

The complaint

Mr C has complained with the help of a professional third party, about a transfer of his Attivo Financial Services Limited ('Attivo') personal pension to a small self-administered scheme ("SSAS") in September 2015. Mr C's SSAS was subsequently used to invest in an overseas property development with The Resort Group ('TRG'). The investment now appears to have little value and Mr C says he has lost out financially as a result.

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

What happened

Mr C says he was cold called in 2015 to discuss an opportunity to invest his pension and generate favourable returns. He says meetings then followed at his home where he was told if he invested through TRG in a hotel development he'd receive returns of 8-12% per year and would be able to sell the investment property for an increased amount. Mr C says he wasn't informed of any risks and led to believe the investment was secure. He says he was advised to transfer by the person he spoke to and that they presented themselves as a specialist in this area. He also says he was then referred to a company called Strategic Alternatives Limited ('SAL') for an application to be made to set up a SSAS. SAL was not authorised or regulated by the Financial Conduct Authority ('FCA').

On 5 May 2015, Mr C signed a terms of business provided by Choices Wealth Limited ('CWL'). These terms of business explained that CWL offered to help set up a SSAS and act as an introducer, noting it too was not authorised or regulated by the FCA.

The following day a company was incorporated with Mr C as director. I'll refer to this company as D Ltd.

Mr C also signed a letter of authority for First Review Pension Services ('FRPS') which said he gave FRPS permission to submit an application for a SSAS to Rowanmoor Group Plc. FRPS was also not regulated by the FCA. FRPS and CWL had a controlling director in common at the time.

Mr C signed an application form for a SSAS to be set up on 13 May 2015. This named SAL as the adviser providing "*advice on the scheme to the member trustees*". The form also said the investment being considered was TRG.

I understand a SSAS was then set up with D Ltd as the SSAS's principal employer and Rowanmoor Group Plc as the administrator. I also understand Rowanmoor Trustees Limited was appointed as the independent trustee and to act as the signatory to the trustee bank account. HMRC wrote to Rowanmoor confirming that the SSAS had been registered with it on 13 July 2015.

On 15 July 2015 Rowanmoor wrote to Attivo confirming Mr C wanted to transfer his pension benefits to the SSAS and enclosing an authority and initial application.

On 20 July 2015, Attivo wrote to Mr C acknowledging his request to transfer his pension. It said it enclosed a transfer declaration for him to complete and a “*leaflet detailing the risks associated with transferring your pension fund*”. Attivo says this was the Pension Regulator’s (‘TPR’) ‘Scorpion’ leaflet.

Mr C signed the transfer out declaration on 12 August 2015 and forwarded this to Rowanmoor for it to complete the relevant section. Rowanmoor did so on 26 August 2015 and sent the form back to Attivo.

On 30 September 2015, Attivo wrote to Rowanmoor to confirm it had transferred Mr C’s pension benefits, totalling £117,582.03, as requested. It also wrote to Mr C confirming the same.

Approximately £93,500 was then invested with TRG. The remaining pension sum stayed in the pension bank account, invested in cash. I understand that the investment has not provided the returns expected, what returns there were have now ceased and there is little market for re-sale of the investment.

In April 2020, Mr C complained to Attivo. Briefly, his argument is that Attivo ought to have spotted, and told him about, a number of warning signs in relation to the transfer. These included but were not limited to: the receiving scheme and sponsoring employer being newly registered, Mr C had been cold called, the proposed investment being unregulated and high risk, the involvement of unregulated introducers and advisers and an unregulated business having recommended that Mr C transfer. Mr C said if Attivo had properly informed him of the warning signs and the risks, he wouldn’t have transferred.

Attivo didn’t uphold the complaint. It said it had carried out appropriate checks – that the SSAS was HMRC registered and Rowanmoor was a legitimate pension provider. And it said it had provided Mr C the Scorpion leaflet. It said it was under no regulatory requirement to contact Mr C and felt him completing the declaration saying he wanted to proceed was sufficient. Attivo felt the other parties involved, who had advised him to transfer (assuming they were FCA regulated) and allowed the investments in TRG to be made, were responsible for his losses.

I issued a provisional decision earlier in October 2024 explaining that I didn’t intend to uphold Mr C’s complaint. Below are extracts from my provisional findings, explaining why, which form part of my final decision.

The relevant rules and guidance

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 Attivo 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 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 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 SIPP's and SSAS's 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, which is relevant for this complaint. 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. 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 March 2015 Scorpion guidance

When the Scorpion guidance was launched in 2013, it included two standard documents that scheme administrators could use to warn their members about some of the potential dangers of transferring: a short “insert”, intended to be sent to members when requesting a transfer, and a longer booklet intended to be used for members looking for more information on the subject.

The March 2015 Scorpion guidance asked schemes to ensure they provided their members with “regular, clear” information on how to spot a scam. It recommended giving members that information in annual pension statements and whenever they requested a transfer pack. It said to include the pensions scam “leaflet” in member communications. 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 (which had been refreshed in March 2015) to be sent when someone requested a transfer and the longer version (which had also been refreshed) made available when members sought further information on the subject.

When a transfer request was made, transferring schemes were also asked to use a three-part checklist to find out more about a receiving scheme and why their member was looking to transfer.

The PSIG Code of Good Practice

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. 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 2015 Scorpion guidance – 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, SIPP, SSASs and QROPS. The 2015 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 a member’s interest.

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 C says he was cold called in 2015 to discuss his pension and an opportunity to invest it to generate desirable returns. Mr C says he agreed to follow up meetings at his home.

He says in the meetings he was advised to transfer and invest with TRG. Mr C says he was told:

- *The investment, in a hotel development in Cape Verde, was in an 'up and coming' country and a major travel corporation had already invested in the hotel.*
- *Even if the hotel room which formed the basis of the investment was only occupied 60% of the year, his returns would still be between 8% and 12%.*
- *A proportion of the transferred funds would also be invested in a more common stocks and shares portfolio.*

Mr C says he had limited investment experience and considered himself to have a low attitude to risk. He says the risks of transferring were not discussed or made clear, rather he was led to believe the investment was secure and offered him an opportunity to improve his retirement benefits. Mr C says he was reliant on the advice given and believed the adviser to be professional and he says it was not made clear that they were in fact unregulated.

After agreeing to go ahead Mr C says he was referred to SAL and from there the Rowanmoor SSAS was set up. He says he was told setting the pension up under his name would be a better pension strategy.

Mr C says there was very little communication between Attivo and himself during the process and it didn't contact him by phone or ask him any questions.

I think Mr C's recollections are plausible and are consistent with the available information. The only correspondence between he and Attivo appears to have been the letter of 20 July 2015, asking him to complete a declaration and consider the Scorpion leaflet, and the letter of 30 September 2015 confirming the transfer had gone ahead. I've not seen any record of any other contact and indeed Attivo's response to the complaint suggests it didn't contact him by phone as it says it wasn't required to.

SAL was mentioned as the trustee adviser on the application for the SSAS. Which also supports what Mr C has said about being referred to it.

Mr C signed a terms of business for CWL and a letter of authority for FRPS, giving them permission to apply for a SSAS. As I've said these two businesses had a director in common and both were unregulated. Based on when the documents were dated, they suggest that CWL was the first of these companies Mr C spoke to. But given they appear to have been linked the representative who called Mr C and subsequently met him could have worked for either. The first mention and involvement of Rowanmoor and SAL appears to have come after Mr C spoke to CWL / FRPS and after D Ltd had already been established – a precursor to setting up the SSAS and investing. So, on balance I think it was likely a representative of CWL / FRPS that initially suggested the transfer and investment.

Mr C has said that he didn't have very much investment experience. And I haven't seen anything to dispute this. While his Attivo pension was a self-invested personal pension, the application form for when this was opened indicates he received advice when setting it up. 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. Rather Mr C has said that it was the promise of the favourable returns of 8-12% that persuaded him to transfer. And I think it likely was this that persuaded him to do so.

What Mr C has said he was told about the favourable returns and this improving his retirement position seems to have represented comparing the prospective benefits of the two schemes and suggesting the new scheme was more beneficial. I think this represented advice to transfer. I think it was this advice that was the catalyst for the transfer. And I think it

was likely CWL / FRPS that provided this advice. This is because, as I've explained, it seems one, or both, of these parties had been in contact with Mr C initially and when D Ltd was established as well as being the party, or parties, that applied for the SSAS.

I think what Mr C has said about the investment now having little value is also likely to be correct. As I've noted, I understand returns from the investment to the pension have stopped. And from what we know about investments through TRG from other complaints we've seen, I think there is unlikely to be any real market for re-sale of the investment unit and the investments are now largely illiquid.

What did Attivo do and was it enough?

The Scorpion insert:

For the reasons given above, my view is that personal pension providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information.

Attivo's letter of 20 July 2015 referred to a leaflet being enclosed outlining the risks of transferring a pension. And Attivo says this was the Scorpion leaflet and has provided a copy of what it says was sent to Mr C. This letter was sent directly to Mr C – as suggested by the PSIG code and Scorpion guidance for businesses.

Mr C's representative says this doesn't confirm that the leaflet was sent to Mr C. And he does not recall receiving any risk warnings.

This all took place several years ago. The letter Attivo has provided was certainly sent to Mr C – as he signed and returned the declaration that was also enclosed. So, it was received by him.

The letter made it clear there was an enclosure and that it referred to transfer risks. And on balance of probabilities, I think the Scorpion leaflet was included with the letter Attivo sent to Mr C. If it hadn't been, given the letter suggested it was, I'd have thought Mr C would have raised this with Attivo. But he didn't do so.

I also think it is likely that Mr C read that information. The covering letter and declaration form to complete were only three pages, with the Scorpion insert another two. So, I think it is unlikely that this document was missed when he reviewed the letter – which again he did as he signed the declaration. I appreciate Mr C doesn't recall seeing this. But I wouldn't necessarily expect him to remember everything that took place several years ago.

Due diligence:

As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mr C'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 Attivo's actions using the Scorpion guidance as a benchmark instead.

Attivo said that it checked that the scheme was validly registered with HMRC and that Rowanmoor was a legitimate pension provider. An HMRC notification of registration was included in the information Rowanmoor sent to Attivo.

But beyond checking the SSAS was registered with HMRC and details of Rowanmoor, I can't see that Attivo carried out any further due diligence. The Scorpion guidance for businesses at the time said "If a member is asking for a scheme transfer, use the checklist

on the next page to find out more about the receiving scheme and how the member came to make the request". But the information Attivo had gathered did not address all of the relevant questions in that checklist. And under the PSIG Code Attivo ought to have been prompted to ask 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 three of them would have been answered "yes":

- Did receiving scheme/adviser or sales agents/representatives for the receiving scheme make the first contact (e.g. a cold call)?
- 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 Attivo should have addressed all four sections of the SSAS due diligence process.

What should Attivo have found out?

Amongst other things, if Attivo had carried out appropriate further due diligence, including asking Mr C questions, it would have found that he was not employed by the sponsoring employer of the SSAS. And that, as well as the SSAS being newly established, D Ltd had only recently been incorporated as well. It would also have found that one of Mr C's intended investments was of the type that the Code highlighted. I'm satisfied Mr C would have confirmed to Attivo that he had been cold called. And I also think, based on what he has said, that he'd have said he'd been advised to transfer. And, as there was no regulated business involved, this ought to have given Attivo cause for concern.

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 Attivo should therefore have been concerned by CWL and FRPS's involvement because it pointed to a criminal breach of FSMA. On the balance of probabilities, I'm satisfied such a breach occurred here. In its response to the complaint, Attivo appears to have assumed that a regulated adviser was involved, as it said the adviser would have been obliged to assess the suitability of its advice under COBS. Yet I've seen no evidence of a regulated business being involved or of this being suggested to Attivo during the transfer process. So, in my view, this assumption was unreasonable.

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

Had it done more thorough due diligence, there would have been a number of warnings Attivo could have given to Mr C in relation to a possible scam threat as identified by the PSIG Code (and the Scorpion action pack). One of the most significant being the threat posed by a non-regulated adviser, which Attivo failed to uncover.

It would have been appropriate for Attivo to have informed Mr C that the business he had been advised by was unregulated and could put his pension at risk. And Attivo should have said only authorised financial advisers are allowed to give advice on personal pension transfers, so he risked falling victim to illegal activity and losing regulatory protections. I don't think this would have been a disproportionate response given the scale of the potential harm Mr C was facing.

What I need to consider is whether further warnings would have changed Mr C's mind about the transfer.

As I've said, I'm satisfied that Attivo did provide Mr C the Scorpion insert. And I think this would've been the March 2015 version, given when it was sent. The front page made the statements "Pension scams. Don't get stung". It then explained "Scammers don't care whether you're an inexperienced investor or have never put your money anywhere other than a bank. They will try to flatter, tempt and pressure you into transferring your pension fund into an investment with guaranteed returns. Once the transfer has gone through, it's too late. Remember, the only people who benefit from scams are the scammers themselves." It then went on to explain how to spot warning signs by setting out some of the most common tactics used by scammers. The things listed were:

- Being cold called, receiving a text message, a website pop-up or a doorstep caller offering a 'free pension review', 'one-off investment opportunity' or 'legal loophole'.*
- Convincing marketing materials that offered returns of over 8%.*
- Pension access before age 55.*
- Documents being delivered by courier for immediate signing.*
- The overseas transfer of funds.*
- The suggestion to put money into a single investment (noting in most circumstances advisers will suggest diversification).*

At least four of these warnings applied to what Mr C said happened and what he was told.

Mr C says he was cold called, he was told he'd receive returns in excess of 8% annually, the proposal involved the transfer of funds overseas, as the main investment discussed was the hotel development in Cape Verde, and the returns were portrayed as being guaranteed to be above 8%.

I think most people acting rationally would generally be somewhat wary of being approached out of the blue, particularly to talk about such a significant financial product as their existing pension provisions. And even if the person they spoke to might then have seemed persuasive and genuine, the Scorpion insert warned that scammers commonly tried to tempt people into a transaction.

I believe the information in the Scorpion insert at that time gave stark warnings about the risks of falling victim to a scam. The document was clearly headed as referring to pension scams. It reiterated the point that scammers are acting for themselves and not in a consumer's interest. It listed the warning signs to look out for and referred to these as being common tactics of scammers. And it said before signing anything, a consumer should call TPAS or go to a website which provided further information. These are strong warnings. And, as I've explained, they were relevant to Mr C's circumstances.

But Mr C evidently ignored those warnings and didn't seek the further information he was directed to. Given Mr C didn't heed strong, easy to understand and relevant warnings about the scam risk he was potentially facing, I don't think it would be reasonable to say a further warning from Attivo of the type I've described above would have prompted Mr C to reconsider his transfer. The contemporaneous evidence doesn't, in my view, support that argument.

Responses to my provisional decision

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

Attivo said it had nothing further to add.

Mr C's representative said that they agreed with my findings about what had happened – including that Attivo hadn't done due diligence and should have warned Mr C that the adviser he was dealing with was unregulated.

But they said they disagreed with my conclusion about what would have happened if Attivo had done more. They said there was a significant difference between a warning about an adviser being unregulated and those in the Scorpion insert. And that the manner the Scorpion insert was provided wouldn't have given him cause to think Attivo was directing him to review the leaflet or indicating there it had concerns about his request. It said Mr C was the type of person that wanted to and did rely on advisers when making changes to his pension arrangements and they didn't think my conclusion that he'd have gone ahead with the transfer was fair.

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.

As neither party has provided any substantial comments on my findings about the advice process that took place here, I don't see reason to depart from my provisional findings in relation to this. So, to summarise, I'm satisfied that Attivo did send Mr C the Scorpion insert but I also believe it ought to have done more due diligence, which would have uncovered

other concerns.

The issue in dispute, and what remains for me to decide, is whether Mr C would have acted differently if Attivo had done this and provided additional warnings.

Mr C's representative have argued that the warnings in the Scorpion insert weren't as significant as a warning about an unregulated adviser would have been. And that the manner in which the Scorpion warnings were given, wouldn't reasonably have suggested to Mr C there was a potential problem or prompted him to review those warnings in detail.

The letter Attivo sent to Mr C that enclosed the Scorpion insert said "*...find enclosed a leaflet detailing the risks associated with transferring your pension fund.*" Mr C was applying to transfer his pension fund, so the way that the leaflet was presented would've meant, in my view, that he was aware that this applied to what he was seeking to do. The letter went on to say "*If, after reading this document, you no longer wish to transfer away from Attivo Financial Services, please contact us immediately...*" This referred to Mr C reading the document – indicating this was something he should do. Not only that, but it also suggested that there was information with the Scorpion leaflet that could lead him to decide not to transfer.

Mr C's representative has said that he had limited investment experience but also that he didn't take a high-risk approach to his finances, which were well managed rather than recklessly. With that in mind I think his pension provider sending him information about risks involved with a transaction he was undertaking and suggesting the information might dissuade him from proceeding with that course of action ought to have made him aware that the information was important and something he should consider. His representatives have also said that he sought to rely on advisers when considering his pension arrangements. But I think this would also have meant he would heed the information provided to him by Attivo – a pension provider whom he'd trusted with his pension savings for some time – even though it wasn't advising him about this transfer.

So, I don't agree that the way the Scorpion information was presented wouldn't have led Mr C to think there might be a reason not to transfer or that he shouldn't read it.

And I remain of the opinion that the warnings in the Scorpion insert were stark and should have resonated with Mr C. The front page of the leaflet is clear that it relates to pensions scams. There is a section, with a bold heading "how to spot signs of a scam" that described the things mentioned as some of the most common tactics used by scammers. Being cold called, being told you'd receive returns of over 8% per year and the overseas transfer of funds were all highlighted prominently. All of these were present in the transfer that had been suggested to Mr C – as had guaranteed returns which the leaflet highlighted in the initial pre-amble. After listing the signs of a scam, the leaflet went on to explain steps that could be taken. These were to not be rushed into a decision, call TPAS before signing anything and making a report to Action Fraud if an offer had already been accepted. It concluded by saying "*arm yourself with the facts and stop a lifetime's savings being lost*" and provided a link – in bold, large font – to the pension scams website, to find out more. Additional information given for individuals, via this website, at that time included to make sure their adviser was approved by the FCA and a link to the FCA register to check this.

It doesn't appear though that Mr C considered these warnings or took any of the suggested steps – which I'd have expected him to do. This is not just because I think most rational people would when presented with these warnings, but also, because of what has been said about his circumstances – that he had limited experience but managed his finances well with minimal risk. The information was clearly presented as being in relation to risks – something he apparently wanted to avoid. And I think the similarities to his circumstances should reasonably have led him to consider the matter further. I think it would have been reasonable

for this to include considering the links to other resources the materials provided. And this provided a prompt to check the regulatory status of the business he was being advised by.

A direct warning that only authorised advisers could give advice on personal pension transfers would have been a strong message. But the messages and resources that Mr C had already been provided about the risks involved were also strong, as well as being clear and easy to understand and follow. I don't think Mr C's lack of investment experience would've meant he didn't understand these messages or their seriousness. I know that this will come as a disappointment to Mr C and his representative. But I remain of the view that the evidence doesn't support that a further warning from Attivo would've dissuaded Mr C from proceeding, given the other relevant warnings didn't lead him to reconsider.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 3 December 2024.

Ben Stoker
Ombudsman