

The complaint

Mr L complains that Aviva Life & Pensions UK Limited failed to carry out sufficient due diligence activities when he asked to transfer some pension savings to an occupational pension scheme (OPS) in early 2013.

What happened

Mr L has been assisted in making his complaint by a claims management company (CMC). But for ease, in this decision, I will generally refer to all communication as having been with, and from, Mr L himself.

Mr L held pension savings with Aviva. He says that he was cold called by a firm offering him a free review of his pension arrangements. Following that review he was told that if he were to transfer his pension savings to the Capita Oak Pension Scheme he would receive an immediate tax-free sum of £1,500, and likely investment returns between 2% and 5% higher than he was currently receiving. Mr L was attracted by that advice and agreed to the transfer being started.

On 21 January 2013 Mr L informed Aviva that he wished to transfer his pension savings. Aviva sent Mr L the relevant paperwork later that day. The new scheme made a transfer request to Aviva on 12 February. And Aviva received a confirmatory letter from Mr L on 26 February. The transfer was completed, and the pension savings sent to the new scheme, on 1 March.

In January 2017 The Pensions Regulator (TPR) appointed a new independent trustee to the OPS. Mr L says that his investments in the scheme will result in him suffering a significant loss and he will potentially need to pay additional tax in relation to the initial “transfer fee” he received. He says that Aviva should have taken steps to contact him at the time of the transfer and make him aware of the possible dangers he was facing.

One of our investigators has assessed Mr L’s complaint. She didn’t think that sufficient time had elapsed between the introduction of new guidance by TPR and the transfer being made for Aviva to embed that new guidance in its processes. So, in the absence of any other warning signs, she didn’t think Aviva needed to have taken steps to make Mr L aware that there might be problems with the transfer that he was requesting. So she didn’t think Mr L’s complaint should be upheld.

Mr L didn’t agree with that assessment. He thought that some information issued by TPR in 2012 should have put Aviva on notice that he might be at risk from a pension liberation scam and should have suggested he take further advice. He says that the documentation the OPS provided to Aviva shouldn’t have given the firm much confidence about the transfer. And he says that Aviva failed in its duty to act in his best interests.

So, as the complaint hasn’t been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process.

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.

The relevant rules and guidance

At the time Mr L requested the transfer of his pension no specific guidance had been issued by The Pensions Regulator (TPR) on how businesses should deal with transfer requests. However, there was some emerging knowledge throughout the financial industry of pension scams and fraud and there is evidence that the Financial Services Authority (FSA, subsequently the Financial Conduct Authority (FCA)) and other regulatory bodies such as TPR, were becoming increasingly concerned about the dangers of pension liberation schemes

On 10 June 2011 and 6 July 2011, the FSA warned consumers about the dangers of "pension unlocking". It referred to cold-calling and websites promoting transfers to schemes that invest money overseas (such as in property) to avoid paying UK tax and/or result in cash being drawn from the pension ahead of retirement, including as a loan. Particular concerns related to the tax implications of these transactions, the fees charged and potential investment losses from scam activity. The FSA said it was working closely with HMRC and TPR to find out more information and encouraged affected consumers to contact FSA, HMRC or TPR helplines.

TPR announced in December 2011 that it was working with HMRC and the FSA and had closed some schemes.

In February 2012, TPR published a warning, and factsheet, about pension liberation. The FSA was involved in this campaign. It was designed to raise public awareness about pension liberation rather than introduce new steps for transferring schemes to follow. The warnings highlighted in the campaign related to websites and cold callers that encouraged people to transfer in order receive cash or access a loan.

And then, on 14 February 2013, TPR launched its scorpion campaign. The aim of that campaign was to raise awareness of pension liberation activity and to provide guidance for transferring schemes dealing with transfer requests on steps they could take to prevent liberation from happening. In particular the campaign provided information to scheme administrators about six specific warning signs and a checklist that could be used to establish the liberation dangers of the receiving scheme. And it provided a short insert, and a longer leaflet, at least one of which should be sent to all members who were requesting a transfer.

Financial Services Authority (FSA) Principles for Businesses

As Mr L's policy was a personal pension, Aviva was regulated by the FSA in its operation. There have never been any specific FSA/FCA rules on the checks transferring providers need to make before someone can transfer from a personal pension but the FCA Handbook set out Principles and Rules that firms must adhere to when carrying out their business; and firms must always apply the principles, even when specific rules and guidance from the FSA/FCA in a particular area are absent or evolving – as was the case with pension liberation/scams/fraud.

The 'PRIN' section of the FCA Handbook contains 11 principles that firms must adhere to and I consider the most relevant principles in relation to transfer requests and pension liberation to be the following:

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.

Did Aviva follow the relevant guidance and rules?

I think I should first deal here with the outputs of the scorpion campaign. As I said earlier, that campaign was launched on 14 February 2013. But I think it is important to note that the scorpion guidance was very much a step change in how these sorts of transfers should be viewed. I don't think it would be reasonable to conclude that it represented a formalisation of what might have been considered best practice in the years or months before.

So I think it would be reasonable that a period of implementation should be allowed – where firms can update their processes and procedures to take account of the new responsibilities. Mr L has suggested that Aviva should have suspended its activity on transfer requests whilst those changes took place. But I don't agree – I think it was reasonable for Aviva to continue under its existing processes whilst the changes were being assessed and implemented.

Mr L first asked for the transfer to commence at the end of January 2013. And the formal request from his new scheme was received by Aviva on 12 February. Both of those events were before the scorpion campaign was launched. And the transfer finally completed on 1 March – just two weeks after the scorpion materials were introduced. I don't think it would be reasonable to expect Aviva to have taken account of those additional requirements when dealing with Mr L's transfer request.

As I've said there was some knowledge of pension liberation and scams throughout the industry when Mr L requested the transfer of his pension. So it's reasonable that Aviva should have been aware of the threat and been familiar with TPR announcements. So I'd expect Aviva to have acted using its own judgement and discretion when handling pension transfer requests at that time as well as acting in line with the FSA's Principles for Businesses in all it did.

So these are the points I have considered in my decision, as well as taking account of what good industry practice was at the time.

When Mr L transferred his pension, providers would typically check that the receiving scheme was registered with HMRC and would only investigate further if it was apparent that the transfer was, in some way, suspicious. Aviva has told us that the transfer request it received included a copy of the relevant HMRC registration details for the scheme. Although I haven't seen a copy of that information I have no doubts that it was safely received by Aviva and that the scheme was correctly registered.

I have noted that the scheme address was geographically far away from where Mr L lived and the CMC feels this was something that Aviva should have questioned. If this had been after the scorpion guidance had been incorporated in Aviva's processes, I would have agreed with the CMC. But again, this doesn't seem to have been something TPR had raised as an issue previously so there's no reason why it would be a concern to Aviva. In many companies with a regional presence as well as a head office, the employer's main address may be far from where some employees live.

Turning now to the information Aviva sent out to Mr L at the time of his first information request. That letter provided him with information about his policy. And specifically, the letter sent directly to him states “Aviva strongly recommends that you seek financial advice before making any decisions”.

Taking all of this into account as well as the time the transfer request was made, I think Aviva provided Mr L with sufficient opportunity to check whether he was happy with the risks involved in this transfer which he didn't take up. And while I accept there was no mention of any potential fraud involved, given this was before regulators issued any specific guidance to transferring schemes on the subject, I don't think this was a failing on Aviva's part.

The FSA Principles for Businesses

While Mr L has said Aviva didn't adhere to the FSA principles when it processed his transfer I'm satisfied the principles shouldn't be interpreted as meaning Aviva should have investigated every transfer to the level of detail that he suggests as a matter of course. Even when the first guidance in this area – the scorpion guidance – was introduced at the same time of the transfer, it didn't require providers to conduct the same level of exhaustive enquiries on every transfer whether warning signs were present or not. So I don't think it would be fair and reasonable to have expected Aviva to be automatically suspicious of all transfers when the regulators, after considering the issue carefully, evidently didn't think that was necessary later on.

Furthermore, whether I can fairly say these rules should have led Aviva to carry out a specific investigation on the transfer, to protect Mr L from possible liberation, largely depends on how likely it was viewed at the time that any particular transfer was at risk of this activity. I say this because there was always the risk of legitimate transfers being caught up in indiscriminate enquiries. And as already mentioned above at this stage, the regulators and HMRC's own position was that they were still taking steps to find out more about the problem.

So, on balance, I don't agree it's reasonable to give the FSA principles and rules the context of industry intelligence that was subsequently compiled and circulated after Mr L transferred. TPR seems to have eventually decided that regulators and other agencies couldn't tackle the issue alone – and further intervention by pension providers was necessary. But that wasn't the position at the time of Mr L's transfer. Therefore, I am of the view that Aviva adhered to and met the FSA's Principles for Businesses in dealing with Mr L. I am satisfied it provided Mr L with the information he needed and did make it clear that transferring was an important decision which he should be advised about.

Overall therefore, while I can understand the difficult position Mr L has now found himself in, at the time of his pension transfer the issues he has raised weren't considered enough of a cause for concern for providers across the board. This was, after all, a rapidly emerging issue. So individual providers, who would only have seen a small proportion of all activity in this area, wouldn't necessarily have had a comprehensive enough view of pension liberation schemes to have appreciated what the potential risk factors were before the scorpion guidance – which did begin to catalogue these risk factors – was issued. Of course, some providers may have had an awareness of specific liberation risks ahead of the scorpion guidance because they may, for example, have received a sudden increase in transfer requests to a previously unknown scheme. But I haven't seen anything that makes me think Aviva had, or should reasonably have had, this sort of awareness in Mr L's case.

It therefore follows from the above that I don't uphold Mr L's complaint. I recognise how disappointing this will be for him but for the reasons given above, I'm satisfied Aviva acted in line with what was required of it at the time.

My final decision

For the reasons given above, I don't uphold the complaint or make any award against Aviva Life & Pensions UK Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 3 March 2022.

Paul Reilly
Ombudsman