DRN-5626019

The complaint

Mr L has complained about a transfer of his Zurich Assurance Ltd (Zurich) personal pension to a small self-administered scheme (SSAS) in July 2014. Mr L's SSAS was subsequently used to invest in Dolphin Capital and a resort development in Akbuk, Turkey, offered by The Resort Group (TRG). The investments now appear to have little value. Mr L says he's lost out financially as a result.

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

What happened

I issued a provisional decision on 2 June 2025. I've repeated here what I said about what had happened and my provisional findings. But I've removed references to a third party by his full name and which I'd included in my provisional decision to assist understanding. So that third party is now referred to below only by his title and initial.

Mr L completed an application form to set up a SSAS with Rowanmoor Group plc (Rowanmoor). The form we've seen is only partially completed and undated but I assume, given that Rowanmoor made a transfer request to Zurich on 20 June 2014, that the documentation to set up the SSAS was completed around about that time. The application form showed the trustee adviser was Stevenson Pride, an unregulated firm. The investments being considered were Dolphin and Akbuk Resort Group.

Rowanmoor wrote to Zurich on 20 June 2014 saying Mr L wanted to transfer his policy with Zurich to a SSAS. Ceding scheme information forms were enclosed with Mr L's transfer authority which he'd signed on 22 May 2014. Rowanmoor asked Zurich to complete the form or supply the information required in its own format and return it with any forms that neededto be completed. Zurich replied on 24 June 2014 with a transfer pack, information about Mr L's policy and details of its requirements.

Rowanmoor wrote to Zurich on 22 July 2014 with completed transfer forms and a copy of the HMRC's Notification of Registration showing the SSAS had been registered on 6 June 2014 and giving the Pension Scheme Tax Reference (PSTR) number. Zurich received the transfer request the following day, 23 July 2014.

Zurich wrote to Rowanmoor on 28 July 2014 with a cheque for £87,655.20 representing the transfer value.

Mr L, via his representative, complained to Zurich in May 2020. Mr L said he hadn't been treated fairly as he wasn't sufficiently warned about the risks of transferring his pension. Zurich didn't uphold the complaint. It said it had transferred Mr L's fund in good faith and on the instructions it had received.

After the complaint had been referred to us Zurich added, amongst other things, that Mr L had a statutory right to transfer and Rowanmoor had provided information that the SSAS was registered with HMRC. Mr L had appointed a FCA (Financial Conduct Authority) adviser in 2008 for his Zurich policy and who, at the time of the transfer, remained FCA registered. Zurich didn't know if Mr L had sought advice from that adviser in connection with the transfer but he had access to a regulated adviser. Zurich's transfer forms confirmed that Mr L should seek financial advice before making any transfers. The SSAS allowed a wider range of investments and Mr L made his own investment choices once he'd completed the transfer.

Dolphin, who later changed its name to the German Property Group, went into administration in 2020 having allegedly failed to use investors' money to develop properties. There's no secondary market for the loan notes and, where they have failed to realise the intended returns, investors are unlikely to get their investment back. The investment with TRG involved fractional ownership of hotel accommodation at a resort in Turkey which was a fairly novel type of investment at the time. Development of the resort was problematic and although investors generally received some returns initially, these later became sporadic before drying up altogether. There's no market for the investments and it appears that investors won't be able to recover any of their money.

I issued a provisional decision on 1 April 2025. I upheld the complaint for the reasons I explained and I set out what Zurich needed to do to put things right for Mr L.

Mr L accepted my provisional decision. Zurich didn't. Zurich provided some documents we hadn't previously seen. Including a letter to Zurich dated 12 August 2017 from TLW Solicitors (TLW) with a LOA signed by Mr L on 6 July 2017 for information to be released to TLW. Zurich queried if that meant Mr L's complaint had been made outside applicable time limits.

We shared the documents with Mr L's representative and asked for comments on what Zurich had said. I've referred further below to the new information that's been provided.

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.

But, as Zurich has suggested that Mr L's complaint may have been made too late, I've considered that first.

We're governed by the DISP rules set out in the regulator's Handbook. So, unless a business consents (and here Zurich doesn't), we can't consider a complaint made outside the time limits set out in DISP 2.8.2R which says, in so far as is relevant here:

'The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service: …

(2) more than:

> *(a) six years after the event complained of; or (if later)*
> *(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;*

unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint being received;'

Mr L is complaining about a transfer from Zurich in July 2014. He complained, through his representative, to Zurich in 2020. I've seen the letter of complaint was dated 29 May 2020 but it seems Zurich didn't receive it until 23 July 2020. Zurich has pointed to the letter from TLW dated 12 August 2017 with enclosed LOA signed by Mr L on 6 July 2017. I think Zurich is suggesting that Mr L may have become aware, from discussions with TLW on or about 6 July 2017, that he had cause for complaint about what Zurich had or hadn't done in respect of the transfer. Hence TLW wrote to Zurich on 12 August 2017, requesting information.

If Mr L became aware (or reasonably ought to have become aware) he had cause for complaint on or before 6 July 2017 his complaint, then a complaint made on 23 July 2020 would be more than three years later. But the primary period for bringing a complaint is six years after the event complained of. The three year period only applies if the complaint is made later than six years. Here the event complained of was the transfer which was completed on 28 July 2014. So a complaint received by Zurich on 23 July 2020 is within six years and so in time.

As the complaint hasn't been made too late I've gone on to consider the merits, that is if the complaint should be upheld or not. As I've said, I issued an earlier provisional decision and I've now reconsidered all of the available evidence and arguments from the outset as well as the further information that's been provided, to decide what's fair and reasonable in the circumstances of this complaint. As required by DISP 3.6.4R I've taken into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time. Having done so, I've reached similar conclusions as previously and for similar reasons.

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

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

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

• A longer leaflet issued by TPAS which gives more information, including example scenarios, about pension liberation. Guidance provided by TPR on its website at the time said this longer leaflet was intended to be sent to members who had queries about pension liberation fraud.

• An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "look out for" various warning signs of liberation. 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 transferring schemes still had concerns, they were encouraged to write to members to warn them of the potential tax consequences of their actions; to consider delaying the transfer; to seek legal advice; and to direct the member to TPAS, TPR or Action Fraud.

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 those requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance's specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

In those circumstances, I consider firms which received pension transfer requests needed to pay regard to the contents of the Scorpion guidance as a matter of good industry practice. It

means February 2013 marks an inflection point in terms of what was expected of personal pension providers dealing with transfer requests as a matter of fulfilling their duties under the regulator's Principles and COBS 2.1.1R.

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. *When TPR launched the Scorpion guidance in February 2013, its press release said the Scorpion insert should be provided in the information sent to members requesting a transfer. It said on its website that it wanted the inclusion of the Scorpion insert in transfer packs to "become best practice". The Scorpion insert provided an important safeguard for transferring members, allowing them to consider for themselves the liberation 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 pension liberation scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The action pack 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 – was does the evidence suggest happened?

I set out in my provisional decision what had happened, largely based on what Mr L had told us. To recap that first, Mr L said a friend had recommended Mr L and his wife speak to an

adviser who'd done some investments for him. His friend thought the adviser, who I'll call Mr H, was very good. A meeting was arranged and Mr H came to the house and went through Mr L's and his wife's pensions and investments. Mr H recommended that Mr L transfer his 'frozen' Zurich pension to a SSAS and invest in Dolphin Capital and TRG. Mr H took all the details and did a lot of 'number crunching' to work out potentially what Mr L and his wife could earn and where they'd be in five years' if they did those investments. Mr H said the returns were high but it wasn't high risk as the returns were guaranteed.

Mr L said he and his wife weren't high risk investors. They thought about it and didn't do what Mr H had suggested immediately. But he seemed honest and they came to regard him more like a friend. He'd been recommended and he gained their trust and confidence. They assumed he was a regulated financial adviser (which is what he gave them to understand). Mr H also recommended that Mr and Mrs L cancel their life insurance policies, also with Zurich, to release more funds to invest. Mr H wrote the letters to Zurich and Mr L and his wife signed them – I've mentioned below their letter dated 21 January 2015 to Zurich. Mr L said he did read the letters but they seemed in order and he and his wife thought they were doing the right thing. They didn't have any debt problems, nor had Mr L been looking to do something with his pension. It was just that Mr H had told him he could put the money in a better place.

I thought what Mr L had said was a plausible account of what had led him to set up a SSAS and transfer his pension to invest in Dolphin Capital and TRG. I accepted that he didn't have investment or pension expertise. I said a SSAS is a relatively unusual and complex pension arrangement for someone in Mr L's circumstances. And the investments were unusual too. I didn't think Mr L would've decided for himself to set up a SSAS and invest as he did – or even known that type of pension arrangement and/or investments were available to him – unless it had been suggested to him.

And I thought he'd have only been prepared to go ahead if he'd been given to understand he'd be better off as a result. Which is what he'd said had happened – Mr H said Mr L's existing pension with Zurich wasn't working for him and the returns would be higher – and guaranteed – if Mr L did what Mr H was suggesting. So essentially Mr H recommended that Mr L transfer so he could invest in Dolphin and TRG. That would be advice to transfer which would be regulated advice and which should only be given by a FCA regulated adviser with the appropriate permissions.

Mr L understood Mr H was a regulated adviser. I noted there was a registered firm in Mr H's name but it's a payment services directive agent so nothing to do with investments or pensions. In any event, it was only registered from May 2015 which was after Mr L's transfer. A search against registered individuals shows up two with the same name as Mr H. One didn't hold any registered position from November 2012 to June 2016. And the other individual's registration dates from 2018. I think it's likely to have been the former … who Mr L dealt with and who's located in the same area as Mr L. So, contrary to what Mr L may have thought, Mr H wasn't authorised or regulated by the FCA at the time.

But in response to my provisional decision Zurich provided some new information. Including a letter dated 21 January 2015 to Zurich signed by Mr L and his wife. It referred to their life assurance plans which they said they wanted to cancel. They also requested a figure for the investment element of the plans. They asked Zurich to send a copy of its response to their adviser, Mr H, whose address was given as that of Infinity Financial Solutions. Zurich said a search on the FCA's register showed Infinity Financial Solutions Ltd was an advice firm located in the same area as Mr H and Mr L and was FCA regulated at the time of the transfer. So, although Mr H wasn't a FCA regulated individual at the time, he was working for that FCA regulated firm. Zurich also said that, in March 2025, Mr L's representative had requested information in connection with a claim to FSCS that they were assisting Mr L with.

We shared what Zurich had told us with Mr L's representative and asked for Mr L's comments. Mr L said he didn't recall dealing with Infinity Financial Solutions Ltd, nor was the Mr H known to him. He said he'd never instructed that firm or any individual associated with it to act on his behalf.

Mr L supplied a 'Letter of Understanding' (LOU) from The Affinity Partnership Assets Limited (TAP Assets). We'll share a copy with Zurich. I've referred further below to what the LOU said. But, in summary, is said TAP Assets' role was 'to provide a money education service' to clients. TAP Assets was a non-regulated company introducing non-regulated products and didn't advise or recommend any products, either regulated or non-regulated. TAP Assets acted as introducer to the product provider. It introduced clients to two asset classes – commercial property and loan notes. TAP Assets wasn't authorised to give investment or tax advice.

Mr L's representative suggested Zurich had confused TAP Assets with Infinity Financial Solutions Ltd. Mr L's involvement was with TAP Assets, not with any FCA regulated firm such as Infinity Financial Solutions Ltd. And the reference to a claim to FSCS had been an administrative error and should've referred to Mr L's current complaint to this service. No claim has been made to FSCS, nor was there any intention to make a claim.

I've considered the new evidence and information. Central to my earlier provisional decision was what I said about the circumstances surrounding the transfer and, in particular, that Mr L had been advised in connection with the transfer by Mr H who wasn't regulated. But Mr L is now saying Mr H's name isn't known to him. The transfer was over ten years ago now. It's understandable if Mr L doesn't recall all the details, including the names of all the people he was dealing with. But it's of concern that he initially named an individual as being at the very centre of things but he now says he doesn't recognise the name he gave.

Zurich might argue that such a major change to Mr L's testimony means his evidence is generally unreliable and little or no weight can be placed on anything he's said. But it's a matter of fact and record that Mr L transferred his pension with Zurich in July 2014. And, as I've noted below, it seems Zurich didn't do all it should've in dealing with the transfer request. Even if what Mr L has said about what happened has changed, I still need to try to piece together what likely happened. Including what Mr L would've likely told Zurich about what was going on and what Zurich should've made of it.

I'll deal first with Mr L's representative's suggestion that Zurich may be confused in saying that Infinity Financial Solutions Ltd was involved and the correct firm was TAP Assets. Mr L has supplied a LOU as evidence he was dealing with TAP Assets, an unregulated entity, and not Infinity Financial Solutions Ltd. The LOU is undated and it's unclear exactly when Mr L would've been given it. But, in any event, and regardless of any dealings with TAP Assets, Zurich has produced the letter Mr L and his wife sent to Zurich on 21 January 2015 which they signed and which clearly named Mr H and Infinity Financial Solutions Ltd as the firm he was with. So there was no confusion on Zurich's part – Zurich had clear information that, at some stage at least, Mr L was dealing with Mr H via Infinity Financial Solutions Ltd, a regulated firm.

So three parties have been mentioned – an individual (Mr H, who was unregulated) and two firms (Infinity Financial Solutions Limited, a regulated firm, and TAP Assets, who wasn't regulated).

Sometimes, where differing versions of events are given, I'd be more inclined to accept what was said earlier, on the basis that what happened would've been fresher in someone's mind and there'd have been less chance they might've become confused by any after the event

discussions. And Mr L's original testimony was relatively detailed: he recalled how he'd been introduced to Mr H by a friend; that Mr H had come to his home and discussed pensions and investments with Mr L and his wife; and that they'd come to regard Mr H as more of a friend. And there's written evidence that Mr L and his wife were dealing with Mr H – their letter of 21 January 2015. Although that postdates the transfer by some six months, it's still clear evidence that, by then at least, Mr L was dealing with Mr H.

The position is further complicated because Mr L is now saying he was dealing with TAP Assets. And, although Mr L now says he doesn't recall Mr H, the latter appears to have been behind TAP Assets. He was a founding director and secretary of the company, which was incorporated in December 2010. He then resigned from both positions in April 2012 but was re-appointed as a director in March 2013. So he'd have held that post at the time of the transfer. The company entered into liquidation in 2017 and was dissolved in October 2020.

I could understand if Mr L had said he was dealing with Mr H who he thought was from TAP Assets. But instead Mr L is saying he doesn't recall Mr H at all. Not only is that inconsistent with what Mr L originally told us, it's somewhat odd given it's a matter of record that Mr H was involved with TAP Assets. And when there's contemporaneous written evidence which records that in January 2015 Mr L was dealing with Mr H who was by then at least working for Infinity Financial Solutions Ltd. So, despite what Mr L says now, the wider evidence is persuasive that he was dealing with Mr H.

What's unclear is whether, at the time of the transfer, Mr H would've been acting for TAP Assets or Infinity Financial Solutions Ltd. We can't ask Infinity Financial Solutions Ltd if Mr H was employed in July 2014 or thereabouts as the company entered into liquidation in 2017 and was dissolved in October 2020. But, even if Mr H was working for Infinity Financial Solutions Ltd in about July 2014, we know that he also was also a director of his own limited company, So any dealings with Mr L may have been through that company and not Infinity Financial Solutions Ltd.

I note here that Infinity Financial Solutions Ltd dealt with mortgages and protection products. If its permissions didn't extend to pensions and investments, Mr H couldn't have dealt with Mr L's transfer through Infinity Financial Solutions Ltd. But when it came to the surrender of the life assurance policies, that might've been business he was able to put through Infinity Financial Solutions Ltd and which would explain how Infinity Financial Solutions Ltd came to be involved which was some months after the transfer had been made. I don't think there's evidence to suggest that Infinity Financial Solutions Ltd or Mr H in that capacity was involved earlier and in the transfer.

I think the LOU evidences that Mr L's dealings in relation to the transfer were with TAP Assets and, if not via Mr H, through someone else at that company. I don't see how the LOU would've come into Mr L's possession unless he'd been given it by TAP Assets. And although the LOU isn't dated, its contents are consistent with what actually happened. It says clients are introduced to two asset classes – commercial property and loan notes. I don't think it's a coincidence that's exactly what Mr L's pension fund was invested in – TRG, an overseas commercial property development and loan notes in Dolphin, which was also an overseas property development. So the evidence points to Mr L having been introduced by TAP Assets to the idea of investing in TRG and Dolphin.

As to any other adviser who might've been involved, as I've noted above, the SSAS application form gave the trustee adviser as Stevenson Pride. I know Zurich won't have seen that form but I've taken it into account in deciding what happened and in particular who advised Mr L. He's now saying he dealt with TAP Assets but it seems he also received advice from Stevenson Pride as the trustee adviser. Indeed, from what we know, Rowanmoor would've insisted that Mr L take section 36 advice as a condition of setting up

the SSAS.

Stevenson Pride wasn't, at the time of Mr L's transfer, a regulated firm. Up until 15 July 2011 it had been an appointed representative of a regulated firm. But that was no longer the case in 2014. However, as the trustee adviser, Stevenson Pride didn't need to be regulated. To explain, section 36 of the Pensions Act 1995 requires a trustee (which Mr L was) of an occupational pension scheme (which a SSAS is) to take and consider advice as to whether the proposed investments are satisfactory for the aims of the scheme. That isn't regulated advice. Whereas a personal recommendation to transfer would be and as such should only be given by a registered adviser with the appropriate permissions to advise on pension transfers. I don't know the content of the section 36 advice and what information or warnings may have been given about the investments.

However, I think as part of Rowanmoor's process, it would've also written to Mr L about the proposed investments. I've seen from other cases the letter Rowanmoor sent about investing in Dolphin. Amongst other things it said it was high risk, highly speculative and there was no recognised secondary market. Investors must have no need for liquidity and be able to withstand a total loss of investment. The investment wasn't regulated by the FCA and most of the protections afforded under the UK financial services regulatory system didn't apply and compensation under FSCS may not be available. As with all complex investments, Rowanmoor strongly recommended that, before proceeding, appropriate legal and other professional advice was taken. The letter Rowanmoor issued where the proposed investment was in Akbuk Bay was along similar lines. Because, as I've said, it was part of Rowanmoor's process to issue such letters, I think Mr L would've likely received them, even if he doesn't now recall. I've considered the impact of such letters later in this decision.

Mr L also wanted to transfer another pension policy to the Rowanmoor SSAS. We've made enquiries of that provider, who I'll call Provider R. Rowanmoor wrote to Provider R on 20 June 2014 saying Mr L wanted to transfer and enclosing a LOA and a ceding scheme information form which Mr L had in part completed on 25 May 2014. Provider R wrote to Mr L on 26 June 2014 saying it had received his LOA for Rowanmoor and confirming that the policy was in full force and the third party interest had been recorded. If Mr L had any questions or needed more information he could contact Provider R on the telephone number given. There were no enclosures to the letter.

Provider R wrote to Rowanmoor on the same date with the completed transfer in ceding scheme information form and a transfer payment release form. Rowanmoor wrote to Provider R on 22 July 2014 returning Provider R's completed transfer form and enclosing a copy of the SSAS's HMRC registration certificate. I've seen an internal email sent toProvider R's Financial Crime Suspicion & Query Referral team. The sender flagged up the transfer request as being suspicious. But the reply was 'They (I assume here that's Rowanmoor) are authorised by the FCA and as such I have no worries. Please get the payment made.' Provider R wrote to Rowanmoor on 5 August 2014 confirming the transfer had been completed and a cheque for £5,118.89 had been sent.

It would seem that whoever was dealing with the transfer request at Provider R did have some concerns although these were thought to be unfounded. I haven't seen that Provider R provided Mr L with the Scorpion insert or any similar warnings in a different format or engaged with him about the transfer. So there was nothing from Provider R which might've alerted Mr L to the possibility that there might be anything untoward with the transfer.

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

The Scorpion insert:

For the reasons given above, my view is that personal pension providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information. If Zurich had sent the insert to Mr L when it received the transfer request in June 2014, it would've been the original February 2013 insert entitled 'Predators stalk your pension'. Here there's nothing to show that Zurich sent the insert and Zurich hasn't said it did send it. I think that was a failing on Zurich's part.

But, even if it had been sent, the focus of the insert was early access pension liberation which Mr L wasn't doing so I don't see that the warnings would've really resonated with him. I bear in mind what he told our investigator when she shared with him a copy of the insert – he initially said he thought the insert, coming from Zurich, might've made a bit of a difference. And later on he said he thought it could've made a big difference, as a considerable amount of money was involved. But I think those comments were made largely with the benefit of hindsight and I'm not convinced that, even if the insert had been sent, it would've changed things for Mr L.

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 pension liberation and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk. I don't think Zurich, once it had seen, from the paperwork supplied in support of the transfer request, that the SSAS was registered with HMRC, undertook any further due diligence.

Given the information Zurich had at the time, one feature of Mr L's transfer would've been a potential warning sign of liberation activity as identified by the Scorpion action pack: Mr L's SSAS was recently registered – it was registered on 14 June 2014 and the transfer request was made on 22 July 2014. Zurich should've therefore followed up on this to find out if other signs of liberation were present. Given this sign, I think it would've 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've 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 liberation was a realistic threat. Given the warning sign that should've been apparent when dealing with Mr L's transfer request, and the relatively limited information it had about the transfer, I think in this case Zurich should've addressed all three parts of the check list and contacted Mr L as part of its due diligence.

I note here the timing of the transfer request. Zurich received it on 23 July 2014 (a Thursday) which was the day before the Scorpion campaign was relaunched. The transfer cheque was sent on 28 July 2014 (a Monday). I don't know exactly how the transfer was processed – it may be that all the formalities were completed the same day as the request was received and the cheque requisitioned. So, by the time the updated guidance was launched (and I don't know what time that would've been on 24 July 2014 – and there was no warning that the guidance was going to be updated), the transfer had effectively been put in place with just the transfer cheque awaited. But I think the point is that, had Zurich contacted Mr L about the transfer and as I've said Zurich should've done, then that would've been after the 24 July 2014 update had been issued and so Zurich should've processed the transfer in accordance with that guidance. And, if Zurich needed time to get to grips with the updated guidance, Zurich could've paused the transfer to give itself time to understand and put into effect what was required.

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

Investigations under part 1 of the check list would have revealed the receiving scheme had been newly registered with HMRC – it had been registered only some six weeks or so before the transfer was requested. And the sponsoring employer, the limited company which Mr L had set up and which I'll call L Limited, was newly incorporated too – a check on Companies House would've shown that it had been set up in May 2014 – so only a couple of months before the transfer request. And it was shown as a non trading company. If Zurich had asked Mr L about L Limited I think he'd have said that he wasn't employed by the company and it didn't provide him with an income – as I understand it, L Limited never traded. I note here what Mr L says about the other director being someone he didn't know. That director was appointed the day L Limited was incorporated and resigned the same day. That individual has a very large number of appointments, some of which appear to be connected to TRG. I mention that largely in passing as I'm not saying Zurich should've picked up on that. But the SSAS being newly registered and L Limited only being set up to facilitate it were points of caution.

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've taken comfort from this. I disagree. The Scorpion guidance gave ceding schemes an important role to play in protecting customers wanting to transfer a pension. It would defeat the purpose of the Scorpion guidance for a ceding scheme to have delegated that role to a different business – especially one that had a vested interest in the transfer

proceeding. An important aspect in this is the fact that there is little regulatory oversight of 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 L's transfer.

Further, investigations under part 2 of the check list would've revealed a link to unusual and higher risk investments – Dolphin and TRG, both of which were overseas property developments.

As to investigations under part 3, I said, in my original provisional decision, that Mr L would've said he'd been advised to transfer to the SSAS and invest in Dolphin and TRG by Mr H. But it now seems, from what Mr L has more recently said and the LOU he's produced, that he wouldn't have mentioned Mr H. Instead he'd have said he was dealing with TAP Assets.

I said earlier that Mr L wouldn't have decided to do what he did – transfer to a SSAS and invest in TRG and Dolphin – on his own. I thought that sort of arrangement must've been suggested to him and on the basis he'd be better off as a result. To some extent that's still my view – I maintain Mr L must've been prompted to do what he did. But whether that extended to having been advised or given a recommendation to transfer is less clear. I note that the LOU expressly said that TAP Assets didn't advise or make any recommendations. But, in discussions about what Mr L might want to do with his pension and the sort of investments that he might want to consider, it's possible that what TAP Assets said may have strayed into advice territory. But, on the face of it, the LOU was clear that no advice would be given. And that TAP Assets' role was limited to introducing the investments. That meant TAP Assets would've provided information about TRG and Dolphin investments and may have said that funds held in a pension scheme could be used to invest. As the LOU also said that TAP Assets would 'guide [the client] through the buying process', I think it's likely that TAP Assets would've put Mr L in touch with Rowanmoor and assisted him in setting up L Limited and the SSAS.

I think what Mr L would've likely told Zurich would've reflected all that – that he'd been dealing with TAP Assets who'd introduced him to the idea of investing in TRG and Dolphin and had helped him take things forward.

<u>What should Zurich have told Mr L – and would it have made a difference?</u>

Had it done more thorough due diligence, there'd have been a number of warnings Zurich could've given Mr L in relation to a possible scam threat as identified by the action pack. Not only had L Limited only been set up to facilitate the SSAS but Mr L was planning to invest in two overseas property developments with the help of an unregulated party. A conversation about the proposed investments may have led to Zurich suggesting that, if the investments were unregulated, then Mr L's protection, if the investments went wrong, might be limited. In saying that I recognise Mr L should've known the proposed investments were unregulated –

the LOU said TAP Assets was a non regulated company offering non regulated products. But the risks that entailed – such as the loss of regulatory protections – weren't set out. A discussion centring on that may have made Mr L think about if the investments were really right for him.

But, in any event, I think, if Mr L had said he'd been dealing with TAP Assets, that firm's involvement should've been of concern to Zurich. Mr L may have told Zurich that TAP Assets wasn't regulated as that's what the LOU said. Or Zurich could've quickly and easily found that out by checking the FCA's online register. TAP Assets wasn't shown and so Zurich would've known that Mr L was dealing with an unregulated introducer. I think alarm bells should've rung with Zurich: Mr L was planning to transfer his pension fund and invest it all in two unregulated high risk overseas investments. And an unregulated introducer was behind his decision to do that. In my view, Zurich should've identified that sort of situation meant there was a risk that Mr L could fall victim to a scam and warned Mr L accordingly.

I think Zurich's failure to uncover the warning signs of a scam and then warn Mr L about it meant Zurich didn't meet its obligations under Principles 2, 6 and 7 and COBS 2.1.1R. With those obligations in mind, it would have been appropriate for Zurich to have informed Mr L that the firm he was dealing with was unregulated and could put his pension at risk. And the investments were unregulated and risky too.

I'm satisfied any messages along these lines would've changed Mr L's mind about the transfer. The messages would've followed conversations with him and so would've seemed to him (and indeed would've been) specific to his individual circumstances and would've been given in the context of Zurich raising concerns about the risk of losing pension monies as a result of the involvement of untrustworthy parties who might not be acting in his best interest. This would have made Mr L aware there were serious risks in using an unregulated firm even if he wasn't liberating his pension. I think the gravity of any messages along those lines would prompt most reasonable people to change their mind. I've seen no persuasive reason why Mr L would've been any different. So, I consider, if Zurich had acted as it should've, Mr L wouldn't have proceeded with the transfer out of his personal pension or suffered the investment losses that followed.

At the very least I think Mr L would've wanted to check out what he was planning to do by consulting a regulated financial adviser – perhaps the adviser held on Zurich's records. I don't think a FCA regulated adviser would've endorsed what Mr L was planning to do. So I think Mr L would've left his pension with Zurich.

I've also taken on board that Mr L did get some warnings. Although he didn't get any Scorpion insert (either from Zurich or Provider R) I've said I think he'd have got letters from Rowanmoor about the investments. As he went ahead anyway, there's an argument he wouldn't have heeded any warnings which Zurich should've given. But I don't think that necessarily follows. The warnings I've said Zurich should've given would've reinforced the fact that the investments were risky and also made Mr L aware that dealing with an unregulated introducer might mean he was more likely to fall victim to a scam. If Zurich had expressed reservations about the transfer I think that would've been enough to make Mr L think again and he'd have decided against proceeding with the transfer and investments. Instead, as things stood, Zurich simply processed the transfer and didn't give Mr L any reason or opportunity to reconsider what he was doing and if it was really wise.

Lastly Mr L has told us that he and his wife were also advised to surrender life assurance policies also held with Zurich so more could be invested in TRG and Dolphin via Mr L's SSAS. And we've seen that Mr and Mrs L instructed Zurich in January 2015 that they wanted to surrender the policies. From what Mr L has said, the surrender proceeds amounted to about £40,000 which was then paid into Mr S's SSAS and invested in Dolphin.

The amount transferred from Mr L's Zurich pension was £87,655.20. The expression of interest form says that £40,588 is to be invested in Dolphin with about £40,000 to be invested in TRG. I understand that a further approximately £40,000 was then invested in Dolphin when the life assurance policies were encashed.

The investigator told Mr L that the life assurance policies are a separate matter and should be a different complaint. In my provisional decision I said I didn't disagree. Particularly if one of the policies was in Mr L's wife's name. I couldn't consider, as part of a complaint made by Mr L, what's happened with a life assurance policy held by his wife.

But I said I'd thought about if, as part of Mr L's current complaint, the redress should include losses Mr L has sustained in connection with the surrender of his life assurance policy and the investment of that sum via his SSAS. But I said, on balance, that such losses shouldn't be included. I could see the argument that, if the transfer of his pension policy to the SSAS hadn't gone ahead, Mr L couldn't have invested the life assurance surrender proceeds in Dolphin via his SSAS. But I also had to consider if losses arising from the surrender were reasonably foreseeable in the context of Mr L's current complaint, about the transfer of his pension policy.

I said that, first, I was unsure as to the timing. If the life policy was surrendered before the transfer went ahead, then I didn't think Mr L could successfully argue that, but for the transfer to the SSAS, he wouldn't have surrendered his life policy. But from what I've now seen – Mr and Mrs L's letter to Zurich dated 21 January 2015 – the surrenders of the life policies were some months after the transfer had gone ahead. However, as I said earlier, the surrenders would've been dealt with by a different department at Zurich – not the same one which dealt with the transfer of Mr L's pension. I didn't think either department would've been aware that Mr L's requests to surrender his life policy and transfer his pension policy were linked and that the intended destination of both funds was the SSAS and ultimately investment in Dolphin.

Further, and in any event, Zurich's responsibilities in connection with each transaction weren't the same. The focus of the Scorpion guidance, initially aimed at combatting pension liberation fraud and later widened to pension scams more generally, was pension funds and the steps that should be taken to protect a consumer's accumulated pension savings. I wasn't saying that Zurich didn't have any responsibilities in connection with the surrender of the life policy, including those set out in the Principles and COBS 2.2.1R. But, as I hadn't examined, as part of Mr L's current complaint, whether Zurich acted correctly in connection with the surrender of the life policy, I don't think it would be fair and reasonable to include losses Mr L has sustained in consequence of the surrender of the life policy in awarding redress for his current complaint.

And the letter dated 21 January 2015 reinforces what I said. It indicates Mr and Mrs L were dealing with a regulated firm in connection with the surrenders of the life policies. So their position was fundamentally different from what happened in connection with the transfer and which seems to have gone ahead without the involvement of a regulated adviser/firm. I'm not saying that meant Zurich could simply process Mr and Mrs L's instruction – I haven't investigated a complaint about the surrender of the life policies – but I'm pointing to that being a factual difference and a further reason why any complaint about the surrender of the life policies should be dealt with separately.

So the redress I've set out below doesn't take into account the life policy surrender proceeds and is limited to the losses sustained by Mr L in consequence of the transfer of his pension policy. The redress is also proportioned to take into account the transfer from Provider R.

I went on to set out what Zurich needed to do to put things right.

Responses to my provisional decision

Mr L accepted my provisional decision and didn't have any further points to raise or any additional information to provide. Zurich didn't accept what I'd said and made further comments which I've considered below.

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.

I explained in my provisional decision, as recapped above, why I was satisfied that Mr L's complaint had been made within the applicable time limits. We're required to keep jurisdiction under review throughout our consideration of a complaint, up to when we issue a final decision. I've done that. But, and in the absence of any new information or arguments about jurisdiction, I maintain what I said earlier – that Mr L's complaint was made within the primary six year period in DISP 2.8.2R (2) and so in time.

Turning to the merits of the complaint, I've considered carefully what Zurich has said in response to my provisional decision. But I haven't been persuaded to depart from the views I reached earlier. I've dealt below with Zurich's main points.

As to any possible claim to FSCS, we've asked Mr L's representative about that and we've been told no claim has been made and it isn't intended to make one. I don't see any reason to doubt what we've been told.

Zurich has referred to what it terms '*the extremes of information provided*' and which, in its view, demonstrate an overall lack of credibility on Mr L's part. I can understand Zurich's position. I said, in my provisional decision, that the change to Mr L's testimony was of concern and such that Zurich might argue that his evidence was generally unreliable. But I also said that, notwithstanding, I still had to try to work out what likely had happened. Even though Mr L's evidence has changed – and fundamentally so – the situation remains that he decided to transfer away from Zurich and so I need to decide what likely led to that. I reach my conclusions about that on the balance of probabilities – that is what I consider is more likely to have happened – taking into account all of the available evidence, some of which, as is the case here, might be contradictory, and the wider circumstances. And Zurich can be assured that I have considered Mr L's testimony critically and I have put more weight on the documentary evidence provided.

I maintain that Mr L wouldn't have decided on his own to do what he did – set up L Limited and transfer to a SSAS so he could invest in TRG and Dolphin. I simply don't see he'd have come up with that idea and gone down that path unless it had been suggested to him. As I've said, a SSAS is a relatively unusual pension arrangement for someone in Mr L's situation and who didn't need his own limited company for other reasons. And the proposed investments weren't mainstream.

What's not clear is who suggested that's what he might want to do. In my initial provisional decision I found, based on what Mr L had then told us, that he'd been advised by Mr H and he'd have told Zurich that and Zurich should've found out that Mr H was not regulated. So Zurich had failed to uncover the threat posed by a non regulated adviser. His later testimony said he had dealt with TAP Assets And I thought the LOU supported what Mr L had said about having dealt with TAP Assets was true. Mr H was a director of TAP Assets and had acted for Mr L a few months later with regards to his and his wife's life insurance policies.

So, whilst Mr L now says he can't remember Mr H, I'm satisfied, based on the evidence provided, that he was the one speaking to Mr L throughout.

Zurich points out that the LOU isn't dated or addressed to Mr L which Zurich suggests would mean it isn't admissible as evidence in any other situation – I presume here Zurich is referring to admissibility of evidence in court. But DISP 3.5.9R says I can include evidence that wouldn't be admissible in a court. Although, in any event, I don't see that the LOU wouldn't admissible, although the fact that it's updated and not addressed to Mr L might impact on the weight to be placed on it. In deciding what weight I should place on the LOU, I take those factors into account too. But, on balance, I think the LOU does support what Mr L has said about his dealings in relation to the transfer having been with TAP Assets. As I've said, I don't see how the LOU would've come into Mr L's possession unless he'd been given it by TAP Assets. And its contents are specific and consistent with what happened in Mr L's case – the LOU says clients are introduced to two asset classes – commercial property and loan notes. That's exactly what Mr L's SSAS invested in – TRG and Dolphin loan notes.

In that scenario, as Zurich has pointed out, Mr L would've known, from what the LOU said, that TAP Assets was a non regulated company introducing non regulated products and that that TAP Assets didn't give advice or make recommendations. So that would've been reflected in what he told Zurich – that he'd been dealing with TAP Assets who'd introduced him to the idea of investing in TRG and Dolphin and had helped him take things forward. I maintain, as I said in my provisional decision, that TAP Assets' involvement should've been of concern to Zurich. Knowing that an unregulated introducer was behind Mr L's decision to transfer to a SSAS and invest in two unregulated high risk overseas investments should've alerted Zurich to the possibility that Mr L might be falling victim to a scam. So, either way, whether Mr L would've said he'd been dealing with Mr H or TAP Assets, Zurich should've been concerned.

However, Zurich's position is that, even if it had done more and warned Mr L, it isn't credible to say he'd have changed his mind about the transfer. Zurich points to the information Mr L had and ultimately relied on. In particular Zurich says Mr L knew he was dealing with an unregulated firm, that the investments were high risk, unregulated and wouldn't benefit from the protections afforded by FSCS, yet he proceeded regardless. I don't entirely agree with Zurich here. I accept that Mr L would've known, from the LOU, that TAP Assets and the proposed investments were unregulated and that TAP Assets didn't give advice or recommend any products. But it's unclear if he'd have known, at the time of any discussions that should've taken place with Zurich, that the proposed investments were high risk and/or that he'd lose regulatory protections. The LOU didn't say that. Although, as Zurich has pointed out, letters from Rowanmoor would've covered those points, those may not have been issued until a later stage – after the transfer had gone ahead and Mr L had given investment instructions to Rowanmoor.

It is the case that ultimately Mr L did get some warnings from Rowanmoor and which didn't deter him from proceeding with the investments. But I don't think that means he wouldn't have heeded any warnings given by Zurich. The warnings from Zurich would've been different and not just focused on the risks posed by the investments. I maintain that warnings from Zurich – in the context of Mr L possibly losing his pension savings due to the involvement of untrustworthy parties who might not be acting in his best interest – would've put things in a different light for Mr L. Such warnings would've been specific and direct and, coming from his existing pension provider and a major player in the industry likely, in my view, to have carried weight with Mr L.

I note what Zurich says about the timing of the transfer request and that it's untenable for me to suggest that Zurich should've halted its transfer business a day after receiving updated guidance to consider that guidance. But that's not what I'm saying. Here Zurich simply

processed the transfer request on the day it was received. If Zurich had processed the transfer in line with the existing guidance, Zurich should've made further enquiries of Mr L, prompted by the fact the SSAS was newly registered. And that would've meant the transfer wouldn't have been processed on the same day as the transfer request was received. The new guidance was launched the following day so Zurich should've dealt with the transfer request in line with that guidance (or paused the pending transfer request to allow Zurich to get to grips with the refreshed guidance). The new guidance meant Zurich needed to be on the lookout, not just for early access pension liberation fraud, but pension scams more generally. I think the circumstances of Mr L's transfer suggested a scam might be in place.

To sum up, Mr L didn't get any warnings from Zurich (or from Provider R). Zurich didn't send Mr L a copy of the Scorpion insert. Given that the focus of the version he'd have been given was early access pension liberation fraud, its contents were unlikely to have resonated with him. But, nevertheless, the insert should've been sent. More importantly, Zurich's due diligence was lacking. It failed to identify a potential warning sign identified by the Scorpion action pack in use at the time the transfer request was received – that Mr L's SSAS was newly registered. That should've led Zurich to make further enquiries about the transfer. Had Zurich engaged with Mr L about the transfer, he'd have indicated the involvement of an unregulated adviser (Mr H) or an unregulated introducer (TAP Assets). Either scenario, viewed from the perspective of the updated guidance, should've led to Zurich warning Mr L about the transfer. On balance I'm satisfied a warning from Zurich would've changed Mr L's mind about the transfer and he'd have decided against proceeding.

My views remain as set out in my provisional decision. I've recapped what I said above and it forms part of this decision. For the reasons I've given I uphold the complaint. I've set out below what Zurich needs to do to redress Mr L and which follows what I said in my provisional decision.

Putting things right

My aim is that Mr L should be put as closely as possible into the position he would probably now be in if Zurich had treated him fairly. The SSAS only seems to have been used in order for Mr L to make investments that I don't think he'd have made from the proceeds of this pension transfer, but for Zurich's actions. So I think that Mr L would've remained in his pension plan with Zurich and wouldn't have transferred to the SSAS. To compensate Mr L fairly, Zurich should subtract the proportion of the actual value of the SSAS which originates from the transfer of the Zurich pension, from the notional value if the funds had remained with Zurich. If the notional value is greater than the actual value, there is a loss.

Actual value

This means the proportion of the SSAS value originating from Mr L's Zurich transfer (the "**relevant proportion**") at the date of my Final Decision. To arrive at this value, any amount in the SSAS bank account is to be included, but any overdue administration charges yet to be applied to the SSAS should be deducted. Mr L 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 L to the position he would have been in but for the actions of Zurich. This is complicated where an investment is illiquid (meaning it cannot be readily sold on the open market), as its value can't be determined. On the basis of the evidence I have, that is likely to be the case with the following investment(s): Dolphin Capital and Akbuk, TRG. This is because they appear to have failed and there's no market for them. And I don't think it's realistically possible for Zurich to only acquire a part of the investment from the SSAS as I'm only holding it responsible for the loss originating from a transfer in of the Zurich funds.

Therefore as part of calculating compensation:

- Zurich should give the illiquid investment(s) a nil value as part of determining the actual value. In return Zurich may ask Mr L 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 SSAS. Zurich will need to meet any costs in drawing up the undertaking. If Zurich asks Mr L to provide this undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.
- It's also fair that Mr L should not be disadvantaged while he is unable to close down the SSAS. So to provide certainty to all parties, if these illiquid investment(s) remain in the scheme, I think it's fair that Zurich should pay an upfront sum to Mr L equivalent to five years' worth of future administration fees at the current tariff for the SSAS, to allow a reasonable period of time for the SSAS to be closed.

Notional value

This is the value of Mr L'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 L received from the SSAS are treated as notional withdrawals from Zurich on the date(s) they were paid, so that they cease to take part in the calculation of notional value from those point(s) onwards.

Payment of compensation

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

Zurich should reinstate Mr L's original pension plan as if its value on the date of my Final Decision was equal to the amount of any loss established from the steps above (and it performs thereafter in line with the funds Mr L was invested in). Zurich shouldn't reinstate Mr L's original plan if it would cause a breach of any HMRC pension protections or allowances – but my understanding is that it might be possible for it to reinstate a pension it formerly administered in order to rectify an administrative error that led to the transfer taking place. It is for Zurich to determine whether this is possible.

If Zurich is unable to reinstate Mr L's pension and it is open to new business, it should set up a new pension plan with a value equal to the amount of any loss on the date of my Final Decision. The new plan should have features, costs and investment choices that are as close as possible to Mr L's original pension.

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

If it's not possible to set up a new pension plan, Zurich should pay the amount of any loss direct to Mr L. 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 L is retired. (This is an adjustment to ensure that Mr L isn't overcompensated

– it's not an actual payment of tax to HMRC.)

To make this reduction, it's reasonable to assume that Mr L is likely to be a basic rate taxpayer in retirement. So, if the loss represents further 'uncrystallised' funds from which Mr L 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 L 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 L's acceptance of the Final Decision, interest must be added to the compensation at the rate of 8% per year simple from the date of the Final Decision to the date of payment.

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

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

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

My final decision

I uphold the complaint. Zurich Assurance Ltd must redress Mr L as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 21 July 2025.
Lesley Stead
Ombudsman