DRN-5004598

The complaint

Mr S has complained about the actions of Aviva Life & Pensions UK Limited ("Aviva") when it transferred his personal pension to a Qualifying Recognised Overseas Pension Scheme ("QROPS") in 2015. Mr S's QROPS was used to invest in various assets, including those managed by The Resort Group ("TRG"). TRG is an overseas commercial property scheme that has run into trouble. Mr S says he has lost out financially as a result of Aviva's actions.

Mr S says Aviva failed in its responsibilities when dealing with his transfer request. He says that Aviva 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 in place at the time. Mr S says he wouldn't have suffered the losses he did if Aviva had acted as it should have done.

What happened

Mr S says the transfer process started with a cold call, following which someone visited him at home to discuss his circumstances and options for his three personal pensions (the largest of which was held with Aviva and is the subject of this complaint). A report was written by Strategic Wealth Limited, which was licensed by the Gibraltar Financial Services Commission. The report was sent to Mr S on 2 September 2015. It included information on different types of pension, including the type of scheme Mr S was thinking of transferring to – a QROPS – and information on Mr S's proposed investments, 50% of which were earmarked for TRG-related investments with the remainder split between two funds which were described as cautious.

On 19 October 2015, Optimus Pension Administrators Limited ("OPAL") wrote to Aviva requesting it transfer Mr S's Aviva personal pension to the Optimus Retirement Benefit Scheme No.1, a Maltese QROPS (which I will refer to as "the Optimus Scheme"). OPAL was providing certain administrative functions on behalf of Integrated Capabilities (Malta) Limited, the administrators for the Optimus Scheme. OPAL's covering letter included Aviva's QROPS transfer payment form, two HMRC forms (CA1890 and APSS263), a declaration from the Optimus Scheme that it was a QROPS, a letter from HMRC to Integrated Capabilities dated 4 August 2014 confirming that the Optimus Scheme was going on its QROPS list, and bank details for the transfer payment. The letter also included documents from the Maltese Inland Revenue and the Malta Financial Services Authority relating to the registration and status of the Optimus Scheme.

At various points after receiving the transfer documents, Aviva wrote to OPAL requesting Mr S sign a declaration relating to his lifetime allowance. This was sent by OPAL on 11 December 2015.

On 30 December, Aviva wrote to Mr S to confirm the transfer had been paid on 24 December. The transfer value was just under £41,000. On 31 December Mr S called Aviva to ask it to stop the transfer because one of his other pension providers had caused him to have doubts about what he was doing. Aviva said that the payment had already been made and that there was nothing it could do beyond setting up a new policy for Mr S if he transferred his funds back – which he didn't do. Mr S didn't transfer his other two personal pensions.

In January 2021, Mr S (with the help of a claims management company) complained to Aviva. Briefly, his argument is that Aviva failed to do adequate due diligence on the receiving scheme and Mr S's intended investments. In Mr S's view, if Aviva had done more thorough due diligence, it would have established that the transfer was high risk and not in his best interests.

Aviva didn't think it had done anything wrong. It said, in brief, that it had confirmation that the Optimus Scheme was a QROPS and therefore a legitimate destination for transfer payments. It said it couldn't assess the suitability of the transfer, or Mr S's intended investments, but noted that Mr S had received a suitability report. It concluded by saying Mr S had a statutory right to transfer so it had no authority to block his request. Aviva also said it complied with the "Scorpion guidance", the contents of which I covered in my provisional decision.

In my provisional decision, I concluded that the complaint shouldn't be upheld. My provisional decision is attached and forms part of my final decision. Neither party had anything further to add.

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.

Neither party provided substantive comments on my provisional findings. With that in mind, and having reviewed the case once again, I see no reason to reach a different decision. Therefore, for the reasons outlined in my provisional decision – which I repeat below – I don't uphold Mr S's complaint.

COPY OF PROVISIONAL DECISION

The complaint

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Mr S says Aviva failed in its responsibilities when dealing with his transfer request. He says that Aviva 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 in place at the time. Mr S says he wouldn't have suffered the losses he did if Aviva had acted as it should have done.

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Our investigator was unable to resolve the dispute informally, so the matter was passed to me to decide.

What I've provisionally decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

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

Personal pension providers are regulated by the Financial Conduct Authority (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 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.

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 PSIG Code of Good Practice. The intention of the 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.

<u>The March 2015 Scorpion guidance</u>

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 where appropriate (for instance, when members requested 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 where appropriate.

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.

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

The PSIG Code was voluntary. But, in its own words, it set a standard for dealing with transfer requests from UK registered pension schemes. It was “welcomed” by the FCA and the Association of British Insurers (amongst others). And several FCA regulated pension providers were part of the PSIG and co-authored the Code. 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.

- 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, SIPPs, 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 PSIG 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.

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

Mr S told our investigator that the transfer process started with a cold call from someone offering to review his pension. He said he was thinking about moving his pension at that time because he felt returns had been "stagnant" with Aviva, so he went along with the process which involved him being visited at home by someone. It's not clear from Mr S's recollections who that person was.

When Mr S called Aviva on 31 December 2015 to halt his transfer, he was asked by the Aviva call handler who the adviser on his policy was. He couldn't answer that question but referred to having initially dealt with a firm called Choices Wealth. He said that they were no longer involved and that the Optimus Scheme had taken over. I'm aware from other cases that Choices Wealth had links to TRG – which Mr S went on to invest in – and were involved in contacting people about that investment. So it looks like Choices Wealth were involved in some capacity in Mr S's transfer, at least to begin with, and were the party that got him interested in TRG.

When Mr S spoke to our investigator, he mentioned a person by name – a "Mr B". This person was the signatory to a report by Strategic Wealth Limited (a Gibraltar-based firm) that was sent to Mr S ahead of him transferring. Mr S signed to confirm receipt of that report and to confirm that it was a fair reflection of the conversation he'd had with Mr B. So it would seem Mr B did have some involvement here. Mr S also told our investigator that Mr B had emigrated to Malta at some point. Whilst I make no comment on whether Mr B did emigrate, I believe Mr S was told this and I think it adds support to the likelihood of Mr B's involvement as it strikes me as being an unlikely detail for Mr S to bring up now if Mr B wasn't ever involved. So whilst I recognise Mr S's recollections aren't especially clear, I'm satisfied Mr B from Strategic Wealth was involved in the transfer and most likely visited Mr S at his home during that process.

Mr B was on the FCA register until 2016 which recorded him as working for Strategic Wealth UK Ltd (which was also on the FCA register). But it seems Mr B and Strategic Wealth UK Ltd were at pains to avoid providing regulated advice, at least on paper. The report that was sent to Mr S was on the headed paper of a sister company, Strategic Wealth Limited, which was based in Gibraltar. And the report was careful to limit its scope to just providing information on different types of pension scheme, including the Optimus Scheme, and Mr S's proposed investments. The report said Strategic Wealth Limited (the Gibraltar-based arm) had been engaged by the trustees of the Optimus Scheme in order to give Mr S information on his options, which looks to have been a condition of the trustees accepting new funds into the scheme.

Strategic Wealth Limited was authorised by the Gibraltar Financial Services Commission. It had 'passported' into the UK which means that, although it wasn't regulated from the UK, the FCA had become its host regulator and it appeared on the FCA register. It had a "services passport" which means it didn't have a physical presence in the UK.

The tenor of the report was that it was for Mr S to decide on the suitability of transferring from a personal pension to a QROPS and the suitability of his proposed investments. The report recorded the following:

- Mr S was 45, married, with no dependents.
- He had three personal pensions, the largest of which was with Aviva and is the subject of this complaint. The report assumed Mr S was considering transferring all three pensions.
- Mr S was looking to take his pension benefits at the age of 65.
- His attitude to risk was assessed as being 4 out of 10 (with 1 being the most risk averse), which was described as "cautious to moderate."

The report also highlighted some of the key features of a QROPS and some risks it wanted Mr S to be aware of, including the risk that the Financial Services Compensation Scheme (FSCS) may not offer protection in relation to Mr S's transfer. It also provided further information on Mr S's proposed investments, including some of the risks with those investments. Mr S was intending to invest his transfer proceeds as follows: 25% in a TRG property; 25% in TRG corporate bonds; 25% in the Prudential Dynamic Portfolio Cautious Growth Fund and 25% in the Apollo Athena International IV Cautious Fund.

Strategic Wealth UK Ltd went into default to the FSCS in April 2018. I assume the Gibraltar firm's fate has been similar given its website no longer exists.

With the above in mind, I make the following findings of fact:

- The transfer process was initiated by a cold call from Choices Wealth, who pitched TRG as being an attractive investment. At some point its involvement ended and Mr B then progressed things.
- Mr B was authorised by the FCA, as was the company the FCA recorded him as working for – Strategic Wealth UK Ltd. Strategic Wealth Limited (the Gibraltar arm), was also on the FCA register having passported into the UK.
- Mr B and Strategic Wealth tried to calibrate their approach in an attempt to stop short of providing regulated financial advice.
- Mr S's motives for transferring appear to have been to generate higher returns for his pension rather than to receive unauthorised payments from it.

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

The Scorpion insert:

Mr S says he can't recall being sent the Scorpion insert by Aviva. Aviva has said its policy at the time was to "routinely issue" the Scorpion insert but can't provide (and would find it difficult to ever provide) evidence to show an insert was actually put in an envelope.

Whilst I recognise there can be difficulties in providing evidence to show something was included in a mailing, I'm not persuaded Aviva has done nearly enough to prove its point on this occasion. I say this because it hasn't provided evidence of any correspondence going direct to Mr S's home address in the run-up to the transfer. All the correspondence sent by Aviva in this period was sent instead to the Optimus Scheme. By extension, the Scorpion insert – if enclosed – would have been sent there too. For the reasons given previously, Aviva fell short of what I'd expect in this respect. It should have sent the Scorpion insert direct to Mr S so he could decide for himself the risks he was facing.

However, it looks like Mr S was sent the insert by Strategic Wealth Limited. In its suitability report, it said the following:

"The Pensions Advisory Service has issued a warning leaflet to members of UK pension schemes to inform clients of the risks of moving a pension to an overseas scheme. A copy of this guide has been provided with your information pack."

This describes the Scorpion insert. On balance, therefore, I'm satisfied Mr S was sent the Scorpion insert – just not by Aviva. I address what this means for Mr S's complaint later.

Due diligence:

Aviva has said it conducted due diligence on Mr S's transfer because it had evidence that the Optimus Scheme was a QROPS and listed as such by HMRC. It was therefore a legitimate destination for transfer funds. It said it didn't have the authority to block Mr S's transfer.

The steps Aviva took were a necessary part of the due diligence process. And it's correct to point out that ceding schemes typically can't block a transfer except in very specific circumstances. However, Aviva has misread the extent of its obligations here. The Scorpion guidance and PSIG Code meant there was far more that Aviva should have done.

As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes dealing with transfer requests. I've therefore considered Mr S'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 Aviva's actions using the 2015 Scorpion guidance as a benchmark instead.

Although Aviva's due diligence was brief, it *hasn't* argued that it fast-tracked Mr S's transfer request in line with the "Initial analysis" section (section 6.2.1) of the Code. Nevertheless, for completeness, it's worth noting the transfer request didn't come from an accepted club such as the Public Sector Transfer Club and Aviva hadn't already identified the receiving scheme/administrator as being free from scam risk. In fact, other than the destination of Mr S's transfer, it's apparent that Aviva knew very little about Mr S's transfer.

So the initial triage process under the Code should (if deployed) have led to Aviva asking Mr S further questions about the transfer as per Section 6.2.2 ("Initial analysis – member questions"). I won't repeat the list of suggested questions in full. Suffice to say, at least two of them would have been answered "yes":

- Did receiving scheme/adviser or sales agents/representatives for the receiving scheme make the first contact (e.g. a cold call)?

- 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 QROPS section of the Code (Section 6.4.4) has the following statement:

"The key items to consider are the rationale for moving funds offshore, and the likelihood that the receiving scheme is a bona fide pension scheme, as if HMRC determine retrospectively that it is not, there may be a scheme sanction charge liability regardless of whether the receiving scheme was included on the list or not."

In order to address those two items – the rationale for moving funds offshore and the legitimacy of the QROPS – the Code suggests the transferring scheme should broadly follow the same due diligence process as for a SSAS, which outlined four areas of concern under the following headings: employment link, geographical link, marketing methods and provenance of the receiving scheme. 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, I think in this case Aviva should have addressed all four areas of concern and contacted Mr S in order to help with this.

Aviva did establish the legitimacy of the QROPS. But that was the extent of its due diligence. It didn't address Mr S's rationale for transferring. If it had asked Mr S about this – which it should have done, using the framework outlined above – it would have found out Mr S was transferring his pension following an unsolicited approach and that he was transferring to an arrangement that was designed for people living overseas even though he wasn't intending to do that. It would also have found out that the reason for transferring overseas was to invest, in part, in TRG – an overseas property scheme of the type that was highlighted as an area of concern in the PSIG Code.

I appreciate that if Aviva had spoken to Mr S then the due diligence process wouldn't have necessarily followed a neat, linear, path. But I think it is fair to say that Aviva wouldn't have needed to progress too far through the Code, or asked too many questions of Mr S, for various warning signs to have become apparent. And if Aviva had followed the Scorpion action pack, similar findings would have followed. Indeed, the action also included a case study, in which the victim – like Mr S – transferred in order to invest in an overseas hotel development.

However, Aviva should also have asked Mr S about what advice he was receiving and from whom. Of course, the extent of the service provided by Mr B and Strategic Wealth (both the UK and Gibraltar arms) was, deliberately, quite narrow to the point that they would argue – if still trading – that they hadn't actually given regulated advice. But I don't think that's a distinction that Mr S would have appreciated. Therefore, had Aviva asked Mr S who had advised him, I'm satisfied he would have mentioned either "Mr B" – as he did when our investigator spoke to him – and/or "Strategic Wealth".

With that in mind, Aviva would have established that the people or entities Mr S could have mentioned – Mr B, Strategic Wealth Limited and Strategic Wealth UK Limited – were all on the FCA register. The latter was regulated by the Gibraltarian equivalent of the FCA and had passported into the UK under a services passport. But the Code and the checklist don't contain any warnings about using overseas advisers that are on the FCA register. They also didn't at that time ask ceding schemes to determine the precise nature of an adviser's involvement or the precise nature of an adviser's regulatory permissions – just that they were on the FCA register.

So I can't fairly say Aviva should have had a cause for concern about the various parties involved in Mr S's transfer. Once it had confirmed a regulated adviser was involved, and the legitimacy of the receiving scheme, Aviva didn't need to look any further; it had substantively met the requirements of the Scorpion guidance, the Code and its wider obligations under the Principles and COBS 2.1.1R.

I note here that contemporaneous evidence suggests Mr S may not have pointed Aviva to Strategic Wealth or Mr B. When Mr S called Aviva to halt his transfer, he was asked who the adviser on the policy was (most likely as a security question). Mr S couldn't name an adviser. Nevertheless, for reasons I've explained earlier, I'm satisfied Strategic Wealth was involved here and any probing on the part of Aviva during a due diligence process (rather than in response to a one-off security question) would have revealed as much.

Therefore, if Aviva had conducted further due diligence, I'm satisfied it would have ultimately concluded that the threat posed by the transfer was minimal. Not only was Mr S transferring to a legitimate scheme – one that hadn't done anything over the preceding 16 months to attract the attention of HMRC – but there was also the involvement of parties on the FCA register. There would be no grounds for blocking the transfer and no reason to provide Mr S with any warnings about the transfer. In that light, I don't think Mr S would have been given any reason to question what he was doing.

I recognise asking Mr S about how he came to hear about the Optimus Scheme and his motivations for wanting to transfer may have caused him to have second thoughts. But Mr S was already looking to boost the returns on his pension, his Aviva pension having become "stagnant" in his view. He'd overlooked some warnings about the steps he was about to take, both in the form of the Scorpion insert sent by Strategic Wealth Limited and the report it sent. And Aviva's questions would have been just that – questions. For the reasons given above, there were no explicit warnings that it should, reasonably, have given to Mr S. So I don't think Mr S would have questioned the transfer had Aviva contacted him as part of a due diligence process.

In coming to this conclusion, I've considered the fact that Mr S did ultimately call Aviva to try to halt the transfer. It was too late for him to do so but the call does show he wasn't so committed to the transfer that he would have gone ahead regardless of anything Aviva could have said or done. But the call to Aviva was prompted by paperwork he received by one of his other two personal pension providers that raised – in his words – "red flags" about the transfer because of concerns about the regulatory status of those involved. So it's evident Mr S was responding to specific information of the type that wouldn't, reasonably, have been provided by Aviva for the reasons I've given previously.

It follows that I don't intend to uphold Mr S's complaint. It's also worth noting at this point that it appears as though Mr S could, reasonably, have taken action to prevent some of his losses. I say this because Mr S called Aviva on 31 December 2015 to try to stop his transfer. The transaction statement for Mr S's QROPS shows the Aviva funds as being received on 5 January 2016. The same statement shows a debit of £10,500 for the purchase of TRG on 13 January and a debit of just over £27,000 the following day for the remainder of Mr S's investments (which included a TRG corporate bond and two other multi-asset funds). As such, there was a window of time – approximately two weeks – in which Mr S could have taken action to stop his investments being made. If he had done so, it's possible that he would have still incurred some fees – but he could have limited his investment losses. So even if I was minded to uphold Mr S's complaint, my remedy for putting things right wouldn't likely have taken into account his investment losses.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 17 October 2024.

Christian Wood
Ombudsman