DRN-5363539

The complaint

Mr R has complained, with the help of a professional third party, about the transfer of his Zurich Assurance Ltd ('Zurich') personal pension to a small self-administered scheme ('SSAS') in December 2016. Mr R's SSAS was subsequently used to invest in Dolphin Capital loan notes. The investment now appears to have little value. Mr R says he has lost out financially as a result.

Mr R 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 R 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.

Mr R also transferred pension benefits he held with two other businesses, which I'll call Firm R and Firm S, to the SSAS at around the same time. Those transfers were the subject of separate complaints with our service. But some of the circumstances are relevant to Mr R's complaint about Zurich, so I'll refer to them below.

What happened

On 22 February 2016, Mr R signed a letter of authority giving Zurich permission to provide information about his pension to Blackstar Wealth Management Limited ('BWML'). At that time BWML was authorised and regulated by the Financial Conduct Authority ('FCA').

I can see that Zurich responded to BWML, providing a transfer pack. I've haven't seen any evidence of any correspondence being sent to Mr R at that time.

In June 2016, a company was incorporated with Mr R as director. I'll refer to this company as E Ltd.

On 20 June 2016, Mr R signed an application form to open a SSAS. Amongst other things this said E Ltd was the principal employer and Mr R signed the employers declaration as director. Rowanmoor Group Plc ('Rowanmoor') was appointed as scheme administrator and Rowanmoor Trustees Limited as independent trustee. The form noted Connect and Grow Limited ('C&GL') as being the trustee adviser. The FCA did not regulate C&GL .The arrangement fee for the SSAS was £996. The investments being considered were recorded as 'Dolphin Trust' and 'Park First'. Mr R's pensions with Zurich, Firm S and Firm R were all to be transferred to the SSAS, and he signed a letter of authority for each provider to deal with Rowanmoor.

On 5 July 2016, Rowanmoor wrote to Zurich requesting the transfer of Mr R's pension benefits into the SSAS. It enclosed a ceding scheme form which it asked Zurich to complete as well as the letter of authority Mr R had signed.

Zurich replied to Rowanmoor on 8 July 2016, providing a transfer pack. This included a transfer claim form that needed to be completed. Zurich's letter said its policy was not to complete other providers forms.

I understand that in November 2016, Rowanmoor submitted requests to Firm R and Firm S via the Origo Options system, to transfer the pension benefits Mr R held with those providers to the SSAS. Origo is an electronic platform which allows the transfer of pensions and investments which can make transfers more efficient and reduce transfer times.

Mr R signed the Zurich transfer claim form on 1 December 2016. This was the version that had been sent to Rowanmoor. The form was received by Zurich on 12 December 2016.

Firm R transferred the benefits Mr R held with it to the SSAS on 14 December 2016. On 23 December 2016, Zurich wrote to Rowanmoor enclosing a cheque for £29,194.57 representing the full transfer value of Mr R's pension benefits. Mr R was 58 at the time. And on 23 January 2017, Firm S also transferred Mr R's pension benefits to the SSAS.

Bank account statements for the SSAS show a fee of £996 being paid to C&GL. Mr R invested £46,500 with Dolphin Capital in February 2017, in a five-year loan note maturing in 2021. Literature Mr R was provided said the return on this would be 10% per year, fixed. I can also see that Mr R took tax free cash of £17,660 from the pension in April 2017.

Dolphin (now called German Property Group) was a German business which offered high yielding Loan Note investments generally offering over 10% investment returns per year. Its underlying business was described as the renovation of derelict properties to provide residential accommodation. Dolphin is now in insolvency proceedings in Germany having collapsed in 2020 owing significant amounts to investors. There has been a total loss on all non-matured Loan Notes.

In November 2022, Mr R complained to Zurich. Briefly, his representative said Zurich hadn't carried out sufficient due diligence in line with its obligations at the time. And if it had it would have found that Mr R had been advised to transfer by C&GL, an unregulated business, following an unsolicited approach, the SSAS and limited company were both recently set up and he was being recommended a high-risk investment and told he'd receive unrealistic returns, all of which were warning signs of a scam.

Zurich didn't uphold the complaint. It said it had initially been approached by BWML, so Mr R had access to regulated advice, and it had conducted appropriate checks into Rowanmoor. So, it was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

The complaint was referred to the Financial Ombudsman Service. When providing its file, Zurich said it gave consent to our Service considering the complaint which, in short, permitted us to consider the complaint even if it had been made too late under the rules we follow.

One of our Investigator's reviewed the complaint and recommended it should be upheld. Zurich disagreed.

A solicitor responding on behalf of Zurich said that they believed we did not have jurisdiction to consider the matter, as it had been made outside of the time limits in our rules. They also said, that notwithstanding, they disagreed with our Investigator's opinion. As we were unable to resolve the dispute informally, the matter was passed to me to decide.

I issued a provisional decision in February 2025 explaining that I was satisfied that we did have jurisdiction to consider Mr R's complaint, as I didn't agree that it had been brought too late but in any event Zurich had consented to us doing so and this could not be withdrawn, and I intended to uphold it.

There were no further comments made in respect of whether we could consider the matter, so I've taken from this that Zurich accepts what I've said on this. As a result, I've considered the merits of the matter and below are extracts from my provisional findings, explaining why I intended to uphold the complaint, which form part of my final decision.

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

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

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

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

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

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

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

That said, the launch of the Scorpion guidance in 2013 was an important moment in so far 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 those *requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance's specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.*

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

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

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

There was a further update to the Scorpion guidance in March 2015. This guidance referenced the potential dangers posed by "pension freedoms" (which was about to give people greater flexibility in relation to taking pension benefits) and explained that pension scams were evolving. In particular, it highlighted that single member occupational schemes were being used by scammers. It also prompted businesses to use the checklist TPR had prepared to find out more about the receiving scheme and how the member came to make a transfer request whenever a member requested a transfer.

At the same time, a broader piece of guidance was initiated by an industry working group covering both TPR and FCA regulated firms: the Pension Scams Industry Group ('PSIG') Code of Good Practice. The intention of the PSIG Code was to help firms achieve the aims of the Scorpion campaign in a streamlined way which balanced the need to process transfers promptly with the need to identify those customers at material risk of scams.

The Scorpion guidance for businesses was updated again in March 2016. This said businesses should direct members to the government's Pension Wise website and reiterated the recommendation for businesses to use TPR's checklist and carry out due diligence on all transfer requests. And it said business should communicate any suspicions to consumers, record these and direct consumers to TPAS.

<u>The Scorpion guidance</u>

The March 2016 update to the Scorpion guidance set out how businesses could protect members from falling victim to scams. And the first step listed was to read and share TPR's scams booklet for consumers. Directing members to TPR's information was also repeated separately.

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

And again transferring schemes were asked, in both the 2015 and 2016 versions of the guidance, to carry out due diligence and use a three-part checklist to find out more about a receiving scheme and why their member was looking to transfer, for all transfer requests received.

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

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

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

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

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

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

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

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

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

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

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

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

Mr R says he was contacted unsolicited by C&GL. He says his brother had been speaking to someone he understood to be a financial adviser and Mr R believes his brother may have provided Mr R's contact details to that person, which is what led to the contact. But Mr R says he wasn't actively looking into his pension at the time, so he says the contact was unsolicited.

Mr R recalls the name of the person he spoke to, which was who he said his brother had been talking to. And Companies House records show that person was linked to C&GL. Mr R says the representative from C&GL came to his home and recommended that he invest in Dolphin Capital and transfer his three pensions to do so. He says he was told the investments would be over a term of five years and he was guaranteed returns that would outperform his existing pension. Mr R says he was aware that the investment was overseas and broadly what Dolphin Capital did, he trusted what he was told as he didn't know C&GL were not authorised and thought the investment was safe as he wasn't informed about there being any risk. Mr R says it was the promise of the high returns, potentially enabling earlier retirement, that persuaded him to transfer, and he wasn't offered any incentives.

Mr R says he didn't receive any warnings from Zurich. And he doesn't recall BWML or their involvement.

I haven't seen anything to suggest that Mr R was offered a cash incentive to transfer. And I've seen literature he was provided from the time, emphasising returns of 10% on investments in Dolphin. So, I don't doubt what he has said that it was the prospect of these higher returns that meant he was interested in transferring. I also haven't seen anything about his circumstances or what he's said that leads me to think he'd likely have embarked on such a complicated arrangement on his own – setting up a new company, opening a SSAS, transferring his existing pension and investing overseas. So, on balance I think he was likely advised to do so.

Mr R did sign a letter of authority for BWML to request information about his Zurich pension. And indeed Firm R and Firm S both said they also received letters of authority from BWML at around the same time – in February and March 2016. So, although Mr R does not recall BWML, I'm satisfied he did complete paperwork bearing its name. And information that Zurich has provided indicates that BWML contacted it more than once. Zurich appears to *have sent at least two copies of the requested transfer pack, several weeks apart – suggesting it was chased when the first didn't arrive. And it has evidence indicating it received a call from someone who said they represented BWML in April 2016. The content of the note around this is limited, but this appears to have been a further chaser for information to be provided by email.*

That being said, none of the documents I've seen indicate that BWML had any involvement in the establishment of the SSAS or the recommendation to transfer to it and invest in Dolphin.

Mr R has said C&GL advised him to transfer. And the SSAS application form listed C&GL as the trustee adviser. Admittedly this indicates that it was Mr R's adviser in his capacity as a trustee. But I also note that the arrangement fee for setting up the SSAS, listed in the application, was paid to C&GL from the SSAS bank account. So, C&GL's involvement appears to have gone beyond just advising on the investment as it was paid a fee for establishing the SSAS in the first place – the step before any investment advice to the trustee could be given.

When Rowanmoor first sent the transfer application, it did not include any of the transfer forms that had been sent to BWML when it requested transfer packs. It only sent its own form, which prompted Zurich to send a further transfer pack. This suggests there was no correspondence between BWML and Rowanmoor, as the initial transfer pack doesn't appear to have been shared with Rowanmoor. And the form subsequently submitted was the one that had been sent to Rowanmoor, not BWML. There was also no payment recorded to BWML from the SSAS. And advisers, such as BWML, are highly unlikely to provide a service for free.

Taking everything into account, I think it's likely that C&GL was the party that contacted Mr R. I think C&GL may have acted as an introducer and initially referred the enquiry to BWML to use its letter of authority, potentially to bring some legitimacy to the matter. But given the disconnect between the BWML enquiry and the application to transfer – no documents sent to BWML being used and there being no fee for advice – I think it was C&GL that advised Mr R to transfer. And I think this is the party he'd have identified if asked.

I also think Mr R is correct that he has likely incurred losses to his pension savings. As I've said, Dolphin is in insolvency proceedings and all non-matured loan notes at the point it collapsed in 2020 (which included Mr R's loan note which wasn't due to mature until 2021) have suffered a total loss. So, Mr R's investment is likely to have no value.

<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.

Mr R says he didn't receive the Scorpion information. And I haven't seen any evidence that Zurich corresponded directly with Mr R or sent him the Scorpion leaflet either when providing transfer packs to BWML or to Rowanmoor. I also note that neither Firm R nor Firm S has said that they sent him this information either.

The PSIG Code made the following point under section 6.1 (Transfer packs), "If a transfer pack is not being sent to a member directly, pension scam awareness material should still be sent to the member's home address". I think that this is a reasonable action to expect of

Zurich even if the Code hadn't been so specific on this point. To do otherwise places an unreasonable trust in third parties to share the information with members.

But in any event, none of the transfer packs that I've been provided copies of, which were sent to Rowanmoor and BWML, refer to the Scorpion information being enclosed.

So, I don't think I can reasonably say that this information was shared with Mr R and so Zurich failed to make Mr R aware of the scam risks that were considered good industry practice at the time. And he didn't get this information from his other providers.

Due diligence:

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

There isn't a great deal of information about the due diligence Zurich actually carried out in this case. Based on what it has said in response to the complaint it seems to have relied on Rowanmoor, a long established SSAS provider, administering the SSAS, allowing the application to be fast tracked under the initial analysis section of the PSIG code. I would presume Zurich also confirmed that the E Ltd SSAS was properly registered with HMRC.

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

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

The PSIG Code allowed for firms to fast-track transfer requests from an accepted club or group. I've considered whether Zurich's view of Rowanmoor's involvement may have been equivalent to considering this transfer request as coming from a recognised 'club' or group, which was one of the initial filter questions for transfers at low scam risk under the PSIG Code. But the example PSIG gave of a recognised club or group was an association of pension schemes: the Public Sector Transfer Club. This was mostly large schemes in the public sector who would be making transfers between each other on a regular basis. It would *be relatively unusual to be making a transfer to a scheme which had recently joined that club, and understandably some comfort could be drawn from that. I don't think the same would apply to a recently established SSAS, even if the scheme administrators were known.*

So, for those reasons I don't agree that the "accepted club" part of the "Initial analysis" section of the PSIG Code is applicable here. Neither have I seen anything that makes me think Zurich had identified the receiving scheme/administrator as being free of scam risk, bearing in mind what the Code said about this in Section 6.11. So, the initial triage process should have instead led to Zurich asking Mr R further questions about the transfer as per Section 6.2.2 ("Initial analysis – member questions"). I won't repeat the list of suggested questions in full. Suffice to say, at least two of them would have been answered "yes":

- *Have you been promised a specific/guaranteed rate of return?*
- *Have you been informed of an overseas investment opportunity?*

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

a) Employment link: a lack of an employment link to any member of the SSAS.

b) Geographical link: a sponsoring employer that is geographically distant from the member.

c) Marketing methods: a SSAS being marketed through a cold call or an unsolicited approach.

d) Provenance of receiving scheme: a SSAS registered within the previous six months or a recently registered sponsoring employer or administrator operating from 'virtual' offices, or using PO Boxes for correspondence purposes.

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

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

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

From a few simple questions to Mr R and research online, in line with the guidance in the PSIG Code, in addition to the warnings highlighted by the initial analysis, I think Zurich would've found several warning signs of a potential scam.

In addition to the SSAS being newly registered, the sponsoring employer had also only recently been set up. And a large number of other businesses had been set up from the registered address of E Ltd in the previous year. Zurich could also have learned that, while Mr R was a director of E Ltd, it wasn't trading or providing him an income.

I think Mr R would also have told Zurich that the initial contact from the business that had recommended the transfer was unsolicited. And more importantly, I think he'd have said that C&GL were the business that had advised him to transfer, despite not being regulated or authorised by the FCA to provide such advice.

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

My view is that Zurich should therefore have been concerned by C&GL's involvement because it pointed to a criminal breach of FSMA. On the balance of probabilities, I'm satisfied such a breach occurred here.

Zurich has said that as a regulated adviser, BWML, had requested a transfer pack, this indicated that Mr R had access to regulated advice. But none of the information that was submitted as part of the application to transfer indicated that BWML had remained involved or had provided Mr R with advice. So, there was no evidence that he had taken regulated advice.

I also don't think a regulated business having requested information at some point prior to an application to transfer being made is enough for Zurich to have safely assumed that any advice received was regulated or that there was no other business that might've contacted Mr R and provided him with unauthorised advice. Again, the Scorpion guidance and PSIG Code gave Zurich an important role to play here. And I don't think making this assumption was in line with what I'd have expected it to do in light of this responsibility.

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

Had it done more thorough due diligence, there would have been a number of warnings Zurich could have given to Mr R in relation to a possible scam threat as identified by the PSIG Code (and the Scorpion action pack). Not least the Scorpion leaflets for consumers themselves.

The March 2015 version, that ought to have been provided when information was requested by BWML, would've warned Mr R of being contacted unsolicited and offered a free pension review, the overseas transfer of funds, proposals to put money in a single investment and convincing marketing materials that promised returns over 8%. All of these warnings were relevant to Mr R's circumstances.

Likewise the 2016 version of the Scorpion insert, that ought to have been sent at the same time as the transfer pack in July 2016, while warning of similar things, also directed consumers to check the status of their adviser and provided contact information for TPAS.

I think a number of warnings in these documents would've struck a chord with Mr R and led to him thinking again about the transfer.

The most egregious oversight though was Zurich's failure to uncover the threat posed by a non-regulated adviser. Its failure to do so, and failure to warn Mr R accordingly, meant it didn't meet its obligations under PRIN and COBS 2.1.1R.

With those obligations in mind, I think it would have been appropriate for Zurich to have *informed Mr R that the business he had been advised by was unregulated and could put his pension at risk. Zurich should have said only authorised financial advisers are allowed to give advice on personal pension transfers, so Mr R risked falling victim to illegal activity and losing regulatory protections.*

I don't think this would have been a disproportionate response given the scale of the potential harm Mr R was facing and Zurich's responsibilities under PRIN and COBS 2.1.1R. And I don't think any such warnings would reasonably have caused Zurich to think it was running the risk of advising Mr R, that it was replicating the responsibilities of the receiving scheme or that it was putting in place unnecessary barriers to exit.

I'm satisfied any messages along these lines would have changed Mr R's mind about the transfer. The messages would have followed conversations with Mr R 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 R 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 R would have been any different.

In reaching this conclusion I have considered the fact that, in other similar cases we have seen, Rowanmoor trustees sent the member trustees warning letters about the type of asset class being invested in. For clarity I haven't seen a copy of such warning being given to Mr R and he hasn't provided any such evidence. But I have considered the type of warning letter that Rowanmoor were sending member trustees prior to investments in Dolphin Trust.

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

I don't think though that it's fair to interpret any failure of Mr R to react to this type of warning from Rowanmoor as being indicative that he would proceed with the transfer despite any other warnings. Mr R would've received that warning because he was at the point of investing – so had already opened the SSAS and transferred – 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 Dolphin Trust investment. And it was against that backdrop that he would have received Rowanmoor's letter. He had no reason to doubt that any recommendation he had received was not in his best interests. And the content of the Rowanmoor letters that I have seen were not likely to undermine that.

But for Zurich's failings Mr R would not have ended up in the position of relying on advice in breach of FSMA. Zurich's failure to send Mr R the Scorpion insert (or similar message) denied him the information that may have led him to question the advice process he'd been subject of. But worse than that, Zurich's failure to make any of the enquiries that the PSIG Code proposed, meant that it failed to give Mr R clear warnings that would, in my opinion, have undermined the trust he had in the advice he'd been given. So, I consider that if Zurich had acted as it should, Mr R wouldn't have proceeded with the transfer out of his personal pension or suffered the investment losses that followed.

Responses to my provisional decision

I gave both parties an opportunity to make further comments or send additional information before I reached my final decision.

Mr R said he was happy with my provisional findings and had no further comments.

Zurich disagreed with my findings. It said that its transfer packs did include the Scorpion leaflet even though they were not referenced. Zurich reiterated, under the PSIG Code, it was legitimately allowed to proceed if there were no concerns and it felt this applied to Rowanmoor. And it added that the transfer was not a scam and Mr R had been given warnings by his SSAS provider about the investments. Lastly it repeated that Mr R had signed an LOA for an authorised business, so had the option of taking regulated advice. He'd decided not to do so, so Zurich disagreed that any further warnings would've been likely to change his mind.

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've taken account of what Zurich has said. But it hasn't presented any new information or arguments that were not covered in my provisional findings. So, although it disagrees with me, I'm not inclined to change my opinion.

Zurich says it sent Scorpion inserts with its transfer packs as part of its process, but that these weren't listed as an enclosure. Notwithstanding that the pack makes no reference to the Scorpion insert or to Mr R being directed to read it, I haven't seen anything to show that Zurich sent copies of the transfer packs directly to Mr R. Rather they were sent to BWML and Rowanmoor. The purpose of issuing the Scorpion materials was so that consumers could see, for themselves, the risks involved with such transfers. So, even if they were included in the transfer packs I don't think Zurich relying on third parties, who might have a vested interest in not sharing the information, providing this to Mr R was pragmatic. And, based on the available information I still can't reasonably conclude that the Scorpion leaflet was provided directly to Mr R to consider, prior to the transfer taking place.

Zurich has indicated it still felt it was reasonable for it to rely on Rowanmoor's standing as an established SSAS provider and that this negated the need for it to carry out further due diligence. But for the reasons I explained in my provisional decision, I don't agree. Zurich hasn't provided evidence of any wider due diligence it carried out in respect of Rowanmoor that would lead me to think it could reasonably have concluded that there was not a risk of a scam, bearing in mind section 6.11 of the PSIG Code which required businesses to conduct ongoing and robust due diligence on firms they believed did not present a transfer risk. Additionally, the transfer was not to Rowanmoor it was to E Ltd's SSAS, which was the recently established SSAS of a newly incorporated company which Zurich could have had no previous knowledge about to allow it to fast-track the due diligence process. And I don't think, for the reasons I've already explained, that relying on the name of the business administering the SSAS was sufficient – particularly when the entities involved in this transfer were not subject to FCA regulation. Zurich has said that Firm R and Firm S must have shared its opinion of Rowanmoor. But that doesn't change my view that Zurich ought to have carried out further due diligence here.

As I said in my provisional decision, I haven't seen any evidence that Rowanmoor did provide Mr R warnings about the proposed investment. But even if it did, given when these would have been received and the content of the warnings we've seen given to consumers taking out similar investments, I don't agree that this indicates he'd have always gone ahead with the transfer.

And I also don't agree with Zurich that Mr R not *"continuing to proceed via a regulated firm"* shows that he'd always have transferred. As I've explained, I'm satisfied that Mr R did sign LOA's allowing BWML to request information from his pension providers. But there is no evidence that BWML advised Mr R or for that matter, as Zurich seems to think, that BWML was willing to provide regulated advice to Mr R, which he declined. Mr R has been clear about who he recalls dealing with and he doesn't remember BWML. I haven't seen any evidence that indicates he met with an adviser from BWML or that it made any recommendation to him – to transfer to a SSAS or anywhere else. None of the transfer paperwork used was that issued to BWML, it was the copies that were later sent to Rowanmoor. There is nothing which indicates BWML had any involvement with the decision to transfer to a Rowanmoor SSAS or that its involvement went beyond its name potentially being used to bring some legitimacy to the matter. And so, there is nothing that supports Zurich's suggestion that Mr R opted to take unregulated advice rather than regulated advice that had been made available to him.

I've seen no evidence of Mr R being warned about the potential risks of accepting advice from an unregulated party or that a business giving advice without authorisation could be acting illegally, in breach of FSMA. I think Zurich ought to have identified this risk and warned Mr R about it here. And for the reasons I've already explained, I think warnings along these lines would have changed his mind about transferring. So, I uphold Mr R's complaint.

Putting things right

Fair compensation

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

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

To compensate Mr R fairly, Zurich must subtract the proportion of the actual value of the E Ltd 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 E Ltd SSAS value originating from Mr R's Zurich transfer (the **"relevant proportion"**) at the date of my Final Decision. To arrive at this value, any amount in the E Ltd SSAS bank account is to be included, but any overdue administration charges yet to be applied to the E Ltd SSAS should be deducted. Mr R 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 R 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 Dolphin Capital investment. And I don't think it's realistically possible for Zurich to only acquire a part of the investment from the E Ltd 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 must give the illiquid investment(s) a nil value as part of determining the actual value. In return Zurich may ask Mr R to provide an undertaking, to account to it for the relevant proportion of the net proceeds he may receive from those investments in future on withdrawing them from the E Ltd SSAS. Zurich will need to meet any costs in drawing up the undertaking. If Zurich asks Mr R to provide this undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

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

Notional value

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

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

Payment of compensation

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

Zurich should reinstate Mr R'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 R was invested in).

Zurich shouldn't reinstate Mr R'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 R'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 R'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 R 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 R doesn't incur an annual allowance charge. If Zurich cannot do this, then it shouldn't set up a new plan for Mr R.

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

Mr R appears to have drawn tax-free cash following the transfer. But it is unclear if he has retired. If he has, he should provide Zurich with evidence of his marginal tax rate in order for appropriate deductions to be made. If he isn’t yet retired, I think it’s reasonable to assume that Mr R is likely to be a basic rate taxpayer in retirement. Because he has taken tax-free cash, the loss represents ‘crystallised’ funds. So a 20% reduction, representing basic rate tax, 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 R’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 R how much has been taken off. Zurich should give Mr R a tax deduction certificate in respect of interest if Mr R 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 R’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 R was invested. However, I expect any such reinstatement to be achieved promptly.

Details of the calculation must be provided to Mr R in a clear, simple format.

My final decision

For the reasons given above, I uphold this complaint. Zurich Assurance Ltd must now put things right in line with the approach set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr R to accept or reject my decision before 1 April 2025.

Ben Stoker
Ombudsman