DRN-5402073

The complaint

Mr T has complained about a transfer of his personal pension with Zurich Assurance Ltd (Zurich) to a small self-administered scheme (SSAS) in January 2015. Mr T's SSAS was subsequently used to invest in The Resort Group (TRG), in a resort development in Cape Verde. The investment now appears to have little value. Mr T says he's lost out financially as a result.

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

What happened

I issued a provisional decision on 28 February 2025. I said I was issuing a provisional decision as, although I agreed with the investigator's views and the outcome he reached – that the complaint should be upheld – my redress wasn't the same as the investigator had suggested. I've repeated here what I said in my provisional decision about what had happened, along with my provisional findings, including why I thought Mr T ought to bear some responsibility for the losses he'd incurred.

'*On 6 October 2014 Zurich received a request for information and transfer documents from Capital Facts Limited (CFL), an unregulated firm, with a letter of authority (LOA) from Mr T. Zurich responded on 13 October 2014 with the requested information.*

There's a letter to Mr T dated 20 November 2014 from Broadwood Assets Limited (Broadwood). It said Mr T was considering appropriate investments for his recently established SSAS – a commercial property investment in Cape Verde with TRG. And that it was a requirement under section 36 of the Pensions Act 1995 that Mr T, as a trustee, take and consider appropriate advice as to whether the proposed investment was satisfactory for the aims of the scheme and he'd appointed Broadwood to provide that advice. Broadwood's advice was limited to that. Broadwood wasn't providing advice that would be deemed regulated advice under the Financial Services and Markets Act 2000 (FSMA) and Broadwood wasn't regulated or authorised by the Financial Conduct Authority (FCA).

On 11 December 2014 Zurich received a transfer request from Cantwell Grove Limited (CGL) saying Mr T wanted to transfer to a SSAS administered by CGL. CGL said it was aware of concerns about pension liberation and supported the pension industry's efforts to tackle it. CGL also supported the 'Scorpion' campaign, which I mention further below. CGL confirmed it had spoken to Mr T about pension liberation and given him a copy of the Scorpion leaflet, 'Predators stalk your pension'.

The documentation in support of the request included:

- *Completed transfer forms.*
- *A letter signed by Mr T saying he was aware there'd recently been a significant rise*

in cases of pension liberation fraud and he wished to confirm his transfer request had been made so he could take advantage of investment opportunities which were in no way connected to pension liberation. He wasn't seeking to access his pension benefits before age 55 and he was aware of the significant tax liabilities that could arise if he attempted to do so. Nor had he been offered cash or other incentive.

- *A copy of the SSAS trust deed and rules.*
- *A letter from HMRC confirming the SSAS had been registered with HMRC as a pension scheme on 2 December 2014.*
- *A Q&A document which said amongst other things, that as required under section 36 of the Pensions Act 1995, the trustee (Mr T) was taking appropriate advice from Sequence Financial Management Limited (Sequence), a FCA authorised firm, about whether the proposed investments were satisfactory for the scheme's aims. Mr T was considering investing in a discretionary fund management (DFM) service with Parmenion Capital Partners LLP (Parmenion) and also in an investment provided by TRG. A link to a TRG webpage was given.*

But it seems that, as mentioned above, Broadwood gave the section 36 advice at least in relation to TRG investment. Mr T has produced some documentation from Sequence from which it appears that Sequence may have given section 36 advice in connection with the Parmenion DFM portfolio.

Zurich wrote to Mr T on 16 December 2014 acknowledging the transfer request. Zurich said it needed time to gather sufficient information to satisfy itself that the transfer would be an authorised payment. Zurich also referred to increased pension liberation activity and the need to act cautiously and make more checks on transfer requests to protect pension savings.

On 19 December 2014 Zurich wrote to Mr T again. The letter carried the imagery and title – 'Predators stalk your pension' – from the Scorpion materials and a warning (in capitals) which read: 'Your pension could be at risk – because of this we may decide not to action your transfer request'. The letter itself said Zurich wanted to ensure Mr T wasn't being misled into transferring when it wasn't in his best interest to do so. Zurich referred to unscrupulous firms persuading people to transfer so they could take pension cash immediately which, under HMRC rules, wasn't usually permitted before age 55. To protect its customers from so called pension liberation scams, Zurich was taking extra precautions when dealing with transfer requests. A leaflet issued by The Pensions Regulator was enclosed which Zurich asked Mr T to read carefully.

Zurich set out the impact pension liberation might have – significant tax implications, high charges, less or no income at retirement and investments in high risk, overseas unregulated assets and no compensation if the investment failed. Zurich set out a number of questions which Mr T needed to satisfy himself about:

- *Had he received advice regarding the possible transfer of his pension from a UK regulated financial adviser specialising in pensions?*
- *Is his financial adviser and/or the scheme administrator/receiving scheme regulated by the FCA or another professional body? He could ensure that a financial adviser or business is regulated with the relevant authority, the FCA by checking the Financial Services Register, the website address for which was given.*
- *If he hadn't had regulated financial advice or dealt with a regulated business, what were his options if things went wrong? Did he know he wasn't covered by the Financial Ombudsman Service or the Financial Services Compensation Scheme (FSCS) if he hadn't dealt with a FCA regulated adviser or firm?*
- *What checks had he made about the proposed investments? Was he happy that he*

> *fully understood the risks involved? How quickly could he access the funds if he decided to claim his retirement benefits or transfer them elsewhere? Had he been given any guarantees and what was available to back these up?*

The letter went on to say, if Mr T hadn't yet had received advice from a UK regulated financial adviser specialising in pensions, Zurich strongly recommended he obtain such advice. Details as to how he could find an adviser near him were given.

If, after reading the letter and enclosed leaflet, Mr T still wanted Zurich to consider his transfer request, he should complete and return the enclosed form. It included links to TPR's and Zurich's website for 'further reading'. Mr T signed the form on 23 December 2014. Zurich received it on 7 January 2015.

Zurich wrote to Mr T again on 14 January 2015. Zurich referred to the need for the receiving scheme to be registered with HMRC. Although the SSAS had been registered, Zurich needed to check it hadn't been deregistered (or was subject to a deregistration notice) before any transfer took place. So Zurich had written to HMRC. So long as HMRC's reply was, in effect, satisfactory, Zurich would be able to transfer Mr T's pension, assuming he still wanted that, and unless in the meantime Zurich had become aware of any adverse information about the scheme. Zurich went on to repeat the questions in its earlier letter and the advice about seeking advice from a UK regulated adviser and how to find one.

On 29 January 2015 Zurich wrote to CGL with a transfer value cheque for £30,016.66. Zurich wrote to Mr T on the same date confirming a cheque had been sent.

In February 2015, after the transfer had been made, £21,875 was invested in the White Sands resort – in an apartment which was under construction. We've been told that in June 2015, Mr T was advised by CGL to increase his investment in TRG to £26,196.20 and to switch his investment from White Sands to the Dunas Beach resort, which had been operational since November 2014. In July 2015 a further £4,321.20 was transferred to TRG and invested in an apartment at Dunas Beach.

On 29 October 2018 Mr T applied for his pension to be partially crystallised so he could access tax free cash of £2,267.15, which he received on 1 November 2018. I understand that as at 23 December 2020 the total value of the SSAS was £26,201.61, made up of £26,196.20 invested with TRG and £5.41 cash held in the SASS bank account. So it would appear that the Parmenion DFM investment didn't go ahead or, if it did, it was encashed when Mr T took tax free cash. My understanding is that the TRG investment has failed. I think initially it did provide some returns. But these then became sporadic before drying up completely. TRG investments are considered to be of no value. They are illiquid as there's no market to sell them.

On 25 November 2021, Mr T, through his then representative, complained to Zurich. He said, having received the transfer request, the onus was on Zurich to warn him about potential pension scams, liberation and fraudsters. Zurich had to carry out adequate due diligence prior to transferring any money to the new scheme. Zurich should inform members of any 'red flags' and notify them before the transfer proceeded. Due to Zurich's failure in performing reasonable basic checks and due diligence, it had failed to demonstrate that reasonable care and skill was exercised, as required under its common law duty to Mr T. If sufficient due diligence had been carried out, Zurich would've identified concerns.

In response, Zurich set out how it had dealt with the transfer request. Zurich referred to Mr T's letter in support of his transfer request and to the information provided by CGL which confirmed Mr T was receiving advice from Sequence, which was, at the time, regulated by the FCA. And the DFM, Parmenion, was also regulated. Zurich referred to the letters sent to

Mr T on 16 and 19 December 2014, the latter enclosing TPR's 'Predators stalk your pension' leaflet. Zurich asked Mr T sign a declaration confirming he still wanted to proceed, which he did. A further letter was sent on 14 January 2015, whilst Zurich was awaiting confirmation from HMRC that the SSAS was registered. Zurich had strongly recommended that Mr T seek financial advice, explained how he could check he'd received regulated financial advice and how he could find a qualified adviser. He'd also received the Scorpion insert. Given the warnings he received, Zurich's view was that it was highly doubtful that any further contact would've resulted in him making a different decision.

Our investigator was unable to resolve the dispute informally, so the matter was passed to me to decide. In doing so I've taken into account the detailed comments made by Zurich's legal representative in response to the investigator's view.

What I've provisionally decided – and why

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

Personal pension providers are regulated by the FCA. Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority (FSA). As such Zurich was subject to the FSA/FCA Handbook, and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA/FCA rules governing pension transfer requests, but the following have particular relevance here:

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

The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme if certain conditions are satisfied (and they may also have a right to transfer under the terms of the contract). This right came to be exploited, with people encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren't entitled to – for instance, because they were below minimum retirement age. At various points, regulators issued bulletins warning of the dangers of taking such action. But it was only from 14 February 2013 that transferring schemes had guidance to follow that was aimed at tackling pension liberation – the "Scorpion" guidance.

The Scorpion guidance was launched by TPR. It was described as a cross-government initiative by Action Fraud, The City of London Police, HMRC, the Pensions Advisory Service (TPAS), TPR, the SFO, and the FSA/FCA, all of which endorsed the guidance, allowing their names and logos to appear in Scorpion materials.

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

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

The Scorpion guidance

The materials in the Scorpion campaign comprised:

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

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

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

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

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

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

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

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

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

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. In deciding how to apply the guidance, they needed to consider the guidance as a whole, including the various warning signs to which it drew attention, the case studies that highlighted different types of scam, and the checklist and various suggested actions ceding schemes might take. And where the recommendations in the guidance applied, absent a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations:

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

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

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

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

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

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

I've considered what was said when Mr T's complaint was made, what we've since been told happened and the contemporaneous documentation. When Mr T's complaint was made to Zurich and then referred to us, Mr T had a representative acting for him but he's now dealing with the complaint himself.

I understand that at the time of the transfer Mr T was a warehouse assistant manager. Mr T's then representative said Mr T had been cold called by CFL and offered a free pension review. Mr T signed a LOA for CFL to request information from Zurich. Once that was to hand, CFL then referred Mr T to FRPS. FRPS's business was to introduce its customers to third parties who provide pension scheme services and investment opportunities; help customers with the process of amalgamating existing funds and investing those funds into chosen investment opportunities; and introduce customers to a firm of financial advisers for the purposes of understanding the suitability of transferring their pension benefits. Unbeknown to Mr T, FRPS wasn't regulated by the FCA and didn't have the required permissions to provide financial or investment advice.

A representative from FRPS, who I'll call Mr H, visited Mr T at home. He provided Mr T with information about the main advantages and disadvantages of a SSAS, including that Mr T would have more control over his pension and greater flexibility. Mr H also gave Mr T promotional material for an investment opportunity in Cape Verde offered by TRG, who developed, managed and operated hotel resort developments. There were discussions about when Mr T anticipated retiring and his attitude to risk. Mr T said he was looking to retire at age 65 and his attitude to risk was medium. Mr H told Mr T that the safest investment was in bricks and mortar. Mr H told Mr T that to invest in TRG via a SSAS he'd need to set up a limited company which Mr H would be able to help with. Mr H produced a prepopulated application form for Mr T to sign and a form of authority for the SSAS to be set up and CGL to contact Zurich and request a transfer to the SSAS. Mr H didn't go through or explain the application form to Mr T.

After a limited company had been incorporated, Mr T received correspondence from Broadwood commenting on the appropriateness of TRG investment. Broadwood wasn't regulated by the FCA and didn't have the required permissions to provide investment or financial advice. Mr T confirmed, based on Broadwood's advice, that he'd like to proceed with an investment in TRG. Mr T didn't know the risks associated with the investment recommended by Broadwood and Mr H – only the benefits had been emphasised and the risks weren't discussed. Mr T was persuaded by the information he'd been given and understood that the SSAS and the overseas recommended investment would be well balanced, diverse and safe.

Our investigator spoke to Mr T about what had happened. Mr T said he was looking online for options for his pension, which was an old work pension he'd discovered and which he thought was worth about £20,000. He was aware he'd be investing in overseas property and that the development was still being built at the time. He didn't have any doubts about the investment, as he was convinced by what he was told – that it was a 'safe bet' and guaranteed to make money. He felt a bit pressured at the time as the 'salesman' was persuasive and good at his job.

The contemporaneous documents support what Mr T has said. We've seen that in early October 2014 CFL requested information from Zurich which was provided. I think that was probably passed on to FRPS who then met with Mr T to discuss what he could do with his pension. And what Mr T ended up doing was complicated. He needed to set up his own *limited company, establish a SSAS, transfer his existing Zurich pension fund to the SSAS and then arrange the investment in TRG – an overseas property development and the purchase of a fractional share of hotel accommodation. Those were complex and unusual arrangements for someone such as Mr T who I accept wasn't a sophisticated investor and not someone who knew much about pensions. I can't see he'd have done that, or even known that sort of arrangement was available to him, unless he'd been told it about it.*

On the face of it, FRPS representative, Mr H, wouldn't have given advice. What's been said above about what FRPS's role was didn't include giving advice to transfer to a SSAS. And I've seen, in other cases, that FRPS's terms of business expressly say that FRPS doesn't give advice and isn't authorised to do so. Giving general information about the advantages and disadvantages of a SSAS and promoting TRG investment wouldn't amount to advice to transfer which would be regulated advice and which should only be given by a FCA regulated adviser which FRPS wasn't. But it would be very easy, in discussions about possible pension vehicles and investments, for what FRPS said to stray into advice territory. And we know that FRPS had links to TRG (including one or more directors in common) and we've seen a fairly large number of cases where FRPS has recommended transfers to SSASs to invest in TRG.

I think that's likely what happened here. As I've said, Mr T was an inexperienced investor and what he was doing was complex and unusual for someone in his circumstances. I can't see he'd have been prepared to transfer to a SSAS and invest in TRG unless he'd been encouraged to do so on the basis that he'd be better off when he came to retire as a result. That would amount to a recommendation to transfer which would be regulated advice and which, as I've said, should only have been given by an authorised financial adviser who held the necessary permissions to advise on pension transfers, which FRPS didn't.

To pick up on what Mr T's then representative said, I don't see that Broadwood advised Mr T, apart from giving section 36 advice in relation to TRG investment. As I've said, that imposes a requirement on a trustee to take and consider appropriate advice on whether a proposed investment is satisfactory for the aims of the SSAS. That isn't the same as advice to Mr T in his personal capacity as to whether transferring to a SSAS and investing in TRG was suitable for him. I think it was Mr H of FRPS who advised Mr T about that.

In a similar vein, I note that, in its final response letter, Zurich referred to the information provided by CGL in support of Mr T's transfer request which confirmed he was receiving advice from Sequence, which was, at the time, regulated by the FCA. But, as I've said (and regardless of whether it was Sequence or Broadwood who gave the advice) that was section 36 advice given to Mr T in his capacity as a trustee and not personally. Zurich should've known that was different to personal advice. So I don't think Zurich should've assumed that Mr T was receiving regulated advice in connection with the transfer or taken any comfort from that.

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

The Scorpion insert:

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

CGL's letter to Zurich saying Mr T wanted to transfer said the 'Predators stalk your pension' leaflet had been given to Mr T. That was the title of the February 2013 insert or booklet. It's difficult to be sure if that actually happened – that is Mr T was given the insert or booklet by CGL or FRPS. But the investigator said, in any event, a copy was enclosed with Zurich's *letter of 19 December 2014 which Mr T accepts he received. I think that was on the basis that the letter carried the logo from the February 2013 insert and booklet. And in its final response to Mr T's complaint Zurich had said that was the version that had been sent. But the Scorpion materials had been refreshed in July 2014. And, in response to the investigator's view, Zurich said it had been the updated July 2014 leaflet that had been sent. Zurich said the reference to the earlier version in the final response letter had been a mistake and Zurich's internal processes required the current version of the leaflet to be enclosed with correspondence to members.*

It's not entirely clear because the letter itself didn't say which version of the insert was enclosed. I say insert because I'd assume leaflet denotes the shorter insert rather than the longer booklet. The letter said: '[TPR] has issued the enclosed leaflet providing information on the warning signs you should look out for – please read it carefully.' But, as I've said, the letter carried the title and logo from the original, February 2013 insert. The July 2014 insert had a different title – 'A lifetime's savings lost in a moment'. It would be logical, if that updated version had been enclosed, for that to have been shown on the letter instead. And I don't think what was said in the final response letter can simply be disregarded – whoever looked into Mr T's complaint would presumably have done so carefully and making sure what was said was accurate. So, on balance, I think it's likely to have been the February 2013 insert that was enclosed with Zurich's letter of 19 December 2014. However, I've considered below both versions below, including whether sight of the updated July 2014 insert would've changed things for Mr T.

Due diligence:

In light of the Scorpion guidance, I think firms ought to have been on the look-out for the tell-tale signs of a pension scam and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk. And because, as I've said, the Scorpion campaign had been refreshed in July 2014, Zurich needed to take the updated guidance into account in processing Mr T's transfer request and which, as I've said, widened the focus from early access pension liberation fraud to pension scams more generally.

In reaching my findings I've considered what Zurich said in response to the investigator's view as to Zurich's obligations and the due diligence it was required to undertake in the period October to December 2014. But, for the reasons I've gone on to explain, I don't think Zurich did do all it should've. I note that Zurich considers the investigator's view in this case to be inconsistent with other cases. I'd however point out that we deal with complaints on their individual facts and merits. Sometimes a complaint might, at first sight, appear very similar to another but there may be differences which, even if small, may impact on the outcome. Further, evidential weight is a matter for the ombudsman concerned so some differences might prevail. So I don't think an extensive case by case analysis and comparison is warranted.

I note what's been said about CGL's involvement. I agree CGL didn't need to be regulated to obtain (with Mr T's authority) information about his pension. And the information CGL provided in support of the transfer request indicated that Mr T, as a trustee of the SSAS, would be taking advice from Sequence, a FCA regulated firm. It was Broadwood who gave the section 36 advice about TRG investment. Sequence may have given section 36 advice about the Parmenion DFM. But, in any event, I don't think it was correct for Zurich to record Sequence as Mr T's financial adviser. Any advice he received as a trustee wasn't the same as advice given to him in his personal capacity as to suitability of the transfer or the investments.

Zurich has also pointed to determinations issued by the Pensions Ombudsman (TPO). But, *as Zurich will know, TPO is an entirely separate organisation. We aren't bound by TPO's decisions or vice versa. Zurich has also referred to the PSIG Code but, as it wasn't introduced until after Mr T's transfer had been completed, I don't see its relevant here.*

Zurich did do some additional due diligence. Zurich did make enquiries of HMRC to check out what CGL had said about the SSAS being registered. Zurich also had CGL's letter saying pension liberation had been explained to Mr T and a letter signed by him confirming that was included with the transfer request. Further, Zurich wrote to Mr T on 16 and 19 December 2014 and 14 January 2015. I've considered below those letters and other information Mr T received.

But, looking at the information Zurich had, two features of Mr T's transfer would've been potential warning signs of a scam. First, Mr T's SSAS was recently registered. Secondly, the updated July 2014 guidance said one of the things to watch out for was 'Transfers of money or investments overseas, meaning the money is harder to recover'. Zurich would've been aware that Mr T was planning to do that – CGL's Q&A document explained that Mr T was considering an investment in TRG. There was a key features document and a link to TRG's website from which Zurich would've seen, if it wasn't familiar with TRG already, that all of the developments were overseas. I note Zurich doesn't accept TRG investment was what might properly be termed a scam or fraudulent. But, even if it was an investment which simply failed, it was an overseas investment which was highlighted as being something to look out for and which might mean a scam (whether or not it actually was) was more likely.

Looking at what Zurich knew about the transfer, I think it would've been fair and reasonable – and good practice – for Zurich to have looked into the proposed transfer and the most reasonable way of going about that would have been to turn to the check list in the action pack to structure its due diligence into the transfer.

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

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

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

2. *Description/promotion of the scheme*

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

3. *The scheme member*

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

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

I don't think it would've always been necessary to follow the check list in its entirety. And I don't think an answer to any one single question on the check list would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the check list to establish whether a scam was a realistic threat. Given the warning sign that should've been apparent when dealing with Mr T's transfer request, and the relatively limited information it had about the transfer, I think in this case Zurich should've addressed all three parts of the check list and contacted Mr T as part of its due diligence. As to what's been said about whether Zurich should've contacted Mr T by telephone, I agree that the method of contact wasn't specified. But the point is that Zurich should've obtained further information from Mr T, whether by telephone, letter or email. And my conclusions are based on what Zurich would've likely found out, if further information had been obtained from Mr T.

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

As to part 1 of the checklist, Zurich already knew, from the information it had, that the SSAS was newly registered with HMRC – it had only been registered on 2 December 2014, only a matter of days before the transfer request was made on 11 December 2014. If Zurich had looked into the sponsoring employer by checking on Companies House, Zurich would've seen that it too was newly established – in November 2014 – and was shown as a dormant company. And, if Zurich had asked Mr T about it, I think he'd have said he'd been told he needed to set up a limited company, that he wasn't employed by the company and he was in fact employed elsewhere. So the company had been set up purely to facilitate the SSAS. In response to enquiries under part 2, I think Mr T would've said he'd been given a lot of promotional material for TRG (which I don't doubt painted TRG investment in an attractive light). And, if enquiries under part 3 had been made, I don't see any reason why Mr T wouldn't have told Zurich what he's told us – that he'd been cold called by CFL, who'd obtained information with his authority from Zurich which was then passed on to FRPS who'd visited him at home and told him he'd be better off if he transferred to a SSAS and invested in TRG – so essentially he'd been advised by FRPS to transfer.

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

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

My view is that Zurich should've been concerned by FRPS's involvement because it pointed to a criminal breach of FSMA. On the balance of probabilities, and taking into account what I've said above, I'm satisfied such a breach occurred here.

<u>What should Zurich have told Mr T?</u>

Had it done more thorough due diligence, there'd have been a number of warnings Zurich could've given to Mr T in relation to a possible scam threat as identified by the action pack. Zurich should also have been aware of the close parallels between Mr T's transfer and the warnings the FCA gave to consumers in August 2014 about transferring to SSASs (which was brought to the attention of pension providers the following month). 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 T accordingly, meant it didn't meet its obligations under PRIN and COBS 2.1.1R.

With those obligations in mind, it would have been appropriate for Zurich to have informed Mr T that the firm he'd been advised by was unregulated and could put his pension at risk. Zurich should've said 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.

<u>Would it have made a difference?</u>

I've taken into account Zurich's comments in response to the investigator's view and why Zurich doesn't agree Mr T would've acted differently if he'd been given further warnings. I reach my conclusions about what would've happened in that scenario on the balance of probabilities – that is, what I consider is likely to have happened, taking into account all the available evidence (which might be incomplete, inconclusive or contradictory) and the wider circumstances.

Zurich did engage with Mr T – Zurich wrote direct to him three times (16 and 19 December 2014 and 14 January 2015) before his transfer request was processed. Zurich has also pointed to the transfer request confirmation form enclosed with its letter of 19 December 2014 and which Mr T signed and returned to confirm he wanted to go ahead with the transfer. I don't think the form adds anything. It did include links to TPR's and Zurich's website for 'further reading' but Mr T wasn't asked, for example, to confirm he'd read and considered the information provided or asked to explain why he still wanted to transfer despite the warnings given.

Zurich's first letter, dated 16 December 2014, was a fairly generic warning about the need to safeguard pension savings. It might've put Mr T on notice generally of the need to be careful but I don't think it adds much. Zurich's further letter, dated 19 December 2014, was more specific and detailed the particular threat to pension savings – being persuaded to transfer pension funds into a new pension scheme to take cash immediately and which, under HMRC's rules, generally wasn't allowed under the age of 55. The references to 'not being misled into transferring' and 'unscrupulous firms' were in the context set out – persuading people to transfer so they could take their pension cash immediately. Scams were mentioned. But, again, that followed on from what had earlier been said about 'these so-called pension liberation scams', that is taking pension cash immediately. So it would've seemed the 'scam' activity was limited to that.

The letter went on to set out the impact of pension liberation – significant tax charges, penalties, interest imposed by HMRC and very high charges, fees or commission payments. There was reference to high risk, overseas investments which might fail and the lack of regulatory protections. But, overall, the main thrust of the letter was the danger and potential adverse consequences of accessing a pension fund early. Although the questions posed and the checks suggested were of wider application, the background remained early access pension liberation. So, in my view, Mr T would've reasonably viewed what was said, and its application to his situation, in that light.

Zurich's letter of 14 January 2015, was, in the main, about the need for the receiving scheme to be registered with HMRC and what Zurich was doing to check that was and remained the position. Zurich did repeat the questions in its earlier letter and the recommendation to seek seeking advice from a UK regulated adviser and how to find one. But I don't see that would've prompted Mr T to have thought much more about things, given what I've said about Zurich's earlier letter being primarily focused on early access pension liberation which Mr T wasn't doing.

As to what other warnings Mr T was given, I've said I can't be certain he was given the February 2013 'Predators stalk your pension' insert by CGL and if that or the later July 2014 updated version 'A lifetime's savings lost in a moment' was shared with him by Zurich. But, even if Mr T saw both, I don't think it would've changed the outcome.

The focus of the original insert was on pension liberation fraud – that is early access to pension funds. At the time of the transfer Mr T was 52, so he was too young to legitimately access his pension benefits (absent circumstances such as ill health). But, as I've said, I haven't seen anything to suggest he was seeking to do that – he's said his motive in transferring was to take advantage of other investment opportunities and he didn't get any payment, loan or other incentive in return for transferring. And he'd signed a letter in support of the transfer confirming that he knew about pension liberation and he wasn't doing that. On that basis, I don't see that the warnings given would've resonated with Mr T.

And, even if it was the later July 2014 insert or booklet that was enclosed with Zurich's letter of 19 December 2014, given what I've said about the content and focus of the covering letter, I think the impression given would still have been that it was early access pension liberation fraud that Zurich was seeking to guard against. The July 2014 insert warned about cold calls and being offered a free pension review to lure customers into one-off investment opportunities. But Mr T hadn't been cold called in the sense of being contacted out of the blue when he hadn't been even thinking about doing anything with his pension fund. Instead it seems he'd only just realised he had a pension policy with Zurich and he'd been looking into what he might do with it. So CFL's contact with him may not have been a coincidence – Mr T may have left his details on a website or his browsing history may have triggered CFL's contact. Further, the updated insert still warned about accessing a pension pot before age 55 or being enticed with up front cash, none of which applied to Mr T. So I don't think the July 2014 insert, even assuming Mr T had seen it, would've changed things.

But, even though, as I've said, Zurich's focus appeared to be on early access pension liberation fraud, Zurich did stress, more than once, that Mr T should take advice from a UK regulated financial adviser specialising in pensions and gave a link to a website where he could find such an adviser in his area. And Zurich also told Mr T how he could check on the FCA's website (the address for which was given) that a financial adviser or business was regulated with the FCA. However, Zurich didn't go on to put that into context by explaining that an unregulated adviser who'd given advice to transfer would be acting unlawfully. I think that's a serious matter and one which most people would rightly regard as being a significant issue.

Mr T has said the person he was dealing with, Mr H, was convincing and a good salesperson. I don't doubt that FRPS's representative would've appeared professional, knowledgeable and persuasive. So Mr T's inclination would've been to trust him. But I think Mr T's confidence in Mr H and what he'd said Mr T should do would've been shaken if Zurich, in the course of making the enquiries I've referred to above, had indicated to Mr T that the representative he'd been dealing with from FRPS, who'd advised him to transfer to a SSAS and invest in TRG, was acting unlawfully. I think that would've put a different light on things for Mr T and made him think about if FRPS's representative was really likely to be trustworthy and acting in Mr T's best interest.

I don't think it follows that, because Mr T didn't heed the warnings Zurich gave, he wouldn't have acted differently if further warnings had been given. I don't think repeating the same warnings would've worked. But the warning Zurich should've given would've been different and focused on the unlawful advice which, as I've said, is a serious issue. I also note what Mr T has said about now realising that Zurich was trying to warn him about transferring but, at the time, he thought he was doing the right thing. With the benefit of hindsight, Mr T now wishes he'd heeded the warnings Zurich gave. But I don't think that necessarily means he'd have ignored further, more specific warnings from Zurich and when, at the time, he didn't realise that what Zurich was saying had a wider application and wasn't just related to early access pension liberation which wasn't what he was doing.

I think Mr T would've responded positively to a warning from Zurich – his existing pension provider and a major player in the pensions industry – that he was being advised by someone who shouldn't have been advising him and was acting unlawfully in doing so. I'm satisfied any messages along these lines would have changed Mr T's mind about the transfer. The messages would have followed conversations with Mr T and so would've seemed to him (and indeed would've been) specific to his individual circumstances and given in the context of Zurich raising concerns about the risk of losing pension monies as a result of untrustworthy advice. This would've made Mr T aware that there were serious risks in using an unregulated adviser. I think the gravity of any messages along these lines would prompt most reasonable people to rethink their actions. I've seen no persuasive reason why Mr T would've been any different.

So, I consider, if Zurich had acted as it should've, Mr T wouldn't have proceeded with the transfer out of his personal pension or suffered the investment losses that followed. I don't agree with Zurich's comments about it being Mr T's poor choice of investment which caused his losses which weren't foreseeable and so aren't Zurich's responsibility. On the contrary, I think it was foreseeable, if Mr T transferred to a SSAS and invested as he'd indicated he was going to do – in TRG – and there were shortcomings in how Zurich dealt with the transfer request, that Zurich could be liable for any losses Mr T suffered in consequence of transferring. So, for the reasons I've given, I'm upholding Mr T's complaint.

Fair compensation

I've thought about if Mr T should bear some responsibility for the losses he's incurred. I take into account that the courts are able to reduce a defendant's liability for negligence, where the claimant shares responsibility for the damage they've suffered. The Law Reform (Contributory Negligence) Act 1945 allows for the apportionment of liability in the case of contributory negligence. And in summary this says where a person suffers damage partly due to their own fault and partly due to the fault of another party, a claim in respect of that damage shall not be defeated because the person who suffered the damage was partly at fault, but the damages recoverable shall be reduced by what the court thinks is an equitable share based on the share of responsibility/fault of the claimant.

I'm not deciding a legal claim, only a complaint. But, having considered the matter carefully, I think it's fair for Mr T to bear some responsibility for the losses he incurred, due to his failure to act on what he should've reasonably known having contributed to the loss he's suffered.

Zurich recommended, more than once, that Mr T take advice from an appropriately qualified UK regulated adviser with specialist knowledge of pension transfers. And links were given to help him find a local regulated adviser. He was also given the link to the FCA register to check the status of any business that had advised him. As I've said, this correspondence was all largely presented in relation to the risks of pension liberation – which wasn't something Mr T was doing. So, as I've said, the warnings may not have resonated with him *as strongly. But they were, nonetheless, warnings from a trusted source about how he could protect himself from an inappropriate transfer – including how to find a regulated adviser and how to check if an adviser was regulated.*

I'd also mention here Broadwood's letter of 20 November 2014 giving advice under section 36 of the Pensions Act 1995 in relation to TRG investment. While it provided reassurance that the scheme would not facilitate pension liberation and that the investment was legitimate, the letter did include some warnings – it said the investment was high risk, potentially illiquid, returns weren't guaranteed and only suitable for adventurous investors. And it made it clear that Broadwood was giving advice to Mr T as a trustee which wasn't regulated advice and, if he preferred advice on the suitability of the investment for him personally, he should seek regulated financial advice.

Mr T has said he didn't have any investment experience, Mr H said the investments were safe as they were in property and Mr T trusted what he'd been told. I don't doubt that Mr H was convincing and Mr T may have believed he was regulated. But Mr T had been told several times by Zurich (and Broadwood mentioned it too) that he should consider getting regulated advice. He was also told how he could check that any adviser involved was regulated. None of the parties Mr T was dealing with at the start of things – CFL, FRPS, CGL, Broadwood – were regulated and I haven't seen anything to suggest they claimed to be regulated – indeed Broadwood's letter confirmed that it wasn't regulated. Mr T may also have had dealings with some regulated parties – Sequence and Parmenion – but that wasn't in connection with the transfer itself and would've been later. It appears Mr T didn't see the need to check that the advice he'd received in connection with the transfer had come from a regulated source – and despite being told, several times, that he should get such advice and given details of how he could find a regulated adviser and how he could check that any adviser was FCA regulated.

Given all the information he had, I don't think it's unreasonable to say Mr T ought to have checked if his adviser – Mr H from FRPS – was regulated. Accessing the FCA's online website isn't difficult. If Mr T had searched against FRPS, no results would've been returned so Mr T would've known that he was dealing with an unregulated firm. I think that would probably have led to the unlawful advice being uncovered. And I think knowing that Mr H/FRPS wasn't regulated would've been enough for Mr T to lose confidence in Mr H and I don't think Mr T would've been happy to continue with the transfer.

So, in deciding fair compensation here, I think it would be reasonable to attribute some responsibility for the loss Mr T has suffered to his own failure to act. Essentially, I think both Zurich and Mr T should've done more during the process of the transfer to guard against the risk of a scam and that if either of them had done as they reasonably should, Mr T's losses would've been avoided. Here Zurich was the professional party and dealing with members' pension transfer requests was an inherent part of operating, as it did, a regulated pensions business. So, it should've been more familiar with the risks than Mr T. In accordance with its duty under PRIN 6 and COBS 2.1.1R, Zurich should've (and as I've found above) given Mr T specific warning about the likelihood he'd been drawn into a scam. So, I think its failings were worse than those of Mr T. While this isn't an exact science, in the circumstances of this complaint, I don't disagree with the investigator's proposal to reduce Mr T's compensation by 25%. I think this is a fair way to account for Mr T's own contribution to the loss he's suffered.'

I went on to set out how Zurich needed to put things right for Mr T, taking into account what I'd said about Mr T having some responsibility for what had happened. I noted that my redress wasn't exactly the same as that suggested by the investigator.

Zurich responded to my provisional decision. It didn't agree that the complaint should be upheld, for the reasons it had given previously. In particular Zurich was disappointed I hadn't agreed that the most up to date Scorpion insert had been sent to Mr T. Zurich also said it couldn't see any difference between the redress I'd set out and that proposed by the investigator. And, that aside, Zurich queried the 75%/25% split as not being consistent with other cases we'd considered.

We didn't receive any response to my provisional decision from Mr T.

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.

Although Zurich is unhappy with my provisional decision, in the absence of any new evidence, arguments or information, I maintain the views I reached previously. I've set those out in full above and they form part of this decision.

In my provisional decision I explained why I considered it more likely that the February 2013 '*Predators stalk your pension*' insert was enclosed with Zurich's letter of 19 December 2014, rather than the updated July 2014 version. But I went on to consider both versions anyway. And I explained why I didn't think, even if it had been the later insert or booklet that had been sent, that would've changed things.

The redress I set out in my provisional decision did differ from that suggested by the investigator. Although I maintained the proposed 75%/25% split, the investigator hadn't given any option for Zurich to reinstate Mr T's plan, whereas I've included reinstatement in my below redress (which follows what I set out in my provisional decision).

And the investigator said that compensation should be paid into Mr T's SSAS whereas (as I said in my provisional decision and repeated below) I don't think it's appropriate for further compensation to be paid into the SSAS, given Mr T's dissatisfaction with the outcome of the investment it facilitated.

As to the 75%/25% split, as I said in my provisional decision, it's not a precise science. Any reduction to compensation to reflect a consumer's own fault is a matter for my judgment. A 75%/25% split is within the range I consider reasonable. Although Zurich has pointed to other complaints we've considered, sometimes complaints which may appear very similar aren't identical and relatively small differences may impact on the outcome and/or redress. Further, and in any event, the weight an ombudsman attaches to particular evidence is a matter for the ombudsman concerned and so some differences may prevail. As I've said, I consider apportioning 75% responsibility to Zurich and 25% to Mr T is reasonable in the circumstances of this particular case.

Putting things right

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

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

To compensate Mr T fairly, Zurich must subtract the actual value of the SSAS from the notional value if the funds had remained with Zurich. If the notional value is greater than the actual value, there is a loss. Zurich must then pay 75% of that loss.

Actual value

This means the SSAS value at the date of my Final Decision. To arrive at this value, any amount in the SSAS bank account is to be included, but any overdue administration charges yet to be applied to the SSAS should be deducted. Mr T may be asked to give Zurich his authority to enable it to obtain this information to assist in assessing his loss, in which case I expect him to provide it promptly.

My aim is to return Mr T to the position he would have been in but for the actions of Zurich. This is complicated where an investment is illiquid (meaning it cannot be readily sold on the open market), as its value can't be determined. On the basis of the evidence I have, that is likely to be the case with the following investment(s): TRG. This is because there's no market for the investment which appears to have failed. And I don't think it's realistically possible for Zurich to only acquire a part of the investment from the SSAS as I'm only holding it responsible for 75% of the loss. Therefore as part of calculating compensation:

- Zurich must give the illiquid investment(s) a nil value as part of determining the actual value. In return Zurich may ask Mr T to provide an undertaking, to account to it for 75% of the net proceeds he may receive from those investments in future on withdrawing them from the SSAS. Zurich will need to meet any costs in drawing up the undertaking. If Zurich asks Mr T to provide this undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

- It's also fair that Mr T should not be disadvantaged while he is unable to close down the SSAS. So to provide certainty to all parties, if these illiquid investment(s) remain in the scheme, I think it's fair that Zurich must pay an upfront sum to Mr T equivalent to 75% of five years' worth of future administration fees at the current tariff for the SSAS, to allow a reasonable period of time for the SSAS to be closed.

Notional value

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

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

Payment of compensation

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

Zurich should reinstate Mr T's original pension plan as if its value on the date of my Final Decision was equal to 75% of the amount of any loss established from the steps above (and it performs thereafter in line with the funds Mr T was invested in).

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

If Zurich is unable to reinstate Mr T’s pension and it is open to new business, it should set up a **new** pension plan with a value equal to 75% of the amount of any loss on the date of my Final Decision. The new plan should have features, costs and investment choices that are as close as possible to Mr T’s original pension.

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

If it’s not possible to set up a new pension plan, Zurich must pay the amount of 75% of any loss direct to Mr T. But if this money had been in a pension, it would have provided a taxable income during retirement. Therefore compensation paid in this way should be notionally reduced to allow for the marginal rate of income tax that would likely have been paid in future when Mr T is retired. (This is an adjustment to ensure that Mr T isn’t overcompensated – it’s not an actual payment of tax to HMRC.)

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

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

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

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

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

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

My final decision

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

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr T to accept or reject my decision before 15 April 2025.

Lesley Stead
Ombudsman