DRN-5438459

The complaint

Mr P has complained about the transfer of his Zurich Assurance Ltd (Zurich) personal pension to a small self-administered scheme ("SSAS") in May 2015. Mr P's SSAS was subsequently used to invest in two overseas unregulated investments, Dolphin Trust a German property group and The Resort Group, a hotel developer in Cape Verde. The investments now appear to have little value. Mr P says he has lost out financially as a result.

Mr P 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 P 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

I set out the background to this complaint and my provisional findings in my provisional decision of 17 February 2025. This is attached and forms part of this decision.

In response to my provisional decision Zurich said it disagreed because:

- It fundamentally disagrees with the proposed outcome, a position that has significantly changed since the Investigator's decision was issued in September 2022, and a decision that was based on the exactly the same evidence and testimony from Mr P.
- The SSAS into which Mr P transferred was not a scam and Zurich are being held responsible for a failed investment.
- Mr P did not heed any of the warnings provided to him by Rowanmoor, and he's confirmed the warnings set out in the Scams Leaflet would not have persuaded him against transferring either.
- Mr P instead proceeded to make investments into higher risk investments. The investments have not subsequently performed as he was expecting and it is this that has prompted the complaint.

What I've decided – and why

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

And having done so I am not persuaded to alter my decision set out in my provisional decision.

I appreciate Zurich disagrees with my decision as it is right, but I explained in my provisional decision why I felt the complaint should be upheld. And I also explained why I disagreed with the investigator's view of Mr P's testimony. Mr P clearly said that had he had any warnings given to him that this was a scam he wouldn't have proceeded. Something the investigator didn't comment on. Considering his circumstances and his testimony, in which he was very open and I believe it to be honest, I think additional warnings that Zurich ought to have given would've made a difference here. I appreciate it's a subjective matter but I am required here to make a decision on the balance of probabilities based on the evidence we do have.

That the investigator and I reached different outcomes, isn't unusual and reflects the subjective matter of this case. It is why we have a two-stage process and I've explained in the provisional decision why I reached the conclusion the complaint should be upheld. It does significantly differ in terms of outcome to that of the investigator but I've explained why and Zurich has been given plenty of time to digest this and respond. It is not surprising that Zurich favours the initial outcome but I'm afraid I don't agree with that outcome having considered the case afresh from that of the investigator.

It disagrees that Mr P was a victim of a scam but looking at the guidance in place of the time, there were warning signs apparent in his transfer that industry bodies considered were signs of a scam. Mr P had no genuine employment link to P LTD SSAS and it was recently set up. It was set up via an unsolicited approach and wasn't setup for the purposes of an OPS. And most importantly Mr P received advice from a firm not regulated to provide advice. Zurich seemingly failed to uncover any of this information, had it acted as I think it should've done, it would have found out this information. And it should've passed this information onto Mr P, alongside the warning that his advisers were acting illegally and it was a criminal breach of FSMA. This alongside the other warning signs of a scam being pointed out to Mr P, I think would've been enough to make him re-think the transfer. I don't agree that we are holding Zurich responsible purely for a failed investment. Had Zurich acted appropriately in its due diligence and communication with Mr P or Mr P transferred after receiving regulated advice it's unlikely it would've been found responsible for the failed investment. So I disagree it is being held responsible for a failed investment, it is been held responsible for its own failings that led to Mr P suffering losses.

Mr P did confirm that the Scorpion leaflet in itself wouldn't likely to have been enough to stop him transferring. He clearly trusted what he was being told by the unregulated individuals and they had convinced him everything was above board – so he wasn't particularly suspicious of its conduct. And it seems he likely would've received warnings referred to in the provisional decision from Rowanmoor about his investments that he didn't act on. But Mr P was an inexperienced investor and so wouldn't likely have known much about the context of pension scams or what to look out for. And the unregulated individuals advising him to transfer, were likely skilled in presenting a veil of respectability. And as I set out in the provisional decision I don't think not acting on the warnings provided by Rowanmoor was indicative of what he would've done had he received, what should have been a much more impactful, warning from Zurich about the people advising him. I think Zurich acting reasonably and providing Mr P with the appropriate warnings would've punctured this veil of respectability, Mr P would've known they were acting unlawfully in advising him to transfer. And this would've in my view brought into focus the other warnings signs of a scam that Zurich ought to have warned him about and those relevant to him in the Scorpion insert that Zurich also should've given to him.

So it is for these reasons, I am not persuaded to change my view. I think had Zurich acted as it should've done, Mr P would've reconsidered transferring and opted to abort the transfer based on the contact from Zurich.

Putting things right

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

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

To compensate Mr P fairly, Zurich should subtract the actual value of the P LTD SSAS from the notional value if the funds had remained with Zurich. If the notional value is greater than the actual value, there is a loss.

Actual value

This means the P LTD SSAS value at the date of calculation. To arrive at this value, any amount in the P LTD SSAS bank account is to be included, but any overdue administration charges yet to be applied to the P LTD SSAS should be deducted. Mr P 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 P 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 investments: TRG and Dolphin Trust. This is because these investments have potentially failed entirely and have no secondary market. Therefore as part of calculating compensation:

Zurich should seek to agree an amount with the P LTD SSAS as a commercial value for the illiquid investments above, then pay the sum agreed to the P LTD SSAS plus any costs, and take ownership of those investments. The actual value used in the calculations should include anything Zurich has paid to the P LTD SSAS for illiquid investments.
Alternatively, if it is unable to buy them from the P LTD SSAS, Zurich should give the illiquid investments a nil value as part of determining the actual value. In return Zurich may ask Mr P to provide an undertaking, to account to it for the net proceeds he may receive from those investments in future on withdrawing them from the P LTD SSAS. Zurich will need to meet any costs in drawing up the undertaking. If Zurich asks Mr P to provide this undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

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

Notional value

This is the value of Mr P's funds had he remained invested with Zurich up to the date of calculation.

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

Payment of compensation

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

Zurich should reinstate Mr P’s original pension plan as if its value on the date of calculation was equal to the amount of any loss established from the steps above (and it performs thereafter in line with the funds Mr P was invested in).

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

If it’s not possible to set up a new pension plan, Zurich should pay the amount of any loss direct to Mr P. 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 P is retired. (This is an adjustment to ensure that Mr P isn’t overcompensated – it’s not an actual payment of tax to HMRC).
To make this reduction, it’s reasonable to assume that Mr P is likely to be a basic rate taxpayer in retirement. So, if the loss represents further ‘uncrystallised’ funds from which Mr P 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 P 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 P’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 P how much has been taken off. Zurich should give Mr P a tax deduction certificate in respect of interest if Mr P 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 P’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 P was invested. However, I expect any such reinstatement to be achieved promptly.

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

My final decision

For the reasons explained above and in my provisional decision, I am upholding Mr P’s complaint against Zurich Assurance Ltd and require it to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr P to accept or reject my decision before 25 April 2025.

Simon Hollingshead
Ombudsman

Provisional decision

The complaint

Mr P has complained about the transfer of his Zurich Assurance Ltd personal pension to a small self-administered scheme ("SSAS") in May 2015. Mr P's SSAS was subsequently used to invest in two overseas unregulated investments, Dolphin Trust a German property group and The Resort Group, a hotel developer in Cape Verde. The investments now appear to have little value. Mr P says he has lost out financially as a result.

Mr P 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 P 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

Mr P signed a letter of authority allowing Capital Facts Limited (CFL) to obtain details, and transfer documents, in relation to his pension. Mr P says this followed an unsolicited approach. On 18 December 2014, CFL wrote to Zurich, enclosing Mr P's letter of authority. It requested information on Mr P's pension and discharge forms to allow a transfer. Zurich sent CFL the requested information on 29 December 2014. CFL wasn't authorised by the Financial Conduct Authority (FCA).

Mr P says he was attracted by the prospect of consolidating his pension. Advice about where to invest wasn't given until after the transfer. Mr P's said that he thought it was all genuine, he was told about returns of around 10% but it's not clear whether this was prior to transferring or when he was advised to invest after the transfer.

On 19 March 2015, a company was incorporated with Mr P as director. I'll refer to this company as P LTD SSAS. On 26 March 2015, Mr P submitted an application for a SSAS with Rowanmoor. P LTD SSAS was recorded as the SSAS's principal employer. The SSAS documents also recorded that the SSAS was to be used to invest in The Resort Group. And the Trustee adviser was listed as Strategic Alternatives Ltd.

Rowanmoor contacted Zurich on 9 April 2015 requesting policy information which included a letter of authority signed by Mr P. Zurich provided the requested transfer pack on 14 April 2015.

Zurich received the completed transfer pack from Rowanmoor on 14 May 2015.

On 19 May 2015 Zurich wrote to Mr P and Rowanmoor to say:

"We need to take the time to gather sufficient information to satisfy ourselves that this particular transfer can be considered to be an authorised payment and would be permitted under the Pension Scheme Act 1993, in order to ensure your funds are safeguarded and to protect your interests. As you may be aware, due to increased pension liberation activity, the pensions industry is acting cautiously and making more checks before processing with (or declining) transfer requests. Inevitably, this slows down the transfer process, which is regrettable, but it is designed to provide greater protection to individuals so that their pension savings are available to provide them with pension income in later life."

On 21 May 2015, Zurich completed the transfer, sending a cheque to Rowanmoor for £53,457.09.

Mr P also made a transfer from another provider which followed a similar journey, a complaint about it is being dealt with under separate reference, the provider on 20 May 2015, also sent £5,051.20 to the Rowanmoor SSAS.

Initially both investments saw some returns but the TRG investment failed to deliver the advertised returns and has no secondary value meaning it likely has no value. The Dolphin investment has also failed to make the promised returns or to return the loan capital.

On 9 December 2020, Mr P through professional representatives complained to Zurich. Briefly, his argument is that Zurich ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including (but not limited to) the following: the SSAS was newly registered, there wasn't a genuine employment link to the sponsoring employer, the catalyst for the transfer was an unsolicited call and he had been advised by an unregulated business and promised unrealistic returns.

Zurich didn't uphold the complaint. It said Mr P had a legal right to transfer and that none of the information it had about the transfer at the time gave it cause for concern. It was satisfied it had conducted an appropriate level of care and skill in dealing with the transfer request.

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

What I've provisionally decided – and why

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

<u>The relevant rules and guidance</u>

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

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

In February 2013, The Pensions Regulator (TPR) issued its Scorpion guidance to help tackle the increasing problem of pension liberation, the process by which unauthorised payments are made from a pension (such as accessing a pension below minimum retirement age). In brief, the guidance provided a due diligence framework for ceding schemes dealing with pension transfer requests and some consumer-facing warning materials designed to allow members decide for themselves the risks they were running when considering a transfer.

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

The FSA's endorsement of the Scorpion guidance was relatively informal: it didn't take the form of Handbook Guidance, because it was not issued under s.139A of the Financial Services and Markets Act (FSMA), which enabled the FSA to issue guidance provided it underwent a consultation process first. Nor did it constitute "confirmed industry guidance", as can be seen by consulting the list of all such FSA/FCA guidance on its website. So the content of the Scorpion guidance was essentially informational and advisory in nature. Deviating from it doesn't therefore mean a firm has necessarily broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's right to transfer.

That said, the launch of the Scorpion guidance in 2013 was an important moment in so far it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing those requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance's specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

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

The Scorpion guidance was updated in July 2014. It widened the focus from pension liberation specifically, to pension scams more generally – which included situations where someone transferred in order to benefit from "too good to be true" investment opportunities such as overseas property developments. An example of this was given in one of the action pack's case studies.

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

There was a further update to the Scorpion guidance in March 2015, which is relevant for this complaint. This guidance referenced the potential dangers posed by "pension freedoms" (which was about to give people greater flexibility in relation to taking pension benefits) and explained that pension scams were evolving. In particular, it highlighted that single member occupational schemes were being used by scammers. At the same time, a broader piece of guidance was initiated by an industry working group covering both TPR and FCA regulated firms: the Pension Scams Industry Group (PSIG) Code of Good Practice. The intention of the PSIG Code was to help firms achieve the aims of the Scorpion campaign in a streamlined way which balanced the need to process transfers promptly with the need to identify those customers at material risk of scams.

<u>The March 2015 Scorpion guidance</u>

The March 2015 update to the Scorpion guidance asked schemes to ensure they provided their members with "regular, clear" information on how to spot a scam. It recommended giving members that information in annual pension statements and whenever they requested a transfer pack. It said to include the pensions scam "leaflet" in member communications.

In the absence of more explicit direction, I take the view that the member-facing Scorpion warning materials were to be used in much the same way as previously, which is for the shorter insert (which had been refreshed in March 2015) to be sent when someone requested a transfer pack and the longer version (which had also been refreshed) made available when members sought further information on the subject.

When a transfer request was made, transferring schemes were also asked to use a three-part checklist to find out more about a receiving scheme and why their member was looking to transfer.

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

The PSIG Code was voluntary. But, in its own words, it set a standard for dealing with transfer requests from UK registered pension schemes. It was "welcomed" by the FCA and the Association of British Insurers (amongst others). And several FCA regulated pension providers were part of the PSIG and co-authored the Code. So much of the observations I've made about the status of the Scorpion guidance would, by extension, apply to the PSIG Code. In other words, personal pension providers didn't necessarily have to follow it in its entirety in every transfer request and failure to do so wouldn't necessarily be a breach of the regulator's Principles or COBS. Nevertheless, the Code sets an additional benchmark of good industry practice in addition to the Scorpion guidance.

In brief, the PSIG Code asked schemes to send the Scorpion "materials" in transfer packs and statements, and make them available on websites where applicable. The PSIG Code goes on to say those materials should be sent to scheme members directly, rather than just to their advisers.

Like the Scorpion guidance, the PSIG Code also outlined a due diligence process for ceding schemes to follow. However, whilst there is considerable overlap between the Scorpion guidance and the PSIG Code, there are several differences worth highlighting here, such as:

- The PSIG Code includes an observation that: "*A strong first signal of [a scam] would be a letter of authority requesting a company not authorised by FCA to obtain the required pension information; e.g. a transfer value, etc*." This is a departure from the Scorpion guidance (including the 2015 guidance) which was silent on whether anything could be read into the entity seeking information on a person's pension.

- The Code makes explicit reference to the need for scheme administrators to keep up to date with the latest pension scams and to use that knowledge to inform due diligence processes. Attention is drawn to FCA alerts in this area. (I noted the contents of some of those alerts earlier in my decision.)

- Under the PSIG Code, an 'initial analysis' stage allows transferring schemes to fast-track a transfer request without the need for further detailed due diligence, providing certain conditions are met. No such triage process exists in the 2015 Scorpion guidance – following the three-part due diligence checklist was expected whenever a transfer was requested.

- The PSIG Code splits its later due diligence process by receiving scheme type: larger occupational pension schemes, SIPPs, SSASs and QROPS. The 2015 Scorpion guidance doesn't distinguish between receiving scheme in this way – there's just the one due diligence checklist which is largely (apart from a few questions) the same whatever the destination scheme.

TPR began referring to the Code as soon as it was published, in the March 2015 version of the Scorpion action pack. Likewise, the PSIG Code referenced the Scorpion guidance and indicated staff dealing with scheme members needed to be aware of the Scorpion materials.

Therefore, in order to act in the consumer's best interest and to play an active part in trying to protect customers from scams, I think it's fair and reasonable to expect ceding schemes to have paid due regard to both the Scorpion guidance and the PSIG Code when processing transfer requests. Where one differed from the other, they needed to consider carefully how to assess a transfer request taking into account the interests of the transferring member. Typically, I'd consider the Code to have been a reasonable starting point for most ceding schemes because it provided more detailed guidance on how to go about further due diligence, including steps to potentially fast-track some transfers which – where appropriate – would be in the interest of both parties.

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

The circumstances surrounding the transfer: what does the evidence suggest happened?

Mr P says an adviser called Rob who he believes worked for First Review Pension Services (FRPS) initiated the process. He doesn't remember how they contacted him but he remembers them coming to his property to discuss his pensions. Mr P doesn't remember the initial contact but knowing that it was initiated by the unregulated introducer and the usual pattern followed in this type of scenario, I think on the balance of probabilities Mr P was cold called. FRPS are a known introducer to The Resort Group and Dolphin Trust investments, the letter of authority to Zurich came via CFL who are another party that conducted itself in a similar manner to FRPS. I can also see that FRPS sent emails to Rowanmoor regarding the P Ltd SSAS and said they would arrange for the required documents to be signed.

I note a third firm Strategic Alternatives Limited (SAL) was involved as well listed as giving the Trustee Advice to Mr P presumably to invest in The Resort Group. This was the adviser who will provide advice on the scheme to the member trustee.

This is a distinct role that is not necessarily provided by the same party that advises on the transfer of a personal pension to the SSAS. It is advice provided to the trustee, as a requirement of the Pensions Act 1995. I think that it's more likely this firm was involved in that capacity and not in advising Mr P on transferring his personal pension.

Even if I am wrong, and SAL instead provided transfer advice to Mr P, SAL was not in fact regulated to provide advice.

I think it is most likely that it was FRPS who gave the advice. But regardless of which of these firms took the leading role in the transfer, I am satisfied Mr P transferred due to the advice given by an unregulated firm.

Mr P said he'd never transferred or attempted to transfer his pension before. Along with this pension, he also transferred another pension to Rowanmoor. He said both pensions transferred without any questions. Mr P says he was offered a pension review and from this it was recommended he transferred his pensions into one place, so all the funds would be pooled together.

Mr P says he didn't feel pressured into transferring his pension. He just thought it was the right thing to do. He said the agent visited his home to complete the paperwork. Mr P says prior to the transfer he wasn't aware of where the funds were going to be invested or how he could access it. However, I note on his application to open the Rowanmoor SSAS which was before the transfer completed it said the money was to be invested in The Resort Group. And Mr P had signed the declaration and property development information schedule to invest in The Resort Group.

Mr P says his investments were only discussed months after the transfer. This is true of the Dolphin Trust investment but as I've said above The Resort Group was listed as part of his application to Rowanmoor in late March before the transfer and the investment was made less than a month after the transfer occurred. So I think this is likely a case of Mr P's memory of the event becoming hazy over many years. And it's also possible that if Mr P was enticed by the pooling of his pensions in one place that the adviser focussed more on this rather than the investment opportunities to tempt Mr P to transfer.

Mr P said he had no doubts prior to transferring and thought it was all genuine. He felt it was legitimate because he saw his name on the documents etc so he thought this can't be a scam.

Mr P said the contents of the Scorpion leaflet wouldn't likely have alarmed him as he thought the purpose was to consolidate his pensions and he thought everything was genuine. But he said if he'd been given any direct warnings that it might be a scam, say if for example Zurich contacted him to raise concerns, he wouldn't have taken any risks and would've aborted the transfer.

What did Zurich do and was it enough?

The Scorpion insert:

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

Zurich says it sent the scorpion leaflets with its responses to the information requests from CFL and Rowanmoor, although there is no corroborating evidence to say this was the case. And this didn't go direct to the member either, so may not have made it to Mr P if it had been sent. Mr P has been very open in his testimony and says he hadn't seen or received anything from Zurich or the other provider in the other transfer that was like the Scorpion leaflet. And therefore, I think on the evidence presented, I don't think Mr P received a copy of the Scorpion leaflet.

So what is most relevant is that I've seen no evidence that Zurich made any direct contact with Mr P following the requested information. And the PSIG Code made the following point under section 6.1 (Transfer packs):

"If a transfer pack is not being sent to a member directly, pension scam awareness material should still be sent to the member's home address".

I think that this is a reasonable action to expect of Zurich even if the Code wasn't so specific on this point. To do otherwise places an unreasonable trust in third parties to share the information with members.

For these reasons I think that Zurich failed to make Mr P aware of the scam risks that were considered good industry practice at the time. This treated him unfairly.

However, our investigator sent Mr P a copy of the shorter March 2015 Scorpion Insert and he said as it didn't really fit with his understanding of why he was transferring, he didn't think the leaflet alone would've made a difference to him.

Due diligence

Sending the Scorpion insert, or a similar warning, to Mr P was only a part of what industry guidance suggested Zurich ought to have done. Zurich was also expected to perform due diligence to determine whether or not to process the transfer. As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mr P's transfer in that light. But I don't think it would make a difference to the outcome of the complaint if I had considered Zurich's actions using the Scorpion guidance as a benchmark instead.

I've looked at what due diligence Zurich carried out in this case to consider whether it was sufficient. But there is little evidence of any due diligence resembling what was recommended in the Scorpion campaign or PSIG Code. Zurich confirmed that the P LTD SSAS was properly registered with HMRC. And other than that it appeared to have been satisfied to proceed on the basis that the P LTD SSAS was administered by Rowanmoor Group. A part of which was regulated by the FCA for the provision of personal pensions. Although not the part that administered the SSAS.

I note that at the time of the transfer Rowanmoor was a long established SSAS provider and had some repute in the industry. Rowanmoor Trustees Limited also had legal and fiduciary duties as a professional trustee. There's an argument, therefore, that Zurich could have taken comfort from this. I disagree.

The Scorpion guidance gave ceding schemes an important role to play in protecting customers wanting to transfer a pension. It would defeat the purpose of the Scorpion guidance for a ceding scheme to have delegated that role to a different business – especially one that had a vested interest in the transfer proceeding. An important aspect in this is the fact that there is little regulatory oversight of SSASs like this; they don't have to be registered with TPR. In the absence of that oversight, Zurich was assuming, in effect, that Rowanmoor would want to maintain its standing in the industry and the trustee subsidiary would comply with its legal and fiduciary duties. In the context of guarding against pension scams – and an environment where providers and trustees clearly didn't always act as they should have done – I don't consider this to have been a prudent assumption.

The fact that a different part of Rowanmoor's business was regulated by the FCA doesn't change my thinking on this. The key point is that Rowanmoor Group Plc and Rowanmoor Trustees Limited (both of which were involved in the operation of the SSAS) weren't FCA regulated so I see no reason why they would have operated with FCA regulations and Principles in mind – or why their actions would have come under FCA scrutiny. As such, I'm not persuaded Zurich could, reasonably, have derived sufficient comfort about the Rowanmoor SSAS as a destination for Mr P's transfer.

The PSIG Code allowed for firms to fast track transfer requests from an accepted club or group. I've considered whether Zurich's view of Rowanmoor's involvement may have been equivalent to considering this transfer request as coming from a recognised 'club' or group which was one of the initial filter questions for transfers at low scam risk under the PSIG Code. But the example PSIG gave of a recognised club or group was an association of pension schemes: the Public Sector Transfer Club. This was mostly large schemes in the public sector who would be making transfers between each other on a regular basis. It would be relatively unusual to be making a transfer to a scheme which had recently joined that club, and understandably some comfort could be drawn from that. I don't think the same would apply to a recently established SSAS, even if the scheme administrators were known.
For the reasons given above, the "accepted club" part of the "Initial analysis" section of the PSIG Code isn't applicable here. Neither could Zurich have considered the receiving scheme/administrator as being free of scam risk. So the initial triage process should have instead led to Zurich asking Mr P further questions about the transfer as per Section 6.2.2 ("Initial analysis – member questions"). I won't repeat the list of suggested questions in full.

But one of these questions would've been relevant to Mr P – as below:

- *Did receiving scheme/adviser or sales agents/representatives for the receiving scheme make the first contact (e.g. a cold call)?*

I also think despite Mr P's testimony now that he wasn't aware of the investments at the time of transfer, if pressed at the time he would've been able to recall that the plan was for him to invest in The Resort Group. This was present on his application that he signed to open the SSAS with Rowanmoor and he had signed a schedule to make the investment in The Resort Group. If he couldn't recall that if pressed, I think he could've found this information out as it wasn't hidden and Rowanmoor would've been able to provide this information. So I also think the question below would've been relevant to Mr P:

- *Have you been informed of an overseas investment opportunity?*

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

a) Employment link: a lack of an employment link to any member of the SSAS.
b) Geographical link: a sponsoring employer that is geographically distant from the member.
c) Marketing methods: a SSAS being marketed through a cold call or an unsolicited approach.
d) Provenance of receiving scheme: a SSAS registered within the previous six months or a recently registered sponsoring employer.

Underneath each area of concern, the Code set out a series of example questions to help scheme administrators assess the potential risk facing a transferring member.

Not every question would need to be addressed under the Code. Indeed, the Code makes the point that it is for scheme administrators to choose the most relevant questions to ask (including asking questions not on the list if appropriate). But the Code makes the point that a transferring scheme would typically need to conduct investigations into a "wide range" of issues to establish whether a scam was a realistic threat. With that in mind, and given the relatively limited information it had about the transfer, I think in this case Zurich should have addressed all four sections of the SSAS due diligence process and contacted Mr P to help with that.

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

Had Zurich conducted due diligence along the guidance in the PSIG Code, it would likely have established the following warning signs about Mr P's transfer:

- Mr P had no genuine employment link to P LTD SSAS.
- The SSAS was set up following an unsolicited approach which indicates it may not have been set up for the purposes of an Occupational Pension Scheme.
- The SSAS was recently setup.
- Mr P had received face to face advice from FRPS, a firm not regulated by the FCA.

Being advised by an unauthorised firm to transfer benefits from a personal pension plan would have been a breach of the general prohibition imposed by FSMA, which states no one can carry out regulated activities unless they're authorised or exempt. Anyone working in this field should have been aware that financial advisers need to be authorised to give regulated advice in the UK. The PSIG Code (and the Scorpion guidance) make much the same point.
Indeed, the PSIG Code says firms should report individuals appearing to give regulated advice that aren't authorised to do so.

My view is that Zurich should therefore have been concerned by the unregulated firm's involvement because it pointed to a criminal breach of FSMA. On the balance of probabilities, I'm satisfied such a breach occurred here. And that Zurich would have found this out by simply asking Mr P questions like those set out in the Code and Scorpion guidance.

<u>What should Zurich have told Mr P – 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 P in relation to a possible scam threat as identified by the PSIG Code (and the Scorpion action pack). Zurich should also have been aware of the close parallels between Mr P'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. 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 P 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 P that the person he had been advised by was unregulated and could put his pension at risk. Zurich should have said only authorised financial advisers are allowed to give advice on personal pension transfers, so he risked falling victim to illegal activity and losing regulatory protections.

I don't think this would have been a disproportionate response given the scale of the potential harm Mr P 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 in advising Mr P, that it was replicating the responsibilities of the receiving scheme or that it was putting in place unnecessary barriers to exit.

I'm satisfied any messages along these lines would have changed Mr P's mind about the transfer. The messages would have followed conversations with Mr P so would have seemed to him (and indeed would have been) specific to his individual circumstances and would have been given in the context of Zurich raising concerns about the risk of losing pension monies as a result of untrustworthy advice. This would have made Mr P 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 P would have been any different.

I recognise that the investigator previously said he'd spoken to Mr P and he'd said in his view that Mr P had said warnings about the transfer wouldn't likely have changed his mind. However, I listened to this call and the customer had that response to a question about the warnings present on the scorpion insert, some of which at that point in time (the transfer) weren't applicable to him (although as discussed earlier I think this is likely due to his memory being impaired around the overseas investment timing). He also ended that response by saying if anybody had told him that transferring could put him at risk of a scam, he wouldn't have transferred. Mr P was obviously very trusting of the unregulated adviser and the process he was going through but I think this was due to his ignorance of the risks at hand. Had Zurich, a recognised and regulated pension provider, warned Mr P that the people involved were in essence breaking the law by advising him, I think his trust would've been broken. I think Mr P would've placed more emphasis and trust on Zurich as an institution than the person who had contacted him out of the blue to transfer his pensions.

After listening to Mr P's testimony and considering his circumstances at the time, I think if Zurich had acted as it should, Mr P wouldn't have proceeded with the transfer out of his personal pension or suffered the investment losses that followed. I therefore uphold Mr P's complaint.

In reaching this conclusion I have considered the fact that, in other similar cases we have seen Rowanmoor trustees sent the member trustees warning letters about the type of asset class being invested in. This it is not within the contents of the information received from the SSAS as part of Mr P's subject access request. So I have considered the type of warning letter that Rowanmoor were sending member trustees prior to investments in Dolphin Trust.

These letters all appeared to contain the same wording. They warned consumers that the investment in a loan note carried a high risk and had no secondary market. It explained, amongst other things, that investors should have no need for liquidity over the term of the loan. The letter confirmed Rowanmoor's view that the investment was eligible to be held in the SSAS it made it clear that it wasn't a recommendation. And recommended obtaining legal and other professional advice. I haven't seen that Mr P received this letter, but given the other cases we have seen, it is likely that he would have. It required signed authorisation to proceed. I think it unlikely that Rowanmoor would not have required the same in Mr P's case.

I don't think that it's fair to interpret any failure of Mr P to react to this type of warning from Rowanmoor as being indicative that he would proceed with the transfer despite any other warnings. That's because I think Mr P was at that stage because he trusted the advice that he'd been given that had got him to that point. He had, more likely than not, been advised on the suitability of the Dolphin Trust investment. And it was against that backdrop that he would have received Rowanmoor's letter. He had no reason to doubt that any recommendation he had was not in his best interests. The content of the Rowanmoor letters that I have seen were not likely to undermine that.

But for Zurich's failings Mr P would not have ended up in the position of relying on advice in breach of FSMA. As I explained above, Zurich's failure to make any of the enquiries that the PSIG Code proposed, meant that it failed to give Mr P clear warnings that would, in my opinion, have undermined the trust he had in the advice he'd been given. So, I consider that if Zurich had acted as it should, Mr P wouldn't have proceeded with the transfer out of his personal pension or suffered the investment losses that followed. I therefore uphold Mr P's complaint.

Putting things right

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

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

To compensate Mr P fairly, Zurich should subtract the actual value of the P LTD SSAS from the notional value if the funds had remained with Zurich. If the notional value is greater than the actual value, there is a loss.

Actual value

This means the P LTD SSAS value at the date of calculation. To arrive at this value, any amount in the P LTD SSAS bank account is to be included, but any overdue administration charges yet to be applied to the P LTD SSAS should be deducted. Mr P 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 P 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 investments: TRG and Dolphin Trust. This is because these investments have potentially failed entirely and have no secondary market. Therefore as part of calculating compensation:

Zurich should seek to agree an amount with the P LTD SSAS as a commercial value for the illiquid investments above, then pay the sum agreed to the P LTD SSAS plus any costs, and take ownership of those investments. The actual value used in the calculations should include anything Zurich has paid to the P LTD SSAS for illiquid investments.
Alternatively, if it is unable to buy them from the P LTD SSAS, Zurich should give the illiquid investments a nil value as part of determining the actual value. In return Zurich may ask Mr P to provide an undertaking, to account to it for the net proceeds he may receive from those investments in future on withdrawing them from the P LTD SSAS. Zurich will need to meet any costs in drawing up the undertaking. If Zurich asks Mr P to provide this undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

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

Notional value

This is the value of Mr P's funds had he remained invested with Zurich up to the date of calculation.

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

Payment of compensation

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

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

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

If it’s not possible to set up a new pension plan, Zurich should pay the amount of any loss direct to Mr P. 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 P is retired. (This is an adjustment to ensure that Mr P isn’t overcompensated – it’s not an actual payment of tax to HMRC). To make this reduction, it’s reasonable to assume that Mr P is likely to be a basic rate taxpayer in retirement. So, if the loss represents further ‘uncrystallised’ funds from which Mr P 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 P 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 this Provisional Decision is accepted by both parties and we notify the parties that I’ve decided not to issue a Final Decision, the date we notify the parties of this will become the date of calculation referenced above. However, if payment of compensation is not then made within 28 days of that date of calculation, interest should be added to the compensation at the rate of 8% per year simple from the date of calculation until it is paid. If a Final Decision has to be issued, the date of calculation will become the date of the Final Decision itself, and interest will be calculated differently, as set out below.

If payment of compensation is not made within 28 days of Zurich receiving Mr P’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 P how much has been taken off. Zurich should give Mr P a tax deduction certificate in respect of interest if Mr P 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 P’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 P was invested. However, I expect any such reinstatement to be achieved promptly.

Mr P or Zurich must respond to let us know if they intend to dispute any of the following as soon as possible:

- the assumption that Mr P will be a basic rate taxpayer in retirement.
- the assumption of nil value for TRG and Dolphin Trust at the date of calculation.

This is so that these assumptions can be revisited and Mr P receives appropriate compensation. It won’t be possible for us to amend these assumptions if a Final Decision is issued on the complaint.

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

My provisional decision

For the above reasons my provisional decision is that Mr P’s complaint should be upheld and Zurich Assurance Ltd should compensate Mr P as set out above.

Simon Hollingshead
Ombudsman