DRN-4777391

The complaint

Mr M has complained, with the help of a professional third party, about the transfer of his Aviva Life & Pensions UK Limited ('Aviva') personal pension to a small self-administered scheme ('SSAS') in June 2014. Mr M's SSAS was subsequently used to invest in a car parking scheme. That investment now appears to have little value.

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

Mr M's wife, Mrs M, also transferred a pension she held with Aviva to the SSAS at the same time. The transfer of Mrs M's Aviva pension is the subject of a separate complaint with the Financial Ombudsman Service. Mr and Mrs M also held pensions individually with another business which I'll call 'Firm F'. And they both also applied to transfer their pension benefits from Firm F to the SSAS at around the same time as the transfers from Aviva. Some of the circumstances of Mr M's application to transfer his Firm F pension and both of Mrs M's applications to transfer her pensions are relevant to this complaint. So, I have referred to them below.

What happened

Mr M says he and Mrs M met someone at a function who told them about an investment they could make that would provide guaranteed returns. Mr M says a phone call was arranged for shortly afterwards during which he and Mrs M were both advised to transfer their pensions and use them to take up the car parking scheme investment.

On 10 March 2014, Aviva wrote to a business called CIP. CIP does not appear to have been authorised or regulated by the Financial Conduct Authority ('FCA'). Aviva acknowledged receipt of a letter of authority, signed by Mr M, allowing it to provide information to CIP and said it enclosed the details that CIP had asked for – a valuation of Mr M's pension policy. The letter also thanked CIP for requesting transfer discharge forms but explained that transfers could be requested through the Origo Options system, removing the need for forms. Origo is an electronic platform which allows the transfer of pensions and investments which can make transfers more efficient and reduce transfer times.

On the same day, Aviva also sent a letter to Mr M. This said it had received the letter of authority from CIP. It explained while this gave it permission to share information it didn't allow Aviva to take instructions from CIP. The letter said that while most pension transfers were problem free, some companies were seeking to persuade pension holders to engage in pension liberation. Aviva said it enclosed a leaflet from The Pensions Regulator ('TPR') which provided important information about this.

On the following day, 11 March 2014, Aviva wrote to CIP again thanking it for a phone call and enclosing the transfer forms it had requested. It sent another letter to Mr M on the same

day, providing a copy of the transfer forms and setting out which parties needed to complete them.

In April 2014, a company was incorporated with Mr and Mrs M as directors. I'll refer to this company as H Ltd. A SSAS was then set up and registered with HMRC on 9 May 2014. H Ltd was the SSAS's principal employer and Rowanmoor Group Plc ('Rowanmoor') was the administrator. The interim trust deed said Rowanmoor Trustees Limited was appointed as the independent trustee. Minutes of the first trustee meeting on 8 May 2014 indicate that Rowanmoor was also appointed as scheme and actuarial adviser, Rowanmoor Trustees Limited was appointed to act as the sole signatory to the trustee bank account and Return on Capital Group Limited ('ROCG') as the Investment and scheme adviser.

Aviva then received a request via Origo to transfer Mr M's pension benefits. The copy of the Origo entry we've been provided gave the transfer creation date as 27 May 2014. It noted the expected completion date was in June 2014 and said the reason for the delay was *"additional checks required"*. The request listed Rowanmoor as the receiving provider and ROCG as the adviser firm.

I've seen a copy of an internal email exchange at Aviva. The first email I've seen was dated 16 June 2014 and noted that a request had been received to transfer to Rowanmoor. The email listed some details of the transfer, including referring to CIP as the financial adviser. The email concluded by saying *"I know we are currently not processing transfer to this scheme, please advise"*. There was a reply on 18 June 2014 saying the transfer could now proceed.

On 19 June 2014 pension funds were transferred as requested and Aviva wrote to Mr M confirming this. The amount transferred was £45,746.31. Mr M was 46 years old at the time. Mrs M's Aviva pension was also transferred to the SIPP, following an Origo request, on the same day.

Around the same time as the Aviva transfer was ongoing, an application was made to also transfer Mr M's pension benefits held with Firm F to the SSAS. In response to that request, Firm F asked Mr M to complete a 'Supplemental transfer form'.

The first page of the form asked Mr M for some information relating to the receiving scheme, specifically the sponsoring employer. It asked for the name of the sponsoring employer, whether this business was trading, in what capacity Mr M worked for the business, whether he was being paid by it and whether ongoing contributions were being made by the employer to the scheme. Mr M confirmed H Ltd was the sponsoring employer, he was a director of that business, but it was non-trading, he wasn't being paid and there were no contributions being made by him or the employer to the SSAS.

The second page was a 'pension liberation checklist for members'. This gave a brief explanation of what pension liberation was and referred members to TPR's leaflet about this. It asked Mr M to tick any statements from a list that applied to the transfer. These included if he'd been contacted by phone, text, email or online about making the transfer, if his adviser was not authorised by the FCA, if he'd been offered an incentive to transfer, if he'd been invited to join the pension scheme of a business he didn't work for, if he'd been offered a guaranteed or high return investment or if he'd been offered access to his pension before age 55 or to more than 25% tax free through a 'loophole'. Mr M did not tick any of these statements to say that they applied. The checklist concluded by saying

"Lastly, do you know

- *Where your money is being invested, who is managing the investment and what their*

credentials are?

- *What will happen to your pension savings in the event the employer / trustee or scheme administrator commences winding up or cannot be contacted?*

- *What the charges are in relation to the transfer and the ongoing administration of the receiving scheme?"*

These three bullet points were all ticked.

The final page of the form was a member declaration section. Mr M signed and dated this on 5 July 2014 confirming he'd read the TPR leaflet entitled 'Predators Stalk Your Pension', he agreed that where the scheme administrator had any doubt about the transfer it reserved the right to decline the request and if the scheme administrator agreed to the transfer, Mr M accepted responsibility for this.

I understand Firm F subsequently declined the transfer request and so ultimately only Mr M's Aviva pension was moved to the SSAS. I haven't seen copies of correspondence about this decision in Mr M's case. But I have seen a letter Firm F sent to Rowanmoor in April 2015 in respect of Mrs M's transfer request which indicates Rowanmoor had sought to appeal the decision to decline the transfer on Mrs M's behalf. However Firm F was still unwilling to proceed.

Following the transfer from Aviva, Rowanmoor wrote to Mr M saying it understood he wished to go ahead with investment in the car parking scheme. It said that a company called The Hetherington Partnership ('THP') would send him legal documents for signature. I understand that was a law firm introduced by Group First, which offered the investment in the car parking scheme. THP provided Mr M a report on the investment which explained that it involved purchasing a leasehold on two parking spaces. The purchase price was £40,000. Park First, part of Group First, agreed to rent the space from Mr M and would pay the first two years payment upfront, and THP set out the rent payable for the rest of the agreement. With the payment of rent upfront factored in, along with fees, the amount that needed to be paid from the pension funds to complete was just under £34,000, which was sent to THP in October 2014.

The bank statements for the SSAS indicate rent was initially received in line with the agreement THP provided. But it appears these payments ceased in 2019. I understand the investment has run into trouble and Mr M – like many investors – is struggling to realise any value from it.

Mr M complained to Aviva in 2021. He said Aviva had information that the transfer was to a newly set up SSAS and that unregulated parties had been involved. He didn't think Aviva had done sufficient further due diligence given it was aware of that information.

Aviva didn't uphold the complaint. It said the transfer request had come through Origo, not just any company could use that system and providers had to sign up to a strict terms of business agreement. One condition was the new provider needed a completed application form authorising the ceding scheme to settle the policy and transfer funds to the receiving scheme. As a result, Aviva said transfer requests received through Origo would not be viewed as suspicious or illegitimate and Aviva would not contact consumers to check that they wanted to proceed.

The complaint was referred to the Financial Ombudsman Service. I issued a provisional decision in November 2024 explaining that I didn't intend to uphold Mr M'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 Aviva was subject to the FSA/FCA Handbook, and under that to the Principles for Businesses ('PRIN') and to the Conduct of Business Sourcebook ('COBS'). There have never been any specific FSA/FCA rules governing pension transfer requests, but the following have particular relevance here:

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

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

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

- *An insert to be included in transfer packs (the 'Scorpion insert'). The insert warns readers about the dangers of agreeing to cash in a pension early and identifies a number of warning signs to look out for.*
- *A longer booklet issued by TPAS which gives more information, including example scenarios, about pension liberation. Guidance provided by TPR on its website at the time said this longer leaflet was intended to be sent to members who had queries about pension liberation fraud.*
- *An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "look out for" various warning signs of liberation. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where transferring schemes still had concerns, they were encouraged to write to members to warn them of the potential tax consequences of their actions; to consider delaying the transfer; to seek*

legal advice; and to direct the member to TPAS, TPR or Action Fraud.

TPR issued the guidance under the powers at s.12 of the Pension Act 2004. Thus, for the bodies regulated by TPR, the status of the guidance was that it provided them with information, education and/or assistance, as opposed to creating any new binding rule or legal duty. Correspondingly, the communications about the launch of the guidance were predominantly expressed in terms that made its non-obligatory status clear. So, the tenor of the guidance is essentially a set of prompts and suggestions, not requirements.

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

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

That said, the launch of the Scorpion guidance was an important moment in so far as it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing 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.

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

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. And where the recommendations in the guidance applied, absent a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations. With that in mind, I take the view that personal pension providers dealing with transfer requests needed to heed the following:

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

2. *When TPR launched the Scorpion guidance in February 2013, its press release said the Scorpion insert should be provided in the information sent to members requesting a transfer. It said on its website that it wanted the inclusion of the Scorpion insert in transfer packs to "become best practice". The Scorpion insert provided an important safeguard for transferring members, allowing them to consider for themselves the liberation threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one*

that wouldn't have got in the way of efficiently dealing with transfer requests. So, all things considered, I think the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party.

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

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

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

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

Mr M says he and his wife were at a function. They were discussing pensions with friends. They met someone during that conversation (who I'll refer to as 'SM') who told them about an investment opportunity. They agreed to speak to SM the following week. Mr M says he then had a phone call with SM, as agreed, who advised him to transfer his pension from Aviva and invest in the airport parking investment that he later took out. Mr M says SM guided him through the application process, making the point that it was their money, and led him to believe that a transfer was in his best interests and that the guaranteed returns made it a "no brainer".

I think Mr M's explanation is plausible and I think it was the conversation with SM that prompted the request to transfer from Aviva.

It isn't clear who SM worked for or represented when they spoke to Mr M. Mr M says he doesn't recall any contact with ROCG. Nor did he recognise the name of the person on the letters to and from CIP. Mr M wasn't sure if SM worked for CIP, and says he thought SM might've worked independently and that he believed SM would arrange everything.

CIP was the business that first contacted Aviva on Mr M's behalf. And it appears in fact that this business and Rowanmoor were the only two businesses that Aviva had any contact with. I can't see that ROCG or THP had any contact with Aviva. ROCG was only mentioned from the point that the SSAS was established and in the Origo request. And THP doesn't appear to have been involved until after the transfer completed.

I've seen nothing to suggest SM was connected to Rowanmoor – as otherwise I wouldn't

have expected CIP to request information from Aviva as Rowanmoor could have contacted it directly. I don't think SM was working for THP, as otherwise I might have expected to see this business mentioned sooner in the process or at least some reference being made, when Rowanmoor introduced this business to Mr M, of him already being aware of them due to his contact with SM. And I think it is unlikely that SM was connected to ROCG. It is true ROCG, which wasn't regulated by the FCA, was named on the Origo report as the adviser. But the minutes of the SSAS trustee meeting indicate that ROCG's involvement was potentially in respect of advice to the trustees on the investments the SSAS could make. And again, if SM worked for ROCG I'd have expected ROCG to have been the party that asked Aviva for transfer documents.

Mr M doesn't recall if SM worked for CIP. And this isn't clear. On balance though I think it's likely that SM did either work for CIP or acted as an introducer to CIP – as this would explain it being the party that Mr M signed a letter of authority for and CIP asking Aviva for information to potentially facilitate a transfer. I can't see that CIP was regulated by the FCA. And I've seen nothing to confirm that SM was either – in whichever capacity they were operating.

I do note that, in response to Firm F, Mr M failed to tick a box on the questionnaire he was sent to confirm that his adviser / agent was not authorised by the FCA (the form directed him to the FCA's website to check this). Mr M says SM didn't say anything to suggest they weren't authorised, and he had assumed they were. It appears that Mr M failed to check this, despite being told how he could do so.

Mr M said he was told a transfer was in his interests because of the guaranteed returns it would provide. He says he wasn't offered a cash incentive to transfer, nor was he told he could access money before age 55. And I haven't seen anything from the SSAS account statements to suggest he was provided access to any of his pension benefits early.

What Mr M has said about what he was told is, in my view, consistent with him being advised – the improved returns of the alternative pension and investment being in his interests, so therefore better than what he would receive from Aviva. I haven't seen anything that leads me to think Mr M had much experience with regard to pensions and investments or that he was considering transferring his pension prior to speaking to SM. Nor have I 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 in a single, unregulated investment. So, I think it's likely he was advised to transfer, and it was this advice that prompted him to do so.

I'd also briefly note that Park First entered administration in 2019 and the FCA commenced legal proceedings against it with the aim of recovering funds for investors. As I understand it what this means for Mr M is still unknown. So, the investment does not appear to be providing any returns anymore and it appears to be illiquid.

<u>What did Aviva 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.

As I've explained, Aviva wrote to Mr M on 10 March 2014, in response to CIP's request for information. Its letter talked about pension liberation and said it enclosed a leaflet from TPR

about this. I think on balance of probabilities the leaflet the letter said was enclosed was likely the Scorpion insert.

Mr M has said he doesn't recall seeing or receiving the Scorpion leaflet. But the transfer took place several years before he complained. And I think it is understandable he may no longer recall all of the written information he saw at the time. I also note, in response to the questions raised by Firm F when Mr M was looking to transfer another pension policy, Mr M signed to say he'd read and understood TPR's leaflet about pension liberation titled 'Predators stalk your pension'. This was the title of the Scorpion insert at the time. I don't think Mr M would have signed that declaration if he hadn't seen the Scorpion leaflet.

So, while Mr M now doesn't recall receiving the Scorpion leaflet, on balance I think he did see a copy of this at the time he applied to transfer. I think it is likely Aviva shared this leaflet with Mr M, at the point transfer forms were requested. And I think it is likely that he read this – as the covering letter was only one page long so the leaflet, which contained striking imagery, appears to have made up the majority of that piece of correspondence.

Due diligence:

In light of the Scorpion guidance, I think firms ought to have been on the look-out for the tell-tale signs of pension liberation and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk.

In response to this complaint, Aviva has said that the transfer was processed through Origo, and providers had to be vetted and approved to use that service. And it has also said Rowanmoor was the largest independent SSAS provider and renowned for its expertise.

Aviva hasn't though provided any details on what exactly Origo did to approve Rowanmoor to use its service. And I think that points to the problem with relying on due diligence conducted by a third party when Aviva doesn't appear to have really known what that due diligence involved. Given the importance of what the due diligence covered in the Scorpion guidance was aimed at preventing – pension liberation, the end result of which can often be the loss of entire pension funds – and the clear steps that were expected of ceding schemes to prevent this happening, not to mention the duties of ceding schemes under PRIN and COBS 2.1.1R, I don't think relying on Origo's vetting process would have been good enough here.

It is true that at the time of the transfer Rowanmoor was a long established SSAS provider and had some repute in the industry. Rowanmoor Trustees Limited, which the documents indicate was the independent trustee of the SSAS, also had legal and fiduciary duties as a professional trustee. There's an argument, therefore, that Aviva could have taken comfort from this. But I don't think this was enough to say further due diligence wasn't required. 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 small SSASs; they don't have to be registered with TPR. In the absence of that oversight, without further due diligence Aviva would've been 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 think this would've 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 Aviva could, reasonably, have derived sufficient comfort about the Rowanmoor SSAS as a destination for Mr M's transfer.

So, I don't think the presence of Origo and Rowanmoor meant Aviva didn't have to consider the Scorpion guidance.

I note though, despite what Aviva said in response to the complaint, the available information suggests it did carry out some additional due diligence here. The Origo summary that I've been provided explains the gap between the request being made and the transfer proceeding was due to additional checks being required. The internal email exchange I mentioned earlier, shows the transfer was referred to its internal transfer team. And it said the reason was that transfers involving Rowanmoor were not currently being processed at the time – suggesting Rowanmoor's involvement did not provide the reassurance that Aviva has since said it did. This indicates that Aviva did do some wider due diligence regarding Rowanmoor – as transfers appear to have been paused but then allowed to resume.

So, Aviva sent the Scorpion insert to Mr M and did some due diligence. Which I think was an attempt to follow the Scorpion guidance. But I'm not sure that wider due diligence was enough in respect of looking out for the signs of potential pension liberation in Mr M's specific transfer.

I haven't been provided evidence of what further checks Aviva did, before its internal transfer team said the transfer could go ahead. Aviva has said that this would have consisted of checking if the scheme was registered with HMRC and if Aviva had any other existing concerns. But here no additional concerns were noted.

Checking that the SSAS was correctly registered with HMRC would've alerted Aviva to it having only been registered in May 2014. And a receiving scheme being newly registered was something that the Scorpion action pack for businesses said was a potential warning sign of liberation activity. Aviva has argued that it was not uncommon for SSAS's to be newly registered and that this wasn't necessarily cause for concern. But the Scorpion action pack specifically identifies this as a warning sign to be wary of.

In addition, the internal referral email mentioned that the financial adviser on file was CIP, an unregulated business. The Origo request named another business, ROCG, as the adviser. But this was also an unregulated business. While being advised by an unregulated adviser wasn't one of the highlighted warning signs in the Scorpion action pack for businesses, it was in the longer check list as something to ask about and potentially be a reason for concern. Which I think it would've been reasonable for Aviva to consider, given the scheme was newly registered.

In terms of what Aviva did to establish any additional concerns, which it apparently didn't find, I haven't been provided evidence of this or what actions it took. Mr M told our service that he thinks he may have received a call from his pension provider asking if he understood the transaction he was entering into. And that he responded along the lines that it was his money to make choices about. But it isn't clear if it was Aviva or Firm F that contacted Mr M.

So, although Aviva did clearly do something here – as the transfer was paused pending approval - I don't know what this consisted of. But I can say that what I think it should have done was to use the check list in the action pack for businesses to structure these enquiries.

The check list provided a series of questions to help transferring schemes assess the

potential threat by finding out more about the receiving scheme and how the consumer came to make the transfer request. Some items on the check list could have been addressed by checking online resources such as Companies House and HMRC. Others would have required contacting the consumer. The check list is divided into three parts (which I've numbered for ease of reading and not because I think the check list was designed to be followed in a particular order):

1. *The nature/status of the receiving scheme*

Sample questions: Is the receiving scheme newly registered with HMRC, is it sponsored by a newly registered or dormant employer, an employer that doesn't employ the transferring member or is geographically distant from them, or is the receiving scheme connected to an unregulated investment company?

2. *Description/promotion of the scheme*

Sample questions: Do descriptions, promotional materials or adverts of the receiving scheme include the words 'loan', 'savings advance', 'cash incentive', 'bonus', 'loophole' or 'preference shares' or allude to overseas investments or unusual, creative or new investment techniques?

3. *The scheme member*

Sample questions: Has the transferring member been advised by an 'introducer', been advised by a non-regulated adviser or taken no advice? Has the member decided to transfer after receiving cold calls, unsolicited emails or text messages about their pension? Have they applied pressure to transfer as quickly as possible or been told they can access their pension before age 55?

Opposite each question, or group of questions, the check list identified actions that should help the transferring scheme establish the facts.

I don't think it would always have been necessary to follow the check list in its entirety. And I don't think an answer to any one single question on the check list would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the check list to establish whether pension liberation – which was the focus of the Scorpion guidance at that time – was a realistic threat.

Had it done this, I think it's likely that Aviva would have built up the following information about the transfer – which were signs of potential pension liberation under the Scorpion guidance:

- *Mr M was transferring to a recently established scheme with a newly incorporated sponsoring employer.*

- *Although Mr M was a director of the sponsoring employer, it wasn't genuinely trading or providing him with an income. It was, essentially, a means to establish a pension arrangement, which the Scorpion guidance indicated could be a sign of liberation activity.*

- *Mr M's intended investment was unregulated.*

Against this though, Aviva would also have known, and established, the following which would have indicated liberation wasn't a concern:

- *Mr M's reason for transferring was to access a particular investment and improve returns. He wasn't expecting a cash payment following the transfer.*

- *Mr M hadn't been told he could access his funds before age 55.*

It is important to remember that businesses were being asked at that time to help guard against the risk of pension liberation. Investigations into the receiving scheme, sponsoring employer and intended investments were a means to an end: to establish the risk of liberation. And here, while Aviva should have found some liberation warning signs, I think it would have ultimately concluded that the liberation threat was minimal given Mr M's reasons for transferring. And it had already provided Mr M with the Scorpion leaflet.

As I've said though, the initial request for information came from CIP – which Aviva noted as the adviser in its internal referral. And the Origo summary said ROCG was the adviser. Neither CIP or ROCG were authorised by the FCA to advise on transferring benefits from a personal pension plan. So, either of those businesses acting as Mr M's adviser, which appears to have been the understanding at the time, would have been a breach of the general prohibition imposed by FSMA, which states no one can carry out regulated activities unless they're authorised or exempt. Anyone working in this field should have been aware that financial advisers need to be authorised to give regulated investment advice in the United Kingdom – indeed, the Scorpion insert itself makes this point.

My view is that Aviva should have been concerned by CIP and ROCG's involvement – which it was aware of. And I think it ought to have informed Mr M of these concerns.

What I have to decide is, whether I think that would have made a difference here.

As I've already explained, the 'Supplemental transfer from' that Firm F asked Mr M to complete had a list of statements that it said to tick if they applied. And it said that if they did, Mr M should consider whether his pension was at risk. One of these statements was that his adviser / agent was not authorised by the FCA, with a link provided to the FCA register in order to check this. Another statement in the list talked about being encouraged not to proceed without speaking to an FCA regulated adviser. Mr M did not tick either of these boxes.

Mr M has told us he doesn't recall if any of the parties he spoke to said whether they were regulated. And he primarily recalls dealing with SM. Mr M appears to have been convinced by the information that SM provided to him and so may well have trusted that they were acting in his interests. But the questions in the form Firm F sent Mr M were a significant prompt for him to check the status of the person that had advised him and to be wary if they weren't regulated. Again, Mr M left both blank. So, it appears he either did check this and, based on information he had at the time and can no longer recall, he thought SM was regulated. Or he disregarded this prompt and left the form blank, assuming SM or another party involved was regulated. Or he was aware that he'd received unregulated advice but wanted to go ahead with the transfer anyway as he'd been told he'd receive good returns and he trusted the adviser.

It isn't clear which of these scenarios resulted in him completing that form in the way he did. But whichever it was I think, on balance of probabilities, it is likely that if Aviva had told him about the need for advisers to be regulated, he'd have proceeded on the same basis – either thinking or knowing that SM or another party was regulated or knowing they were unregulated but wanting to go ahead anyway.

Mr M has also said that SM hadn't pressured him but rather said that the transfer was a "no brainer" and that he'd receive guaranteed returns. The form from Firm F again included

having been offered guaranteed or high returns in the list of statements to tick if they applied. Again, indicating that this suggested Mr M's pension potentially being at risk. But Mr M also left this statement blank. This suggests, despite him having been told something by SM that this form suggested ought to be a concern, Mr M was keen to proceed.

I think this is further supported by the fact that Mr M went ahead with the investment in October 2014, even though Firm F had not allowed the transfer of his other pension at that stage. The application to transfer the Firm F pension had clearly preceded this – with him having completed the supplemental form in July 2014. So, he knew at the time of making the investment that Firm F hadn't yet allowed the other transfer. He might not have been aware why exactly. But he would've known there was some reason for it not proceeding – and the supplemental form had talked about risks. Yet this didn't deter Mr M from going ahead with the investment. And indeed he has suggested, when one of his two pension providers enquired about his reasons for wanting to transfer, he had made the point that it was his money – indicating he wanted to proceed.

While I haven't seen a corresponding letter in respect of Mr M's transfer from Firm F, I have seen a letter from Firm F to Rowanmoor in April 2015 in respect of Mrs M's transfer request. This talked about it not agreeing to the transfer, despite what appears to have been an appeal by Rowanmoor on Mrs M's behalf. On balance of probabilities, given it was the same ceding provider and receiving scheme involved, I think it is likely that there was similar correspondence in respect of Mr M's application to transfer benefits from Firm F. And what this suggests is that even though Firm F had initially declined to proceed, Mr M and Mrs M were motivated to still go ahead and had agreed to Rowanmoor pursuing this on their behalf – suggesting they knew that Firm F was reluctant.

Taking all of this into account, I don't think it would be reasonable to say a further warning from Aviva about Mr M's adviser would have prompted him 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.

Aviva didn't provide any further comments for me to consider.

Mr M's representative said that they disagreed with my findings. In summary they said I'd placed too much weight on the actions of Firm F, when the complaint was about Aviva. They said it wasn't clear if the questionnaire I'd referred to had been sent to Mr M before his Aviva transfer had completed, or if Firm F had raised concerns at that stage. They also said it was unclear how much correspondence Firm F had directly with Mr M and what warnings it had provided, or if the questionnaire was sent to him or Rowanmoor.

In contrast, they said I'd agreed that Aviva ought to have been aware of several warning signs within the transfer request, but it hadn't done sufficient due diligence or provided warnings to Mr M beyond the Scorpion leaflet – which they said was unlikely to have resonated with him as he was not liberating his pension. And they did not agree with me that further warnings from Aviva were unlikely to have changed Mr M's mind about the transfer.

They also provided information to show that 'SM' was an appointed representative of an FCA authorised business at the time of the transfer – although was not authorised to provide pension transfer advice. And finally they said, as Mr M was not receiving earnings from H Ltd he wouldn't have had a statutory right to transfer, which was a further reason Aviva should have stopped the transfer.

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.

When doing so I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

Mr M's representatives are correct that this complaint is looking at the actions of Aviva. But my role isn't just to look at whether Aviva has done something wrong. I have to think about whether that has caused Mr M to be in a position he otherwise wouldn't have been and incur a loss that is attributable to Aviva. To determine that, the wider circumstances are relevant, which include the prospective transfer from Firm F. So, I don't agree with Mr M's representative that it is unfair for me to consider the communication between Firm F and Mr M.

As I explained in my provisional findings, on balance, I'm satisfied that Aviva carried out due diligence here. The Origo information made it clear that further checks had been required by Aviva before it processed the transfer. And the internal emails from Aviva support that this was referred to a specific transfer team for authorisation. And they indicate this was because of the presence of Rowanmoor. It was only after that department gave approval that the transfer was processed. So, I'm satisfied that Aviva did take some action.

Again though, it isn't clear how extensive that due diligence was. Aviva has said this would've involved checking that the receiving scheme was correctly registered and if there were any other concerns noted internally. But I don't think that necessarily went far enough, given the information that it had – in particular that its check of whether the scheme was registered with HMRC would've shown that it had only recently been set up. So, I think Aviva should have done some further due diligence around Mr M's transfer.

But the Scorpion guidance wasn't prescriptive around how that due diligence ought to have been conducted. And I think it would have been entirely reasonable for Aviva to have done so in the same manner as Firm F – by which I mean asking any questions of Mr M in writing.

Had it done so, I see no reason to think Mr M would've provided different answers to Aviva to those he gave to Firm F. And again, when completing that form, Mr M was asked to tick statements that applied to his transfer. And he left blank questions including;

- Had he been contacted by phone, text, email or online about making the transfer?
- Was his adviser not authorised by the FCA?
- Had he been offered an incentive to transfer?
- Had he been invited to join the pension scheme of a business he didn't work for?
- Had he been offered a guaranteed or high return investment?
- Had he been offered access to his pension before age 55 or to more than 25% tax free through a 'loophole'?

Mr M's representative has said it isn't clear when this request was sent to Mr M or if it was in fact sent to him directly. But Mr M signed the form in question. So, I think it is reasonable to conclude that the answers given reflected his understanding of the transfer. And I don't think it matters when these questions were provided to him to answer because ultimately what I think they reflect is how he'd have answered similar questions had Aviva put those to him.

The Scorpion guidance at the time asked ceding schemes to be on the look out for pension liberation. And, based on what I think Aviva would have learned had it asked further questions about the transfer – that there were some potential warning signs the Scorpion guidance highlighted but Mr M wasn't transferring in order to access his pension benefits before age 55 or due to being offered an incentive (something his representative has confirmed when saying the Scorpion warnings would not have resonated) – I still think it would've reasonably concluded that the threat of pension liberation was minimal.

Mr M has provided additional information about 'SM', specifically that this was a firm recorded on the FCA register as Stephen Mccarry, which was an appointed representative of a business that was authorised by the FCA at the time of the transfer. But I think this indicates that, had Aviva asked him if his adviser was authorised by the FCA, in a similar way to what Firm F asked, that Mr M would have said that they were. So, this was unlikely to have prompted Aviva to provide any additional warnings. And I think it also serves to further show that, even if Aviva had mentioned the need for an adviser to be FCA regulated, Mr M would likely have concluded this warning was not relevant to him – as he was in contact with an adviser that was registered with the FCA.

Taking all of this into account, while I think Aviva potentially ought to have gathered further information prior to processing the transfer, I don't think this would've led it to conclude that pension liberation was a risk here. As it had already provided the Scorpion warnings to Mr M, I don't think it would have concluded it needed to provide him with further warnings. And even if it had done, based on the circumstances of his complaint, I don't think this would've resulted in him taking a different course of action.

Mr M's representatives have said that they believe he did not have a statutory right to transfer as he was not receiving earnings from the sponsoring employer of the SSAS. Notwithstanding that Aviva was not required as a matter of course to check Mr M's employment status, a court clarified (in 'Hughes v The Royal London Mutual Insurance Society Ltd [2016] EWHC 319 (Ch)') that earnings did not have to come from the sponsoring employer for a statutory right to exist. Rather the applicant just had to be earning – and Mr M has indicated he was at the time of the transfer.

So, while I know this will come as a disappointment to Mr M, I don't think Aviva needs to take any action here.

My final decision

For the reasons given above, I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 16 January 2025.

Ben Stoker
Ombudsman