DRN-5240466

The complaint

Mr A has complained about a transfer of his Aviva Life & Pensions UK Limited pension to a Qualifying Recognised Overseas Pension Scheme ("QROPS") in Gibraltar in September 2014. Mr A's QROPS was subsequently used to invest in the Trafalgar Multi Asset Fund. The investment now appears to have little value. Mr A says he has lost out financially as a result.

Mr A 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 A 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

Mr A had a group personal pension (GPP) plan with Friends Life. Friends Life have since become part of Aviva and it is Aviva that is the respondent for Mr A's complaint. For ease of reading I will refer to any actions or responses as being attributable to Aviva.

Mr A explains he was contacted out of the blue by a company offering a review of his pensions in early 2014. And that he was put into contact with Global Partners Limited (GPL). On 7 March 2014, Mr A signed a letter of authority allowing GPL to obtain details, and transfer documents, in relation to his pension. GPL forwarded this to Aviva requesting transfer information for Mr A's pension. On 2 April 2014 Aviva sent a transfer pack directly to GPL in response.

GPL was a financial adviser regulated in a European Economic Area (EEA) member state. The firm became Tourbillon Limited after June 2014 who were again an EEA regulated financial adviser and entered on the Financial Conduct Authority (FCA) register as having passporting rights to provide services within the UK.

On 1 May 2014 Mr A received a financial recommendation letter from GPL. The letter identified that Mr A had two defined contribution pension schemes: the Aviva GPP plan (subject of this complaint) and a GPP with Aegon. It also identified that Mr A had a defined benefits occupational pension scheme (OPS). The report addressed the OPS by providing a 'critical yield', which it explained was the annual investment return required to provide equivalent benefits to the OPS. It said that the critical yield for the OPS was 11.68%. And went on to explain that was not achievable. The report went on to recommend that all three of Mr A's pensions, which were addressed, were transferred to the STM QROPS regulated in Gibraltar. The report did not specify the end investment for the QROPS.

On 17 June 2014 Mr A signed a declaration to update his financial adviser for the QROPS as Nationwide Benefit Consultants Ltd. This firm was a UK based firm that was registered with the FCA as an appointed representative of the principal firm 'Joseph Oliver - Mediacao de Seguros LDA'. Joseph Oliver was based in an EEA country and had passporting rights to provide financial services in the UK.

Aviva then received a new letter of authority from The Pension Reporter (which was a trading name of Nationwide Benefit Consultants and recorded on the FCA register as such) on 20 August 2014. Aviva responded on 27 August 2014 by sending another transfer pack to GPL which was at the same address as The Pension Reporter.

Mr A applied to start a QROPS with STM G.I.B Pension Transfer Plan. The membership form, names Nationwide Benefit Consultants as the professional adviser. And indicates that there will be an initial advice fee of £1,000.

On 19 September 2014 Aviva received Mr A's transfer request. These were sent in by STM Fidecs who was the QROPS administrator. Included in the transfer papers were: completed and signed transfer discharge forms; completed HMRC forms; HMRC letter confirming registration of QROPS from 9 April 2013.

Mr A's pension was transferred by Aviva on 19 September 2014. His transfer value was around £16,000. He was 51 years old at the time of the transfer. The transferred funds were invested in the Trafalgar Multi Asset Fund, which was an investment fund based in the Cayman Islands. In addition to this transfer, Mr A transferred other pensions to the QROPS: an OPS in August 2014 with a cash equivalent transfer value around £17,000 and an Aegon GPP in February 2015 with a transfer value around £17,000; and in June 2015 a transfer in of around £22,500 from what appears to be a further OPS.

The Trafalgar Multi Asset Fund was placed into solvent liquidation in 2017 and individuals connected with it have been the subject of investigation regarding the misappropriation of funds. The investment has therefore been illiquid and it is as yet unclear whether the liquidators will be able to return any funds to Trafalgar Multi Asset Fund investors.

In November 2021 Mr A complained to Aviva. Briefly, his argument is that Aviva ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including (but not limited to) the following: it was overseas and involved a high risk overseas investment, the transfer followed high pressure sales techniques, the catalyst for the transfer was an unsolicited call and he had been advised by a business that wasn't regulated by the FCA so had no recourse to UK regulatory protection, Mr A had been told he could expect very high and unrealistic investment returns (over 25%).

Aviva didn't uphold the complaint. It said it was satisfied it had conducted an appropriate level of due diligence given the requirements of the time. It checked that the QROPS was HMRC recognised and didn't agree it had any cause to investigate the way that the transfer came about or the intended investments for it.

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.

The relevant rules and guidance

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 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.

An overseas pension scheme is defined in HMRC regulations as being one which is subject to specified regulatory and taxation restrictions in the country of establishment. To become a QROPS it must also be:

- Recognised, meaning in short that it meets specified tests applied by HMRC, including on minimum retirement age and the application of tax relief.
- Qualifying, meaning it must notify HMRC that it is a recognised overseas pension scheme; provide appropriate evidence of this; undertake to adhere to HMRC's requirements; and not be otherwise excluded by HMRC from being a QROPS.

Overseas schemes that have notified HMRC that they qualify to be a QROPS are included in a published list on HMRC's website.

The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme, which is either registered with HMRC for tax purposes or is a QROPS. And indeed they may also have a right to transfer under the terms of the contract.

This right came to be exploited, with people encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren't entitled to – for instance, because they were below minimum retirement age. At various points, regulators issued bulletins warning of the dangers of taking such action. But it was only from 14 February 2013 that transferring schemes had guidance to follow that was aimed at tackling pension liberation – the "Scorpion" guidance.

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

- An insert to be included in transfer packs (the 'Scorpion insert'). The insert warns readers about the dangers of agreeing to cash in a pension early and identifies a number of warning signs to look out for.

- A longer booklet issued by TPAS which gives more information, including example scenarios, about pension liberation. Guidance provided by TPR on its website at the time said this longer leaflet was intended to be sent to members who had queries about pension liberation fraud.

- An ‘action pack’ for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should “look out for” various warning signs of liberation. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where transferring schemes still had concerns, they were encouraged to write to members to warn them of the potential tax consequences of their actions; to consider delaying the transfer; to seek legal advice; and to direct the member to TPAS, TPR or Action Fraud.

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

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

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

That said, the launch of the Scorpion guidance was an important moment in so far as it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing those requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance’s specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

In those circumstances, I consider firms which received pension transfer requests needed to pay regard to the contents of the Scorpion guidance as a matter of good industry practice. It means February 2013 marks an inflection point in terms of what was expected of personal pension providers dealing with transfer requests as a matter of fulfilling their duties under the regulator’s Principles and COBS 2.1.1R.

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

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

1. When TPR launched the Scorpion guidance in February 2013, its press release said the Scorpion insert should be provided in the information sent to members requesting a transfer. It said on its website that it wanted the inclusion of the Scorpion insert in

transfer packs to “become best practice”. The Scorpion insert provided an important safeguard for transferring members, allowing them to consider *for themselves* the liberation threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one that wouldn’t have got in the way of efficiently dealing with transfer requests. So, all things considered, I think the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party.

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

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

4. These were additional requirements over and above what a ceding scheme would always have needed to do when processing a QROPS transfer. Those requirements included checking whether the QROPS was on HMRC’s published list, and ensuring the necessary HMRC forms were completed.

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

The circumstances surrounding the transfer – what does the evidence suggest happened?

Mr A’s complaint explains that he was cold called over the phone and put in contact with GPL. His complaint did not specify who cold called him and he has declined the opportunity to speak with our investigator to provide his testimony in person. So I am unable to determine who the introducer may have been.

The documentary evidence that I have seen shows that Mr A signed a letter of authority in March 2014 for GPL to obtain information from his pension providers. Which GPL did. And Mr A has provided a copy of a written recommendation that GPL provided him in May 2014. This recommendation letter was signed as being provided by an individual that I will refer to as Mr X. These documents corroborate Mr A’s account and overall, I am persuaded that GPL were initially involved in providing Mr A with the recommendation to transfer his Aviva GPP (as well as two other pensions referred to earlier) into the QROPS. GPL, as I pointed out earlier, were a firm that were regulated in its EEA member state and had passporting rights to provide financial services to the UK.

GPL's recommendation letter didn't refer to any adviser fee. But it did refer to the provision of a separate 'Terms of Business' document that it had provided Mr A. I have not been provided a copy of this document. But this is the type of document that I would expect to set out the fee for advice. The QROPS application however does indicate that an adviser fee of £1,000 would be paid. And the QROPS transaction history shows that an advisor fee of £1,000 was paid from the fund on 5 August 2014. So I think that Mr A, more likely than not, understood that the financial advice was not being provided free of charge and that he agreed to pay that fee.

I note that Mr A signed a new letter of authority for Nationwide Benefits Consultants Ltd and this firm was identified as being his adviser in the QROPS application. Mr X was still named as the individual providing advice, albeit via this different firm after around June 2014. Nationwide Benefit Consultants was an appointed representative of another firm that was regulated in its EEA member state.

Mr A's complaint letter explained that he was told that he could get returns in the region of 27-28% a year by transferring. But I am not persuaded that the evidence supports this. I say this because, as I referred to earlier, the recommendation that GPL gave to Mr A said that the critical yield for his OPS was 11.68%. And it went on to explain that was not an achievable rate of return. On balance, I am not persuaded that a written record of this kind supports Mr A's recollection that returns of 27-28% were indicated as being likely. So I am not persuaded by his recollection that he was being promised indicative returns so high. I am therefore left unclear exactly what level of return he was likely led to expect from any recommended investment. And no investment literature has been shared. Overall, I am inclined to accept that Mr A was likely persuaded by the promise of improved returns, but the evidence does not support a finding that those returns were of an unrealistically high level.

There is no evidence that Mr A was told in the recommendation that he could access his benefits before age 55 and he has not told us that he was promised, nor that he received, any cash incentive to transfer.

<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 have suggested that it would have sent a copy of the relevant Scorpion insert with its Transfer Pack because that was its process at the time. It has not provided evidence of this, explaining that it has incomplete documentation. The evidence in this case shows that Aviva wrote to Mr A on 2 April 2014 providing a copy of the information that it had also sent to GPL on that date. But the cover letter for this and the contents make no reference of the inclusion of any supplementary warning material from TPR. So I am not persuaded, based on this, that Aviva sent the Scorpion warning insert to Mr A. And I think that it should have sent it with this correspondence. The evidence I have seen in Mr A's other transfer with Aegon persuades me that Aegon did not send him the Scorpion insert either. I have not seen any correspondence from the transfer of Mr A's OPS. But based on the information I do have, I am inclined to accept that Mr A did not see the relevant Scorpion warning prior to completing the transfer.

Had Aviva sent Mr A the Scorpion insert that was in use at the time the first transfer pack was requested, that would have been the version published in February 2013. That would have warned Mr A of the risk of companies telling consumers that they could access cash from their pensions before age 55. Which wasn't what Mr A was being told and wasn't his reason for transferring. In short, the type of risk being warned about at that time wasn't something that was relevant to Mr A's circumstances. He had not been offered any cash incentives and I don't think the overall timescale of the transfer (detailed above under the heading 'What happened') supports a finding that he had been rushed to complete it.

In this case Aviva received a second request for a transfer pack in August 2014. This was after the Scorpion guidance was updated in July 2014. And I think that this was an opportunity where it should have sent Mr A the updated version of the Scorpion insert. This insert warned of pension scams and listed the following tricks that scammers may use to catch consumers out:

- Claim that the pension could be accessed before age 55;
- Approach customers out of the blue over the phone, by text or in person;
- Entice consumers with upfront cash;
- Offer free pension reviews or one-off investment opportunities.

Of these, the only one that was likely to appear relevant to Mr A's circumstances was that he was called out of the blue. As I explained previously, I don't think the evidence indicates that he was offered any incentive, told he could access his pension before age 55 or offered a free pension review. And Mr A has explained that he didn't have a clear understanding of the exact nature of the investments the intended fund would hold, but that he understood it to be a portfolio of investments available. I am not persuaded that the circumstances would have caused him to think that this was a one-off investment opportunity or that there were any time pressures on making the investment.

For the above reasons, even though I think Aviva should have sent the Scorpion inserts to Mr A, I don't think that it would have made any difference to what Mr A went on to do. The 2013 insert simply wasn't warning about the type of harm that Mr A was about to suffer. And the content would not, reasonably, have caused him to be concerned about the advice he'd received. And even though I accept that Mr A was more likely than not cold called, I don't think the overall tone of the insert of July 2014 would have sufficiently resonated with Mr A. Most of the things that it warned of simply do not appear to have been relevant to the likely circumstances Mr A faced at the time.

I understand that in hindsight Mr A says receiving the Scorpion insert would have made a difference. However, on balance I don't think there were enough warnings present in the leaflet that would have concerned Mr A.

Due diligence:

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

Aviva received the following information from STM Fidecs with the transfer request: transfer discharge forms; HMRC forms; confirmation that HMRC recognised the QROPS in April 2013. It also checked that the receiving QROPS was on HMRC's published list. This step ensured that the transfer payment qualified as an authorised payment for tax purposes.

Given the information Aviva had at the time, one feature of Mr A's transfer would have been a potential warning sign of a scam: Mr A's transfer to a QROPS obviously involved moving money overseas. Aviva should therefore have followed up on it to find out if other signs of a scam were present. Given this warning sign, I think it would have been fair and reasonable – and good practice – for Aviva to look into the proposed transfer and the most reasonable way of going about that would have been to turn to the check list in the action pack to structure its due diligence into the transfer.

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

1. The nature/status of the receiving scheme

   Sample questions: Is the receiving scheme newly recognised by HMRC, or is the receiving scheme connected to an unregulated investment company?

2. Description/promotion of the scheme

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

3. The scheme member

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

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

I don't think it would always have been necessary to follow the check list in its entirety. And I don't think an answer to any one single question on the check list would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the check list to establish whether a scam was a realistic threat. Given the warning sign that should have been apparent when dealing with Mr A's transfer request, and the relatively limited information it had about the transfer, I think in this case Aviva should have addressed all three parts of the check list and contacted Mr A as part of its due diligence.

Had it done so, I think it likely that Aviva would have identified the following warning signs as being present in the transfer:

- Mr A was transferring his pension funds to a scheme not authorised by the FCA.

- Mr A's transfer funds would be invested overseas.

- Mr A's transfer may have come about as a result of an unsolicited approach.

Against this, Aviva would also have eliminated the following relevant warning signs:

- The QROPS was not a recently recognised scheme.
- The QROPS was not associated with an unregulated investment company.
- Aviva would not likely have identified reference to loans, savings advances, or cash incentives in any promotional material or in the written suitability report that Mr A could have provided it. There would have similarly been no references to one-off investment opportunities, or free pension reviews.
- I am not persuaded that the circumstances would have caused Aviva to consider that the transfer hinted at unusual or creative investment techniques. Mr A appears to have considered that he would have a mixed portfolio and be investing via an overseas fund manager.
- Mr A wasn't going to be accessing his pension benefits before the age of 55.
- Mr A was getting advice from GPL in the first instance, then Nationwide Benefit Consultants. The former was regulated in an EEA member state and had passporting rights to the UK. The latter was a UK based appointed representative for a firm that was regulated in an EEA member state and had passporting rights to the UK.
- Mr A had not been pressured or rushed to transfer having had time to consider the recommendation he'd been given.
- Mr A is likely to have had documents from a legitimate QROPS scheme that he could have provided to Aviva on request.

Aviva needed to consider the overall circumstances in order to determine whether Mr A's transfer presented a scam risk. So whilst Aviva would likely have (had it conducted thorough due diligence) found there to be some of the pension scam warning signs indicated in the Scorpion Action Pack, I think it would have ultimately concluded that the risk was minimal. I say this because Mr A would have explained that he wanted to transfer to take advantage of the potential for improved investment performance. And, key in this case, was that Mr A had received financial advice.

Overall, Mr A wouldn't have given the impression to Aviva that he was being led through a process by another party acting in a potentially unlawful way – which would be the usual pattern for someone falling victim to a scam. Instead, it would have established that Mr A was acting on advice from a regulated party. I haven't seen anything that Aviva would, reasonably, have been aware of that should have alerted it to the potential of Mr A being misled in this way. It's an important point that goes to the heart of this case: Mr A's actions would have appeared to be following financial advice and a business could, reasonably, have taken comfort from that.

I have considered the fact that GPL and the principal firm for Nationwide Benefit Consultants were overseas advice firms. But as Mr A was transferring to a QROPS, it wouldn't be unusual that overseas parties would be involved. The rules in place at the time allowed firms, which were properly regulated in an EEA state to have passporting rights to legitimately provide services in the UK. I see no reason why Aviva ought to have concluded that advice from a firm that was regulated in an EEA member state, with passporting rights, was inferior to that of a FCA regulated firm. Or that these firms were not likely to be acting in Mr A's best interests. I don't think it would be reasonable to expect Aviva to scrutinise the advice that Mr A had been given. It would have been enough for it to satisfy itself that the firm responsible for giving it was regulated and possessed passporting rights.

I've considered if it's reasonable to expect Aviva to have done more to warn Mr A about what he was intending to do, even if the scam threat would have appeared to be minimal. But I think those arguments misread what should, reasonably, have been expected of transferring schemes at that time. Investigations into the receiving scheme, and intended investments were a means to an end: to establish the risk of a pension scam. As I've said previously, a firm needed 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 statutory rights. Expecting a firm to share its due diligence "workings" in this way would cut across this (and could potentially be viewed as a self-serving tactic to hold on to a customer). Where the scam threat was assessed as being minimal (as I think it would most likely have been in this case) I don't think it would be unreasonable for the transfer to proceed as normal.

I've also considered whether Aviva should have warned Mr A that it was unusual for him to be transferring a pension overseas – and checked whether the reason for doing that was because he was moving or planned to move overseas. At the time (unlike today) there wasn't a prospect of a tax charge that had to be levied by the ceding scheme in certain circumstances where someone transferred their pension overseas whilst remaining resident in the UK. I think whether it was appropriate for Mr A to be transferring his pension to Gibraltar was a financial planning matter that it wasn't Aviva's role to intervene in. And, as I have said, it would have established that Mr A had separately taken advice on that.

It therefore follows that I'm satisfied Mr A wouldn't have stopped the transfer even if Aviva had done more thorough due diligence in line with the Scorpion action pack. The end result of any such due diligence wouldn't have resulted in any warnings being given to Mr A. And I don't think the mere act of contacting Mr A and asking questions about the transfer would have prompted a change of heart. The majority of the responses he would likely have provided would not have given rise to concerns.

<u>Summary</u>

Overall, I think Aviva should have done more here. However, I don't think sending the leaflet and/or asking Mr A further questions about the transfer would have led Mr A to cancel the transfer.

I understand that Mr A is in a difficult position and it seems that his pension fund may have been misappropriated as a result of illegality by certain parties involved. I am sorry to hear of the impact this has had on Mr A and understand why he will be disappointed with my decision. However, I need to consider that even if Aviva had done everything they should have, I think the transfer would have happened anyway. As I have explained, I don't think it would have found out anything that would have led it to think that the type of harm it was supposed to be alert to at the time was about to happen to Mr A. It means that Aviva's mistakes haven't caused Mr A's losses and it wouldn't be fair or reasonable to hold them responsible for this.

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 A to accept or reject my decision before 20 February 2025.

Gary Lane
Ombudsman