The complaint

Mr F has complained about a transfer of his Zurich Assurance Ltd personal pension to a small self-administered scheme (SSAS) in April 2015. Mr F's SSAS was subsequently used to invest in The Resort Group (TRG), a hotel development in Cape Verde. The investment now appears to have little value. Mr F says he has lost out financially as a result. He is represented in this complaint by a Claims Management Company (CMC)

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

What happened

On 1 April 2014 Mr F signed a letter of authority (LoA) allowing Moneywise Financial Advisors Limited to obtain details, and transfer documents, in relation to his pension. On 11 April, Moneywise wrote to Zurich, enclosing Mr F's LoA. It requested information on Mr F's pension and discharge forms to allow a transfer. Zurich sent Moneywise the requested information on 14 April. Moneywise was authorised by the Financial Conduct Authority (FCA).

Mr F says that at around this time he'd either responded to an advertisement or been cold-called by First Review Pension Services (FRPS) offering a free pension review, and then visited at home by an introducer from that firm, which wasn't authorised by the FCA. They encouraged him to establish a new company to act as the SSAS's sponsoring employer, which he did on 27 May 2014.

Mr F received a 'dear trustee' letter from a further unregulated adviser (Broadwood Assets Limited) dated 9 June 2014, addressed to him as a prospective trustee of a SSAS. It is written on the basis that a SSAS already exists (i.e. it does not discuss a transfer to the SSAS). It discusses fractional investment in a TRG hotel, which it says would not constitute pension liberation - but *'You may be required to provide such information and declarations as are necessary…in order to demonstrate that you are not involved in pension liberation.'*

The letter confirms Broadwood is unregulated, but *'advice on investing in commercial property through a SSAS is not so regulated'*. It sets out some of the main risks of TRG and recommends that the trustee invest - providing they adequately diversify into other investments, don't require early access to the funds, and are a 'more adventurous' investor. Mr F was required to sign this letter before the investment into TRG went ahead (which, due to the protracted timescale of this transfer, he didn't sign until 10 April 2015).

A SSAS for Mr F's sponsoring employer was then established on 27 June 2014, with Mr F as sole trustee and Cantwell Grove Ltd (CGL) as scheme administrator. It was registered with HMRC on 7 July 2014.

CGL then requested the transfer from Zurich on 18 July, enclosing a set of 'Q&As' which disclosed that the proposed investments were going to be TRG and a discretionary fund management (DFM) portfolio. It said that Mr F would be taking advice as a trustee from a regulated firm (Central Markets Investment Management - CMIM) on these. I'm aware that CMIM did indeed have a relationship with some introducers to the TRG investment, but for whatever reason CGL incorrectly identified Mr F as being one of the recipients of that advice. As noted above, the advice Mr F received as trustee was actually from Broadwood Assets. Zurich was unaware of this.

CGL's letter also said that it supported The Pensions Regulator (TPR)'s campaign to stop pension liberation activity – the so-called "Scorpion" campaign because of the imagery used – and to that end it had shared the Scorpion awareness material with Mr F. It further enclosed a statement from Mr F signed on 18 July that he was familiar with what pension liberation was, and he was only transferring his pension for the purposes of ongoing investment.

For the remaining nine months Zurich was carrying out due diligence checks on the transfer and requesting further information from HMRC and Mr F. The process concluded on 8 April 2015 with £33,703 being transferred. He was aged 42 at the time. A fee of £120 was paid from the SSAS to Broadwood Assets on 14 April 2015 for its advice.

Mr F invested £24,000 of the transfer in the Dunas Beach Resort. This initially paid him quarterly income of around £100, which subsequently dried up and the investment is thought to be unmarketable with little or no value. Mr F didn't proceed to invest in the DFM either, as Broadwood had said he would need to seek advice from a regulated adviser on other investments to hold in the SSAS. The rest of his funds have remained in cash but subject to charges.

Mr F's CMC complained in October 2019 that Zurich should have taken further steps to deter him from transferring. It said Mr F was not financially sophisticated, had no other savings or investments, and had fallen victim to a scam. Zurich failed to send him TPR's "Scorpion" leaflet itself or spot the warning signs, including that:

- Mr F had initially been contacted by cold call and offered a free pension review.
- The proposed sponsoring employer of the scheme was a newly registered, dormant company which didn't employ Mr F. (Mr F was the sole director of that company.)
- The proposed recipient scheme was newly registered with HMRC, and its administrator CGL had only been in business for one year.
- The proposed investment was unregulated, overseas, high risk and not diversified.

In summary, Zurich's response to the complaint was as follows:

- The transfer process had been initiated by Moneywise - and it had sent the Scorpion leaflet to that adviser, which is no longer trading.
- It verified that the SSAS was HMRC registered and wrote to Mr F in August 2014 and February 2015 to warn him of the risks and to encourage him to take regulated financial advice. (I'll discuss Zurich's letters later on in this decision.)
- Mr F declared he was aware of, and not carrying out, pensions liberation – and repeated this when he later insisted on going ahead despite Zurich's warnings.
- He had both a statutory and contractual right to transfer to any other scheme that was a recognised transfer under the Finance Act 2004; rights that he had re-asserted to Zurich after it attempted to caution him about making the transfer.

Our investigator was unable to resolve the dispute informally, so the matter was passed to me to decide. I issued a Provisional Decision on 5 March 2025. In summary, I concluded that Zurich failed to provide a warning leaflet about pension liberation to Mr F when a transfer pack was requested on his behalf in April 2014, but CGL had in any event likely provided the same leaflet to Mr F itself. Regardless, I thought the messages in that leaflet focusing on accessing pension funds early, wouldn't have echoed particularly with what Mr F was doing.

I went on to observe that Zurich had already accepted there were some initial warning signs of a scam in Mr F's case, requiring it to carry out further due diligence. But the extent of Zurich's enquiries was only to ask HMRC about Mr F's SSAS. Although Zurich's communications with Mr F about its HMRC enquiry prompted Mr F to write back insisting on a transfer, I had found evidence that this was a prepared letter he'd signed at the outset of the transfer process for this circumstance.

Had Zurich properly engaged with Mr F about the concerning warning signs present in his transfer request, I concluded it was unlikely he would still have insisted on transferring. However, I also had to acknowledge that Zurich had provided Mr F with some warnings about the importance of getting regulated advice, and these were also missed opportunities for Mr F to act on this information and uncover the fact that he was getting unregulated advice. So I allowed for a 30% deduction for contributory negligence from the compensation that I required Zurich to pay Mr F.

Mr F responded to the Provisional Decision confirming he had no further comments to make. Zurich didn't agree with the Provisional Decision. In summary, it said:

- I was using the benefit of hindsight to disagree with the view the investigator had reached three years earlier not to uphold the complaint.
- It fundamentally disagrees about the extent of the due diligence I've said it should have carried out, or that any other warnings provided to Mr F would have resulted in a different decision about transferring.
- Whilst the letter Mr F signed insisting on going ahead with the transfer may now have been shown to be a pre-drafted template, Zurich didn't know this at the time. There was no reason to question the contents of the letter. It was Mr F's choice to sign it in advance and he must take responsibility for that.
- The SSAS remains an appropriately registered pension – it is not a scam. Mr F was warned by the third parties who advised him that the investments were high risk and that has come to fruition: they have not produced the returns he was expecting.
- At the time these events were taking place, the Pensions Ombudsman (TPO) had concluded some firms were wrong to attempt to block transfers without considering whether the member had a statutory right to make the transfer.
- If the business practices of the third parties involved *"were as dubious as the Ombudsman has sought to demonstrate"*, they would likely have told Mr F what to say in response to objections Zurich raised – such as instructing him to say (untruthfully) that he had been advised by Moneywise Financial Advisors.

Where relevant, I'll address what Zurich has said in my revised findings which follow.

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.

Zurich says that my Provisional Decision used the benefit of hindsight as it disagreed with the approach the investigator had taken three years earlier. There is a two-stage process for considering complaints at this service, and I'm not bound by the initial view the investigator reached. Further information also came to light surrounding the prepared nature of the letter Mr F sent to Zurich insisting on making a transfer, which it was reasonable for me to take into account. The decision I've reached here is what I consider to be fair and reasonable in the circumstances, taking account of the relevant background to these matters below.

The relevant rules and guidance

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

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

In February 2013, 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, which covers most of the period before Mr F's transfer was made – so I'll cover this in more detail below. 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.

A further update to the Scorpion guidance on 16 March 2015 (shortly before Mr F's transfer completed) referenced the potential dangers posed by "pension freedoms" (which were about to give people greater flexibility in relation to taking pension benefits) and explained that pension scams were evolving. In particular, it highlighted that single member occupational schemes were now 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. This was also released on 16 March 2015. 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.

<u>The July 2014 and March 2015 Scorpion guidance</u>

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. (However as a transfer pack was requested before July 2014 in Mr F's case, the relevant insert would have been the February 2013 version.)

- 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, schemes could use a checklist 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.

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.

As part of this, 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.

The action pack wasn't significantly changed by TPR's March 2015 update, except that ceding schemes were now asked to use a three-part checklist to find out more about a receiving scheme, and why their member was looking to transfer, in <u>every</u> case (rather than only where certain warning signs of a scam were already apparent). It therefore follows that if I go on to find that warning signs were already apparent in Mr F's transfer request, whether I apply TPR's July 2014 or March 2015 update (which was published a few weeks before he transferred in early April 2015) won't make a difference.

<u>The PSIG Code of Good Practice</u>

Zurich should have been aware of this Code from a few weeks before it completed Mr F's transfer. The PSIG Code was voluntary (although I note that Zurich was a contributor to it alongside other FCA-regulated pension providers). 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). 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.

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.

  However, in the particular circumstances of this case, I accept that the triage process would not have been available to Zurich for almost all of the time it had been considering Mr F's transfer request since July 2014. Assuming it did identify grounds to use TPR's action pack checklist, I would therefore expect its enquiries through that checklist to have been well-advanced before the PSIG Code was introduced.

- Nevertheless, the PSIG Code does split its later process (where the triage stage identifies that full due diligence *is* required) by receiving scheme type: larger occupational pension schemes, SIPPs, SSASs and QROPS. So I will consider the wider range of issues highlighted in PSIG's SSAS checklist as part of reaching my outcome.

TPR began referring to the Code as soon as it was published on the same day as the 16 March 2015 update to 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.

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, informed by wider material such as FCA alerts, 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, and provide appropriate warnings in proportion to any threats identified.

The considerations of regulated firms also 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 F could recall the first name of the person he met, who his CMC believes worked either for FRPS or Broadwood Assets (who sent him the advice letter). He was sure that FRPS was the name of the firm when our investigator put it to him. Mr F thought all of the information he got from FRPS came via the person he met. He says they also gave him the impression they were acting on behalf of CGL.

A person of the same first name that Mr F gave ("Mr N") acted as witness to the trust deed and rules for his new SSAS. Mr F didn't recognise the name of the regulated firm, Moneywise, who originally asked for information on his pension. He did sign an LoA for that firm. However as that seems to have been the extent of their interaction, I can understand the lack of recollection. This service is aware more widely of a connection between Moneywise and FRPS, it appears with FRPS originally intending to pass clients on to that firm.

I've seen evidence in some cases (where transfers took place earlier than Mr F's) of Moneywise looking to provide advice on a SIPP for the purpose of making investments such as TRG. However, Moneywise was restricted on the FCA register from providing such advice with effect from June 2014. There have also been some examples of Moneywise acting in the same capacity as Broadwood Assets did in this case, namely to provide advice to a SSAS trustee but predicated on the transfer to the SSAS already having taken place.

Clearly in this case Mr F took that advice from Broadwood Assets rather than Moneywise. He confirmed to our investigator that he had got a copy of Broadwood's letter, and was able to send us his unsigned copy. Correspondence between himself and CGL at the time confirmed that he was acting on Broadwood Assets' advice in deciding to make the TRG investment once his SSAS had been set up. But by its very nature, there's no reference in the letter to who was involved in advising Mr F to establish the SSAS.

There's no evidence of any other recommendation to transfer (to a SSAS or any other product) from Moneywise itself. In common with many other individuals who transferred to a CGL SSAS, I think that Mr F was likely advised by FRPS to take steps that would result in the TRG investment, because FRPS was known by this point to have directorship links with TRG and to source investments through, mainly, cold-calling operations. So, FRPS had a vested interest in the TRG investment proceeding.

Given the number of complaints this service has reviewed of this nature I have little doubt that an FRPS adviser would have been prepared to encourage Mr F to transfer his Zurich personal pension to CGL to achieve that aim. Indeed it was commonplace for FRPS to witness the applications to set up the SSAS, as Mr N has done here (albeit without giving a company name) – demonstrating their involvement at the stage of influencing clients to transfer out of their existing pension arrangements.

Mr F worked as a driver in the transport industry at the time this happened. He had no savings or investments. He explained to our investigator that he had forgotten he even had this pension (which he believed was set up for him by a relative when they worked for Allied Dunbar). He recalled being told he would achieve significantly better returns if he transferred to the SSAS to invest in Cape Verde, and would be able to access the money again after a three-year term. I don't think he was what would be described as a sophisticated investor, so it's highly unlikely he came up with the idea of transferring to a SSAS and making a TRG investment on his own.

I accept it's likely Mr F was advised to make these steps, and would have considered Mr N as being the person who gave that advice. On the basis of the evidence I have, including Mr F's familiarity with FRPS' name and the known wider involvement of FRPS (with its links to TRG) in these transfers, I'm prepared to accept that Mr N most likely worked for FRPS.

<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.

Although the transfer pack Zurich sent to Moneywise mentions a number of enclosures, the Scorpion insert isn't mentioned. Zurich has provided evidence centrally to this service of an internal memo requiring that insert to be included in transfer packs from June 2013 onwards. Even if I accept that evidence, that means the insert would have gone to Moneywise. There's no evidence of a letter to Mr F at around the same time to provide the insert (or similar material) to him.

Nevertheless, I think it's likely that CGL in fact sent either the insert or the longer-form booklet to Mr F. I say this as its letter to Zurich requesting the transfer confirms that it had sent the 'Predators Stalk Your Pension' leaflet to Mr F (both the insert and booklet have that name). In turn Mr F had signed a letter to Zurich confirming *"From guidance and information I have received in connection with this decision I appreciate that there has recently been a significant rise in cases of 'pensions liberation' fraud."*

It wouldn't have been difficult for CGL to provide Mr F with this leaflet given that its intention was to demonstrate (successfully) that Mr F wasn't liberating his pension. The insert in use at that time was focused mainly on the risks of early release pension liberation: where the member gained access to their pension funds through unauthorised payments (such as before minimum pension age). Similarly, the 'Five steps to avoid becoming a victim' section, which come towards the end of the insert, would have had a reduced impact on Mr F given the overall focus of the insert was on trying to prevent people from doing something Mr F wasn't even attempting to do. The insert doesn't refer to overseas investment at all.

So in conclusion, I don't think that version of the leaflet would have echoed particularly with what Mr F was doing. Whilst it refers to *"being approached out of the blue over the phone"*, Mr F is not entirely sure whether this was how he came into contact with FRPS. And the remaining warnings in the leaflet are about gaining early access to pension funds, which CGL and Broadwood Assets had assured him he wasn't doing.

Due diligence:

As explained above, for most of the time period Zurich was considering Mr F's transfer the July 2014 version of the Scorpion action pack was in operation. And it's clear Zurich did consider the content of that action pack and determined that it had a reason to carry out due diligence on Mr F's transfer.

Zurich says it noted that the transfer request was to a recently-registered SSAS and it was this that initially prompted it to consider things in more detail. Confusingly, however, it also says that it received no information about where Mr F was planning to invest the funds once transferred. The Q&A document it received from CGL states that Mr F would be investing in *"A commercial property investment provided by The Resort Group PLC (www.theresortgroupplc.com)",* and a DFM arrangement provided by CMIM (who were also advising Mr F as trustee on these investments).

So in fact, there was a further warning sign – with TRG, Mr F was transferring funds overseas (and into an investment which appeared to be unregulated). But in any case, whether there was one or more warning signs here, it's clear there was a need for Zurich to carry out further due diligence, as it accepts. I think the most reasonable way of going about that would have been to turn to the checklist in the action pack to structure its due diligence into the transfer.

Zurich has reiterated in response to my Provisional Decision that it disagrees with this Service's approach on what form that further due diligence should have taken, but it hasn't explained what alternative framework would have achieved the same goals that TPR was expecting ceding schemes to accomplish.

The checklist 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 checklist is divided into three parts (which I've numbered for ease of reading and not because I think the checklist 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 checklist identified actions that should help the transferring scheme establish the facts.

I don't think it would always have been necessary to follow the checklist 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.

Zurich already knew (or should have known, from the information it received) that Mr F was using a recently established SSAS to make an overseas investment, but had little other information about how the request to transfer had come about. It was told that CMIM, a regulated firm, was advising Mr F – but from the explanation CGL had provided, this firm was appearing to limit its role to advice to a trustee for the purposes of the Pensions Act 1995. That advice wouldn't include whether Mr F, as a Zurich policyholder, should transfer his pension to the CGL SSAS. Zurich was yet to learn who, if anyone, was advising Mr F on that aspect – but from the explanation CGL provided it evidently wasn't CMIM. So I think in this case Zurich should have addressed all three parts of the checklist and contacted Mr F as part of its due diligence.

Instead of asking for information from Mr F, Zurich only made enquiries directly with HMRC. It took advantage of a facility suggested in the guidance to query the status of occupational schemes (including SSASs). Zurich wrote to Mr F directly on 4 August 2014 to explain it had contacted HMRC. It wasn't until 12 February 2015 that it updated Mr F having received a response from HMRC that *"at the present time the information held by HMRC does not indicate a significant risk of the scheme being set up or being used to facilitate pension liberation."*

The position taken by HMRC on the validity of Mr F's and other CGL SSASs is consistent with the later *Hughes v Royal London* High Court case in February 2016 (I wrongly said June 2015 in my Provisional Decision), which determined that a member didn't need to receive earnings from the sponsoring employer to obtain transfer credits in an occupational scheme, as long as they had some earnings. Mr F's CMC has confirmed in his complaint that he was in paid employment at the time.

So in my view, the most that the HMRC query did was to inform a conclusion Zurich could mostly already have reached from the declaration Mr F signed with his transfer request: that he was not liberating his pension. So, other than delaying matters – which I accept can sometimes be of benefit in prompting the member to rethink their course of action – I don't think the HMRC query brought matters much further forward.

Zurich is in effect referencing the *Hughes* case, and several other ones TPO decided in early 2015, in its observation that TPO expected ceding schemes to consider whether the member had a statutory right to transfer. For example, TPO issued three determinations together on 8 January 2015 involving complaints where the member objected to having their transfer blocked. In each case it concluded that the member did not have a statutory right to make the transfer and agreed with the ceding scheme's approach (other than emphasizing that any other discretionary or contractual right *also* needed to be considered).

TPO didn't determine the *Hughes* case until June 2015, which was after Mr F's transfer had happened. But I can't see how that supports Zurich's position either, because (before this was overturned by the High Court) TPO initially agreed with the approach Royal London had taken to block Mrs Hughes' transfer because (like Mr F) her earnings did not come from the SSAS's sponsoring employer.

I think what Zurich might be referring to is another complaint TPO determined in the same month as, but again slightly after, Mr F's transfer[1]. TPO disagreed with that ceding scheme's transfer refusal because, whilst the member didn't appear to have a statutory right to transfer (due to the same understanding as above of the legal position regarding 'earnings') they did have a contractual right to do so. I assume Zurich's point is therefore that their options for attempting to block a transfer such as Mr F's would have been very limited.

Whilst I'm not bound by determinations TPO has reached, as I operate under a different jurisdiction, it's important to say I'm also not approaching Mr F's complaint from the same position of Mr F already having complained – to a statutory ombudsman scheme – that his transfer should not have been blocked. Zurich delayed Mr F's transfer but it didn't seek to block it. What I'm considering is whether, during that period of delay, Zurich adequately explained to Mr F what its concerns were – and what prospects that better communication with Mr F had of changing his mind about transferring. That's a different matter to the points TPO was considering in the cases I believe Zurich is referring to.

I'm also mindful that for the entire time Zurich's enquiry with HMRC was ongoing, there had been a wider focus on scams in the Scorpion campaign than just early release pension liberation. As HMRC said itself on the website announcing this enquiry facility, it should not be used as a substitute for a ceding scheme carrying out its own proper due diligence.

I accept that Zurich's narrow focus on the HMRC enquiry, and the consequent delay, did prompt insistence on Mr F's part to transfer his pension. I'll return to that when considering if any further steps Zurich should have taken would have made a difference to what Mr F then did. But firstly, I need to set out what the results of a fuller due diligence exercise would have looked like and how that should have been communicated to Mr F.

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

Under part 1 of the checklist, Zurich already knew Mr F was asking to transfer to a SSAS that had only been registered a couple of months previously, with a sponsoring employer that was also recently established and showing as dormant. Whilst the company was also registered to his home address, meaning no geographical separation, I think any basic enquiry of Mr F would have confirmed that he wasn't employed by it in a meaningful sense. In other words, it had only been established as a means to operate the SSAS. And that SSAS was being used as a means to make an investment in TRG.

Enquiries under part 2 would have revealed that the SSAS was promoted to Mr F as a way to achieve significantly better returns than his existing pension, over a relatively short period of time enabling him to then reinvest them elsewhere. This involved making an unregulated investment, under which I think Zurich should have known returns typically couldn't be guaranteed (and was unlikely to be liquid, particularly where property was involved). Zurich should have appreciated that fractional ownership in overseas property was the sort of investment TPR was getting at with 'unusual, creative or new investment techniques' – particularly given its similarity to the given examples of scams in the action pack.

Under part 3, I'm satisfied that Mr F would have told Zurich that he was being advised to make this transfer. I think it's most likely Mr F would have given the name of the individual

[1] https://www.pensions-ombudsman.org.uk/sites/default/files/decisions/PO-3184.pdf

(Mr N) who advised him. The checklist 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. That step, which was not difficult, would have led to the conclusion that Mr N wasn't authorised to provide the advice he was giving. If Mr F had said Mr N was working for FRPS (or believed they represented CGL in some way, or Broadwood Assets for that matter), Zurich would not have been able to find these firms on the FCA register either.

Zurich suggests in response to my Provisional Decision that Mr F would have been coached to say that he'd been advised by Moneywise Financial Advisors, so as to avoid raising Zurich's suspicions. That isn't indicated in any of Mr F's recollections, which were blank on Moneywise being involved at all (beyond an initial information request). And I have to say I haven't heard of that coming up even in cases this service has dealt with where ceding schemes *did* contact consumers to ask who was advising them.

Taking that to its logical conclusion would involve FRPS needing to explain to Mr F *why* it wanted him to make such an untruthful statement to his existing pension provider. That would in my view only have served to emphasize that Mr F would be better off taking advice from Moneywise (which he wasn't doing) rather than FRPS. So I find it unlikely that would be how FRPS prepared Mr F for such a discussion with his ceding pension scheme.

For the reasons I've already explained, Zurich also couldn't have accepted the explanation from CGL of advice Mr F was supposedly getting from CMIM, as that advice didn't relate to a transfer into the SSAS. (And Zurich went on to write to Mr F twice in August 2014 and February 2015 to make him aware of the possibility he was getting advice from an unregulated adviser, so evidently it was also not satisfied by CGL's explanation either.)

I accept Mr F had already told Zurich in writing – and would have been able to confirm – that he hadn't received any other incentives to invest. And he's equivocated to this service on whether he was cold-called. However, I think the unregulated advice it would have become clear to Zurich he was getting to transfer his pension to the SSAS should have concerned it the most.

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. (The PSIG Code also says firms should report individuals appearing to give regulated advice that aren't authorised to do so.)

So my view is that Zurich should have been concerned by not only the recently registered SSAS, the non-genuine employer, and being promised returns from unusual unregulated investments, but also Mr P/FRPS's involvement - because this pointed to a criminal breach of FSMA. On the balance of probabilities, I'm satisfied such a breach occurred here.

Even though the PSIG Code had been introduced by the time the transfer completed, I don't think it would make a difference to the outcome of the complaint if I had considered what information Zurich could have gathered from the SSAS-specific questions in that Code. If anything, the Code is even more explicit in asking Zurich to consider, *"Has the scheme or administrator been linked to investments linked to high fraud risk?".* Zurich would likely also have known from a number of similar transfer requests it received by this point, that CGL transfer requests all included the same Q&A document describing a TRG investment that was provided in Mr F's case.

This question I've quoted above from the Code's SSAS section goes on to give a list of example fraud-risk investments which included *"overseas property developments".* So, it would be difficult not to conclude here that Zurich ought to have appreciated the investment Mr F was making was at risk of being fraudulent.

<u>What should Zurich have told Mr F – 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 F in relation to a possible scam threat as identified by the Scorpion action pack (and the PSIG Code). The most important thing to highlight was the threat posed by a unregulated adviser.

With its obligations under PRIN and COBS 2.1.1R in mind, it was appropriate for Zurich to inform Mr F that the party who had advised him 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.

Zurich should also have been aware of the close parallels between Mr F'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. So, this should also have led to warnings to Mr F that the steps this unregulated adviser was advising him to take were similar to those involved in known examples of scams. I've considered how Zurich's actions here measure up to what it should have done.

Zurich's first letter

Zurich initially wrote to Mr F on 4 August 2014 to explain why it was contacting HMRC about his proposed transfer. It said this was due to a need to be satisfied that HMRC would not regard it as an unauthorised payment and tax it accordingly. Zurich went on to say:

> *"Unfortunately many individuals had already been caught out as a result of pension liberation fraud and have either have either suffered substantial tax charges and/or have lost out financially through expensive scheme/scheme administrator charges and/or unregulated investments, or all of these".*

Whilst Zurich said it would still transfer Mr F's pension providing it didn't receive indication from HMRC (or elsewhere) that there was a significant risk of pension liberation, it gave these additional warnings:

> *"Confirmation that we are able to transfer your pension to the scheme you have chosen should not be taken as any form of endorsement by us (or HMRC) of the receiving scheme or product. You should still carry out your own checks before satisfying yourself that the proposed transfer is appropriate for you and your pension. If you do change your mind about transferring to the scheme please let us know immediately.*
>
> *In the meantime, if you have not yet been advised regarding your proposed transfer by a UK regulated financial adviser specialising in pensions, we strongly recommend that you now obtain such regulated advice…You can check if a financial adviser is regulated with the relevant authority, the Financial Conduct Authority (FCA), by checking the Financial Services Register, which is hosted on the FCA's website* [direct link given]*."*

Zurich's second letter

There isn't anything to suggest Mr F responded to this first letter, and a considerable time then passed until HMRC responded. Zurich contacted Mr F again on 12 February 2015 to explain HMRC had confirmed it didn't have information to indicate a significant risk of the scheme being used to facilitate pension liberation. However, Zurich told Mr F that HMRC said *"Further checks should be carried out"*, and it still had concerns.

Zurich explained that it was currently undertaking further 'due diligence' enquiries, at least in part because *"even if a pension provider / scheme administrator accepts a pension transfer application, it does not mean that HMRC will later conclude that the transfer was an authorised payment".* And as a result, it said that meant it was acting cautiously. It repeated the warning that individuals had lost out through tax or administrative charges, or unregulated investments. But it's not clear to me what further enquiries Zurich did, in fact make. It didn't seek specific answers to questions from Mr F. But it went further than its previous letter in encouraging Mr F to think, for himself, about the following:

- *Have you received advice regarding the possible transfer of your pension from a UK regulated financial adviser specialising in pensions?*
- *Is your financial adviser and/or the scheme administrator/receiving scheme regulated by the FCA or another professional body?* [details of how to check this again given]
- *If you have not received regulated financial advice or dealt with a regulated business, what are your options if things go wrong? Did you know that you are not covered by the Financial Ombudsman Service… or the Financial Services Compensation Scheme… if you have not dealt with a financial adviser or firm regulated by the FCA?*
- *What checks have you made regarding the proposed investments for your new scheme? Are you happy that you fully understand the risks involved? How quickly can you access these funds if you decide to claim your retirement benefits or transfer them elsewhere? Have you been given any guarantees and what is available to back these up?*

Zurich suggested that Mr F might change his mind on reading the letter, in which case he need do nothing and the transfer would not take place. But if not, it invited him to sign a duplicate copy of the letter in order to confirm that he wanted to proceed.

In my view the first letter was plainly about the risk of early-release pension liberation, which is not surprising as it was sent only a week after the Scorpion campaign had broadened into investment scams more widely and evidently hadn't yet been updated. Thus, whilst it contained a very useful explanation of how Mr F could check if the adviser he was using was regulated, I think the impact of this suggestion was diminished by Mr F having already been told that he wasn't liberating his pension (which was obviously correct in terms of him not gaining early access to the funds).

The second letter repeated some of the same references to pension liberation. So again, to some extent, its impact might have been overlooked by Mr F. Yet despite the unclear terminology I also think it's fair to say the letter shows Zurich's concerns had shifted further towards the risk of Mr F getting unqualified advice on inappropriate investments – and as a result, not being able to access his money when he needed to or even at all, without access to compensation arrangements if things went wrong.

This letter came closer to the broader message of the post July 2014 Scorpion campaign. Where it still fell short, in my view, was that Zurich sent it to him without asking him to explain how he had been approached to make the transfer, as expected by the Scorpion guidance. That would have enabled it to highlight to him that several of his answers he would have then given were concerning. For instance, Zurich could have told Mr F straight away that his adviser was unregulated, without relying on him going away to find this out for himself. Zurich should also have explained that the type of investment he was making (which it already knew, without asking him) had featured in known examples of scams.

Alternatively, and given that Zurich didn't find out more information from Mr F first, I think its letter would have been more impactful if it was accompanied by the longer Scorpion booklet.

TPR had suggested ceding schemes could send this if they (like Zurich here) had concerns that their member might be about to become the victim of a scam. The example in the Scorpion booklet of an individual who invested in an overseas property development that turned out to be a scam would have been harder-hitting than Zurich inviting Mr F to look up the status of his adviser and consider (in the abstract) what guarantees he had about his investment.

So in my view Zurich's second letter, whilst an improvement on the first, still shifted too much of the responsibility onto Mr F identifying that he was at risk of a scam. It didn't properly take into account the expectations of Zurich under the broadened, post-July 2014 Scorpion guidance. Most importantly it didn't establish that Mr F, specifically, was getting advice from an unregulated party that was breaking the law – and the direct detrimental effect of that on his pension planning. I don't think this would have been a disproportionate response given the scale of the potential harm Mr F was facing and Zurich's responsibilities under PRIN and COBS 2.1.1R. And I don't think any such warnings would reasonably have caused Zurich to think it was running the risk of advising Mr F, that it was replicating the responsibilities of the receiving scheme or that it was putting in place unnecessary barriers to exit.

I'm satisfied the gravity of any messages along these lines would prompt most reasonable people to rethink their actions. However, I appreciate Zurich will say that because of how Mr F reacted to this second letter (albeit to warnings that in my view didn't go far enough), he would always have sought to make this transfer. I say this because rather than complete Zurich's short slip reading *"I confirm that I have read and thoroughly digested the contents of the letter dated* […] *and that I still wish to proceed with the transfer of my Personal Pension Plan to* [the SSAS]*"*, a different letter from Mr F was sent back to Zurich in reply with a forceful assertion of his statutory right to transfer.

In order to consider this point I need to set out some of the wider background to how Mr F likely came to sign that letter.

Mr F's reply of 30 March 2015

A number of the paragraphs in this letter are similar to those in Mr F's original letter dated 18 July 2014, which had declared that he wasn't transferring in order to liberate his pension. Like that previous letter, the date was completed by hand, suggesting it was prepared for Mr F as part of the transfer process. Indeed, there is wider evidence from FRPS' sales process to suggest that was the case.

For Zurich's benefit I attached to my earlier Provisional Decision a copy of the checklists that FRPS salesmen left in clients' homes at each of two visits where documents were completed. The SSAS provider used for these particular checklists was Bespoke Pension Services rather than CGL, but I've no reason to think the process wasn't otherwise the same with CGL. (The initial letter warranting that the client wasn't liberating their pension, for instance, was near identical with both providers.) The checklist shows that on the second visit, both Mr F's 18 July 2014 and 30 March 2015 letters would have been signed at the same time (but left undated). That also explains the similar formatting of both letters. The instructions to Mr F for the later letter were as follows:

Letter to existing pension provider where delay in transfer occurs	This letter is from you to your existing pension provider. It will be issued by Bespoke Pension Services Limited on your behalf if there is a significant delay in the request to transfer your fund to your new SSAS being actioned. It confirms the previous information given, expresses discontent at the time taken to action this and requests that the transfer proceeds as quickly as possible to avoid having to make a formal complaint.	Sign. Not dated and will only be used where there is a delay. If not it will be destroyed.

The parts of the March 2015 letter that weren't similar to the July 2014 one read as follows:

> ***"I am fully aware of my statutory right to a transfer. You have a legal obligation to make a transfer to a new scheme on my request as long as that new scheme Is a validly registered pension scheme.***
>
> *I am highly concerned about the length of time it is taking to make the transfer and the impact this may have on my retirement planning. …*
>
> *In addition, following changes to the process by which schemes are registered with HMRC, you can obtain comfort from HMRC that the receiving scheme has been validly registered. HMRC will only give this confirmation if they are also satisfied that they have no information to suggest there is a significant risk of the scheme being set up to facilitate pensions liberation. This verification could easily have been obtained by now.*
>
> *…*
>
> *Moreover were any of the confirmations I have given above to prove to be incorrect, such that after the transfer I took benefits from the receiving scheme prior to age 55 or otherwise in a manner that lead to an unauthorised payment being made out of the receiving scheme, then either myself or the receiving scheme would be liable for all of the tax charges that would arise…*
>
> *Given all of the above and most importantly the fact I have a legal right to a transfer, I am therefore unclear what has lead* [sic] *to the delay here and wish to ensure the transfer Is made as quickly as possible.*
>
> *Please confirm within 7 days of the date of this letter that you will progress my transfer or provide me and my chosen administrator with detailed information in writing as to the reasons for any further delay in relation to this and an indication of precisely when the transfer will be made. I am aware of my rights to make an official complaint using your complaints procedure and the ability to complain to the Pensions Ombudsman about maladministration. I remain hopeful neither will be required here but would be willing to pursue these options if there is continued delay in progressing my transfer."*

It's further clear from the third paragraph I've quoted above that the letter wasn't written in reaction to Zurich notifying Mr F that it had received a response from HMRC, as it continues to suggest Zurich should have gone to HMRC. It's evidently a standard letter, and all the evidence is consistent with Mr F having signed it in the prelude to requesting the transfer in July 2014. Particularly as the nature of his reply, as with several parts of Zurich's letter, remains focused on the risk of pension liberation alone.

Zurich says it had no way of knowing this letter had already been prepared, and I don't disagree with that. I can see why Zurich reacted in the way it did to the letter and went ahead. It had held on to the transfer request for many more than six months (the maximum time period within which it had to give effect to a member's statutory rights). I think Zurich would have been entitled to take Mr F's expressed wish to exercise his statutory rights at face value, if it had already taken the appropriate steps to outline its concerns to him. That, in turn, would confirm that Mr F was taking responsibility for a decision he made in light of the concerns Zurich outlined. But that's where I think Zurich's actions fell short in this case.

The main reason for Zurich's lack of progress was that it had made no specific enquiries of Mr F other than telling him that it was going to HMRC, and then updating him on the result of doing so. Zurich ought to have asked Mr F about the background to his transfer request and outlined the resulting concerns it had (as set out above) well before, or at least at the same time as, updating him on the result of the HMRC enquiry.

The evidence suggests that on receipt of Zurich's second February 2015 letter, which was outwardly fairly similar to the earlier August 2014 letter (despite confirming that HMRC hadn't raised concerns about his transfer), Mr F likely reverted to CGL and/or FRPS to understand what he should do next. I say CGL in particular, as the process outlined above for Bespoke SSAS transfers suggests that CGL may have been holding onto the above complaint letter - which was subsequently dated and sent to Zurich.

The steps Mr F likely took in reverting to CGL suggest that he didn't feel he'd been given enough reason by Zurich to reconsider the transfer, as he didn't actively engage with the warnings in its second letter. I'll address separately below the extent to which he should, reasonably, have engaged with those warnings. But for the moment I'll say that for a combination of all the reasons I've given above, there's a plausible explanation why he didn't. The most impactful messages that could have come out of careful and considered application of the Scorpion guidance, and adherence to Zurich's obligations under PRIN and COBS 2.1.1R, weren't delivered to Mr F at all.

It's understandable in my view that Mr F, still trusting of his adviser and new scheme administrator, recognised Zurich's response as a continued delay to the transfer he still wished to make – and allowed those parties to activate the prepared threat of a complaint to move matters forward. Whereas if Zurich had acted as it should, its engagement with him wouldn't have appeared to take the form of another obstacle to him transferring, with little progress made over the course of nine months – but rather a well-intentioned and hard-hitting warning given in the context of Zurich raising concerns about the risk of losing pension monies through untrustworthy advice.

I've already explained why Zurich's suggestion didn't hold weight that FRPS and/or CGL would have encouraged Mr F to tell Zurich that he was being advised by Moneywise Financial Advisors. But for Mr F to have been pressed into making such a statement in direct response to Zurich highlighting the known involvement of unregulated advisers, this presupposes that he would still have been happy to revert back to the very parties Zurich had just warned him directly about – and then go along with their plan to make untruthful statements in the continued pursuit of his transfer request.

Being in possession of all the facts and information, I think it's likely that Mr F would have acted differently, and wouldn't have reverted back to those same parties. The messages would have followed conversations with him so would have seemed to him (and indeed would have been) specific to his individual circumstances. This would have made Mr F aware that there were serious risks in using Mr P from FRPS, who was unregulated. So on the balance of probabilities, if Zurich had acted as it should, Mr F wouldn't have proceeded with the transfer out of his personal pension or suffered the investment losses that followed. I therefore uphold Mr F's complaint. I've gone on to consider what is fair compensation in the circumstances here.

Fair compensation

Zurich says that Mr F's SSAS remains an appropriately registered pension and is not a scam, but I think that misses the point. I don't need to conclude that a scam has actually taken place to consider what steps Zurich ought to have taken to protect Mr F against the *risk* of a scam. In any event, Mr F's complaint is similar to the type of claim that in legal proceedings would be treated as a claim for damages for negligent failure to give someone the information or advice to which they were entitled.

In that kind of case, the court asks itself whether there is a sufficient connection between the harm for which the claimant seeks damages as compensation and the subject matter of the defendant's duty of care. The court looks to see what risk the defendant's duty was supposed to guard against and whether the claimant's loss represents that particular risk coming to fruition.

Zurich suggests that the risks coming to fruition were only the risks of making unregulated investments, which Broadwood Assets in particular had already warned him about. I disagree. By the time Mr F transferred there was an abundance of guidance cautioning against taking advice from an unauthorised business to set up of a new pension scheme to house an overseas investment. The sheer similarity between what Mr F was doing and the FCA alert about SSAS scams in particular, bears repeating.

None of the regulatory guidance suggested that enquiries should stop once it was confirmed the SSAS was appropriately registered or the investment being made genuinely existed. Instead, the manner of how the individual was being encouraged to set up the pension scheme and make the investment all fell to be considered in the round as part of assessing whether the other parties involved might not be acting in Mr F's best interests. Once unregulated and indeed unlawful advice had been discovered, there is little doubt in my view that Mr F's transfer came well and truly within the scope of what the Scorpion guidance, PSIG Code and FCA alerts were warning about.

As a result, I'm satisfied there is sufficient connection between the harm Mr F wants to be compensated for and the risks that Zurich had a duty to guard against. However, I have given thought to whether Mr F should bear some responsibility for the losses he incurred. I also 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.

In this case, I think Mr F's failure to act on what he knew (or reasonably should have known) contributed to the losses he's suffered. As I explained earlier in this decision, Zurich's letters of August 2014 and February 2015 both recommended he seek regulated advice if he wasn't already in receipt of this. I think these recommendations were initially made more in line with the principal risk Zurich was expected to look out for prior to August 2014 – which was that unregulated third parties might cold call Mr F in an attempt to liberate his pension. And although the message was improved somewhat by the time of the February 2015 letter, the older references to pension liberation and unauthorised payment tax charges remained.

Mr F might have thought he had no reason to worry about pension liberation. But it was, nonetheless, a warning from a trusted source about how he could protect himself from an inappropriate transfer. Both letters explained how to find a new regulated adviser, and how to check if an existing adviser was regulated. The February 2015 letter in particular added further layers of concern about what assurances as to performance and protection Mr F had if things went wrong – with a regulated adviser, covered by our service and the Financial Services Compensation Scheme, offering him better protection.

I also have to take into account that before getting either of these letters, Mr F had received a letter from Broadwood Assets, which also suggested he might want to take regulated financial advice. The Broadwood letter would have been reassuring on some points: it said the proposed transfer wouldn't facilitate pension liberation and the TRG investment was legitimate and well-resourced. But it also clearly explained that:

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

I accept Mr F's evidence that he was an inexperienced investor, so at the time he received the Broadwood letter, I think he would have recognised himself as a "cautious investor". This letter should have been a strong warning that he should get regulated advice to ensure the investment was suitable for him before going ahead. And he subsequently found out from Zurich's letters more of the consequences of not doing so, such as not having protection under complaints and compensation schemes. Those letters also showed him how to check whether the advice he'd already received (more likely than not from FRPS) was regulated.

Yet Mr F didn't check this. His complaint asserts that he didn't appreciate or understand the importance of a financial adviser being FCA regulated or how to check that. He could easily have done so. This would have been a reasonable step I'd expect someone in his position to take and would probably have led to the illegal advice being uncovered and the transfer being aborted.

Therefore, when considering fair compensation in this case, I think it would be reasonable to attribute some responsibility for the loss Mr F has suffered to his own failure to act. Essentially, I think both Zurich and Mr F should have done more during the process of the transfer to guard against the risk of a scam and that if either of them had done as they reasonably should, Mr F's losses would have been avoided. But Zurich was the professional party: it should have been more familiar with the risks than Mr F and should (as I have found above) have given specific warnings about the likelihood Mr F had already been drawn into a scam. I think its failings were worse than those of Mr F.

Therefore while this isn't an exact science, in the circumstances of this complaint, I propose to reduce Mr F's compensation by 30%. I think this is a fair way to account for Mr F's own contribution to the loss he's suffered.

Putting things right

My aim is that Mr F should be put as closely as possible into the position he would probably now be in if Zurich had treated him fairly, taking into account that Mr F shares responsibility for his loss.

The CGL SSAS only seems to have been used in order for Mr F 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 F would have remained in his pension plan with Zurich and wouldn't have transferred to the CGL SSAS.

To compensate Mr F fairly, Zurich must subtract the actual value of the CGL 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 70% of that loss.

Actual value

This means the CGL SSAS value at the date of this Final Decision. To arrive at this value, any amount in the CGL SSAS bank account is to be included, but any overdue administration charges yet to be applied to the CGL SSAS should be deducted. Mr F 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 F 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 established market for the investment, which is no longer paying an income. And I don't think it's realistically possible for Zurich to only acquire a part of the investment from the CGL SSAS as I'm only holding it responsible for 70% of the loss. Therefore as part of calculating compensation:

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

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

Notional value

This is the value of Mr F's funds had he remained invested with Zurich up to the date of this Final Decision.

Payment of compensation

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

Zurich should reinstate Mr F's original pension plan as if its value on the date of this Final Decision was equal to 70% of the amount of any loss established from the steps above (and it performs thereafter in line with the funds Mr F was invested in).

Zurich shouldn't reinstate Mr F'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 F's pension and it is open to new business, it should set up a **new** pension plan with a value equal to 70% of the amount of any loss on the date of this Final Decision. The new plan should have features, costs and investment choices that are as close as possible to Mr F'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 F 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 F doesn't incur an annual allowance charge. If Zurich cannot do this, then it shouldn't set up a new plan for Mr F.

If it's not possible to set up a new pension plan, Zurich should pay the amount of 70% of any loss direct to Mr F. 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 F is retired. (This is an adjustment to ensure that Mr F isn't overcompensated – it's not an actual payment of tax to HMRC.)

To make this reduction, it's reasonable to assume that Mr F is likely to be a basic rate taxpayer in retirement. So, if the loss represents further 'uncrystallised' funds from which Mr F 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 F 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 F’s acceptance of the 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 F how much has been taken off. Zurich should give Mr F a tax deduction certificate in respect of interest if Mr F 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 F’s plan for the amount of the loss – as the reinstated sum should, by definition, mirror the performance after the date of calculation of the funds in which Mr F was invested. However, I expect any such reinstatement to be achieved promptly.

Details of the calculation should be provided to Mr F in a clear, simple format.

My final decision

I uphold Mr F’s complaint and require Zurich Assurance Ltd to calculate and pay him compensation in accordance with the steps set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr F to accept or reject my decision before 28 April 2025.

Gideon Moore
Ombudsman