DRN-5380768

The complaint

Mr P has complained, with the help of a professional representative, about a transfer of his Aviva Life & Pensions UK Limited (”Aviva”) personal pension to an occupational pension scheme in December 2011.

Mr P 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 P 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

Its important to note that very little information that has been provided in the making of the complaint.

What we do know is that Mr P held an individual personal pension with Aviva, and during sometime in 2011 (the representative hasn’t been specific) Mr P was contacted by a firm the representative has referred to as “Silvertree” to discuss his pension arrangements. The contact was made through a personal referral. Mr P held four different pensions at the time with four different providers. Seemingly they were all transferred around the same time. Silvertree referred Mr P to Tudor Capital Management Limited (Tudor) who were the administrators of the Silvertree Investment Pension Scheme (the Scheme) at the time.

Mr P has said that the adviser told him that he would get a higher rate of return if he transferred his pension to the Scheme which was an occupational pension scheme. And by doing this Mr P would then be able to invest his funds into lucrative investment options that would provide him with a guaranteed high rate of return.

Mr P was attracted by this and so provided authority for Tudor to contact Aviva to obtain the details of his pension.

On 6 December 2011 Mr P signed the transfer paperwork.

Aviva received the transfer request from Tudor dated 14 December 2011. The documentation was on Tudor’s letterhead but stated that the Scheme was administered by T12 Administration (T12). However, there was also a form included in the pack entitled the Pension Scheme CV for the Scheme which named Tudor as the administrators of the Scheme.

Aviva processed the transfer and confirmed this in a letter to Tudor and Mr P dated 19 December 2011. The transfer was in the region of £33,000 and Mr P was around 58 years old at the time.

Mr P also transferred pensions from a number of other different providers into the same scheme. I have considered one other complaint Mr P has raised about the transfer of his pensions against a different provider but it is unknown whether he has raised complaints about the transfer of his other pensions.

In total Mr P transferred just under £130,000 into the Scheme. He accessed around £30,000 as tax free cash and around £93,000 was used to purchase Ordinary Shares in GBT Partnership Limited.

Mr P has said that the value of the investment has reduced significantly. He has also been made aware that his shares have been sold and re-invested on a number of occasions and the ownership of the shares have also changed several times due to previous owners being struck off the register and dissolved.

On 8 April 2010 The Pension Regulator (TPR) issued a Determination Notice for the suspension of Tudors' involvement with pension schemes because of what was termed as an immediate risk to the interests of members and their schemes' assets. It revealed that it had been warned by the Financial Services Authority (FSA) and HMRC in April 2010 that Tudor had been involved in criminal activity. The suspension was renewed by TPR on 4 October 2011 and the suspension went on to run for a continuous period until April 2012. And the directors were jailed in 2013.

Following the suspension of Tudor the directors set up T12.

In December 2021 Mr P complained to Aviva. Briefly, his argument is that Aviva didn't warn or provide advice to him in relation to potential scam, pension liberation or fraudsters. He also stated that Aviva had an obligation to carry out due diligence prior to transferring any monies to a new scheme which it failed to do. He's also said that Aviva failed to complete basic checks which would have raised concerns, nor did it make any attempt to discover who the sponsoring employer of the Scheme was or whether Mr P qualified as an "earner" under the interpretation of the legislation at the time. Furthermore, Aviva failed to conduct independent checks on the Administrator of the scheme with HMRC. And had it done so Aviva would have been aware that HMRC suspected the Administrator and its directors were involved in criminal activity relating to pension schemes for which they were trustee and administrator.

Aviva didn't uphold the complaint. In summary, it said Mr P had a statutory and contractual right to transfer and none of the information it had about the transfer gave it cause for concern. It was satisfied it had conducted an appropriate level of due diligence given the requirements of the time. In terms of whether it would have found out about the suspicious activity of the Administrator and the trustee of the Scheme it explained that no information about this was available to it or any firm within the industry until 2014 when the Determination Notices were published.

I issued a provisional decision in February 2025 where I set out my reasons why I felt the complaint couldn't be upheld. An extract of this is set out below and forms part of this decision:

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

Before I explain my reasoning, it will be useful to set out the environment Aviva was operating in at the time with regards to pension transfer requests, as well as any rules and guidance that were in place. Specifically, it's worth noting the following:

- *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 if certain conditions are satisfied (and* *indeed they may also have a right to transfer under the terms of the contract). The possibility that this might be exploited for fraudulent purposes was not new even at the time of this transfer.*

- *However, the obligation on the ceding scheme was limited to ascertaining the type of scheme the transfer was being paid to and that it was a tax-approved scheme.*
- *On 10 June 2011 the FSA issued a warning about the dangers of "pension unlocking" which specifically referred to consumers transferring to access cash from their pension before age 55. (As background to this, the normal minimum pension age had increased to 55 in April 2010.) The FSA said that receiving occupational pension schemes were facilitating this. It encouraged consumers to take independent advice. The announcement acknowledges that some advisers promoting these schemes were FSA authorised.*
- *At around the same time, TPR published information on its website about pension liberation, designed to raise public awareness and remind scheme operators to be vigilant of transfer requests. The warnings highlighted that websites and cold callers were encouraging people to transfer in order to receive cash or access a loan.*
- *At the time of Mr P's transfer, Aviva was regulated by the FSA. As such, it was subject to the 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 rules governing pension transfer requests, but the following have particular relevance:*

  - *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.*

For context, it's also worth noting that on 14 February 2013, TPR launched its "Scorpion" campaign. The aim of the campaign was to raise awareness of pension liberation activity and to provide guidance to scheme administrators on dealing with transfer requests in order to help prevent liberation activity happening. The Scorpion campaign was endorsed by the FSA (and others). The campaign came after Mr P's transfer, but I highlight it here to illustrate the point that the industry's response to the threat posed by pension liberation was still in its infancy at the time of Mr P's transfer and that it wasn't until after his transfer that scheme administrators had specific anti-liberation guidance to follow.

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

With the above in mind, at the time of Mr P's transfer, personal pension providers had to make sure the receiving scheme was validly registered with HMRC. Aviva had the Scheme's HMRC registration certificate, and PSTR, so it didn't need to do anything further in this respect.

There was however also a need for businesses to remain vigilant for obvious signs of pension liberation or other types of fraud. Even though some of the regulators' warnings about the threat of pension liberation and wider scams were directed at consumers, I think it's reasonable to conclude that the sources of intelligence informing those warnings included the industry itself. Personal pension providers were therefore unlikely to be oblivious to these *threats. And, even if they were, a well-run provider with the Principles in mind should have been aware of what was happening in the industry. So, in adhering to the FSA's Principles and rules, I think a personal pension provider should have been mindful of announcements the FSA and TPR had made about pension liberation, even those directed to consumers. It means if a ceding scheme came across anything to suggest the request originated from a cold call or internet promotion offering access to pension funds – which had both been mentioned by regulators as features of liberation up to that point – that would have been a cause for concern.*

In this case, despite the timing of the transfer (being before the Scorpion guidance was issued) I am of the view that Aviva missed a potential warning sign in the information it was provided with. As explained above the transfer paperwork it had received from Tudor named two different firms as the Scheme's administrator. In my view this would have been unusual and is something Aviva should have picked up on.

However, the question then becomes what would Aviva had found out if it had looked into this discrepancy further and perhaps looked into the two firms that had been named.

The investigator who initially assessed this complaint was of the view that had Aviva looked into this matter it would have discovered that the TPR had been looking into Tudor's practices and that it had issued a determination notice in April 2010 for the suspension of Tudor's involvement with pension schemes, as detailed earlier in this decision.

However, I have reviewed TPR's archived website from the time of the transfer and have found that the suspension and notices about Tudor were not published for all of the industry to see until 2014. And it would seem this was because no publication of the notices or TPR's decision about Tudor and T12 were made publicly available until all of TPR's investigations had been finalised.

This has also been confirmed by The Pension Ombudsman (TPO) in its decisions and having also considered another of Mr P's complaint about a different provider it also seems that no other firms within the industry had concerns over Tudor and/or T12 at this point in time.

I know that Aviva did come to have concerns about Tudor/T12 after Mr P's transfer request – in early 2012. As a result of this Aviva wrote to TPR having been recommended to do so by HMRC. Aviva flagged the above concern and also noted links between T12 and Tudor and a tax investigation linked to the directors of the latter – it is unclear whether this investigation was formally reported by the regulators to the industry. In its correspondence Aviva specifically described the directors as being "recently subject" to the investigation. But there was no mention of a TPR Determination Notice which does indicate that this was not yet public knowledge.

In response to Aviva TPR told it in July 2012 that it was not in a position to advise whether or not [Aviva] should pay the transfer requests, nor can we provide you with any guidance as to whether these schemes, or the companies you mention, are legitimate or not.

Its approach therefore from March 2012 as advised by TPR was to warn the customer about the risks of dealing with non FCA registered firms and the risk of pension liberation with regard to tax charges but if the customer still wished to proceed Aviva permitted those transfers providing it had sufficient evidence that they were going to another registered pension scheme. However, from 4 January 2013 Aviva declined all transfers involving T12 /Tudor Capital Management.

It is pleasing to see that Aviva did react to wider concerns it had picked up on about Tudor *and T12. However as already explained this came too late for Mr P as his transfer took place in 2011 and despite its concerns in 2012 there is no way Aviva could have known about TPR' suspending Tudor until publication of the notices in 2014. Which is further supported by TPR's response to Aviva in July 2012 as noted above. Therefore, it would be unfair and unreasonable to expect Aviva to have known about information that seemingly was not in the public domain as far as the industry was concerned or use hindsight to expect it to act with the benefit of that information that it could not reasonably have known at the time.*

Overall, therefore, I do think Aviva should have picked up on Tudor and T12 both being named as the administrators of the Scheme – this should have struck Aviva as odd. However from the information I have I am satisfied that at the time of Mr P's transfer there was not enough information in the public domain within the industry that would have caused Aviva to have concerns over Tudor and T12 even if it had investigated the discrepancy.

Its also important to recognise that at the time the Scorpion guidance hadn't been published so there wasn't a list of warnings signs that Aviva could use to identify any potential wrongdoing in Mr P's transfer.

So in that context, having checked the scheme had been accepted by HMRC it isn't unreasonable that Aviva continued with the transfer of Mr P's pension.

Neither party responded to my provisional findings and so made no further 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.

When considering what is fair and reasonable, I am required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

Where the evidence is incomplete, inconclusive, or contradictory, I've reached 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.

As neither party provided any comments in response to my provisional decision I have no reason to depart from my original findings – that the complaint cannot be upheld.

My final decision

My final decision is that I do not uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 4 April 2025.

Ayshea Khan
Ombudsman