The complaint

Mr H has complained, via his representatives, about a transfer of his personal pension held with Aviva Life & Pensions UK Limited ('Aviva') to a small self-administered scheme ('SSAS'), which completed in June 2015. Part of Mr H's SSAS was subsequently used to invest in a fractional share of a hotel complex, through The Resort Group ('TRG'). The investment now appears to have little value and there is no market to sell the shares. Mr H says he has lost out financially as a result.

Mr H believes Aviva failed in its responsibilities when dealing with the transfer request. His representatives say 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 they say was required of transferring schemes at the time. Mr H says he would not 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 H's transfer was initiated through an agent of an unregulated firm, First Review Pension Services ('FRPS'). On 20 February 2015, FRPS wrote to Aviva, enclosing Mr H's letter of authority and requesting information on Mr H's pension. FRPS was not authorised to give financial advice.

On 2 April 2015, a company was incorporated with Mr H as director. I'll refer to this company as 'N Ltd'. Through that company, Mr H then opened a SSAS with Rowanmoor Executive Pensions Ltd ('Rowanmoor'). N Ltd was the SSAS's sponsoring employer.

On 4 June 2015, Aviva received a request through the Origo system to transfer his pension to Rowanmoor. Mr H's pension was transferred out on 9 June 2015. He was 51 years old at the time of the transfer.

The transfer value was around £75,000, of which around £35,000 was invested in the fractional share of a hotel complex with TRG. The funds are now illiquid, which means that Mr H is unable to access those pension benefits in retirement.

In September 2022, Mr H's representatives complained to Aviva on his behalf. 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: the SSAS was newly registered; there wasn't a genuine employment link to the sponsoring employer; Aviva should have checked the suitability of the transfer; and Mr H had been advised by an unregulated business.

Aviva didn't uphold the complaint. It said it sent Mr H the required 'Scorpion leaflet' in March 2015 after the initial letter of authority for FRPS had been received. And it said it was correct in not having to carry out further checks as per the PSIG Code (the contents of which I discuss below) because the request came through Origo which, in its view, was a trusted electronic system with its own rigorous application process that would mean only legitimate businesses would be able to use it. And as Rowanmoor was such a trusted provider, it's satisfied it followed the correct process and carried out sufficient due diligence.

Our investigator upheld the complaint. But as Aviva didn't agree with his conclusions, he was unable to resolve the dispute informally, so the matter has been passed to me to decide.

My Provisional Decision

In advance of this decision, I issued a provisional decision to the parties in which I said that I thought Mr H's complaint should not be upheld. Aviva did not respond, but Mr H's representatives rejected it on his behalf and made additional comments.

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.

I don't consider that I need to change the findings that I reached in my provisional decision. I have set these out below and adopt them as my findings in this final decision. I have also addressed Mr H's representatives' additional comments at the end of this decision. I have decided that Mr H's complaint should not be upheld.

In my provisional decision I said:

"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 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 to 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 Serious Fraud Office, 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 that 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.

In a similar vein, in April 2014 the FCA had also started to voice concerns about the different types of pension arrangements that were being used to facilitate pensions scams. In an announcement to consumers entitled "Protect Your Pension Pot" the increase in the use of SIPPs and SSASs in pensions scams was highlighted, as was an increase in the use of unregulated and/or illiquid investments. The FCA further published its own factsheet for consumers in late August 2014. It highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.

There was a further update to the Scorpion guidance in March 2015, which is relevant for this complaint. This guidance referenced the potential dangers posed by 'pension freedoms' (which was about to give people greater flexibility in relation to taking pension benefits) and explained that pension scams were evolving. In particular, it highlighted that single member occupational schemes were being used by scammers. At the same time, a broader piece of guidance was initiated by an industry working group covering both TPR and FCA regulated firms: the 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.

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

When the Scorpion guidance was launched in 2013, it included two standard documents that scheme administrators could use to warn their members about some of the potential dangers of transferring: a short 'insert' intended to be sent to members when requesting a *transfer, and a longer booklet intended to be used for members looking for more information on the subject.*

The March 2015 Scorpion guidance asked schemes to ensure they provided their members with “regular, clear” information on how to spot a scam. It recommended giving members that information in annual pension statements and whenever they requested a transfer pack. It said to include the pensions scam leaflet in member communications. In the absence of more explicit direction, I take the view that the member-facing Scorpion warning materials were to be used in much the same way as previously, i.e. for the shorter insert (which had been refreshed in March 2015) to be sent when someone requested a transfer, and the longer version (which had also been refreshed) made available when members sought further information on the matter.

When a transfer request was made, transferring schemes were also asked to use a three-part checklist to find out more about a receiving scheme and why their member was looking to transfer.

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

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

In brief, the PSIG Code asked schemes to send the Scorpion materials in transfer packs and statements, and make them available on websites where applicable. The PSIG Code goes on to say those materials should be sent to scheme members directly, rather than just to their advisers.

Like the Scorpion guidance, the PSIG Code also outlined a due diligence process for ceding schemes to follow. However, whilst there is considerable overlap between the Scorpion guidance and the PSIG Code, there are several differences worth highlighting here, such as:

- *The PSIG Code includes an observation that: “A strong first signal of [a scam] would be a letter of authority requesting a company not authorised by FCA to obtain the required pension information; e.g. a transfer value, etc.” This is a departure from the Scorpion guidance (including the 2015 guidance) which was silent on whether anything could be read into the entity seeking information on a person’s pension.*

- *The Code makes explicit reference to the need for scheme administrators to keep up to date with the latest pension scams and to use that knowledge to inform due diligence processes. Attention is drawn to FCA alerts in this area.*

- *Under the PSIG Code, an ‘initial analysis’ stage allows transferring schemes to fast-track a transfer request without the need for further detailed due diligence, providing certain conditions are met. No such triage process exists in the 2015 Scorpion guidance – following the three-part due diligence checklist was expected whenever a transfer was requested.*

- *The PSIG Code splits its later due diligence process by receiving scheme type: larger*

> *occupational pension schemes, SIPPs, SSASs and QROPS. The 2015 Scorpion guidance doesn't distinguish between receiving schemes 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 a member's interest.

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

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

I haven't seen any evidence Mr H held any other pensions or assets at the time, aside from the transferred funds of around £75,000 of which around £35,000 was invested in TRG. Mr H stated that in November 2022, he had around £33,000 left in a bank account, likely the cash account of the SSAS. His representatives have said that the TRG investment has failed and now can't be sold.

The transfer request was received through an electronic system, Origo, and Aviva has told us that it no longer holds a record of the electronic request form. So it's unclear what information was provided to Aviva at that stage. But prior to the Origo request, Aviva received a letter of authority for Mr H from FRPS.

There's contemporaneous documentary evidence to show that FRPS was involved in the transfer, and I think what was said to Mr H was likely to have amounted to advice or a personal recommendation for Mr H to transfer out of his personal pension to a SSAS to invest in TRG. I say that because I can't see Mr H would've been prepared to enter into that sort of – rather complex – pension arrangement, including the setup of a company and becoming a director, or even known that it was available to him, unless he'd been told it would be a good idea and he'd be better off as a result. His representatives confirmed Mr H wasn't a high net-worth individual or an experienced investor and he followed advice from FRPS when he proceeded with the proposal.

<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.

On 12 March 2015, Aviva sent a letter to Mr H confirming it had received the letter of authority for FRPS and would be able to share information with the firm. It enclosed a 7-page booklet titled "A lifetime's savings lost in a moment." which was the Scorpion leaflet from July 2014. (The updated Scorpion leaflet from 2015 was only released on 16 March 2015.)

The first page stated in bold, "Check the facts before you make an irreversible decision. A lifetime's savings can be lost in a moment." It then went on to list typical signs of a scam and pension liberation as well as 'real life examples' of scams that happened to other people.

One of those examples was that of an 'overseas investment opportunity' in which the victim "unwittingly agreed to become a 'director' of the investment company at the centre of the scam" and lost all his pension savings when the investment failed.

This example had many parallels with Mr H's situation because his investment was in overseas property and he became a director of a newly set up company – N Ltd. The leaflet clearly warns of the risks of such transfers as well as stating that pension holders should check whether their adviser is FCA regulated, providing the web address of the FCA register.

I appreciate that N Ltd was only set up in April 2015, i.e. after Mr H had received the leaflet. So the above example of a company being set up and the pension holder being made a director may not have been true for him at the time he received it in March 2015. But the leaflet made readers aware of such practices and gave stark warnings of what risks come with it, such as legal duties with Companies House and HMRC an inexperienced person might not know of, aside from the risk of losing an entire pension. So further down the process, but before the transfer completed, he would have been able to raise questions and see that the process with FRPS and Rowanmoor as well as registering N Ltd followed the same lines as the example from the leaflet.

Aviva provided a copy of the letter which showed it was sent to Mr H's home address. I'm therefore satisfied that Mr H did receive the longer, more informative version of the Scorpion leaflet from Aviva and thus it's more likely than not that he read it.

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 Mr H's transfer in that light. But I don't think it would make a difference to the outcome of the complaint if I had considered Aviva's actions using the 2015 Scorpion guidance as a benchmark instead.

The PSIG Code sets out certain situations where a transfer can be fast-tracked with minimal further due diligence. The bar for this is high (see section 6.2: Initial Analysis). I'm satisfied it wouldn't have been reasonable to fast-track this transfer request.

Aviva hasn't explicitly argued that it fast-tracked Mr H's transfer request in line with the "Initial analysis" section (section 6.2.1) of the PSIG Code. This would have allowed it to fast-track a transfer request if it came from an accepted club (such as the Public Sector Transfer Club) or if Aviva had already identified the receiving scheme/administrator as being free from scam risk. Further details on how to manage that process were provided in Section 6.11 ("Internal white list approach").

Despite not framing its arguments in this way, it seems that Aviva is, in effect, saying it fast-tracked Mr H's transfer because it drew comfort from factors such as having received the transfer request through Origo and the involvement of a well-known SSAS provider, meaning more in-depth due diligence wasn't, in its view, required.

I note that at the time of the transfer, Rowanmoor was a long established SSAS provider and had some repute in the industry. There's an argument, therefore, that Aviva could have taken comfort from this, but I disagree. The Scorpion guidance and the PSIG Code gave ceding schemes an important role to play in protecting customers wanting to transfer a pension. It would defeat the purpose of the Scorpion guidance and the PSIG Code for a ceding scheme to have delegated that role to a different business – especially one that had a vested interest in the transfer proceeding. An important aspect in this is the fact that there is little regulatory oversight of single-member SSASs; they don't have to be registered with TPR. In the absence of that oversight, Aviva was assuming, in effect, that Rowanmoor would want to maintain its standing in the industry and the trustees would comply with legal and fiduciary duties. In the context of guarding against pension scams – and an environment where providers and trustees clearly didn't always act as they should have done – I don't consider this to have been a prudent assumption.

The key point is that Rowanmoor Executive Pensions Ltd wasn't FCA-regulated so I see no reason why they would have operated with FCA regulations and Principles in mind – or why their actions would have come under FCA scrutiny. As such, I'm not persuaded Aviva could, reasonably, have derived sufficient comfort about the Rowanmoor SSAS as a destination for Mr H's transfer.

For similar reasons I also don't think Aviva could have taken comfort from the involvement of Origo. Aviva accepts that it could not have relied on Origo carrying out the due diligence checks as recommended by TPR. However, it points to the fact that Origo had a robust application process for members and that membership would not be automatically granted. It says Origo required members – which would have included Rowanmoor – to commit to a Memorandum of Understanding ('MOU'). In this MOU members would acknowledge that they would put systems in place in line with good industry practice to prevent any use that was fraudulent or otherwise unlawful or contrary to TPR guidance.

However, I don't think that assurances to a third party in an MOU or initial checks when agreeing membership were something Aviva could reasonably rely on when weighing up potential scam risks for their customers in a particular transfer. I note the importance of what the due diligence in question was aimed at preventing – pension liberation and scams, the end result of which can often be the loss of entire pension funds – and the clear steps that were expected of ceding schemes to prevent this happening. Not to mention the duties of ceding schemes under PRIN and COBS 2.1.1R. I don't think Aviva's reliance on other parties' checks and processes and essentially delegating its own responsibilities was good enough here.

I think it would have been fair and reasonable – and good practice – for Aviva to have looked into the proposed transfer and the most reasonable way of going about that would have been to turn to the check list of the PSIG Code which was in place by the time Mr H requested the transfer in June 2015.

The initial triage process should have led to Aviva asking Mr H 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 the PSIG Code in full. But given that a large part of his pension was to be invested with TRG overseas, at least one of them, if not more, would have been answered with "yes":

- *Have you been informed of an overseas investment opportunity?*

Under the Code, further investigation should follow a "yes" to any question. The nature of that investigation depends on the type of scheme being transferred to. The SSAS section of the Code (Section 6.4.3) points to the following as being potential areas of concern:

a) *Employment link: a lack of an employment link to any member of the SSAS.*

b) *Geographical link: a sponsoring employer that is geographically distant from the member.*

c) *Marketing methods: a SSAS being marketed through a cold call or an unsolicited approach.*

d) *Provenance of receiving scheme: a SSAS registered within the previous six months or a recently registered sponsoring employer or administrator operating from 'virtual' offices, or using PO Boxes for correspondence purposes.*

Underneath each area of concern, the Code set out a series of example questions to help scheme administrators assess the potential risk facing a transferring member.

Not every question would need to be addressed under the Code. Indeed, the Code makes the point that it is for scheme administrators to choose the most relevant questions to ask (including asking questions not on the list if appropriate). But the Code makes the point that a transferring scheme would typically need to conduct investigations into a "wide range" of issues to establish whether a scam was a realistic threat. With that in mind, 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 SSAS due diligence process and contacted Mr H to help with that.

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

Had it done more thorough due diligence, there would have been a number of warnings Aviva could have identified and communicated to Mr H in relation to a possible scam threat as identified by the PSIG Code (and the Scorpion action pack).

Aviva would have known from the information provided to it that N Ltd and therefore the SSAS had only been registered with HMRC in April 2015, shortly before Rowanmoor had sent it the transfer request in June 2015. If Aviva had asked him whether he was employed by N Ltd and how it'd come to be set up, I think he would have told Aviva that he'd been directed to establish the company to facilitate the transfer of his pension, that he had no real employment link to it, and that he was employed elsewhere. Those discoveries should have caused Aviva concern about the lack of a genuine employment link between Mr H and N Ltd.

Aviva could have identified the investment was of a type the PSIG Code determined as being linked to high fraud risk. As set out above, I'm satisfied FRPS advised Mr H to transfer out of his personal pension and I'm satisfied he would have told Aviva that had it asked him – which it should have done under the PSIG Code. FRPS wasn't authorised by the FCA to give that advice.

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 FRPS' involvement because it pointed to a criminal breach of FSMA. On the balance of probabilities, I'm satisfied such a breach occurred here. Aviva's failure to uncover that and to warn Mr H 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 Mr H that the person he had been advised by was unregulated and could put his pension at risk. Aviva should have said only authorised financial advisers are allowed to give advice on personal pension transfers, so he risked falling victim to illegal activity and losing regulatory protections. It would also have been appropriate for Aviva to have informed Mr H of the other warning signs it had identified. I've seen nothing that leads me to think Aviva could reasonably have dismissed these warning signs and proceeded with Mr H's transfer without informing Mr H of what it had found.

I don't think this would have been a disproportionate response given the scale of the potential harm Mr H 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 Mr H, that it was replicating the responsibilities of the receiving scheme or that it was putting in place unnecessary barriers to exit.

However, what I need to consider is whether receiving further warnings from Aviva would have changed Mr H's mind about proceeding with the transfer.

A number of the warning signs that I've found Aviva should have informed him of were mentioned in the Scorpion leaflet sent to Mr H in March 2015. The leaflet gave a clear warning about dealing with unregulated advisers and it explained how scheme members could check the adviser they're dealing with is registered by the FCA. The essence of that warning is the same as the warning Aviva should have given Mr H about dealing with FRPS.

In the section 'Types of scams to watch out for' the leaflet set out what it said were "common features of pension scams;

- *Phrases like 'one-off investment opportunies' [sic], 'free pension reviews', 'legal loopholes', 'cash bonus', 'government endorsement'*
- *Victims are approached out of the blue over the phone, via text messages or in person door-to-door*
- *Transfers of your money or investments overseas, meaning the money is harder to recover […]*
- *No member copy of any documentation*
- *Victims are encouraged to speed up transfer of their money to the new scheme."*

Mr H would have understood the proposed investment to be in a property overseas, and he had likely been promised high returns that persuaded him to enter into the process. So the contents of the leaflet should have resonated strongly with Mr H and put him on notice that there were warning signs of a scam in his transfer. As stated above, I appreciate in March 2015, the process to set up N Ltd and establish the SSAS such as in the leaflet's real life example had not yet started, but Mr H was made aware of typical signs before he went *ahead with the transfer and before the process to set up the company and the SSAS to invest on overseas property was ongoing. Still, the warnings from the Scorpion booklet didn't deter him from transferring later on.*

Mr H's representatives said in his complaint that his attention wasn't drawn to the Scorpion leaflet. One paragraph in the letter from Aviva enclosing the leaflet said:

> *"Thinking of transferring your pension?*
>
> *Most pension transfers are problem-free. However, there are a number of companies who are seeking to persuade pension holders to access their pension funds early - also know as 'pension liberation' [sic]. We enclose a leaflet produced by the Pensions Regulator designed to give you some important information about the potential risks to your pension fund from pension liberation."*

It's unfortunate that Aviva's letter only pointed to the risks of pension liberation, rather than also including scams. However, the booklet then makes it very clear that it also includes information and warnings on scams, even if there is no intention of 'liberating' the pension before age 55. So even if Mr H wasn't pointed towards the risks of scams, the letter did raise the reader's attention by asking "Thinking of transferring your pension?" and it said that 'important information' was enclosed. I also haven't seen evidence that this was part of a larger pack of paperwork in which the leaflet could have been missed. So I'm satisfied Mr H was sufficiently made aware of the leaflet and did, therefore, read it as a result.

The warnings given in the Scorpion leaflet did not dissuade Mr H from proceeding with the transfer. Consequently, taking everything I've said above into account, it's my view that had Aviva informed Mr H of the warning signs it should have identified in relation to his transfer, I don't think that would have led him to decide not to transfer. Mr H was informed and warned of the scam risks, his situation was very similar to one if the examples in the leaflet, and he still decided to go ahead.

So overall, even though I don't think Aviva met its due diligence obligations under the PSIG Code and COBS 2.1.1R, I'm not persuaded further action on the back of such due diligence would have prevented the transfer and Mr H's pension losses. I'm therefore unable to uphold his complaint."

<u>Responses to my Provisional Decision</u>

Aviva didn't respond to my provisional decision, however Mr H's representatives got back to us with the following points.

Mr H's representatives agreed that Aviva's due diligence on Mr H's transfer wasn't sufficient but contested that further warnings would not have impacted his decision to continue with the transfer of his pension. They said:

> "*It is important to recognize that Aviva's failure to specifically highlight the significant risks posed by unregulated advice and the lack of a genuine employment link between* [Mr H] *and the company may have left* [Mr H] *with an incomplete or inadequate understanding of the gravity of his situation.*"

And

> "*Had Aviva provided* [Mr H] *with a clear and direct warning regarding the risks posed by the unregulated advice he had received from FRPS, as well as the potential legal and financial consequences,* [Mr H] *may have reconsidered proceeding with the transfer. At the very least, he should have been given the opportunity to make a fully*

> *informed decision, free from the influence of a firm operating outside of FCA regulations."*

It is true that if Aviva had done more due diligence and communicated with Mr H that his adviser wasn't regulated or that it had concerns about the lack of a genuine employment link to the SSAS scheme, this would have been a stark warning. However, Mr H had already received warnings by way of the Scorpion leaflet which included the prompt to check whether his adviser was regulated. The leaflet stated, "*Make sure the adviser is authorised by the FCA at www.fca.org.uk/register*" as well as, "*Before you sign anything, call The Pensions Advisory Service on 0300 123 1047 for information and guidance about pension scams*" and then in bold: "***Don't proceed unless you are absolutely certain your money will be safe. Once you transfer, it's too late."*** So these statements were clear and accessible to the reader, should have resonated with Mr H, and prompted him to look into FRPS' status.

At least one scenario set out in the Scorpion leaflet also applied to his situation, including an overseas property development and being made a director of a company. Despite this and the above warnings, he decided to go ahead with the transfer. Following the leaflet's prompt, he also would have found out that FRPS was not registered, but he either ignored this warning to check the register, or he decided to transfer regardless.

So I'm not persuaded that a further warning from Aviva about FRPS' lack of authorisation would have been the deciding factor to change his mind, after he had been prompted to check his adviser and the FCA register before.

Mr H's representatives made the point that "*he should have been given the opportunity to make a fully informed decision, free from the influence of a firm operating outside of FCA regulations".* In my opinion, this is precisely what the letter from Aviva with the Scorpion leaflet attached did – it was sent directly to Mr H after he had given his authority for FRPS to request information and deal with his pension on his behalf, to give him the opportunity to review the warnings in his own time and at home, without an agent from FRPS present. He also had been given contact details of independent organisations he could consult about the planned transfer to ensure his pension was safe.

So there is contemporaneous evidence that shows Mr H ignored pertinent warnings and information on how to protect his pension. In that light, it doesn't seem plausible to me that Mr H would have responded in a different way had Aviva provided him with further individual warnings or information.

In conclusion, whilst I agree that Aviva should have done more thorough due diligence, I remain of the opinion that further communication to Mr H would not have prevented the transfer. I'm therefore unable to uphold his complaint.

My final decision

My decision is that I don't uphold Mr H's complaint about Aviva Life & Pensions UK Limited and I don't make an award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 11 February 2025.

Lea Hurlin
Ombudsman