DRN-5474543

The complaint

Mr C has complained about a transfer of his Zurich Assurance Ltd ('Zurich') personal pension to a small self-administered scheme ('SSAS') in July 2014. Mr C's SSAS was subsequently used to invest in overseas hotel fractional ownership with The Resort Group ('TRG'). The investment now appears to have little value. Mr C says he has lost out financially as a result.

Mr C 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 C says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Zurich had acted as it should have done.

What happened

On 28 February 2014, Mr C signed a letter of authority allowing First Review Pension Services ('FRPS') to obtain details, and transfer documents, in relation to his pension. Mr C says this followed an unsolicited approach. The letter of authority also named another firm – Moneywise. This firm had a different business address over 400 miles from the address given for FRPS.

On 17 March 2014, FRPS emailed Zurich, enclosing Mr C's letter of authority. It requested information on Mr C's pension and discharge forms to allow a transfer. Zurich sent FRPS the requested information on 22 March 2014. FRPS wasn't authorised to give financial advice.

Mr C says he was attracted by the prospect of the improved investment returns he was led to expect from the recommended investment which was an overseas property development.

In May 2014, a company was incorporated with Mr C as director. I'll refer to this company as Firm A. On 2 June 2014 Mr C signed documents to open a SSAS with Rowanmoor Group Plc ('Rowanmoor'). Firm A was recorded as the SSAS's principal employer. The SSAS documents also recorded that the SSAS was to be used to invest £53,500 in TRG.

Zurich were contacted by Rowanmoor who requested its transfer claim form for Mr C. Zurich responded directly to Rowanmoor on 18 June 2014 with its transfer pack.

On 22 July 2014 Mr C's transfer papers were sent to Zurich. These were sent in by Rowanmoor. Included in the transfer papers were: signed transfer claim forms, Mr C's letter of authority for Rowanmoor, evidence of HMRC registration of the Firm A SSAS from 9 June 2014.

Mr C's pension was transferred on 29 July 2014. His transfer value was around £60,600. He was 50 years old at the time of the transfer.

On 7 August 2014 an investment of £53,300 was made with TRG. The investments in TRG returned sporadic monthly income but that stopped. There was no secondary market for this

investment so there was no way for Mr C to recover the capital in it. The investment is likely to have little value.

In January 2021, Mr C 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, Rowanmoor was not authorised by the FCA, the transfer followed high pressure sales techniques, the catalyst for the transfer was an unsolicited call and he had been advised by an unregulated business, the proposed investment was in an overseas investment.

Zurich didn't uphold the complaint. It said that FRPS were affiliated with Moneywise Financial Advisers, who were a firm that was regulated by the Financial Conduct Authority ('FCA'). It said that it included The Pension Regulator's warning leaflet (which I later refer to as the Scorpion insert) in its response to FRPS. It said it sent it again in response to Rowanmoor's request for information. It concluded that Mr C had a legal right to transfer and that it wasn't its role to advise Mr C about the suitability of his transfer request. It was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

Mr C additionally submitted a claim to the Financial Services Compensation Scheme ('FSCS') in January 2021 regarding advice he'd been given by Moneywise. That referral was made based on advice Mr C said he received as the member of the Firm A SSAS regarding the TRG investment. In March 2021 the FSCS decided that Mr C had a valid claim and made an offer of £50,000 compensation. On 30 January 2024 Mr C signed a reassignment of rights form granting him the right to pursue his claim against Zurich and to use the proceeds of any compensation from Zurich to repay the compensation received from FSCS.

Our investigator was unable to resolve the dispute informally, so the matter was passed to an ombudsman to decide. That ombudsman issued a provisional decision explaining why he thought Mr C's complaint should be upheld. Zurich appointed legal representation who challenged that ombudsman's provisional finding and also questioned whether the complaint had been made in time for our service to have jurisdiction to consider it. The ombudsman issued a further decision explaining why the case was in our jurisdiction. That ombudsman is no longer able to work this case, and the matter was then passed to me to decide.

What I said in my provisional decision:

I issued a provisional decision on 7 March 2024 to explain that I also thought that Mr C's complaint should be upheld, but for slightly different reasons as I was in possession of additional information. I provided copies of that additional information I had obtained which related to Mr C's claim to FSCS. I summarise the reasoning in my provisional decision as follows:

- I gave my decision on why Mr C's case had been made in time for our service to have jurisdiction to consider his complaint.

- I summarised what I thought the relevant rules, legislation and industry good practice meant for the way that Zurich should have dealt with Mr C's transfer request.

- I was persuaded that Mr C had, more likely than not, been approached out of the blue by FRPS. And that advice to set up a SSAS in order to receive the transfer of his Zurich pension had, more likely than not, been given by FRPS.

- I noted the involvement of a regulated financial advice firm – Moneywise. And had

questioned Mr C about the claim he made to the FSCS against Moneywise which had been successful. But I explained why, on a balance of probabilities, I thought that Moneywise's involvement was likely to have been as the trustee adviser after the transfer. This was based on the information in the SSAS application, which corroborated Mr C's testimony to our service.

- I explained why I didn't think that Zurich had sent Mr C any warnings about pension liberation that I thought it should have done. But I explained that I was not persuaded that Mr C had been adversely affected by this mistake because those warnings were not sufficiently relevant to the circumstances surrounding Mr C's transfer.

- I referred to the type of due diligence that Zurich ought reasonably to have done prior to making Mr C's transfer. And was of the opinion that it didn't undertake any due diligence.

- In the absence of any evidence of due diligence checks, I considered what checks Zurich should reasonably have done based on guidance that had been issued by The Pensions Regulator. I explained what I thought Zurich would likely have found out if it had carried out reasonable due diligence and was persuaded that it would have identified a number of warning signs although it would likely have established that Mr C had not been offered any cash incentive to transfer his pension. But I thought Zurich would also have established that Mr C was receiving advice from a firm that was not regulated to give such advice – in breach of the general prohibition in the Financial Services and Markets Act 2000.

- I explained why I thought that Zurich should have given Mr C a specific warning about the risks of being given financial advice by an unregulated party. And explained why I thought that warnings along those lines would have caused Mr C to rethink the transfer and therefore have prevented the loss he went on to suffer. In reaching this opinion, I had regard to the types of warnings he was likely to have received from Rowanmoor prior to the investment being made, and explained why that didn't persuade me that he'd have transferred regardless of the type of warning Zurich should have provided.

- I set out what I considered to be a fair and reasonable way to put things right.

Responses to my provisional decision:

Mr C responded to say that he had no further comment and was prepared to accept my provisional decision.

Zurich responded via its legal representative. It didn't agree with my provisional decision and set out a detailed challenge which I have considered in full, but summarise as follows:

- It expressed reservations as to the fairness of the late disclosure of information with my provisional decision.

- It considered that the additional information, regarding the FSCS application, implied that Mr C had been advised by Money Redress rather than FRPS as I had provisionally decided.

- It raised objections to the redress proposed in my provisional decision. Specifically, it queried whether the FSCS reassignment or rights actually covered the complaint made against Zurich, and thought any redress should take account of the benefit that Mr C had from the FSCS compensation since 2021.

My further consideration:

I considered the case further and I was persuaded to amend my provisional redress. I sent both parties an update to my proposed redress taking into account the points that Zurich's legal representative had made. I explained that I thought it would be fair and reasonable for Zurich to ask Mr C to sign an undertaking to repay the compensation to FSCS and to provide it with confirmation of that. And I explained that I was also minded to allow Zurich to treat the FSCS compensation as a temporary notional deduction so it did not feature in the loss calculation for the relevant period.

In response to Zurich's legal representative's assertion that my provisional decision was contrary to the conclusion that the FSCS had reached, I contacted the FSCS to ask it for the evidence that it had obtained in the course of its investigation.

I was provided with further evidence from the FSCS on 24 May 2025, some of which had not been available prior to my provisional decision. Amongst the evidence provided by the FSCS was:

- The SSAS bank accounts showing transactions between 30 July 2014 and 1 July 2020.
- A letter Rowanmoor sent to Mr C on 10 June 2014, as the SSAS trustee, warning of the complexity of the TRG investment and recommending that he take appropriate legal or other professional advice.
- A letter of authority, signed by Mr C on 2 June 2014, authorising FRPS to apply to Rowanmoor for a SSAS and for Rowanmoor to share information with FRPS.
- A letter of advice provided by Moneywise Financial Advisors, dated 20 June 2014. This letter explained that Moneywise had been appointed to provide appropriate advice under section 36 of the Pensions Act 1995. Which was a requirement that trustees take and consider appropriate advice. It stipulated that it had not advised on the establishment of Mr C's SSAS. This was signed, as received and understood, by Mr C on 3 July 2014.

This new information was shared with Zurich's representative on 30 April 2025. In particular I drew attention to Moneywise's advice letter of 20 June 2014. I was of the opinion that it corroborated what I had already said in my provisional decision.

I summarise the points made in Zurich's response, via legal representation, as follows:

- It criticised the fairness of our services process. This was down to, what it described as, a "*piecemeal fashion in which information and documentation has been requested, obtained, considered and provided*".
- It questioned whether Mr C and his representatives had been transparent about the evidence in this case.
- It didn't necessarily agree that the Moneywise advice letter was evidence that it hadn't advised Mr C about the transfer. It suggested that the letter was communication that, under the Perimeter Guidance Manual (PERG) and COBS 9, should be treated as financial advice.
- It continued to question what it considered as an inconsistency between the conclusion reached by FSCS and my provisional decision.

What I've decided – and why

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

Although I have considered all of the arguments submitted by all parties, I haven't necessarily addressed every point raised specifically. That's because our service is intended to resolve complaints with a minimum of formality. So I have addressed those points that I consider to be most pertinent to the outcome I have reached.

Zurich will note that I have not, in what follows, given time to speculating over the decision that FSCS reached in making its offer of compensation to Mr C. I have made enquiries as to the information that FSCS obtained prior to making its decision. I have shared that information in line with the principles of natural justice. And I will comment on it where appropriate although, as I already explained to Zurich, I do not consider it to undermine my provisional decision. Rather, it has strengthened my opinion.

In making my determination I am interested in the evidence and I am empowered to make a determination of the facts and circumstances based on a balance of probabilities. I am not bound by a conclusion that was reached by FSCS.

I appreciate Zurich's points about the fact that information has become available quite late in the investigatory process. That's unfortunate but is a consequence of trying to reach a fair and reasonable outcome. The fact is that enquiries were not made of Mr C about his FSCS application at an earlier stage in our investigation. But, in being assigned to me, it was incumbent on me to undertake such additional enquiries as I considered to be relevant. And having done so, that information was shared with Zurich with my provisional decision. And Zurich was afforded time to consider and respond.

It was in response to Zurich's representations that I considered it reasonable to make enquiries of FSCS. And its response was shared with Zurich in a reasonable time frame to enable consideration of that new information. I consider that the information obtained is material to this case, irrespective of the fact it was not obtained sooner. I will consider all information irrespective of the stage of the investigation that it became available. The fact that this was not provided by Mr C or his representative doesn't undermine the credibility of this evidence to my mind. I am satisfied that the source of this is reliable.

The relevant rules and guidance

I set out in my provisional decision what I thought the relevant rules and guidance were at the time of Mr C's transfer. This hasn't specifically been challenged in response to my provisional decision. However, for clarity I set this out again here.

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

- Principle 2 – A firm must conduct its business with due skill, care and diligence;
- Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;

- Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and

- COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

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

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

The guidance was updated on 24 July 2014 (which was before Mr C's transfer). It widened the focus from pension liberation specifically, to pension scams – which it said were on the increase. I cover the Scorpion campaign in more detail below.

In late April 2014 the FCA had also started to voice concerns about the different types of pension arrangements that were being used to facilitate pensions scams. In an announcement to consumers entitled "Protect Your Pension Pot" the increase in the use of SIPPs and SSASs in pensions scams was highlighted, as was an increase in the use of unregulated and/or illiquid investments.

<u>The Scorpion guidance</u>

The materials in the Scorpion campaign comprised:

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

- 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 they could become aware of the scam risks they were facing.

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

TPR issued the guidance under the powers at s.12 of the Pension Act 2004. Thus, for the

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

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

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

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

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

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

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

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

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

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

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

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

Zurich received Mr C's transfer request on 23 July 2014. Which was the day before the updated Scorpion guidance was released. So it ought, at the least, to have been considering the request in light of the original guidance that had already been in place since February 2013. Although, given the raised awareness of scams in general, and the release of the updated guidance that was in place before Zurich processed the transfer, it would not be unreasonable to expect Zurich to be mindful of the additional warnings that updated guidance introduced prior to confirming Mr C's transfer.

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

Mr C has explained that he received an unsolicited approach about his pension in 2014 from FRPS. He was 50 years old and explains that he was not actively seeking advice on his pensions prior to that.

Mr C has told us that he was self-employed, living in rented accommodation, and had no specific financial expertise. Mr C explains that his motivation to transfer was based on being told that he would have better investment returns. He didn't receive any unauthorised payments from his SSAS after the transfer. And explains that was never something he'd been promised by FRPS.

Mr C doesn't have any correspondence or written recommendation from FRPS. But there is evidence that he signed a letter of authority in February 2014, which Zurich received. Zurich sent the requested information to FRPS on 22 March 2014. And a company was incorporated to act as the sponsoring employer of the SSAS by 14 May 2014.

Mr C signed an additional letter authorising Rowanmoor to share information and receive a transfer application from FRPS on 2 June 2014. This letter made no reference to Moneywise.

The SSAS application form, also signed by Mr C on 2 June 2014, names Moneywise as the trustee adviser. It describes this as "*the adviser who will provide advice on the scheme to the member trustee*". The inference from this is that Moneywise's involvement was to advise the

trustee, which was a requirement under section 36 of the Pensions Act 1995. It would not necessarily have precluded Moneywise from also giving Mr C regulated financial advice on his Zurich personal pension. But it is not evidence that suggested that it did so.

Since issuing my provisional decision I have now seen the advice that Moneywise provided. It was dated 20 June 2014 and signed by Mr C as being seen on 3 July 2014. I do not intend to replicate that letter in full in this decision. Of specific note are where it has set out the purpose of that advice and its limitations.

Moneywise explained,

> "*It is a requirement under section 36 of the Pensions Act 1995 that you, as trustee, take and consider appropriate advice on whether your proposed investment is satisfactory for the aims of the scheme. You have appointed Moneywise Financial Advisors to provide that advice."*

This along with the SSAS application imply that Moneywise were providing this advice to Mr C as trustee of the Firm A SSAS. Not as a retail customer. The letter however provides further clarification where it stated:

(a) We have not advised you on the establishment of your SSAS;

(b) We must emphasise that our opinion on this particular investment is provided to you in your capacity as a trustee of your SSAS only, and not in your personal capacity or in your capacity as a member of the SSAS; and

(c) We are not providing advice that would be deemed regulated under the Financial Services and Markets Act 2000 (as subsequently amended), as advice on investing in commercial property through a SSAS is not so regulated.

Even though Moneywise were regulated to provide financial advice, I do not think that is what it was doing here. As a consequence, this letter did not provide Mr C with any personal advice on whether the investment was suitable for him. Or whether it was in his personal best interests to transfer his Zurich pension to a SSAS to make the investment. The advice by Moneywise sat separate to that and fulfilled a legal requirement for the SSAS trustees. I disagree with Zurich that this letter could be read as crossing over with PERG or COBS because the activity it related to was not a regulated one.

Mr C was not, on balance, an experienced or sophisticated investor. He had previously had a conventional personal pension invested in a conventional way. I do not consider it to be likely that Mr C would have independently conceived of the idea of setting up a limited company (that he would not trade from) in order to sponsor a type of occupational pension scheme by himself. It is a complicated pension alternative, and is therefore unlikely that a retail customer would seek advice on this course of action or even be aware of it without being introduced to it. Having considered all of the evidence in this case, I think it is more likely than not that Mr C would reasonably have considered that he had been advised to set up a SSAS and transfer his Zurich pension to it by FRPS. He was subsequently given trustee advice by Moneywise, only after the application had been made to open the Firm A SSAS.

As I explained in my provisional decision, I have compared Mr C's claim to the FSCS with his complaint referral to our service. I consider that the claim form sets out that FRPS had advised Mr C on making the transfer of his personal pension to the Firm A SSAS. And that Moneywise had provided advice to Mr C as trustee of that SSAS. This is consistent with his testimony to our service.

On a balance of probability, I am satisfied that it was Mr C's understanding that FRPS advised him on the transfer of his Zurich pension. Given the consistency of Mr C's testimony, I am persuaded that is what Mr C would have explained to Zurich had it asked him this question as part of his due diligence.

The investment in TRG stopped providing any rental returns to the SSAS since 2019 and there is no secondary market for the fractional property. It means that the investment is illiquid and it is likely to have little value.

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.

Mr C explains that he didn't receive a Scorpion insert or any other correspondence with the same message. And Zurich haven't provided me with evidence to suggest that it sent it to him.

I am aware that it says that it would have been included in the transfer requests that it sent to FRPS and then to Rowanmoor. But the letters don't refer to the inclusion of the Scorpion insert. So, I am not persuaded that Zurich sent the Scorpion insert to FRPS or Rowanmoor. But what is most relevant is that I've seen no evidence that Zurich made any direct contact with Mr C following the requested information. I think that the only reasonable way to ensure that its customer received the recommended warning material would have been to send it to him directly. Anything else was trusting a third party to provide the warning which I don't think was reasonable.

Both the transfer packs were requested prior to 21 July 2014 when the Scorpion guidance was updated. So I think that the insert that Zurich ought to have provided was the original one published in February 2013. It warned consumers about pension loans or cash incentives being used to entice savers. This wasn't something that Mr C had been promised or was going to do. So I don't think that the content of that insert would have been particularly relevant to the circumstances of Mr C's transfer. So I am not persuaded that the failure to have sent it to him would have made a difference to Mr C. Whilst it was designed to grab consumers attention, had he read it, I am not sure he would have considered that it applied to what he'd been recommended.

Due diligence:

In light of the Scorpion guidance, I think firms ought to have been on the look-out for the tell-tale signs of a pension scam and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk. Zurich didn't undertake any further due diligence.

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. But I don't agree that would be a reasonable interpretation of the responsibilities it had to Mr C under PRIN and COBS 2.1.1R.

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 single-member SSASs; 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 C's transfer to have dispensed with the need to conduct any due diligence.

Given the information Zurich had at the time, one feature of Mr C's transfer would have been a potential warning sign of a scam: Mr C's SSAS was recently registered. Zurich should therefore have followed up on it to find out if other signs of a scam were present.

Given this warning sign, I think it would have been fair and reasonable – and good practice – for Zurich to have looked into the proposed transfer and the most reasonable way of going about that would have been to turn to the check list in the action pack to structure its due diligence into the transfer. For the purposes of this case, I do not think that it matters whether or not the Action Pack being considered was the 2013 or 2014 version. That's because the check lists in both were similar and the above warning sign (recently registered scheme) should have triggered the use of the check list in both cases.

The check list (for both the 2013 and 2014 Action Packs) 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 Mr C'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 Mr C as part of its due diligence.

What should Zurich have found out?

Had Zurich carried out investigations like those described under parts 1 to 3 of the check list it would have identified the following risk warnings:

- The Firm A SSAS was newly registered,
- Firm A was newly incorporated and was a dormant company,
- Mr C wasn't employed in any meaningful sense by Firm A,
- The intended investments were an overseas property investment with TRG,
- Mr C had been cold called by FRPS which was also providing unregulated advice on the transfer.

Zurich would also have identified that Mr C had not been offered any cash incentive to transfer his pension.

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 Mr C'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, even though Zurich would have considered the risk of pension liberation to be low, it should still have been concerned by FRPS'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 after the introduction of the updated guidance on 24 July 2014, Zurich should have been concerned that the collective warnings it identified meant there remained a high risk that Mr C's transfer was a scam.

What should Zurich have told Mr C – and would it have made a difference?

Had it done more thorough due diligence, there would have been a number of warnings Zurich could have given to Mr C in relation to a possible scam threat as identified by the action pack. 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 C 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 C that FRPS was unregulated and acting on any recommendation it made 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'm satisfied any messages along these lines would have changed Mr C's mind about the transfer. The messages would have followed direct communication with Mr C 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 C 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 C would have been any different.

Since issuing my provisional decision I have obtained (from the FSCS), and shared, a copy of a warning letter that Rowanmoor trustees sent Mr C (as the member trustee) on 10 June 2014 about the type of asset class being invested in. Whilst I had not seen this prior to my provisional decision I did consider that it was likely that Rowanmoor sent this type of warning letter based on other cases our service had seen.

The letter that Mr C received contained, as I had expected, the same wording that was sent to other consumers making the same type of investment. It told him that Rowanmoor was not able to endorse, recommend or advise on the suitability or risks attached to the proposed investment. It recommended taking appropriate advice before going ahead with the investment. It explained that the investment wasn't regulated by the FCA so most of the protections afforded by the UK regulatory system would not apply. It required signed authorisation to proceed which Mr C provided on 3 July 2014.

That the transfer went ahead means that Mr C read this letter and proceeded anyway. But I don't think that it's fair to interpret any failure of Mr C 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 C was at that stage because he trusted the advice that he'd been given that had gotten him to that point. He had, more likely than not, been advised on the suitability of the TRG investment by FRPS. And had, prior to signing the declaration received trustee specific advice from Moneywise. It was against that backdrop that Mr C would have received Rowanmoor's letter. He had no reason to doubt that any recommendation he'd received was not in his best interests. The content of the Rowanmoor letters was not likely to undermine that. Put simply, he would quite reasonably have considered that he'd already had advice on this like Rowanmoor's letter suggested.

But for Zurich's failings Mr C would not have ended up in the position of relying on advice that was in breach of FSMA. Zurich's failure to make any of the enquiries that the Scorpion

action pack set out, meant that it failed to give Mr C clear warnings that would, in my opinion, have completely undermined the trust he had in the advice he'd been given. So, I consider that if Zurich had acted as it should, Mr C wouldn't have proceeded with the transfer out of his personal pension or suffered the investment losses that followed. I therefore uphold Mr C's complaint.

I have given thought to whether Mr C should bear some responsibility for the losses he incurred. I take into account that the courts are able to reduce a defendant's liability for negligence, where the claimant shares responsibility for the damage they've suffered.

As outlined previously, Zurich didn't provide Mr C with the warnings it should have done. And I don't think Mr C, acting reasonably, would have got a sense from any other sources that there was a particular need for caution when progressing his transfer. In the absence of any such warnings or information, my view is that Mr C's actions were in keeping with those a reasonable person would take. I therefore don't intend to reduce Mr C's compensation.

Putting things right

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

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

To compensate Mr C fairly, Zurich should subtract the actual value of the Firm A 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.

I acknowledge that Mr C has received a sum of compensation from the FSCS, which partly settled his losses from the point it was paid. In order for Mr C to make a complaint to this service about Zurich, he needed to ask the FSCS for a re-assignment of those rights. The terms of Mr C's reassignment of rights from FSCS to bring this complaint require him to return compensation paid by the FSCS in the event this complaint is successful, and I understand that the FSCS will ordinarily enforce the terms of the assignment if required.

So, I think it's fair and reasonable to make no permanent deduction in the redress calculation for the compensation Mr C received from the FSCS. And it will be for Mr C to make the arrangements to make any repayments to the FSCS, but Zurich may ask Mr C to provide an undertaking, to repay the FSCS and provide confirmation to Zurich (Zurich will need to meet any costs in drawing up the undertaking). However, I think it's fair and reasonable to allow for a temporary notional deduction equivalent to the payment he actually received from the FSCS for a period of the calculation, so that the payment ceases to feature in the loss calculation during that period.

As such, Zurich may make an allowance in the form of a deduction from the 'notional value' equivalent to the payment Mr C received from the FSCS following the claim about Moneywise**.** Zurich should calculate the relevant proportion of the total FSCS payment in relation to its transfer into the Firm A SSAS and apply it as a deduction on the date the FSCS payment was actually paid to Mr C**.** Where such a deduction is made there must also be a corresponding addition to the notional value, at the date of my final decision, of the same amount deducted earlier in the calculation.

Actual value

This means the Firm A SSAS value at the date of my final decision. To arrive at this value, any amount in the Firm A SSAS bank account is to be included, but any overdue administration charges yet to be applied to the Firm A SSAS should be deducted. Mr C 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 C to the position he would have been in but for the actions of Zurich. This is complicated where an investment is illiquid (meaning it cannot be readily sold on the open market), as its value can't be determined. On the basis of the evidence I have, that is likely to be the case with the following investment: TRG. This is because there is no recognised secondary market for this investment. Therefore as part of calculating compensation:

- Zurich should seek to agree an amount with the Firm A SSAS as a commercial value for the illiquid investment above, then pay the sum agreed to the Firm A SSAS plus any costs, and take ownership of that investment. The actual value used in the calculations should include anything Zurich has paid to the Firm A SSAS for the illiquid investment.

- Alternatively, if it is unable to buy them from the Firm A SSAS, Zurich should give the illiquid investment a nil value as part of determining the actual value. In return Zurich may ask Mr C 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 Firm A SSAS. Zurich will need to meet any costs in drawing up the undertaking. If Zurich asks Mr C to provide this undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

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

Notional value

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

Zurich should ensure that any pension commencement lump sum or gross income payments Mr C received from the Firm A 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 Firm A SSAS given Mr C's dissatisfaction with the outcome of the investment it facilitated.

As Mr C has already received compensation from FSCS for part of these losses and will have to repay that I think it is fair and reasonable in these circumstances for Zurich to pay the amount of any loss direct to Mr C. this will ensure that there is no double recovery. 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 C is

retired. (This is an adjustment to ensure that Mr C isn't overcompensated – it's not an actual payment of tax to HMRC.)

To make this reduction, it's reasonable to assume that Mr C is likely to be a basic rate taxpayer in retirement. So, if the loss represents further 'uncrystallised' funds from which Mr C 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 C 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 C'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 C how much has been taken off. Zurich should give Mr C a tax deduction certificate in respect of interest if Mr C asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

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

My final decision

For the reasons given above, I'm upholding Mr C's complaint and direct Zurich Assurance Ltd to put things right in line with the approach set out above under the heading 'putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 25 June 2025.

Gary Lane
Ombudsman