

The complaint

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

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

What happened

I set out the background to this complaint and my provisional findings in my provisional decision of 25 February 2025. This is attached and forms part of this decision.

In response to the decision, Mrs A through her representatives said:

- The other provider was effective in preventing the transfer. It's a fact that it didn't go ahead, which means that at some point on the strength of communication Zurich could've given there is a trigger that would have meant Mrs A wouldn't have proceeded.
- In support of my conclusion, I said Mrs A would've gone ahead anyway with reference to the Scorpion insert which she received via Cantwell Grove and not Zurich and that she ignored Zurich's warnings. Yet other cases with these facts present had been upheld by this service. Whilst the wording on Mrs A's letter about unregulated advice was slightly different than the other cases, crucially Zurich told her to do the due diligence herself. Whereas they should've done it alongside providing the appropriate warning regarding a criminal breach of FSMA to Mrs A. And that she would have no recourse to our service or the FSCS.
- Mrs A would've found it difficult to work out whether she was receiving FCA regulated advice. Cantwell Grove had mentioned an FCA regulated adviser in the transfer paperwork (although subsequently they weren't involved). And the unregulated introducers would've likely given reassurances if she raised a question about unregulated advice. Mrs A had no financial services or investment knowledge and so it is a high burden to place on her to unpick a complex factual matrix as to who exactly was advising her. This is exactly why the guidance put the onus on the ceding schemes to do the due diligence and communicate clearly with consumers around this point.
- The Broadwood letter was referred to in relation to Mrs A being prepared to take on the risks explained within that letter, including unregulated advice. But the overall conclusion of that letter was the investment was appropriate for her and there was highly positive advice given. It is unfair to point to that letter to say Mrs A would've ignored direct scam warnings given by Zurich.

- I'd said that after receiving the letter from the other provider Mrs A didn't show any concern about the warnings and I found this compelling. It thinks this is unfair. In other cases Cantwell Grove assisted customers to make complaints to compel the transfer. It seems Mrs A didn't do this. She accepted the decision and left the pension where it was.
- With regards to the letter with what was thought by Mrs A to be an outstanding sum of money uninvested with Cantwell Grove, my interpretation of this was unfair. It believes this shows that Mrs A was confused about the SSAS. This money represented a sum to be paid into TRG when the second transfer occurred (which was blocked). Mrs A clearly didn't understand this. And in fact it is evidence of a customer who had very little grasp on matters and to whom clear warnings were very important. Rather than one that was prepared to ignore risk warnings.
- My comments on Mrs A's recollections are unreasonable. I'd already commented that Mrs A's recollections were hazy so to pick out that she'd made a decision not to 'put all her eggs in one basket' was unfair. Where recollections are poor, the best evidence is the contemporaneous documentary evidence which doesn't support a finding that Mrs A was an insistent client.
- Mrs A's case was equivalent to other cases where insufficient warnings were given but where the customer could've been more proactive and in those we'd upheld with a discount to reflect contributory negligence.

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 see no reason to depart from the findings I reached in my provisional decision.

I'll respond to Mrs A's representatives' points in order.

The other provider blocked the transfer and didn't give Mrs A a choice. I don't think that supports that Mrs A would've had a rethink about the transfer with stronger warnings. I explained in my provisional decision what I thought about Mrs A's actions in relation to the warnings Zurich gave and the other provider gave and I think this supports that Mrs A likely wouldn't have reacted to stronger warnings from Zurich. The evidence shows that warnings given by Zurich, additional warnings in the Broadwood letter and the warnings given by the other provider and the blocking of the transfer wasn't enough to give Mrs A concern about the transfer and investment in TRG. I think it ought to have done. Her subsequent testimony supports this, plus her actions/inaction at the time.

We deal with each case on its own individual merits, I don't agree that this decision is inconsistent with others. I am well aware of the other cases but for the reasons explained in my provisional decision, in the circumstances of this case, I'm satisfied my conclusion that the complaint shouldn't be upheld is fair and reasonable. I sympathise with Mrs A's situation but I need to remain impartial despite this and consider what she would've done had Zurich acted reasonably. I agree Zurich ought to have provided clearer more targeted warnings to Mrs A. But I've explained in detail as to why I don't think it would've made a difference to Mrs A had they done so. And whilst Zurich relied on Mrs A checking whether her advisers were regulated, Zurich did explain that she wouldn't have recourse to us or the FSCS if she relied on unregulated advice. It seems these warnings didn't have any impact on Mrs A and despite instructions to do so, she didn't look into whether she'd received regulated advice. But as I've explained I found the later communications from the other provider and Mrs A's

subsequent actions most compelling in reaching my decision.

I don't agree that it would've been difficult for Mrs A to look up the firms talking to her about transferring and to see if they were regulated. Mrs A would've known at the time who'd been speaking to her. That Cantwell Grove had listed a FCA regulated firm, that it seems had absolutely no contact or involvement with Mrs A, won't in my view have had any impact on Mrs A. She won't have spoken to them, so I don't see why she would've thought it was them that had given her advice. Had Mrs A looked into this following Zurich's letter and taken the steps it suggested, I don't think there is any realistic chance she would've thought she'd received advice by a firm that was regulated to provide advice.

The Broadwood assets recommendation letter which I referred to in relation to the investment risks it set out, did recommend that the investment was suitable for the SSAS and it did make some positive statements. But the warnings and risks set out were clearly stated and correlated with some of the warnings given by Zurich. In any event my decision to not uphold the complaint wasn't made in relation to this letter in isolation but all the other factors I set out in the provisional decision.

I don't think its of any particular relevance to the outcome of this case that Mrs A didn't attempt to overcome the other providers blocking of the transfer. The letter didn't give Mrs A a choice and in her letter to Cantwell Grove she said it had taken too long. That Cantwell Grove didn't follow this up could've been to do with the small value of the pension.

I agree that Mrs A clearly had some confusion about the outstanding amount and that her communications do indicate she was/is an inexperienced investor. But the warnings she received and the transfer being blocked should in my view have caused concern regardless. Whilst there was some technical and industry terms within the information she received, the overall themes and meaning behind the communications wasn't difficult to understand. By the point she wrote to Cantwell Grove asking about the additional investment in TRG (that she hadn't understood was in relation to the transfer that had now been blocked) she had received warnings about unregulated advice and loss of protection from Zurich and this was also mentioned by Broadwood and most compelling of all she'd had direct warnings relating to her circumstances about the transfer and investment from a provider that blocked the transfer altogether. Regardless of Mrs A's confusion about the source of the money, I think its clear these warnings hadn't dissuaded her from wishing to invest in TRG. And so I do think this points to a customer who was prepared to ignore risks warnings.

Whilst Mrs A's recollections were understandably vague about what exactly happened at the time, she did seem clear that the blocking of the transfer and warnings she received hadn't caused her concern. And this is backed up by the evidence from the time.

I don't think in the circumstances of this case, Mrs A would've acted differently had Zurich acted as it should've done. Therefore, I won't be upholding the complaint.

I appreciate Mrs A will be disappointed with this. I was sorry to see she's suffered losses to her pension. But ultimately the circumstances do not support that Zurich should be held responsible.

My final decision

For the reasons explained in this decision and my provisional decision, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 29 April 2025.

A handwritten signature in blue ink, reading 'SHollingshead'.

Simon Hollingshead
Ombudsman

Provisional decision

The complaint

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

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

What happened

Mrs A signed a letter of authority allowing Consumer Money Matters to obtain details, and transfer documents, in relation to her pension. On 22 August 2014 Consumer Money Matters wrote to Zurich, enclosing Mrs A's letter of authority. It requested information on Mrs A's pension and discharge forms to allow a transfer. Zurich sent Consumer Money Matters the requested information on 1 September 2014. Consumer Money Matters wasn't authorised to give financial advice (although regulated as an Appointed Representative of Cavere Ltd as an introducer but not advisers). Mrs A says she was attracted by the prospect of better returns and easy access to her pension.

On 24 September 2014, a company was incorporated with Mrs A as director. I'll refer to this company as 'A LTD'. On 20 August 2014, Mrs A signed documents to open a SSAS with Cantwell Grove. A LTD was recorded as the SSAS's principal employer.

On 29 October 2014, Cantwell Grove wrote to Zurich and enclosed the completed transfer forms, a copy of the schemes Trust Deeds and rules, the HMRC registration, Key scheme details including the proposed investments which were a discretionary managed service provided by Parmenion and a commercial property investment provided by TRG. It said the advice for both of these investments would be provided by Sequence who were FCA regulated (however in reality it wouldn't go onto give advice to Mrs A). It also included confirmation from Cantwell Grove that it had warned Mrs A about pension liberation and provided her with a copy of a leaflet (referred to as the "Scorpion leaflet") produced by The Pensions Regulator (TPR) which warned about pension liberation. It also included a signed letter from Mrs A saying:

- Cantwell Grove had explained pension liberation to her and the risks of transferring her pension
- Confirmation from Mrs A that she hadn't been offered any cash incentive to transfer nor was she trying to access her retirement benefits before the age of 55
- Confirmation from Mrs A that she'd understood the warning about pension liberation

Following receipt of the above letter, Zurich wrote to Mrs A acknowledging her transfer request on 4 November 2014. Within this letter it said it was currently considering her request and that it needed time to gather information to be satisfied that the transfer would be an authorised payment. It mentioned the increase in pension liberation activity and the industry now being more cautious and regrettably this will slow down the process.

Following this letter Zurich wrote again to Mrs A on 12 November to say once it was satisfied that HMRC would consider the transfer to be an authorised payment and that the A LTD SSAS was still registered with HMRC, it would proceed to transfer.

It also explained, confirmation that the transfer could proceed should not be taken as any form of endorsement from it or HMRC.

It again mentioned the increase in pension liberation schemes and it explained many people had been caught out by this. It also said people had lost out by being in unregulated investments. It said Mrs A should carry out her own due diligence and as a minimum she should think about the below:

- 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? You can ensure that a financial adviser or business 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 at <http://www.fsa.gov.uk/register/home.do>.
- 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 (FOS) or the Financial Services Compensation Scheme (FSCS) 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?

The letter said if Mrs A had changed her mind about transferring she should contact them immediately.

By 23 December 2014 Zurich was satisfied the transfer could take place. And it sent a cheque of approximately £25,000 to Cantwell Grove. Mrs A was aged 49 at the time.

Mrs A had on 4 December 2014 received advice as a trustee of the SSAS by an unregulated adviser, Broadwood Assets, to invest in commercial property in Cape Verde through TRG. A significant proportion of the transfer value was invested in a fractional hotel investment in Cape Verde and I understand the investment is now illiquid and essentially of nil value. Within this letter the advising firm made it clear the investment was unregulated and they were unregulated advisers. And that there were risks involved in this investment such as the investment could have liquidity issues, overseas investments brought additional risks and it wasn't suitable for a cautious investor, nor did it have the protections of the UK market.

Mrs A had also attempted to transfer a second pension with another provider to Cantwell Grove, with the same intended investment proposition. But that provider blocked the transfer on 29 July 2015. It wrote to Mrs A to say that the Pensions Ombudsman has issued a number of determinations about Pension Liberation and Pension Scams and taking into account this and the guidance it had decided to block the transfer. It did say it was not saying that any party involved was attempting to scam or liberate but that after considering the guidance it had seen many warning signs in her transfer request. It then listed the warning signs as set out below:

Remaining aspects

When exercising discretion as to whether to permit a transfer in the absence of a statutory right, the available guidance regarding transfers is of particular importance.

Using the PO Determinations, the Pensions Regulator (to which [REDACTED] pension products are subject) guidance (in particular their "Action Pack for trustees and administrators"), the Pension Liberation Industry Group's Code of Practice – Combating Pension Scams and the guidance found on the Website of the FCA the following points were some of the grounds for declining your transfer request:

- You contacted Choices Wealth Limited on the back of a cold call your husband had received on a PPI related matter;
- you appear to have been introduced to the Scheme Administrator (Cantwell Grove Limited (Cantwell Grove) by Choices Wealth Limited, who do not appear to be registered with the FCA;
- Choices Wealth Limited describe their business on Companies House as "Other business support service activities not elsewhere classified" and their registered address is listed as 108 New Walk, Leicester, LE1 7EA. This appears to be a virtual (serviced) office. A serviced office is essentially a pay as you use office space that business are looking to rent with short term lease agreements. An internet search indicated that these premises now appear to be free to rent.
- The documents you completed to establish your company and the SSAS were collected by a courier;
- The Company (i.e. the sponsoring employer) was incorporated on 24 September 2014, which we therefore consider to be newly incorporated;
- the SSAS was registered with HMRC on 22 October 2014, only a week before the transfer request was made (on 31 October 2014), and we therefore consider the SSAS to be newly registered for the purposes of the transfer request;
- You have previously indicated that your signature to the document establishing your scheme was witnessed by your husband, but it is noted that it was in fact witnessed by a [REDACTED] whose occupation is given as "Introducer". On reviewing social media sites we note that he lists his occupation as "Sales Executive – The Resort Group";
- You have advised that in regard to your decision to request a CETV you have relied upon the advice given by Choices Wealth Limited. According to the FCA register, Choices Wealth Limited are not authorised to give pensions related or any financial advice;
- You have indicated that your investment is with The Resort Group PLC. They are based in Gibraltar, are not regulated in the UK and appear to exclusively invest in overseas holiday related properties in Cape Verde. We consider investment in such properties to be high risk with no guarantee of returns;
- Based on the above, the investment would not appear to be regulated under the Financial Services and Markets Act 2000 and is therefore not subject to the jurisdiction of the FCA or UK Financial Ombudsman Service or the Financial Services Compensation Scheme. This view is further supported by reference to the Cape Verde Investments Key Features document issued to you by the Resort Group themselves;
- It is our policy to only pay a transfer to a Trustees Bank Account provided by a bank, regulated as such, and which operates the account as a Trustees Bank Account. Your Trustee Bank Account provider – Card One Banking – is not a bank. They also do not perform credit checks on account holders.

If you should have any queries please do not hesitate to contact us.

Alternatively, you make wish to speak to your financial adviser. If you have no financial adviser, we strongly recommend that you consult an FCA registered adviser, with permission to advise you Pensions Transfers matters, before making any further decisions on your plan.

On 27 August 2015, Mrs A wrote to Cantwell Grove to say the below.

Due to rethinking about my [REDACTED] Pension I have decided not to invest this pension, as it has taken too long to get it sorted, as [REDACTED] are not going to release it at this present time, I shall be informing [REDACTED] with my answer. Also could you let me know what has happen to my remainder of £893.14 that should be invest as soon as funds are received into my ssas account I have not heard what has happen this letter was from [REDACTED] (scheme investment) I enclosed copy of letter.

On 28 August 2015, Mrs A thanked the other provider for the letter and said she had written to Cantwell Grove to inform them and that it may hear from Cantwell Grove.

In February 2020, Mrs A complained to Zurich. Briefly, her argument is that Zurich ought to have spotted, and told her about, a number of warning signs in relation to the transfer, including (but not limited to) the following: the SSAS was newly registered, there wasn't a genuine employment link to the sponsoring employer, the catalyst for the transfer was an unsolicited call and she had been advised by an unregulated business.

Zurich didn't uphold the complaint. It was satisfied it had conducted an appropriate level of due

diligence given the requirements of the time. And it had told Mrs A to get advice, it believed given the warnings it did give her meant that any further contact was unlikely to change her mind. It said she had a legal right to transfer and it had acted in good faith.

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

What I've provisionally decided – and why

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

The relevant rules and guidance

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

- The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme if certain conditions are satisfied (and a member may also have a right to transfer under the terms of the contract). This came to be exploited, with people encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren't entitled to – for instance, because they were below minimum retirement age.
- On 10 June 2011, the Financial Services Authority (FSA) issued a warning about the dangers of "pension unlocking" and specifically referred to consumers transferring to access cash from their pension before age 55. (As background to this, the normal minimum pension age had increased to 55 in April 2010.) The FSA said that receiving occupational pension schemes were facilitating this. It encouraged consumers to take independent advice. The announcement acknowledges that some advisers promoting these schemes were FSA authorised.
- At around the same time, TPR published information on its website about pension liberation, designed to raise public awareness and remind scheme operators to be vigilant of transfer requests. The warnings highlighted that websites and cold callers were encouraging people to transfer in order to receive cash or access a loan.
- TPR launched its Scorpion campaign on 14 February 2013. The aim of the campaign was to raise awareness of pension liberation activity and to provide guidance to scheme administrators on dealing with transfer requests in order to help prevent liberation activity happening. The FSA, and the Financial Conduct Authority (FCA) which had succeeded the FSA, endorsed the guidance. The guidance was subsequently updated, including in July 2014. I cover the Scorpion campaign in more detail below.
- In August 2014 the FCA started to voice concerns about the different types of pension arrangements that were being used to facilitate pensions scams. In an announcement to consumers entitled "Protect Your Pension Pot" the increase in the use of SIPP's and SSASs in pensions scams was highlighted, as was an increase in the use of unregulated and/or illiquid investments. The FCA highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.
- Zurich was subject to the FCA Handbook and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA/FCA rules governing pension transfer requests, but the following have particular relevance:
 - Principle 2 – A firm must conduct its business with due skill, care and diligence;
 - Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;

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

The Scorpion guidance

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

The materials in the Scorpion campaign comprised:

- An insert to be included in transfer packs (the 'Scorpion insert'). The insert warns readers about the dangers of pension scams and identifies a number of warning signs to look out for.
- A longer booklet issued by TPAS which gives more information, including example scenarios, about pension scams. Guidance provided by TPR said this longer leaflet was intended to be used in ongoing communications with members so that could become aware of the scam risks they were facing.
- An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "watch out for" various warning signs of a scam. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where a transferring scheme still had concerns, they were encouraged (amongst other things) to contact the member to establish whether they understood the type of scheme they were transferring to and – where a member insisted on transferring – directing the member to Action Fraud or TPAS.

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

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

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

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

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

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

What did personal pension providers need to do?

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

1. As a first step, a ceding scheme needed to check whether the receiving scheme was validly registered.
2. The Scorpion insert provided an important safeguard for transferring members, allowing them to consider *for themselves* the scam threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. So, all things considered, I think the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party – an unregulated introducer, say.
3. I also think it would be fair and reasonable for personal pension providers – operating with the regulator's Principles and COBS 2.1.1R in mind – to ensure the warnings contained in the Scorpion insert were provided in some form to a member before a transfer even if the transfer process *didn't* involve the sending of transfer packs.
4. The Scorpion guidance asked firms to look out for the tell-tale signs of scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The guidance points to the warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. Therefore, whilst using the action pack wasn't an inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.
5. The considerations of regulated firms didn't start and end with the Scorpion guidance. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn't involve anything specifically referred to in the Scorpion guidance – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's principles and COBS 2.1.1R.

The circumstances surrounding the transfer and Mrs A's recollections.

Mrs A's recollections are not clear which isn't unusual given the amount of time that has passed but there is enough information to put together a picture of what happened. Mrs A says she can't recall

how it all began. We know from other similar cases, commonly it began from unsolicited contact from an 'introducer' who starts the process. And on this case, we can see Consumer Money Matters contacted Zurich on Mrs A's behalf. The documentation from the transfer shows that it was witnessed by someone calling themselves an introducer and they are known to have worked for Choices Wealth Limited who had links to TRG (we also have the letter relating to the other transfer that gives us an idea of the likely process followed in this transfer). Choices Wealth Limited were not regulated to give advice. So I think it is most likely Choices Wealth Limited advised Mrs A on the transfer following unsolicited contact.

Mrs A has confirmed she did see a copy of the scorpion leaflet as it was sent to her by the adviser.

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.

Having reviewed the evidence it's clear that Zurich didn't send the Scorpion leaflet directly to Mrs A, it instead sent it to Consumer Money Matters. However, I don't think this matters here as Mrs A has said she did see a copy in any event. This would have been the version issued in July 2014.

However, Zurich did give other warnings similar to those held in the Scorpion leaflet, in particular it repeatedly mentioned the risk of pension liberation and the importance of receiving regulated advice – and explained the consequences of not doing so. It also made reference to unregulated investments where a customer could lose out.

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

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

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

1. The nature/status of the receiving scheme

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

2. Description/promotion of the scheme

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

3. The scheme member

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

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

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

Had it done so, I think Zurich would have established that Mrs A's receiving scheme was newly registered and was with a dormant employer. One of the two proposed investments was overseas, unusual and used creative investment techniques. I think had Zurich contacted Mrs A at the time, her recollections would've been clearer and she would've told them she'd been advised by an unregulated introducer to transfer and by unsolicited methods.

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

- Check the receiving scheme was registered – which it did do.
- Send the Scorpion insert to Mrs A before the transfer– it didn't send this directly but ultimately immaterial here as she did receive it.
- Looked out for the tell-tale signs of a scam and do further due diligence – I think Zurich did do some further due diligence but I think it ought to have gone further.

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

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

My view is that Zurich should have been concerned by Choices Wealth Limited's (and or Consumer Money Matters) involvement because it pointed to a criminal breach of FSMA. On the balance of probabilities, I'm satisfied such a breach occurred here. And notified Mrs A of this.

Had it done so I need to consider whether this would have changed events and whether Mrs A would've transferred anyway. I've thought about this carefully and I think had Zurich done all it was reasonably expected to do at the time, Mrs A would still have transferred.

I say this because Mrs A did see the Scorpion insert which did cover aspects relevant to Mrs A's experience that suggested she may be putting her pension at risk – such as unsolicited contact. And she ignored Zurich's warnings about getting regulated financial advice and that without this she would lose any regulatory protection. I note again that Mrs A was given instructions on how to check her adviser was regulated or not.

At the time of advice to invest in TRG, Mrs A had already been warned about the risk of unregulated advisers, unregulated investments (and the importance of receiving UK regulated advice). The recommendation letter to invest in TRG made clear that the trustee adviser was unregulated and unauthorised, so I don't think she could have taken any comfort from that. Mrs A still chose to go ahead despite the prior warnings and assumingly without checking the regulatory status of Choices Wealth Limited even though she had been warned to only deal with regulated firms.

The information she was given about the investment also made clear her capital was at risk, the value of the property could collapse, the investment had no guarantees, had additional risks due to being overseas – and had no regulatory protection. So, I think Mrs A ought to have known she was risking her pension by making this type of investment but she was prepared to do so in any event. Quite often in such cases consumers might be under the spell of unregulated advisers which would underplay risks unaware that there might be an issue with the advice they were receiving. However, here Mrs A was given information from Zurich about the risks of unregulated advisers and how to check their status as well as about the importance to check and understand the investments she was making. So, I think Mrs A had enough information to make an informed choice. On the balance of probabilities, I don't think further correspondence with Zurich about the risks of falling foul of a scam and clearer more stark warnings about unregulated advisers would've made a difference, as I think the evidence points to Mrs A ignoring other warnings about dealing with regulated advisers and being prepared to take the risk on this investment.

A key factor in my decision and perhaps the most compelling evidence to what Mrs A would've likely done with better warnings comes from the transfer referred to above in the background to this complaint. The other provider gave her more extensive warnings than Zurich did and directly related some of those warnings to her experience. I'd have expected after having the transfer blocked by that provider (intended for the same product and investment as the Zurich transfer) that Mrs A would've had some concerns about her existing SSAS and the investment in TRG. She was now aware that essentially the same transfer had been blocked by a regulated provider on the basis of warning signs identified by regulatory bodies. And that these warning signs included receiving advice from an unregulated individual, the individual in question was a sales person for the company she was investing in, the firm who gave her the advice had a temporary office and now appeared to have left that address, the sale techniques involved were a warning sign of a scam and her investment was high risk and the investment unregulated.

I would expect that to at the very least to have rung some alarm bells, especially as Mrs A had also previously seen the Scorpion leaflet and Zurich had provided some similar general warnings as well. But Mrs A's contact with Cantwell Grove afterwards didn't show any concern about these warnings. In fact she asked about an outstanding transfer value amount that she wanted investing in TRG. Our investigator also spoke to Mrs A about her recollections of the warnings given by the other provider, and whilst her recollections were understandably hazy, she said she wasn't concerned, she didn't proceed with the transfer simply because she'd been told she couldn't and thought she *'wouldn't put all her eggs in one basket'*. She did recall contacting Cantwell Grove afterwards because she wanted the money to be invested. She didn't have any real concerns about the investment and didn't take any action regarding the money already invested in TRG.

So I think had Zurich made further contact and had given her the warnings that the advice to transfer was unregulated and unlawful, I don't think it likely would have made a difference to the outcome here, I think Mrs A would still have transferred.

Despite my sympathy with Mrs A's situation, I don't think in the circumstances presented here, it would be fair and reasonable to hold Zurich responsible for her decision to transfer her pension and make unregulated high-risk investments.

My provisional decision

For the reasons explained I do not intend to uphold this complaint.

Simon Hollingshead
Ombudsman

