DRN-5060507

The complaint

Mr D has complained, with the help of a professional representative, about the transfer of his Aviva Life & Pensions UK Limited ('Aviva') personal pensions to a Qualifying Recognised Overseas Pension Scheme ("QROPS") in May 2016. Mr D says the investments made through the QROPS have failed and he has lost out financially as a result.

Mr D 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 D 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.

What happened

On 23 April 2015, Mr D signed a letter of authority giving Aviva permission to share information about his pension with Howden Insurance Brokers LLC ('HIB LLC'), a business based in Dubai in the United Arab Emirates ('UAE'). Howden Insurance Brokers with the denotation LLC does not appear on the Financial Conduct Authority ('FCA') register. But a business called Howden Insurance Brokers Limited, based in London, is on the FCA register and authorised and regulated by the FCA. And Howden Insurance Brokers Limited (DIFC Branch) is currently registered with the Dubai Financial Services Authority, the regulator in Dubai.

The letter of authority was sent to Aviva on 27 April 2015. The email enclosing this stated that HIB LLC was also registered in England & Wales and provided a company number. A search of Companies House shows that the company number given belongs to Howden International Broking Limited. This business is registered and authorised by the FCA. And it operates from the same address in London as Howden Insurance Brokers Limited and the businesses share directors in common. All of these businesses appear to refer to themselves more simply as Howden.

The email however came from an email address belonging to Gladstone Morgan Ltd ('GML'). The email signature referred to Howden as working in association with GML. GML appears to be a business registered in Hong Kong, and registered with the Hong Kong Insurance Authority, although the email gave a postal address in the UAE.

On 11 May 2015, Aviva wrote to GML at the address in the UAE providing information about Mr D's pensions and the relevant transfer forms for an application to transfer benefits to an overseas pension.

On 10 March 2016, HIB LLC produced a recommendation report for Mr D. It advised him to transfer his pension benefits from Aviva to the Centaurus Retirement Benefits Scheme ('CRBS') – a QROPS based in Malta.

Mr D then signed several documents. These included a letter of authority for Aviva to correspond with the administrators of the CRBS, Sovereign Pension Services Limited

(‘SPSL’), an application to the administrators to join the scheme, Aviva’s overseas transfer forms and relevant HMRC forms. I can see that HIB LLC also certified copies of Mr D’s identification documents.

SPSL wrote to Aviva on 29 March 2016, applying on Mr D’s behalf to transfer his pension benefits to the QROPS. It enclosed all of the forms Mr D had completed, along with evidence that the CRBS was registered with the Department of Inland Revenue in Malta in July 2012 and recognised by HMRC on its QROPS list from December 2012.

Aviva transferred the value of Mr D’s pensions to the QROPS in May 2016. The total amount transferred was £114,923.64. Approximately £70,000 appears to have been invested in mutual managed funds and a further £40,000 across three ‘bonds’. A recent statement suggests two of the bonds potentially have a nil value and the amount currently held in managed funds is now significantly less than when the QROPS was first invested.

In January 2024, Mr D complained to Aviva. Briefly, he said Aviva had failed to meet FCA principles and didn’t carry out sufficient due diligence into the transfer. If it had, Mr D said that Aviva would’ve found, amongst other things, that he wasn’t receiving regulated advice and was being advised to transfer to a QROPS to make high risk, unregulated investments. And so, he says Aviva should not have allowed the transfer because of the risk of detriment to him.

Aviva didn’t uphold the complaint. It said it had received a valid application to transfer and Mr D was receiving advice from HIB LLC, who had responsibility to ensure the transfer was suitable.

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

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.

While 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. I’d also say that while I’ve considered everything on file and that the parties have said, in light of our role as an impartial alternative dispute resolution service, I haven’t addressed everything that’s been said. Rather I’ve addressed what I see as being the key matters at the heart of Mr D’s complaint and the reasons for my decision.

My findings are similar to those our Investigator reached in her assessment of the complaint. So, my analysis as described below occasionally echo’s the wording our Investigator presented.

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

Personal pension providers are regulated by the FCA. Prior to that they were regulated by the FCA’s predecessor, the Financial Services Authority (‘FSA’). As such 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. This guidance referenced the potential dangers posed by "pension freedoms" (which were 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 Scorpion guidance for businesses was updated again in March 2016. This said business should direct members to the government's Pension Wise website and reiterated the recommendation for businesses to use TPR's checklist and carry out due diligence on all transfer requests. And it said business should communicate any suspicions to consumers, record these and direct consumers to TPAS.

The Scorpion guidance

The March 2015 update to the 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. The March 2016 update to the Scorpion guidance set out how business could protect members from falling victim to scams. And the first step listed was to read and share TPR's scams booklet for consumers. Directing members to TPR's information was also repeated separately.

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

And again, when a transfer request was made, transferring schemes were 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.

- 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 Scorpion guidance doesn't distinguish between receiving scheme in this way – there's just the one due diligence checklist which is largely (apart from a few questions) the same whatever the destination scheme.

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

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

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

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

Mr D was living in Dubai at the time of the transfer. He says he was approached by a representative of HIB LLC / GML who indicated they were an independent financial adviser and wealth manager. Mr D said this adviser specialised in QROPS and told him that a

QROPS would be far superior to his personal pension, given Mr D's status as an expat. Mr D was told he'd receive better returns as the QROPS provided more flexibility and specialist wealth managers, he could access his pension from age 55 and he'd benefit from optimal tax structuring and lower cost to his beneficiaries in the event of his death due to living overseas.

Mr D says he had a limited understanding of how the funds would be invested in the QROPS and just followed the investments proposed by HIB LLC. He says he wasn't offered any cash or other incentives to transfer – just told he'd receive better returns which persuaded him to do so. Mr D says he never received any warnings about potential risks from Aviva.

I've seen a copy of written advice from HIB LLC in March 2016, and I'm satisfied that it did advise Mr D to transfer. I've also not seen any evidence of him being sent any warnings, nor of him being paid any incentives from the pension. So overall, I don't have any reason to doubt what he's said about how the transfer came about or his motivation for doing so.

I also think Mr D appears to be correct that his pension has suffered some losses. As I've said, statements that Mr D has provided indicate at least two of the bonds he invested in have run into difficulty and potentially have a nil value. The amount invested in managed funds is also lower than when the initial investment through the QROPS was made. Although I haven't seen any detailed statements showing whether this was in anyway impacted by withdrawals or transfers to another scheme(s).

<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.

Aviva has said that it no longer holds notes about the transfer and can't confirm if it sent Mr D the Scorpion insert. It has said it wasn't part of its process to scan the insert onto a file at the time, so one could have been issued and not scanned.

I haven't seen any evidence that Aviva wrote directly to Mr D during the transfer process. So, I can't see that it sent him the Scorpion information.

I've seen copies of the letters that Aviva sent to HIB LLC / SML. But none of these indicate that the Scorpion leaflet was included as there isn't a reference to it in either the body text or the list of enclosures.

So, on balance, I don't think I can reasonably say that this information was shared with Mr D, in line with good industry practice at the time.

Due diligence:

In addition to sending the Scorpion warning information, Aviva was also expected to perform due diligence to determine whether or not to process the transfer. As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mr D'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 Mr D's actions using the Scorpion guidance as a benchmark instead.

I can't see, beyond asking the receiving scheme to complete a checklist, that Aviva did any due diligence other than reviewing the paperwork it received. It had evidence that the receiving scheme had been recognised by HMRC since 2012, which I think would've provided some reassurance that the scheme was not being used for pension liberation - as otherwise it would most probably have already been removed from the QROPS list. And checking this ensured that the transfer payment both qualified as an authorised payment for tax purposes and also satisfied Mr D's statutory right, and potentially other legal rights, to transfer.

But I haven't seen anything that makes me think Aviva had identified the receiving scheme/administrator as being free of scam risk, bearing in mind what the Code said about this in Section 6.11. So, the initial triage process under the PSIG Code should have led to Aviva asking Mr D 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 one of them would have been answered "yes" - have you been informed of an overseas investment opportunity?

Admittedly Mr D lived overseas. But 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 each 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.

<u>What should Aviva have found out – and would it have made a difference?</u>

As I've said, I think Aviva had enough information to establish the legitimacy of the QROPS. But that appears to have been the extent of its due diligence. And I think it also ought to have addressed Mr D's rationale for transferring. If it had asked Mr D about this – which it should have done, using the framework outlined above – I think he'd have said he was considering the transfer because of advice he'd received after initially being approached by an adviser. And that he'd been advised to transfer to the QROPS by HIB LLC for greater flexibility and tax efficiency (as confirmed by the suitability report) and to benefit from improved returns.

But again, Aviva would also have been aware that Mr D was living in Dubai. So, transferring his pension overseas (to a QROPS) wouldn't have appeared unusual or out of the ordinary and, in the specific circumstances, I think Aviva could reasonably have placed less weight on this being an indicator of a potential scam.

HIB LLC's name, in that format, did not appear on the FCA register. But it is a business based in the UAE. So, it wouldn't have been subject to FCA rules, and couldn't hold passporting rights. As I've said there are two other entities that appear to have some affiliation with HIB LLC, that do appear on the FCA register. And Aviva could potentially have taken some reassurance from this, if it had looked into HIB LLC's status – although I would note those FCA regulated businesses do not appear, from the available paperwork, to have had a part in giving Mr D advice.

But ultimately, I don't think Aviva needed to look into the adviser in any great detail, in this specific case. To give advice in the UK on the transfer of benefits from a personal pension, businesses have to be authorised by the FCA. And being advised by an unauthorised firm would be a breach of the general prohibition imposed by FSMA, which states no one can carry out regulated activities unless they're authorised or exempt. But Mr D was not in the UK nor was he being advised in the UK to make the transfer. Mr D lived abroad, in Dubai. Which is where his adviser was located. So, the advice was given outside of the FCA's jurisdiction and therefore the adviser wouldn't need to be FCA authorised, as they would not have been subject to FSMA. And so, I think, HIB LLC not appearing on the FCA register, would not have been a cause for concern for Aviva.

I don't think it would be reasonable to expect Aviva to have knowledge of the regulatory regime in Dubai or whether HIB LLC was subject to this, or indeed if it needed to be to provide this type of advice. And given Mr D was taking advice from an adviser based where he lived, I think it would've been reasonable for Aviva to think, in this case, that there wasn't anything unusual about this and that there was no reason to provide any explicit warnings about this or recommend that he take UK regulated advice.

Overall, I think even if it had asked Mr D for further information about his motivations, I think it would've been reasonable for Aviva to conclude, based on what it knew, that there wasn't cause to delay the transfer or provide warnings beyond the general ones in the Scorpion information.

As I've said, I don't think the Scorpion information was provided to Mr D, and I think it should've been. But, while I know Mr D disagrees, like our Investigator, I don't think the Scorpion leaflet would've changed his mind about a transfer. Mr D's representatives said we can't know what would have happened. But in scenarios like that I make my decision on the balance of probabilities. The Scorpion insert that ought to have been provided to Mr D warned about the signs of how to spot a scam. But the majority were not relevant to Mr D's situation. While he has said accessing his benefits from age 55 had been discussed, the warning was about being told of being able to access pension benefits before that age. There hasn't been any suggestion that documents were couriered to him and based on how the QROPS was invested, its apparent that the adviser Mr D spoke to recommended diversification.

The one thing that the insert did highlight that would've been relevant to Mr D's circumstances was the transfer of funds overseas. But the context of this was someone living in the UK and being advised to transfer their funds abroad. Mr D was not living in the UK at the time. And so, I don't think this would've resonated with him. In addition the recommendation from the adviser to transfer to a QROPS – which appears to have been made after several months and, according to the written advice, following the completion of fact finds and attitude to risk assessments – appears to have been based on several factors, including taxation and inheritance benefits. So, investing in a specific way wasn't the only motivation or reason for the advice.

I also don't think that Aviva asking Mr D questions as part of any due diligence would've led to him not going ahead with the transfer. While I don't doubt Mr D may have valued Aviva's opinion given its standing in the pensions industry in the UK, his circumstances and motivations for the transfer weren't the same as the majority of people that the Scorpion guidance was aimed at. He appears to have had a relationship with HIB LLC for around a year, culminating in the advice to transfer. And given, as I've explained, I wouldn't have expected Aviva to have knowledge of the financial regulatory regime in the UAE, I don't think it would've had cause to say anything that would have led Mr D to doubt the advice he was being provided.

Taking everything into account, even if Aviva had sent Mr D the Scorpion insert when I think it should have and had carried out additional due diligence, I don't think this would have resulted in Mr D being in a different position. So, I don't require Aviva to do anything here.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 28 March 2025.

Ben Stoker
Ombudsman