DRN-5199926

The complaint

Mrs T has complained, with the help of a professional representative, about a transfer of her Aviva Life & Pensions UK Limited ('Aviva') personal pension policies to the Forthplus Pensions Ltd Self Invested Personal Pension ('SIPP') in May 2017. Mrs T says the investments subsequently made now appear to have little or no value and she has lost out financially as a result.

Mrs T says Aviva failed in its responsibilities when dealing with the transfer request. She says that it should have done more to warn her of the potential dangers of transferring and undertaken greater due diligence on the transfer. She says she wouldn't have transferred, and therefore wouldn't have put her pension savings at risk, if Aviva had acted as it should have done.

What happened

I issued a provisional decision in which I set out the background and circumstances leading up to this complaint, along with my reasons for why I intended to uphold the complaint and award compensation. Below is a copy of the key extracts of my provisional decision, which forms part of this final decision.

<u>Copy of provisional decision</u>

What happened

In 2017, Mrs T says her partner was thinking about what to do with his pension, so he searched for a business to speak to online. That business was a company called Life Compare Ltd. Mrs T says a meeting was arranged at their home, which she also attended. And it was during this meeting Mrs T says the adviser recommended she transfer her pension to a Forthplus SIPP because it would generate better returns.

Forthplus pensions then wrote to Aviva requesting information about Mrs T's pension. And on 24 February 2017 Aviva replied providing Forthplus with Mrs T's policy information and discharge forms.

On 10 April 2017, Mrs T signed a ForthPlus SIPP application form.

On 8 May 2017, Aviva received a transfer request from Forthplus to transfer her pension to the Forthplus SIPP. Enclosed with paperwork was an HMRC certificate confirming the scheme was registered on 25 November 2015.

The covering letter explained that the scheme administrators were Forthplus Pensions Limited and the trustees were Forthplus Trustees Limited.

On 9 May 2017, Aviva transferred the proceeds of Mrs T's pension policies to the Forthplus SIPP – an amount of around £75,500. Investments were subsequently made in a VAM Close Brothers Cautious Fund, with Konstanz Finance Limited and Audacia Capital.
I understand that in 2019, the VAM Close Brothers investment was redeemed and the

proceeds were used to make an investment with Brite Adviser.

According to the available SIPP statements provided, both the Konstanz Finance and Audacia Capital investments defaulted. And according to Mrs T's SIPP trustees (iPensions Group) Brite Adviser is in receivership, so no current information on the value of this investment is available.

In May 2023, Mrs T complained to Aviva. Briefly she said it failed in its obligations and allowed a transfer of her pension to an unsuitable pension vehicle for the purpose of allowing high risk investments. She said it failed to provide her with a Scorpion leaflet and by not meeting its requirements at the time, it played a fundamental role in her suffering the financial loss on her pension.

Aviva didn't uphold the complaint. In summary it said that it had conducted an appropriate level of due diligence given the requirements of the time. It said the Forthplus SIPP was a registered scheme and it didn't appear on any pension liberation list at the time. It said the transfer was done on an execution only basis – at no point did it provide any advice.

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.

In 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.

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 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 was about to give people greater flexibility in relation to taking pension benefits) and explained that pension scams were evolving. In particular, it highlighted that single member occupational schemes were being used by scammers.
At the same time, a broader piece of guidance was initiated by an industry working group covering both TPR and FCA regulated firms: the Pension Scams Industry Group (PSIG) Code of Good Practice.
The intention of the PSIG Code was to help firms achieve the aims of the Scorpion campaign in a streamlined way which balanced the need to process transfers promptly with the need to identify those customers at material risk of scams.

The Scorpion guidance for businesses was updated again in March 2016, with the Scorpion insert being updated in June 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. A further update to the Scorpion insert was made in March 2017.

<u>The Scorpion guidance</u>

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.

In the absence of more explicit direction, I take the view that the member-facing Scorpion warning materials (which had been refreshed in 2016 and 2017) 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, transferring schemes were asked to carry out due diligence and use a three-part checklist to find out more about a receiving scheme and why their member was looking to transfer, in each requested 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 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.

- 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 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>

Mrs T says that her partner wanted to speak to someone to understand what to do with his pension, so he searched for a business online. The business he found was a company called Life Compare Ltd. Mrs T says a meeting was arranged at their home, which she also attended. She says during the meeting, the representative advised her to transfer her pension to a Forthplus SIPP because it would generate better returns. Life Compare Ltd was not FCA authorised.

She says the representative discussed the investment first and told her that he only way to invest was through her pension. Mrs T says she was led to believe the investments were safe and that there was no risk to her capital.
She says the adviser seemed extremely knowledgeable and said they had invested their pension the same way, which gave her added confidence in what they were suggesting she should do.

Mrs T says that more than one meeting took place in all – she remembers there was at least two. She says there was a large amount of paperwork for her to sign and all the documents for her signature were marked by coloured signature tabs. She says that, if she hadn't been convinced to proceed with the investments, she would have left her pension where it was if that meant it was secure.

Mrs T has been clear with whom she spoke and dealt with and has provided a business card with the representative's name and the company name of Life Compare Ltd. But I could see from the SIPP application provided that in the 'Financial Adviser' section of the form, the adviser firm was recorded as Square Mile Financial Services along with the adviser's name. Square Mile Financial Services at the time was an EEA passported in firm regulated by the Czech Ministry of Finance. The passporting regime meant it could carry out permitted regulated activities in the UK without being authorised by the FCA. The presence of this firm might suggest that it had some involvement in the process, including giving advice to Mrs T. So, I sought clarification from her.

Mrs T has said that she never met or had any contact with this adviser or firm. She says she didn't receive any correspondence from them, and she doesn't know who the business or adviser is. She says she has no recollection of Square Mile being referred to during any discussions about her pension. And in pointing out to Mrs T that the adviser's signature is dated the same as hers on the SIPP application, she says they can't have signed it in her presence because she never met with them.

Looking at the SIPP application I can see that all of Mrs T's personal details have been handwritten on the form – whether by her or the person she met with. But the financial adviser details which record Square Mile Financial Services as the adviser firm, as well as the adviser's name and office address, are typed or computer printed. They are not handwritten like the rest of the form. And this strikes me as somewhat odd. I think if the form had been completed by and in the presence of the Square Mile adviser – the adviser signature bears the same date as Mrs T's – I would expect their details to also have been handwritten on the form. I think it's likely the typed adviser details were added at a different time.

So, I think the evidence from the time supports Mrs T's recollections about the discussions she had and with whom. I don't think the Square Mile adviser met with Mrs T and signed the application in her presence – in fact, I don't think they had much if any involvement in the transfer process. It strikes me that this appears to be a papering exercise making it appear (most likely to Forthplus) there was some involvement from a regulated party.

So, I think it is more likely than not that it was the representative from Life Compare Ltd who met with Mrs T at her home, and it was this business that conducted the meeting(s) with her and completed the necessary paperwork to carry out the transfer. I also think that, given what Mrs T has said was discussed about the benefits of moving to the SIPP and that the representative appears to have been promoting the advantages of the SIPP over the ceding scheme, I think this supports Mrs T being recommended or advised to transfer. Crucially, Life Compare Ltd was unregulated.

<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 says that it was its policy to include a Scorpion insert when it sent out a transfer pack and it has provided a transfer process document in support of what it says. But in weighing up what Aviva has said and provided, I'm mindful that the covering letter Aviva sent to Forthplus enclosing Mrs T's pension policy information does not refer to the Scorpion insert as being enclosed, and the process document it has provided is undated. So, I don't think I can place a great deal of weight on what Aviva says. Furthermore, the transfer pack in

Mrs T's case was sent to Forthplus. I don't think Aviva should have generally relied on Forthplus passing the insert on to Mrs T. I think it should have sent a copy of the insert to Mrs T directly.

So, taking the above into account, I don't think I can safely say that Mrs T did, more likely than not, receive a copy of the Scorpion insert.

Due diligence:

As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mrs T'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 Scorpion guidance as a benchmark instead.

I've firstly looked at what due diligence Aviva carried out in this case to consider whether it was sufficient.

Based on what Aviva said in its final response letter and its submission to us, it appears its due diligence amounted to checking the SIPP's HMRC registration date and checking whether it appeared on its internal liberation list. It has also said that Mrs T had a history of appointing different advisers to transfer away implying it also took some comfort from this that there was no scam risk in progress. But I don't think it was reasonable for Aviva to have taken comfort from this. According to Aviva's business file, I can see that Mrs T previously gave a letter of authority to a firm in 2016 – but she says that this was in relation to seeking help to appoint a beneficiary. She says there was no discussion with this firm about transferring her pension.

Aviva has also said Mrs T had appointed Forthplus as her advisers and they were a regulated firm. Again, it appears to have taken comfort from this. But I don't think it was reasonable for Aviva to have assumed Mrs T was getting advice from Forthplus. Aviva had provided information to them as requested, but they were the administrators of the SIPP. I don't think Aviva should have made the assumption they were also advising Mrs T without checking with her first. So, I don't think Aviva did enough here. I think the initial triage process should have instead led to Aviva asking Mrs T 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. The universal six questions Aviva should have asked would not have likely prompted a "Yes" answer prompting further investigation (it's possible Mrs T would have indicated that she had been promised a specific or guaranteed return, but there isn't enough evidence for me to conclude this.) But because Mrs T was requesting a transfer to a SIPP, Section 6.2.2. refers to an additional question that should be asked:

- Who has advised you to proceed with the transfer? Is this person authorised by the FCA, to advise on pension transfers? Please provide their FCA registration number.

While I'm mindful the second part of the question referring to FCA authorisation on pension transfers would in fact only be relevant for a transfer from a pension that had guarantees – for example a from a defined benefit pension – and so wasn't relevant to Mrs T, the first question about who had advised her to proceed with the transfer was. So, Aviva ought to have asked this additional question as part of the initial analysis member questions.

In response to this question, I think Aviva would have established that Life Compare Ltd had advised Mrs T to transfer – this is the business I'm satisfied she would've named in line with the conclusion I reached earlier on. Because this firm wasn't authorised to provide advice, which Aviva could've readily established by checking the FCA register, this might have prompted it at this earlier stage to warn Mrs T about this. But I think Aviva should have investigated further under the SIPP section of the Code (Section 6.4.2). The SIPP section points to a number of potential areas of concern relating to marketing methods, the provenance of the receiving scheme, FCA regulation and scam risk around cash payments or early access to funds.

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). And it might have chosen to focus its attention on the questions around the advice Mrs T had received. But the Code makes the point that a transferring scheme would typically need to conduct investigations into a "wide range" of issues to establish whether a scam was a realistic threat. With that in mind and given the relatively limited information it had about the transfer, I think in this case Aviva should have addressed all four sections of the SIPP due diligence process and contacted Mrs T to help with that.

<u>What should Aviva have found out?</u>

If Aviva had carried out the steps above, while it would've established that the SIPP wasn't recently registered and Mrs T hadn't been cold called for example, importantly Aviva would have learned from her that she was taking advice from Life Compare Ltd, an unregulated firm. And an unregulated firm that appeared to be recommending she also invest in non-standard offshore based investments.

Being *advised* by an unauthorised firm to transfer benefits from a personal pension plan would have been a breach of the general prohibition imposed by FSMA, which states no one can carry out regulated activities unless they're authorised or exempt. Anyone working in this field should have been aware that financial advisers need to be authorised to give regulated advice in the UK. The PSIG Code (and the Scorpion guidance) make much the same point. Indeed, the PSIG Code says firms should report individuals appearing to give regulated advice that aren't authorised to do so.

My view is that Aviva should therefore have been concerned by Life Compare Ltd's involvement because it pointed to a criminal breach of FSMA. And on the balance of probabilities, I'm satisfied such a breach occurred here.

<u>What should Aviva have told Mrs T – and would it have made a difference?</u>

Had it done more thorough due diligence, there was at least one significant warning Aviva could have given Mrs T in relation to a possible scam threat as identified by the PSIG Code – namely the involvement of an unregulated adviser. I think Aviva's failure to uncover the threat posed by a non-regulated adviser was a significant oversight.

Its failure to do so, and failure to warn Mrs T accordingly, meant it didn't meet its obligations under PRIN and COBS 2.1.1R.

With those obligations in mind, it would have been appropriate for Aviva to have informed Mrs T that the business and adviser she had been advised by was unregulated and could put her pension at risk. Aviva should have said only authorised financial advisers are allowed to give advice on personal pension transfers, so she risked falling victim to illegal activity and losing regulatory protections.

I don't think this would have been a disproportionate response given the scale of the potential harm Mrs T was facing and Aviva's responsibilities under PRIN and COBS 2.1.1R. And I don't think any such warnings would reasonably have caused Aviva to think it was running the risk of advising Mrs T, that it was replicating the responsibilities of the receiving scheme or that it was putting in place unnecessary barriers to exit.

I'm satisfied any messages along these lines would have changed Mrs T's mind about the transfer. The messages would have followed conversations with Mrs T so would have seemed to her (and indeed would have been) specific to her individual circumstances and would have been given in the context of Aviva – a business I think she would've trusted as her existing pension provider – raising concerns about the risk of losing pension monies as a result of untrustworthy advice. This would have made Mrs T aware that there were serious risks in using an unregulated adviser. I think the gravity of any messages along these lines would prompt most reasonable people to rethink their actions. And I've seen no persuasive reason why Mrs T would have been any different. I think the warning along these lines would've rung alarm bells with her and I think she would've heeded it. I think Mrs T would've likely sought regulated independent financial advice (or free guidance from TPAS as set out in the Scorpion leaflet) and as a result concluded the transfer wasn't in her best interests.

So, I consider that if Aviva had acted as it should, Mrs T wouldn't have proceeded with the transfer out of her personal pension or suffered the investment losses that followed.

<u>End of provisional decision</u>

Responses to my provisional decision

Mrs T accepted my provisional decision. She said that she is currently a non-taxpayer and that due to a medical condition she's unlikely to work again. She said her welfare officer has confirmed she's likely to still be a non-taxpayer at state retirement age due to her expected income. She said her preference was for the settlement to be paid into a pension.

Aviva disagreed with my provisional decision, and it provided a substantive response. It also provided a further response to my request for further evidence in support of one its arguments. For ease I will combine the responses. And while I have read and considered Aviva's replies in full, I haven't set out everything here. The following is what I consider are Aviva's key points:

- While Aviva supports the principle of the PSIG Code, its adoption was voluntary. It believes the Financial Ombudsman Service has applied an overly strict interpretation of the due diligence process suggested in the Code.
- Aviva disagrees with my conclusion that using the Scorpion guidance instead of the Code as a benchmark when considering Aviva's actions in carrying out the transfer request would not have made a difference to the outcome of the complaint. It believes none of the due diligence triggers in the Scorpion guidance were apparent from the request.

- The scam risks and associated warning signs were typically absent in transfers to SIPPs. Aviva had no knowledge or material concerns relating to SIPP arrangements, which included the Forthplus SIPP, so there was nothing to prompt enhanced due diligence generally on SIPP transfers.
- Aviva accepts that the FCA authorised status of Forthplus Limited didn't preclude it from carrying out appropriate due diligence. But it believes the assurance offered by

the receiving scheme's regulatory status is significant and should be taken into account in assessing whether Aviva's due diligence was proportionate, which is the approach it was required to take and in line with regulators expectations.
- Aviva had no cause or justification to carry out further due diligence in line with Section 6.2.2. of the PSIG Code. Section 6.2.1. is designed to determine if things can proceed without the need for further due diligence. Because Aviva had no general concerns regarding the provider and there were no case specific concerns, it completed the transfer without the need for further investigation.
- Aviva did not operate a 'whitelist' of schemes. While Section 6.11. of the Code refers to the use of whitelists when applying Section 6.2.1, the Code is very clear that this is guidance on how providers might manage these, and it is for each organisation to decide if they want to build and maintain them – i.e. Section 6.11. offered optionality.
- Aviva did not specifically fast track transfers under Section 6.2.1. but were subject to its standard due diligence requirements it applied to transfers that it deemed did not present a scam risk as in Mrs T's case. To suggest Aviva was not entitled to do this runs contrary to the Code.
- It is factually unclear which firm if any gave Mrs T advice to transfer – it had no knowledge of Life Compare Ltd's involvement. Aviva maintains there were no warning signs present that should have prompted it to make enquiries concerning the involvement of third-party intermediaries or their regulatory status. The only involvement of third parties was with regulated advisers.
- The ombudsman has cast doubt on the advisory role of Square Mile Financial Services as the adviser recorded on the SIPP application, despite it being the only credible or independent evidence of Mrs T receiving advice. Because this firm was permitted to carry out regulated activities in the UK, this is consistent with what the Forthplus key features document said about them only accepting business from appropriately regulated advisers.
- The key features document also said that it was the members responsibility to find a professional adviser and validate their credentials. Mrs T would have been provided with a copy of this before the transfer was processed. If she believed she was getting advice from Life Compare Ltd this suggests she either didn't carry out this check or she did and went ahead anyway.
- The key features document provided Mrs T with investment risk warnings including: 'You might get back less than the initial amount invested.' And: 'You might lose the entire investment amount.' This differs with Mrs T's evidence that she was led to believe there was no risk to her capital. Aviva believes Mrs T's decision to go ahead with the transfer despite being provided with risk warnings around both investments and advice, shows that it's unlikely she would have changed her mind if Aviva had made further contact with her.
- The evidence suggests Mrs T's partner might also have transferred his pension based on the same interaction with Life Compare – an element of joint enterprise. Aviva asks me to consider whether Mrs T's partner did transfer his pension and to where, and if he received any warnings.

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.

Having done so, while I have carefully considered what Aviva has said in response to my provisional decision, I've not been persuaded to change my mind. So, I've decided to uphold this complaint for the same reasons I gave in my provisional decision.

I will now go on to respond to the key points Aviva has raised as I've set out above. For ease I will provide a heading for each of the key points I'll address. I've grouped some of the points together where I deem it is more appropriate to deal with them as a theme.

But before I do, I'd like to deal with two requests Aviva has made. Firstly, it has asked me to issue a further provisional decision instead of a final decision if I to continue to uphold this complaint. It says many of the issues in this case have not been considered or ruled on by the Financial Ombudsman Service before and a second provisional decision will ensure the material points have been properly considered. And secondly it has asked me to consider holding my decision until the FSCS investigation into Forthplus Pensions Limited is compete. It believes the outcome of this will inform whether there are already or could be more appropriate ways for Mrs T to be compensated.

I'm satisfied it is not necessary or appropriate for me to issue a second provisional decision in this case. My reasons for upholding this complaint have not fundamentally changed warranting me seeking further representations before issuing a final decision. I'm satisfied I have given both parties an adequate and reasonable amount of time to provide further evidence and representations before reaching my final decision. And I disagree that the issues raised in this complaint have not already been addressed or ruled on by the Financial Ombudsman Service. I do not consider there is anything novel here or anything else which I consider requires any further detailed consideration or investigation. For these reasons I consider it is fair for me to continue and bring this matter to a conclusion in a final decision.

Equally, I think it is unnecessary for me to wait until the FSCS concludes its investigation into Forthplus before I decide this matter. I have a complaint in front of me which I can decide and one which I consider it is fair for Aviva to compensate Mrs T for the losses she has incurred. And Mrs T has instructed the FSCS to pause her claim against Forthplus pending the outcome of this complaint. In these circumstances I consider it is fair for me to proceed and issue my final decision on this complaint.

Using the Scorpion guidance as a benchmark would not have arrived at the same outcome

In my provisional decision I said that I thought the PSIG Code was a reasonable starting point for most ceding schemes in conducting their due diligence and it was on this basis that I considered Aviva's action in handling Mrs T's transfer. But I also said that I didn't think it would make a difference to the outcome of the complaint if I had considered Aviva's actions using the Scorpion guidance as a benchmark instead. Aviva says it strongly disagrees with my statement because none of the due diligence triggers in the Scorpion guidance would have been present in the transfer request.

I maintain my view here. By the time of Mrs T's transfer, adopting the Scorpion guidance always leads to a ceding scheme having to carry out due diligence on a transfer. The Scorpion action pack is clear about this. It refers to ceding schemes checking the information it receives for a transfer against the checklist provided. And it says: 'Carry out due diligence on all transfer requests…'
So, there's less room for manoeuvre under the Scorpion guidance than Aviva has suggested.

I won't set out all of the questions in the checklist. But importantly, one of the questions for the scheme member asks if they've been advised by a non-regulated adviser and for the ceding scheme to check the adviser's status on the FCA register.

As I said in my provisional decision, using the PSIG Code as the benchmark, in addition to the universal six questions Aviva should have asked Mrs T under Section 6.2.2, because she was transferring to a SIPP it needed to ask an additional question about who had advised her to proceed with the transfer and whether they were authorised by the FCA.

So, I think it is clear that, whether I consider Aviva's actions using the Scorpion guidance or the PSIG Code, the outcome would be the same here. Aviva would have likely uncovered Mrs T was being advised by a party not authorised to do so prompting it to warn her that she risked falling victim to illegal activity, losing regulatory protections, and ultimately risked losing her pension.

<u>Who if anyone advised Mrs T?</u>

There's not much more I feel I can usefully add to what I said in my provisional decision about who I think likely advised Mrs T to transfer. Mrs T has been consistent and clear that it was Life Compare she met with and she has provided supporting evidence that she met with someone from this business. I acknowledged in my provisional decision that Mrs T's SIPP application records another business, Square Mile Financial Services, as the financial adviser. I did not dismiss this point. But I still think for the same reasons I gave in my provisional decision that its involvement was at best minimal and was simply to make it appear that Mrs T had been introduced to the SIPP by a regulated party. As I said, I think this was a papering exercise – I'm not persuaded that Square Mile Financial Services did advise Mrs T to transfer. I still think that advice was given by Life Compare Ltd as Mrs T has said. Aviva would not have known about Life Compare's involvement (or that Square Mile Financial Services was on the SIPP application) based on the paperwork it received in relation to the transfer request. But if Aviva had carried out the further due diligence which I think it ought to have done in this case and asked Mrs T about who had advised her, Life Compare's involvement would have been made clear.

<u>Aviva's due diligence was proportionate – it had no cause to carry our further due diligence in line with Section 6.2.2. of the PSIG Code</u>

This is Aviva's key argument in this case. Aviva says that, while the authorised status of Forthplus Limited didn't preclude it from carrying out appropriate due diligence, the assurance offered by the receiving scheme's regulatory status is significant and it should be taken into account in determining if its due diligence was proportionate. Aviva also appears to be relying on Section 6.2.1. of the Code in this case saying that, because it had no general concerns regarding the provider and there were no case specific concerns, there was no cause to carry out further investigation under Section 6.2.2. of the Code.

I think it would be helpful here to revisit the relevant section of the Code. Section 6.2.1. of the PSIG Code is designed to determine if a ceding scheme can proceed with a transfer without the need for further due diligence – a fast tracking process. The first question in this section about a transfer to a recognised club or group isn't relevant here. But the second question asks: 'Has your organisation currently identified the administrator/ scheme as **not** presenting a risk of pension scam activity (Transferring organisations may hold lists of these)?'

Section 6.11. speaks to this question referring to an internal 'white list' approach providing guidance on how providers might manage schedules of schemes deemed not to present a risk. Aviva says that it did not operate a whitelist at this time and says there was no requirement for it to do so. It says while the Code referred to whitelists, it goes on to say that: 'it is for each organisation to decide if they wish to build and maintain a process to manage a list of organisations…' So, it says Section 6.11. clearly offered optionality and it was guidance only.

I think Aviva is saying here that it could proceed with the transfer due to the application of Section 6.2.1. if it deemed it not to present a risk of scam activity but at the same time, it did not have to operate a whitelist to help decide on this because the Code says it is for each organisation to decide whether to operate and manage such a list – it was optional.

But I think Aviva has misunderstood the guidance. I think providers had the option of fast-tracking transfers under Section 6.2.1. But if they chose to do so, I think the guidance is clear. It expected firms to have an infrastructure around both creating and maintaining a list of schemes that do or do not present a scam risk with ongoing due diligence to support it. By choosing to do this, as the guidance refers to, providers could minimise the administrative burden and: 'significantly reduce the due diligence needed on individual transfers.' It then lists the key considerations a provider would need to weigh up as to whether it was worthwhile doing.

So, with that in mind, I think it is unreasonable for Aviva to determine Forthplus Limited did not present a scam risk without having a process in place or having already done some prior due diligence in line with Section 6.11. of the Code to reach that conclusion. Aviva says it had no general concerns about the provider and applied its standard due diligence which required identification of the receiving scheme and confirmation of its HMRC registration status.

But in my view, not having any general concerns isn't the same as having a properly designed process or an infrastructure in place to determine the scheme did not represent a risk of pension scam activity. I accept the more readily identifiable scam warning signs associated with other products such as SSAS' for example, were not present here. I also accept Forthplus Limited's FCA regulatory status would have given Aviva some comfort – the PSIG Code makes the same point. But as Aviva has acknowledged itself, the fact the SIPP operator was regulated did not preclude it from carrying out due diligence on the transfer. And the Code is, likewise, clear that the regulatory status of the receiving scheme doesn't necessarily outweigh all other considerations.

Aviva has explained it had a list of entities of concern, which it fed into from a number of sources. And the guidance in the Code talked about these types of lists too. But just because Forthplus Limited might not have been on that list, it does not automatically mean it did not present a risk of scam activity and that no further due diligence was required. Whilst a useful input into the due diligence process, I'm satisfied the absence of Forthplus from those lists isn't enough in itself given what is set out in Section 6.11.

So, with no whitelist in operation or other evidence to show that Aviva had carried out some prior due diligence to reasonably conclude Forthplus Limited did not present a risk of pension scam activity, I do not think it was reasonable for Aviva to rely on actioning Mrs T's transfer under Section 6.2.1. of the Code and effectively fast track the transfer. In the circumstances I believe the Code is clear and I think it was proportionate that the initial triage process should instead have led to Aviva asking Mrs T further questions about the transfer as per Section 6.2.2.

As I explained in my provisional decision, the additional question relevant to a transfer to a SIPP asked about who had provided advice to transfer and whether they were FCA authorised. And I said that I think Mrs T would have named Life Compare Ltd in response to this. I don't think Aviva could ignore this. While Aviva could take comfort from the regulatory status of the SIPP operator – the guidance refers to substantial comfort – the presence of an unregulated adviser once seen could not be unseen. So, at this point, I think any comfort Aviva initially took from the receiving scheme ought reasonably to have been replaced by one of substantial concern.

And as a result, it should have prompted Aviva to provide Mrs T with the explicit warning that she risked falling victim to illegal activity and that her pension was at risk. I think this would have been a proportionate response given the scale of the potential harm Mrs T was facing.

<u>The Forthplus SIPP key features document – investment and adviser risk warnings</u>

Aviva says that Mrs T would have received, prior to the transfer, a key features document providing information about the Forthplus SIPP. And this included both investment risk warnings as well as warnings around the member's responsibility to find a professional adviser and validate their credentials. Aviva says that because Mrs T carried on with the transfer despite these warnings, this indicates she was unlikely to have acted differently if Aviva had done anything more and contacted her.

I can see the Forthplus SIPP key features document did set out some investment risk warnings. For instance, it said: 'The value of investments, as well as the potential income from those investments, may fall as well as rise. You may get back less than the initial amount invested. You may lose the entire investment amount. Past performance is not an indicator of potential future performance.'

But crucially here, I think the warnings provided in the key features document were very different from the warnings I think Aviva should have provided to Mrs T as I set out in my provisional decision. They did not discuss, as Aviva should have been doing, any warning signs of a pension scam which were present in Mrs T's transfer – in particular, its concerns that Mrs T was relying on untrustworthy advice. For this reason, as I've said, I think the essence of the warnings the Forthplus SIPP document provided and the warnings Aviva should have provided were very different. In my view, the warning Aviva should have given Mrs T about the risks of falling victim to illegal activity and the consequences of doing so, was so fundamentally different and so impactful that I'm satisfied Mrs T's actions in ignoring the key features document warnings are not indicative of how she would have behaved had Aviva acted as it should have done. As I said in my provisional decision, I think Mrs T would have heeded Aviva's warning and would have changed her mind about the transfer.

<u>Joint enterprise</u>

Aviva says that because Mrs T's partner was involved in finding an adviser and it appears it was a joint enterprise, he might also have transferred his pension based on the same interaction with Life Compare Ltd. And it has asked me to consider if and to where he might have transferred along with any warnings he received.

Mrs T has explained that while there was a joint meeting with the representative from Life Compare, they then spoke to Mrs T and her partner individually to discuss their respective pension transfers and complete the necessary paperwork. Mrs T says that her partner was capable of dealing with his own affairs and paperwork by himself, so she didn't get involved. She says that her partner did transfer his pension based on the interaction with Life Compare, but he transferred to a SSAS and invested in The Resort Group.

Also, Mrs T's partner has made a similar complaint to her about the lack of due diligence carried out by his provider, but he's using a different professional representative to represent him.

I think it's important to stress that Mrs T's partner is a not a party to this complaint. So, I do not have the authority to seek information from his pension provider about what, if any warnings or information it provided him with during the transfer process. But even if it did send him something, it doesn't automatically follow that anything he received Mrs T would have seen too – in my view, many partners conduct their financial affairs separately and don't share everything as a matter of course. And what I think is clear here is that, while there was a joint meeting with Life Compare, Mrs T and her partner made their own individual decisions about their respective pensions, and it seems they kept their financial matters separate. It's also clear that Mrs T's partner did not transfer to the same kind of arrangement as Mrs T – instead, he transferred to something quite different.

So, I don't think this paints quite the joint enterprise picture I think Aviva is trying to suggest is the case here. I think I can fairly decide this case based on the evidence I have seen. In my view what is important here is the resulting information and warnings Aviva should have provided Mrs T with (but didn't) following the due diligence it ought reasonably to have carried out. And that those warnings would have been specific to Mrs T's individual circumstances and given in the context of Aviva raising concerns about the specific transaction she was contemplating, and how she risked losing her pension monies as a result.

<u>Summary</u>

Aviva has been clear to point out that it believes my interpretation of the PSIG Code and its expectations of its conduct do not reflect the reasonable proportionality it was permitted to take when processing transfer requests. But for the reasons I've set out above, I'm satisfied the Code is clear that, given the circumstances of Mrs T's transfer, Aviva should have carried out further due diligence in this case and asked Mrs T further questions about the transfer, including who had advised her.

Had it done so, I believe it would have uncovered that an unregulated party was advising her. And once it had uncovered this, I don't think Aviva could ignore it. So, while Aviva might have taken initial comfort from the SIPP provider being regulated and reasonably believed the risk of a scam appeared low, with the discovery of an unregulated adviser on the scene this ought to have changed things. I think this should have led to Aviva providing an explicit warning that Mrs T was likely failing victim to illegal activity and was putting her pension at risk. And for the reasons I've given, I'm satisfied Mrs T would not have ignored such a grave warning and ultimately would not have proceeded with the transfer out of her personal pension or suffered the investment losses that followed.

For these reasons, I uphold this complaint.

Putting things right – fair compensation

My aim is that Mrs T should be put as closely as possible into the position she would probably now be in if Aviva had treated her fairly.

For the sake of completeness, I'd like to clarify two important points before setting out the approach Aviva should follow to put things right:

- Firstly, in relation to the redeemed investment in 2019 in favour of an alternative investment with Brite Adviser, there is no evidence to indicate that this was the result of Mrs T's actions, rather it was something Forthplus did. In any event, none of the investments would have been made had the transfer not taken place. So, I think it is fair for Aviva to redress Mrs T's total losses in this case by following the approach below.

- Secondly, Mrs T has told us that after seeking advice she was told she would likely be a non-taxpayer in retirement, so any compensation paid to her as cash should not be notionally reduced to allow for the marginal rate of income tax that would likely have been paid in future when Mrs T is retired. But despite requesting supporting evidence, such as a state pension forecast easily obtainable from the gov.uk website and giving Mrs T a reasonable amount of time to provide it, I've not heard back. So, without something to support what Mrs T says, and in light of the fact that a full state pension itself would get someone to the threshold, I don't think it is fair to depart from our reasonable assumption that Mrs T is likely to be a basic rate taxpayer in retirement. This means Aviva should make a notional deduction (if it pays Mrs T compensation direct) as I have set out below.

The Forthplus SIPP (the current trustees of which I understand are iPensions Group, but for ease I will refer to Forthplus) only seems to have been used in order for Mrs T to make an investment that I don't think she would have made from the proceeds of this pension transfer, but for Aviva's actions. So I think that Mrs T would have remained in her pension plan with Aviva and wouldn't have transferred to the Forthplus SIPP.

To compensate Mrs T fairly, Aviva must subtract the actual value of the Forthplus SIPP from the notional value if the funds had remained with Aviva. If the notional value is greater than the actual value, there is a loss.

Actual value

This means the Forthplus SIPP value at the date of my Final Decision. To arrive at this value, any amount in the Forthplus SIPP bank account is to be included, but any overdue administration charges yet to be applied to the Forthplus SIPP should be deducted. Mrs T may be asked to give Aviva her authority to enable it to obtain this information to assist in assessing her loss, in which case I expect her to provide it promptly.

My aim is to return Mrs T to the position she would have been in but for the actions of Aviva. This is complicated where an investment is illiquid (meaning it cannot be readily sold on the open market), as its value can't be determined. On the basis of the evidence I have, that is likely to be the case with the following investment(s): Konstanz Finance, Audacia Capital and Brite Adviser.

This is because the first two investments have defaulted and I understand Brite Adviser is in liquidation and an investment value cannot be currently obtained. Therefore as part of calculating compensation:

- Aviva should seek to agree an amount with the Forthplus SIPP as a commercial value for the illiquid investment(s) above, then pay the sum agreed to the Forthplus SIPP plus any costs, and take ownership of those investment(s). The actual value used in the calculations should include anything Aviva has paid to the Forthplus SIPP for illiquid investment(s).

- Alternatively, if it is unable to buy them from the Forthplus SIPP, Aviva must give the illiquid investment(s) a nil value as part of determining the actual value.

  In return Aviva may ask Mrs T to provide an undertaking, to account to it for the net proceeds she may receive from those investments in future on withdrawing them from the Forthplus SIPP. Aviva will need to meet any costs in drawing up the undertaking. If Aviva asks Mrs T to provide this undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

- It's also fair that Mrs T should not be disadvantaged while she is unable to close down the Forthplus SIPP. So to provide certainty to all parties, if these illiquid investment(s) remain in the scheme, I think it's fair that Aviva must pay an upfront sum to Mrs T equivalent to five years' worth of future administration fees at the current tariff for the Forthplus SIPP, to allow a reasonable period of time for the Forthplus SIPP to be closed.

Notional value

This is the value of Mrs T's funds had she remained invested with Aviva up to the date of my Final Decision.

Aviva should ensure that any pension commencement lump sum or gross income payments Mrs T received from the Forthplus SIPP are treated as notional withdrawals from Aviva on the date(s) they were paid, so that they cease to take part in the calculation of notional value from those point(s) onwards.

Payment of compensation

I don't think it's appropriate for further compensation to be paid into the Forthplus SIPP given Mrs T's dissatisfaction with the outcome of the investment it facilitated.

Aviva should reinstate Mrs T's original pension plan as if its value on the date of my Final Decision was equal to the amount of any loss established from the steps above (and it performs thereafter in line with the funds Mrs T was invested in).

Aviva shouldn't reinstate Mrs T's original plan if it would cause a breach of any HMRC pension protections or allowances – but my understanding is that it might be possible for it to reinstate a pension it formerly administered in order to rectify an administrative error that led to the transfer taking place. It is for Aviva to determine whether this is possible.

If Aviva is unable to reinstate Mrs T's pension and it is open to new business, it should set up a **new** pension plan with a value equal to the amount of any loss on the date of my Final Decision. The new plan should have features, costs and investment choices that are as close as possible to Mrs T's original pension.

If Aviva considers that the amount it pays into a **new** plan is treated as a member contribution, its payment may be reduced to allow for any tax relief to which Mrs T is entitled based on her annual allowance and income tax position. However, Aviva's systems will need to be capable of adding any compensation which doesn't qualify for tax relief to the plan on a gross basis, so that Mrs T doesn't incur an annual allowance charge. If Aviva cannot do this, then it shouldn't set up a new plan for Mrs T.

If it's not possible to set up a new pension plan, Aviva must pay the amount of any loss direct to Mrs T. But if this money had been in a pension, it would have provided a taxable income during retirement. Therefore, compensation paid in this way should be notionally reduced to allow for the marginal rate of income tax that would likely have been paid in future when Mrs T is retired. (This is an adjustment to ensure that Mrs T isn't overcompensated – it's not an actual payment of tax to HMRC.)

To make this reduction, it's reasonable to assume that Mrs T is likely to be a basic rate taxpayer in retirement – as I said above Mrs T has not provided sufficient evidence to persuade me otherwise. So, if the loss represents further 'uncrystallised' funds from which Mrs T was yet to take her 25% tax-free cash, then only the remaining 75% portion would be taxed at 20%. This results in an overall reduction of 15%, which should be applied to the compensation amount if it's paid direct to her in cash.

Alternatively, if the loss represents further ‘crystallised’ funds from which Mrs T had already taken her 25% tax-free cash, the full 20% reduction should be applied to the compensation amount if it’s paid direct to her in cash.

If payment of compensation is not made within 28 days of Aviva receiving Mrs T’s acceptance of the Final Decision, interest must be added to the compensation at the rate of 8% per year simple from the date of the Final Decision to the date of payment.

Income tax may be payable on any interest paid. If Aviva deducts income tax from the interest, it should tell Mrs T how much has been taken off. Aviva should give Mrs T a tax deduction certificate in respect of interest if Mrs T asks for one, so she can reclaim the tax on interest from HMRC if appropriate.

This interest is not required if Aviva is reinstating Mrs T’s plan for the amount of the loss – as the reinstated sum should, by definition, mirror the performance after the date of my Final Decision of the funds in which Mrs T was invested. However, I expect any such reinstatement to be achieved promptly.

Details of the calculation must be provided to Mrs T in a clear, simple format.

My final decision

For the reasons above, I’ve decided to uphold this complaint and I instruct Aviva Life & Pensions UK Limited to put things right in line with the approach above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs T to accept or reject my decision before 25 April 2025.

Paul Featherstone
Ombudsman