breached the FCA's Principles for Businesses (PRIN) in not having regard for Mr G's interests.

Zurich didn't uphold the complaint. It considered there were no warning signs that Rowanmoor was acting inappropriately and so that didn't warrant further due diligence. It reiterated that it was duty-bound to give effect to Mr G's statutory transfer rights, which were satisfied by him being in paid employment (an 'earner') at the time. It *"knew"* that Mr G had received independent financial advice [from Moneywise] and sent Mr G the TPAS leaflet *"through their agency".* So, both Moneywise's involvement and Rowanmoor's professional trusteeship of Mr G's SSAS provided Zurich with an additional degree of confidence.

Our Investigator was unable to resolve the dispute informally, so the matter was passed to me to decide. I most recently issued a provisional decision on 20 February 2025, which Mr G accepted but Zurich didn't agree with. I'll repeat the content of that provisional decision below and address Zurich's point where I consider they are relevant to the outcome.

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

- Principle 2 – A firm must conduct its business with due skill, care and diligence;
- Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;
- Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and
- COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly,

fairly and professionally in accordance with the best interests of its client.

In February 2013, 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 (including Zurich) 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 Zurich, 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 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 Zurich 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 the complaint he made to Zurich 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 Zurich for information on Mr G's policy (2 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 1 February 2016, Mr P was emailing Mr G as 'business development manager' for Philpott Reed Partnership LLP, another FCA-regulated firm that is now dissolved. He referred to this as his 'new' email address. This was after the Park First investment had concluded and the email was in contemplation of further investment recommendations for the rest of the SSAS. There is no evidence that Philpott Reed's involvement went anywhere: Mr G has no written advice from it and any suggestion that it advised on the transfer to the SSAS or the Park First investment is in conflict with Rowanmoor's record of Wealth Consultants (Scotland) receiving remuneration.

By 29 April 2016 Mr P was back emailing Mr G from Vision Administration Services again, 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. Zurich considers I've said that Moneywise deliberately misled Mr G into thinking he was getting advice from them. According to Mr G, Moneywise's director said Mr P was known to the firm, rather than being an 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 Zurich received a Moneywise letter of authority in February 2015 (replying on 15 February 2015), 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.

Zurich says it expects there to be a report of the advice Moneywise gave Mr G as prospective trustee of his SSAS to comply with s36 of the Pensions Act 1995. But there is no reason to expect such a report exists, when it appears from the SSAS bank statements that the SSAS paid £1,100 to Wealth Consultants (Scotland) Ltd as the intermediary for making that investment. That firm was also unregulated.

In summary, I'm satisfied Mr G believed he was being advised to transfer his Zurich 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.

Zurich responded to my 20 February 2025 provisional decision setting out the above conclusions. It says it doesn't follow the logic of this analysis of the role of other advisers or that the evidence available supports the conclusion reached. In particular, it doesn't agree that it's rational to believe that Moneywise would only confirm that they knew Mr P when Mr G phoned them as that 'means nothing'. I think it means what it says – that Moneywise's proprietor knew Mr P. That would have been a logical answer to the question that Mr P says he asked.

I have no way, other than Mr G's recollections, of telling whether he asked a different question about whether Moneywise accepted responsibility or not for Mr P's advice. In any event, I've concluded above that it's likely Moneywise had departed the scene (in terms of any potential involvement it was intended to have in Mr G's case), before Zurich should have been in contact with Mr G and learned who was advising him.

<u>What did Zurich 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.

Zurich sent transfer packs to all the regulated advisory firms that contacted it in accordance with Mr G's letter of authority. It's provided internal memos suggesting it implemented a process to include the TPAS insert in all transfer packs soon after this guidance had been released in 2013. But even if that had been the case, it's evident those leaflets would have gone to the four regulated firms who contacted it after February 2013, rather than Mr G directly. However Zurich believes that it's likely that at least one of those firms would then have forwarded the leaflet on to Mr G.

Even though none of these firms 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 him.

I accept that it's somewhat more possible that one of the four firms might have chosen to forward the insert on to Mr G. However 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 had dealt with Mr G was that each one made an unsolicited approach.

Mr G's CMC says 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 his 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 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 Zurich (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. In conclusion, I don't think Zurich'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 Zurich's actions using the Scorpion guidance as a benchmark instead.

I've firstly looked at what due diligence Zurich carried out in this case to consider whether it was sufficient. Zurich's due diligence seems to have focused on Rowanmoor's standing in the industry, the SSAS's HMRC registration and the legitimacy of the trust deed and rules, plus a belief that Mr G had received regulated advice from Moneywise. The only contemporaneous evidence I've found of the checks it carried out was a handwritten note that the Rowanmoor trust deed and rules had been 'walked to' another employee, who presumably examined them.

I can't see how Zurich could have been satisfied *at the time* that Moneywise was advising Mr G on the transfer of his personal pension to the SSAS, because it didn't ask him. In reality Zurich had heard from seven regulated firms before the transfer happened. So the sheer number of these requests would in itself give some doubt as to who (if any) of these firms was actually advising Mr G. I'm not persuaded that Zurich had a firm basis on which to decide not to carry out due diligence.

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 Zurich 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 entirely 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, Zurich would be 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 – particularly (as TPR was highlighting) with Mr G's type of scheme – I don't consider this to have been a prudent assumption. For these reasons, I'm not persuaded Zurich 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.

Zurich's solicitor says there is an explicit acceptance in the PSIG Code that it is sufficient for a consumer's interests to be protected by another party where the ceding scheme determines the receiving scheme/administrator to be free of scam risk. It adds in response to my 20 February 2025 provisional decision that Rowanmoor was entirely the sort of administrator that the PSIG Code had in mind for this, and any decision otherwise is being made with the benefit of hindsight of what subsequently happened to Rowanmoor's business. It says, *"The Ombudsman has provided no contemporaneous evidence that undermines the position that Rowanmoor's standing at the time demonstrated that it presented no risk of 'scam activity' ".*

This comment is striking because I've stood ready throughout this decision process to consider any evidence Zurich could provide of *how* it contemporaneously determined and recorded that all Rowanmoor SSASs posed a sufficiently low scam risk – such that it was safe for Mr G's interests to be protected only by Rowanmoor. And Zurich wasn't able to provide evidence of such an assessment contemporaneously being made. The thrust of its arguments is that assumptions were being made at the time, without proper investigation, that Rowanmoor was a reputable enough organisation to be able to protect Mr G's interests on its own.

The investments being encouraged (and who was encouraging them) would vary from SSAS to SSAS. To therefore place all Rowanmoor SSASs on a white list or 'clean' list without clear evidence of any investigation into how, in practice, Rowanmoor was scrutinising the other parties involved, wouldn't be a fair discharge of Zurich's obligations to Mr G.

The solicitor also highlights that Rowanmoor Trustees Limited was legally obliged to ensure that investment decisions taken within the SSAS were suitable for Mr G, so his interests were protected by virtue of his right to make a complaint against that firm, including to the Pensions Ombudsman (TPO). But that could be said of any trustee and if so, would render TPR's initiatives including the Scorpion guidance unnecessary. I think Zurich would have needed particular reasons for concluding that the risks that were clearly present in SSASs (as TPR had by then highlighted) *didn't* apply to Rowanmoor.

Zurich in effect says those reasons are that four directors of Rowanmoor Trustees Limited were also directors of Rowanmoor Personal Pensions Limited, which was regulated by the FCA, and themselves regulated individuals. And that Rowanmoor Trustees Limited was holding itself out as a professional trustee. It draws on a determination which was upheld by TPO against Rowanmoor Trustees Limited for failures in its own due diligence on another individual's SSAS in February 2024. In that decision reference was made to the directors of that firm being aware (through Rowanmoor Personal Pensions Limited) of the FCA's views on including these sorts of investments in pension schemes, which it considers vindicates its position. Zurich says that our scheme and TPO are taking contradictory approaches.

Again, I think this misses the point. The two schemes have been asked to consider complaints from individuals against different parties. TPO has explained its view of why Rowanmoor ought to have known that its own due diligence was insufficient, in a complaint that has arisen precisely because of Rowanmoor's dereliction of those duties. The risk that this might happen was not dissimilar to the risk of a pension trustee involving itself in a scam, which prudent application of the Scorpion guidance and PSIG Code mitigates against.

TPO's determination says nothing about what was expected of the ceding schemes in those circumstances, because it wasn't considering a complaint against them. Given the concerns that had first been expressed about SSAS by the FCA as early as April 2014 and later by TPR, I don't think it was reasonable for a ceding scheme to exempt even a professional trustee from further checks – unless it was satisfied that they had robust processes that were commensurate with the higher level of skill the law would expect someone holding themselves out to be a professional trustee to have.

The inspection Zurich carried out of Rowanmoor's trust deed and rules would have confirmed, if anything, that there was a wide scope of investments the SSAS could make. From what I can see Zurich made no further enquiries into Rowanmoor's operations, including what scrutiny Rowanmoor applied to investments and introducers, or keep a record of what it found in such a way that would justify the inclusion of any Rowanmoor SSAS on a 'clean list' in future – and I don't consider it can show it did that. As such, I'm not persuaded Zurich could, reasonably, have derived sufficient comfort about the Rowanmoor SSAS as a destination for Mr G's transfer.

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. The areas of concern and questions were structured slightly differently in the Scorpion checklist itself. But as I’ve already noted above, the PSIG Code offered the advantage of a more streamlined process to Zurich. 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, I think in this case Zurich should have addressed all four sections of the SSAS due diligence process and contacted Mr G to help with that.

<u>How would Mr G have reacted to questions or warnings from Zurich?</u>

Zurich suggests that in view of his prior complaint about its charges, Mr G wouldn’t have engaged with any questioning of the nature I’ve suggested above – or the sort of enquiries further due diligence entailed (which I’ll set out next, below).

It’s evident that one or more of the advisers Mr G spoke to highlighted to him a perceived lack of clarity in Zurich’s charges. Zurich admits that one aspect of the information it gave over the phone was unclear, and I think the details it gave in writing also confirmed the substance of what the advisers were alluding to about there being a clawback of charges (which they termed ‘hidden’) under the plan – either through the initial unit charge if he remained with Zurich, or a penalty if he transferred away.

In my experience some advisers do recommend transfers away from older policies with this charging structure. Whether they are right or wrong to do so is not a matter for this decision, but it means I don’t find Mr G’s recollection surprising that he got at least preliminary advice from some of these regulated firms that a transfer away could be appropriate.

So in effect, Zurich is saying that because it operated this older style charging structure which some advisers were prone to criticise – and then it made mistakes in explaining that charging structure to Mr G – this would have guaranteed that all subsequent attempts to obtain information from him would have failed. Or that he wouldn’t have listened to warnings it might have been able to give him based on the information it *did* obtain. I don’t find this a reasonable argument.

Zurich needed to ensure that the information it gave Mr G was clear, and that he was put in an informed position about the charges on his plan. I think it would reasonably have believed it had had done that, to the best of its ability, by the conclusion of his complaint about the charges. As far as I’m aware, Mr G didn’t take the complaint further with our service or contact Zurich again about it. So in the event that he continued to dislike the charging structure, and that was part of his reasoning for transferring away, I find it unlikely on balance that he would have harboured such ill will towards Zurich that he wouldn’t have been prepared to listen to or engage with what it was saying.

I note that Mr G had already been prepared to talk directly to Zurich, both when he asked for information and then raised his complaint. If he'd been sceptical of the questions Zurich was asking him, I think it was for Zurich to ensure it dealt with Mr G's position sympathetically in view of the past mistakes it had made, and to provide clear explanations of why a regulator and good industry practice expected all providers to ask the questions it was asking. If it had done this, on balance I'm not persuaded there's enough evidence for me to conclude he'd have been unwilling to listen to what Zurich was saying.

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

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 Zurich 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".*

Zurich 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] 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*

---

[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

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

(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 Zurich – 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, Zurich 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 Zurich 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 Zurich 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 Zurich 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. Zurich received Mr G's transfer request in mid-July 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, Zurich'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. Zurich says that not all the employees of an advising firm will be on the register. That's correct, and 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 Zurich 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 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. So I don't find Zurich's argument at all persuasive that Mr P would have been breaking the law if he advised Mr G on his own account, allowing it to conclude he must have been representing Moneywise who had the appropriate FCA authorisation for this advice. The whole point of the TPR guidance, the Code and FCA alerts was that unscrupulous individuals were breaking the law.

Had it properly scrutinised the register in light of what Mr G would have told it about Mr P, Zurich 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 Zurich 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 Zurich 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. To nonetheless assume that Mr G would have regulatory protections resulting from Moneywise accepting responsibility for Mr P's advice would also seem to me a particularly risky step to take given the restriction I've previously mentioned applying against Moneywise's own entry on the FCA register. I've sent both parties evidence of that restriction before. Whilst I understand Zurich's concerns that this restriction says nothing about Moneywise's ability to arrange non-standard investments in 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 Zurich 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 Zurich 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 Zurich 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, Zurich suggests that as it knew Mr G had a source of earnings from the employer paying his existing pension contributions, it would have had no basis on which to question the transfer to the SSAS because he had a statutory right to make it. That was despite the fact that Mr G would 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 Zurich would have found out – purely in order to make the transfer.

This reads as if, in the face of information Zurich ought to have discovered that showed Mr G was at very real risk of a scam, Zurich 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 Zurich would have been disregarding these Principles and rules to do so.

<u>What should Zurich 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 Zurich 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.

Zurich 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 Zurich'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 Zurich to have informed Mr G that the person he had been advised by was unregulated and could put his pension at risk. Zurich should have said only authorised financial advisers are allowed to give advice on personal pension transfers, so he risked falling victim to illegal activity and losing regulatory protections. That seems to me a far more straightforward course of action for Zurich 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 Zurich 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 Zurich's responsibilities under PRIN and COBS 2.1.1R. The significant size of the pension benefits at stake (£181,800) also means it would hardly have been a disproportionate use of Zurich's resources to ensure Mr G was properly informed. And I don't think any such warnings would reasonably have caused Zurich 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 Zurich 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. I've set out my view above on the relevance of his prior inclination to make a complaint to Zurich. 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 Zurich 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.

Zurich suggests that Mr G had evidently already decided to invest less than half of his SSAS in Park First, and had therefore exercised some scrutiny over how much risk he wanted to take. Even if that is correct, Mr G made that decision absent the concerns Zurich should have highlighted to him, so I this doesn't significantly weigh on my overall conclusion. I prefer the argument that the greater concern expressed by Zurich would have led Mr G to think even the fraction he was investing was a step too far. 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.

Zurich claims Mr G *"disregarded all warnings provided to him by two pension providers"* (referring to itself and Standard Life, the other ceding scheme). But as I've also found in the parallel complaint against Standard Life, 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.

Other points Zurich raised before my provisional decision

Zurich's solicitor said that any suggestion that the investment Mr G made would likely now be seen as a scam was contrary to the description of a scam in the PSIG Code. It argues that the focus of all the guidance at the time of Mr G's transfer, the focus was on scams as dishonest or fraudulent schemes (corresponding to the dictionary definition of 'scam'), rather than failed investments from potentially unsuitable advice.

Zurich relies quite heavily on its view that the potentially unsuitable advice was *regulated* advice from Moneywise here. And I think it's quoting a particular part of the PSIG Code out of context when the overall theme of this and the TPR guidance was clear: that unregulated advisers were encouraging individuals to set up SSASs using non-genuine employers, as a means to make high-risk investments. So it was the *process* of securing the investment from the client that constituted the scam rather than necessarily the *bona fides* of the investment itself. Zurich didn't need to identify in real time that an actual scam was happening in order to warn Mr G of the potential risks. And I've already explained above why it shouldn't have been reassured by any reference Mr G *might* have made to Moneywise.

Zurich's solicitor raised a number of comments in relation to risk warnings it's become aware Rowanmoor was providing to SSAS members before investments were placed. It comments on *"the general principle that consumers should take responsibility for their decisions"* which underpins the FCA's consumer protection objective under FSMA. So, it says Mr G's receipt of these warnings mean he was not someone who was ever going to reconsider the transfer when Zurich highlighted its concerns to him. And a failure to establish a causative loss means Mr G's claim must fail.

Zurich sent us a number of example documents giving risk warnings. These refer to a different investment than Mr G made. I've since sent Zurich redacted copies of those relating to Park First which we've recovered from other cases. A letter from Rowanmoor in May 2015 sets out the possible risks of:

- the conveyancing searches being more than three months old, and the English law firm using a Scottish lawyer to act on its behalf – potentially limiting Mr G's rights in any future dispute over the legal title to the property;
- Park First exercising a break clause in its lease back of the parking space after two years, meaning the income would not be guaranteed after that point and Mr G would have to find his own tenant for the space;
- if multiple spaces were purchased, all being on one sub-lease causing increased costs if these need to be separated later on for individual resale;

- Park First having absolute discretion on whether it buys the space back from Mr G after five years: Mr G could not force them to do this.

On receipt of this letter, Mr G would have been asked to tick boxes on a form to confirm whether (if applicable) he wanted to split multiple spaces into separate sub-leases, whether he wanted to update the conveyancing searches, and whether he wanted to appoint a Scottish solicitor. He would also have been asked to confirm (no tick was sought) that he had taken investment advice in accordance with the requirements of the Pensions Act 1995.

The English solicitor (Hetherington Partnership) would also have sent Mr G a supplementary report with the key financial information including purchase price, lease length, ground rent, and the escalating levels of guaranteed rental income payable for two or more years (if Park First didn't exercise the break clause). Mr G has since found his own copy of this report. The supplementary documents add:

- there was no guarantee Park First would even be in existence after five years;
- the Scottish solicitors Hetherington Partnership had instructed were *"specialists in this field…[who] have confirmed that this is a good and marketable title"*;
- the rent (and service charges) were subject to future review;
- if the parking spaces were unoccupied (after Park First exercised the break clause), the SSAS would have to continue to pay service charges until they were sold.

I agree these documents collectively did give Mr G some warnings about the investment risk ahead of investing. They are not as stark as some other warnings I have seen Rowanmoor issue for other investments: they don't, for instance, suggest that Mr G may not be able to recover any money from the investment or highlight the lack of an investment compensation scheme. Rowanmoor's comments on solicitors didn't express a view on the likelihood of legal problems occurring, and they were made at the same time Mr G was being told a specialist Scottish lawyer *had* been consulted on the purchase and they were satisfied the title to the land was sound.

Moreover, Rowanmoor's letter didn't discuss (as Zurich should have been doing) the warning signs of a pension scam which were present in the whole transfer proposal, and which weren't confined to the marketability of the parking space itself. In particular the concerns Zurich should have had that Mr G was relying on untrustworthy advice. As I noted, Mr G was simply asked to confirm he had received advice and there was no emphasis on the regulatory status of that advice.

I think the essence of the warnings in this letter and the warnings Zurich should have provided were very different. Zurich should have warned Mr G about the potential for him to fall victim to illegal activity. Such a warning would have been of a different order of magnitude to the warnings given in the letter, to the extent that I'm satisfied Mr G's actions in ignoring the warnings aren't indicative of how he would have behaved had Zurich acted as it should have done.

In addition, I've already concluded that Mr P advised Mr G to transfer into a SSAS for the purpose of investing in Park First. So I have to be mindful that his advice was likely to be nevertheless in favour of Mr G making that investment, despite Rowanmoor's warnings. Given the commercial interest of unregulated parties persuading customers to invest in unregulated investments that were unsuitable for most retail customers, I also think it is likely any risks were downplayed when recommending the investment itself.

Mr P was arranging other investments in Park First, so would likely have known Mr G was going to receive documentation similar to this from Rowanmoor and Hetherington Partnership – and I'm sure would have been prepared to handle any questions that resulted from it. There obviously were risks in Park First exercising the break clause and Mr G being reliant on demand for the parking spaces, but underpinning the investment was a patch of land which he had been assured he held a sound legal title to. So I don't consider Mr G would have seen this form of investment risk in the same way as the risk of a scam.

However once they had learned from Zurich that their adviser was acting unlawfully in the very act of advising them, I think that a reasonable person in Mr G's position would re-examine the entirety of the adviser's recommendations and their relationship with that adviser. That was key here because without this extra key step from Zurich, I think Mr G would have understood he had already taken appropriate advice – from someone he thought was "an IFA". So, from his perspective, he'd done what he needed to do and accepted the recommendation of someone he trusted. He had no reason at that time not to trust the adviser. I think a warning from Zurich about the adviser's regulatory status would have caused Mr G to lose that confidence.

Finally, Zurich says the evidence of Rowanmoor writing to Mr G shows that it was taking its role seriously. But it didn't rely on Rowanmoor's letter in deciding to proceed with the transfer and doesn't appear to have asked to see what steps were involved in Rowanmoor's due diligence process at the time. So I don't think that's a relevant consideration in my assessing how Zurich *should* have acted.

In response to my 20 February 2015 provisional decision, Zurich has renewed its argument that *"there remains no basis on which the Ombudsman should find that any failing by Zurich "caused" [Mr G]'s loss."* But I'm satisfied I've adequately demonstrated above that it was the lack of direct warnings from Zurich, notwithstanding less impactful warnings he received from others, that ultimately made enough difference to cause him to invest with Rowanmoor and Park First. So on that basis, I can fairly say that Zurich has caused the losses directly flowing from those decisions. But I agree that there might have been other loss (or gain) from the performance of the later investments he made with the SSAS, so there is a question as to the extent of Zurich's responsibility for the SSAS's wider performance.

<u>What losses is Zurich responsible for?</u>

I consider that if Zurich had acted as it should, Mr G wouldn't have proceeded with the transfer to the SSAS or suffered the investment losses that followed. I do accept, as Zurich has now reiterated, that Mr G's past actions demonstrate a strong intention to transfer his pension; particularly in view of his dissatisfaction with Zurich. But that doesn't demonstrate that he would still have transferred to Rowanmoor specifically, after learning what Zurich should have told him about the increased risk of a scam from setting up a non-genuine SSAS on unregulated advice.

It's reasonable to conclude that because of that dissatisfaction with Zurich, Mr G would still have sought alternative advice, having lost confidence in Mr P. What Zurich should have told him would also, in my view, have reaffirmed the importance of going to a regulated adviser – and I think such an adviser was much less likely to recommend this type of pension arrangement altogether. Mr G wasn't a sophisticated investor, wasn't running a small business and didn't require a SSAS to make pension provision. But I find it likely on the balance of probabilities that a regulated adviser would have found an alternative personal pension (or SIPP) that Mr G preferred to his existing Zurich plan.

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 has said 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 Zurich's point 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, coupled with Mr G's dissatisfaction with Zurich's charges, underline that there would likely always have been a transfer from the Zurich plan at some point.

But at the same time, this doesn't reasonably alter the findings I've already made that Zurich 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 Zurich in around 2015/16; but had it not been for Zurich's failings, he would never have made this particular SSAS transfer in order to invest in Park First. So the only loss for which Zurich could reasonably be held responsible would be its proportion, compared with Standard Life'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>

Zurich sets out in its letter of 6 November 2024 that I ought to address whether Mr G should be considered to have contributed to his own losses and also whether other parties might be more *"blameworthy"* (in the word of the case authorities). It says the law of indemnity and contribution should be applied in respect of the involvement of Mr G, Rowanmoor as the SSAS administrator, Rowanmoor Trustees Limited as professional trustees and its belief of Moneywise's involvement. It also says that Mr G's complaint should be directed to the FSCS (in respect of Moneywise) or TPO (in respect of Rowanmoor). It specifically believes the latter complaint would be upheld, and I'm therefore holding Zurich to a higher standard than that expected of Rowanmoor.

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. That is even when taking into account Zurich's additional comments about risk warnings from other parties, as discussed above. 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.

In respect of other parties' involvement Zurich quotes section 2 of the Civil Liability (Contribution) Act 1978, making provision in the courts for contribution between persons who were both liable for, or may be required to pay, compensation for the same damage.

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 Zurich – I don't think this is an unfair or unreasonable outcome.

In effect, what I'm saying is that if Zurich 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. That was made plain in the judicial review case of *R (On the Application Of Portal Financial Services LLP) v Financial Ombudsman Service Ltd [2022] EWHC 710 (Admin)*. Sweeting J said the following in that case involving a financial adviser (where one of the other parties was itself FCA-regulated):

> *"It would be a surprising conclusion that where an Ombudsman has found the advisor to be liable and is considering redress, she is required to conduct an exercise to determine how damages might be apportioned in a notional civil action involving other parties. The "fair and reasonable" test under section 228(2) FSMA is not the same as a "fair and reasonable allocation of the risk of the loss that has occurred"..."*

My understanding is that a court wouldn't be able to make an apportionment if the other party hadn't been joined into the proceedings. 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.

For the reasons given here, I'm satisfied that it is fair and reasonable for Zurich to compensate Mr G in full for its proportion (compared with Standard Life's) of his losses on the Park First investment alone. I don't agree that it is perverse or contrary to natural justice – as Zurich argues – for me to determine the complaint in front of me, as the DISP rules provide for me to do. As Zurich evidently wishes this, I however make my award against Zurich conditional upon Mr G re-assigning to Zurich 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 Zurich'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 Zurich 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 Zurich's shortcomings. I therefore think that Zurich 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, Zurich must subtract:

- the proportion of the actual value of the Park First investment which originates from the transfer of Mr G's Zurich pension; from
- the notional value of the sum that was originally transferred from Zurich 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 Zurich transfer (the "**relevant proportion**") as at the date of calculation. The relevant proportion is defined as the amount received from Zurich divided by the total amount received in the SSAS, which is £181,800 / (£181,800 + £22,717) = 88.89%.

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 Zurich 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, Zurich should give the Park First investment a nil value – so the actual value formed from the Zurich transfer is also nil.

Zurich 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 the calculation, by withdrawing them from the SSAS. Zurich will need to meet any costs in drawing up the undertaking. If Zurich 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 Zurich 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 Zurich (£181,800) would have been worth, had it performed up to the date of calculation in line with the FTSE UK Private Investors Income Total Return index.

In order to arrive at this value, the **relevant proportion** (88.89%) 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 88.89% of £117,215.68 = £104,193.02 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.

Zurich 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 Zurich to reinstate Mr G's former pension plan given my conclusion that Mr G would likely always have transferred away from Zurich (but to make different investments).

Zurich 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). Zurich 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, it's reasonable to assume that Mr G is likely to be a basic rate taxpayer in retirement. 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 Zurich his rights to take further action against Moneywise and Rowanmoor (in respect of the **relevant proportion** of the Park First investment that was funded by Zurich's transfer).

As this is a Final Decision, the date of calculation to be used is the date of this Final Decision. If payment of compensation is not made within 28 days of Zurich receiving Mr G's acceptance of this 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 Zurich deducts income tax from the interest, it should tell Mr G how much has been taken off. Zurich 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 should be provided to Mr G in a clear, simple format.

My final decision

I uphold Mr G's complaint and require Zurich Assurance Ltd to calculate and pay him compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 3 April 2025.

Gideon Moore
Ombudsman