DRN-5395428

Financial Ombudsman Service

The complaint

Mr K has complained, via his representatives, about a transfer of his Aviva Life & Pensions UK Limited personal pension to a Qualifying Recognised Overseas Pension Scheme (QROPS) in June 2016. Mr K's QROPS was subsequently used to invest in various investments overseas, two of which appear to be illiquid and have little value. Mr K says he has lost out financially as a result.

At the time of events complained of Mr K's pension was branded and administered by another company. But, as Aviva is now responsible for responding to the complaint I will only refer to it within this decision.

Mr K 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, in line with the guidance he says was required of transferring schemes at the time. Mr K 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 K held three personal pensions. Two with another provider I'll call provider P and a section 32 buy out plan[1] with Aviva.

Mr K has not complained about the transfer of his pensions from provider P. And my findings in this provisional decision refer to Aviva alone. However, as some of provider P's actions are relevant to my findings about Aviva I have referred to them here for context purposes.

In January 2016 Mr K signed a letter of authority (LOA) allowing a firm called Capital Facts Limited to obtain details, and transfer documents, in relation to his pension. Mr K says this followed an unsolicited approach. Capital Facts forwarded the LOA to Aviva and provider P. Capital Facts asked both pension providers for Mr K's pension information and discharge forms to allow his pension funds to be transferred to a QROPS. Both Aviva and provider P sent Capital Facts the requested information three days later. However, provider P also wrote directly to Mr K on 21 January 2016 sending him the same information it had sent to Capital Facts. At that time provider P's automated process was to include a leaflet – known as the Scorpion insert because of the imagery it contained – produced by The Pensions Regulator (TPR) with all transfer packs.

Mr K says that Capital Facts introduced him to a firm called Felicitas Management Group (FMG) who advised him to transfer his pensions. Mr K was given a report (the report) setting out some of his options. It is branded at the top with a box including the name 'Felicitas Management Group' and immediately underneath it said "Investment Services".

The report said Mr K had asked to switch his pension to a QROPS. It added that its contents were restricted to information on pensions, the plan Mr K wished to switch "and

[1] Section 32 plans were created by transferring the benefits from an existing workplace pension/occupational pension scheme into a personal pension.

appropriateness”. It said if he required financial planning advice he should consult an independent financial adviser.

No mention of Mr K’s Aviva pension was made at any point in the report. It only referred to the provider P pensions. It set out some of Mr K’s options including: remaining in his personal pension, transferring to his occupational pension, and transferring to a self-invested personal pension (SIPP). However, it focused on a transfer to a QROPS, setting out what it described as their benefits and advantages. It gave information about the Harbour Retirement Scheme. This is a QROPS offered by Harbour Pensions (Harbour); a pension provider regulated by the Maltese Financial Services Authority.

The report also gave information about an investment in an overseas property development run by The Resort Group (TRG), a corporate bond also offered by TRG, and two investment portfolios. It said the TRG investments were ‘highly illiquid’. It gave percentages of how much of Mr Ks pension funds were his ‘proposed selected investments’.

The report set out some of the risks of the TRG investment. Those included that any losses were not protected by the Financial Ombudsman Service or the Financial Services Compensation Scheme.

Under a heading of *Appropriateness* the report said its author was not testing for or giving investment advice. However, under the next heading of Fees/Charges it said that Felicitas Management Investment Services (FMIS) would charge a fee of 4% from the gross value of the transfer.

Mr K subsequently signed a declaration in April 2016 to confirm he understood the risks associated with the TRG investments, including that they were highly illiquid and were not UK regulated. He also confirmed he had taken independent advice in relation to the investment.

On the same day in April 2016 Mr K signed an application to join the Harbour Retirement Scheme. The application gave the source of funds for the scheme as being from all three of Mr K’s personal pensions. The form said more than once that an ‘investment adviser’, who I’ll call Mr W, had certified Mr K’s identity and provided investment advice. The name of Mr W’s advising firm is given as “Felicitas Management Services Limited” (FMS). Mr W’s email address was a company one ending with *fmgroupinternational.com*.

Mr W has signed the investment adviser declaration to confirm he had given Mr K advice and recommendations. When certifying Mr K’s identity documents, the business stamp applied gave the certifying firm’s name as FMIS.

Harbour sent a request together with the appropriate forms for Aviva and provider P to transfer Mr K's pension funds to the Harbour QROPS on 4 May 2016.

Around a month later, in June 2016, provider P wrote to Mr K asking him some questions. Those included if he’d taken any advice, if so who from, and how that initial contact was made. It also asked if Mr K was still a UK resident and if he intended to move abroad. It said it was asking for that in line with the TPR leaflet (the Scorpion insert) which it had already sent to him. And it gave him a link to The Pensions Advisory Service’s (TPAS) website, providing further information about pension transfer risks.

Aviva confirmed it had transferred Mr K’s pension funds of £15,304.83 to the Harbour Scheme on 28 June 2016. Mr K was 49 years old at the time.

Mr K replied to provider P's June letter on 13 July 2016. Amongst other things he said that FMG had advised him and gave its address. He said he was introduced to it during the pension review process, although he did not answer provider P's question about how the initial contact had come about. He said that he was still resident in the UK as he "had not made a final decision yet". He concluded his reply saying that he was happy to proceed with the transfer and asked provider P to complete it swiftly.

In an internal email dated 22 July 2016 provider P noted that Mr K had told it that FMG had given him advice. It also noted that FMIS was part of the Felicitas Management Group and shared FMG's address. Provider P said the Cyprus Securities and Exchange Commission[2] regulated FMIS. As such provider P said Mr K had taken regulated advice. And on that basis provider P was happy for the transfer to go ahead.

Shortly after provider P confirmed it had transferred around £69,500 in total from both Mr K's remaining personal pensions into the Harbour QROPS.

I'm told that roughly 25% of Mr K's pension funds were invested in fractional ownership of TRG's overseas property development. Mr K invested a similar sum in TRG's corporate bond. Apart from a small sum held in cash, the remainder of Mr K's transferred funds was invested into managed portfolios.

I understand the TRG fractional property investment did initially provide some returns. But these were lower than expected and – from my understanding of events – these payments would have dried up around 2019. The investments are now considered illiquid and incapable of sale on the open market. I haven't seen a great deal of information about the performance of the TRG corporate bond. However, I understand it to also be illiquid, although it has a ten-year maturity due in 2026. Mr K's other investments remain liquid and I understand he transferred those to a UK provider.

In 2021, via his representatives, Mr K complained to Aviva. Aviva didn't uphold his complaint Amongst other things it said that a transfer to a QROPS was permitted under the relevant legislation. It also said that FMIS was FCA authorised. It didn't consider it was responsible for any losses Mr K might have suffered.

Mr K brought his complaint to the Financial Ombudsman Service. One of our Investigators looked into it. He recommended the complaint be upheld. As Aviva didn't agree with our Investigator's complaint assessment it was passed to me to decide.

Provisional decision

On 26 February 2025 I issued a provisional decision. In it I set out why I wasn't minded to uphold the complaint. For ease of reference I've copied the relevant extracts below.

'*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

While doing so I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

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[2] Cyprus Securities and Exchange Commission is the Cypriot financial service regulator and is the equivalent to the FCA in the UK.

In bringing this complaint and responding to it both Mr K – via his representatives – and Aviva have made an number of detailed points. While I've considered everything on file, in this decision I do not intend to address each and every issue raised. Instead I will focus on what I see as being the key matters at the heart of Mr K's complaint and the reasons for my decision.

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

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 it 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, 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 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 its 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 a turning point in terms of what was expected of personal pension providers dealing with transfer requests as a matter of fulfilling their duties under the regulator's Principles and COBS 2.1.1R.

The Scorpion guidance was updated in July 2014. It widened the focus from pension liberation specifically, to pension scams more generally – which included situations where someone transferred in order to benefit from "too good to be true" investment opportunities such as overseas property developments. An example of this was given in one of the action pack's case studies.

There was a further update to the Scorpion guidance in March 2015. This guidance referenced the potential dangers posed by "pension freedoms" (which were about to give people greater flexibility in relation to taking pension benefits) and explained that pension scams were evolving.

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>Scorpion guidance updates</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 were to be used in much the same way as previously, which is for the shorter insert (which had been refreshed in March 2015) to be sent when someone requested a transfer pack and the longer version (which had also been refreshed) made available when members sought further information on the subject.

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.

The Scorpion guidance was updated again in March 2016. Of relevance to this complaint the action pack reminded ceding schemes of the importance of checking that financial advisers were FCA regulated.

<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 (including the 2015 update) 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, small self-administered schemes (SSASs) and QROPS. The 2015 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>

As I've said above, Mr K told us, via his representatives that his interest in a pension transfer followed an unsolicited call from Capital Facts offering a free pension review. Mr K agreed and was introduced to Mr W. Mr K said that Mr W 'strongly recommended' the TRG investments. Recommendations which Mr K accepted.

I note that there is some contradictory information in the report about whether or not the Felicitas entities were providing advice. As the report on occasion implies that it wasn't giving advice and that it wasn't testing for suitability. But I think the totality of the evidence is clear that Felicitas was giving advice and was drafted in a manner to encourage Mr K to transfer his pension and invest in line with Felicitas' recommendation.

I say the above as Felicitas' report briefly refers to personal pensions, occupational pensions and SIPPS and where it does so it refers to both advantages and disadvantages of those types of scheme. But, when referring to a QROPS, it only refers to their benefits and advantages without listing any disadvantages. So the tenor of the report is that it is making a value judgement that Mr K would be better suited to transferring to a QROPS. And I think that amounts to advice to transfer.

However, even if that were not the case and the wording in the report were more circumspect, I would still be satisfied that Felicitas provided advice to Mr K. I say that as I've had the benefit of seeing the QROPS application documents. And Mr W has clearly signed to say that he has given Mr K advice and that Harbour should act on his investment recommendations. Mr W is named as the investment adviser and the firm he works for named as FMS (not FMG or FMIS). And that the firm has 'terms of business' with Harbour. That is it is an advisory firm approved by Harbour.

Similarly Mr K has signed the form to say that Mr W, and FMS, had given him advice. So regardless of the curious wording in some of the report, I think it's quite clear that Mr W gave Mr K advice to transfer and recommended an investment strategy for him.

That brings me on to which entity actually advised Mr K. That is which firm Mr W represented when giving advice. As I've indicated above there appear to be three separate references to Felicitas entities: FMG, FMIS and FMS.

Mr K's representatives have argued that it was FMG which gave the advice. That is significant as FMG is not a regulated advisory body and would indicate that Mr K had not taken regulated financial advice on the transfer. In contrast, at the time, FMIS was fully regulated and authorised by the Cyprus Securities and Exchange Commission. So FMIS was an EEA (European Economic Area) based firm, which had been passported into the UK. It would have shown on the FCA register as authorised in the UK by virtue of passporting rights. That means it was an appropriately authorised firm to give financial advice in the circumstances Mr K found himself in.

Having considered this carefully I'm satisfied that Mr W was acting for FMIS when giving advice. I say that as not only was FMIS an entity authorised to give such advice, it was also one of a number of entities that appears to be part of the larger Felicitas Management Group. And, in other cases we've seen, FMIS has sent letters which have the same branding at the top of the letter, a box with 'Felicitas Management Group' written in it and immediately *underneath it says ‘Investment Services’. But the footer to those letters make it clear that they were produced by FMIS, not FMG alone. So, I don't think the fact the report refers has the FMG branding rather than FMIS explicitly means that FMIS was not involved.*

It’s not unusual for some corporate structures to be formed in the terms of groups. That generally happens in a number of ways for example where a ‘parent’ organisation owns a number of subsidiary firms. Each of those subsidiaries will be a distinct entity, even though they might have a common owner. And, collectively, the subsidiary organisations make up the group.

In this case FMG merged with another corporate group – the Woodbrook Group – in 2018. Currently, neither FMG’s nor FMIS’s own webpages are accessible. So I can't be certain of the group structure at the time of the transfer. However, there is still information available online which shows that FMIS was part, that is it was most likely a subsidiary company, of the FMG structure and was merged with Woodbrook in 2018[3].

It’s still possible to view FMIS’s company registration on the Cypriot business register – the equivalent of Companies House in Cyprus. That shows at least two other Felicitas companies shared an address and company secretary with FMIS. So those would also appear to have been a part of the Felicitas Management Group. I think it’s worth noting that while Mr K gave FMG’s address as being the same (at that time) as FMIS’s, I can't find any reference to FMG as a corporate entity on the Cypriot Business register. So it's not clear if FMG was actually registered as a distinct entity in Cyprus.

Further, when completing the QROPS application form, FMG is not mentioned at all. Instead the advising firm is referred to as FMS. I don't know why that abbreviated name was used rather than FMIS. But I'm satisfied that they are one and the same. I say that because, as far as I can tell, FMS is not a registered entity on the Cypriot business register and I can't find any other reference to a company of this precise name. But I note that the adviser had ‘terms of agreement’ with Harbour. So it’s certainly possible that Harbour referred to FMIS as FMS in those terms of agreement or even on a drop down menu from its website.

In any event, the QROPS application form also says that the person and firm certifying Mr K’s identity and address is Mr W of FMS. But the stamp Mr W has applied to the documents themselves is quite clear that he is doing so as a representative of FMIS.

What is equally clear is that the report says that FMIS, not FMG or FMS, would take 4% of the fund value for its role in the transfer. That would be an unlikely situation if it wasn't involved in the process and a different entity – FMG – was. Also this aligns with other cases we have seen involving FMIS, where it charged a 4% fee for its advice. And Mr K’s QROPS statement shows a payment of that sum to Felicitas. I can only conclude he agreed to pay FMIS and did so because it was involved in the transfer process.

So, I am confident that it was FMIS – an appropriately authorised firm – which gave Mr K advice and a recommendation to transfer.

I’ll add that we asked Mr K, via his representatives, why he did not complain about provider P’s actions. The representatives told us that they were “unable to find enough grounds to proceed with a complaint”.

[3] https://pitchbook.com/profiles/company/235137-16

What did Aviva do and was it enough?

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 said that it routinely issued the Scorpion leaflet to consumers, although it couldn't evidence that it had done so. But in this case I've been provided with no evidence that it contacted Mr K directly at any point between receiving Capital Facts LOA and making the transfer. So I'm satisfied that it didn't, at any point, send the Scorpion materials directly to Mr K. I think that was a significant omission.

Aviva did send the insert to Capital Facts. But it had no way of knowing whether Capital Facts would pass that information on. And, as I've said above, the purpose of issuing the Scorpion materials was so that consumers could see, for themselves, the risks involved with such transfers. So sending it to an unregulated adviser who might have a vested interest in not passing the information on was not pragmatic.

That said, as I've said above, in January 2016 provider P's automated process involved enclosing a copy of the insert with transfer packs. And it sent such a pack to Mr K at that time. Further, when provider P put questions to him in June 2016, it reminded him of the TPR information previously issued to him. It also provided a link to TPAS's website where he could read further useful information. So I'm satisfied that, regardless that Aviva didn't send Mr K the Scorpion insert, he would have seen it at the time as provider P gave it to him.

Due diligence:

Aviva limited its due diligence to checking that the QROPS remained on HMRC's recognised list. It said that there was nothing unusual about a transfer to a QROPS. Mr K had a statutory right to transfer and it hadn't identified anything that required further due diligence.

However, I don't think Aviva's actions went far enough here. As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mr K'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.

The PSIG does advise that ceding schemes like Aviva may fast-track some transfers without further due diligence. But those situations did not apply to Mr K's case. And PSIG recommended asking the consumer some initial questions about their transfer. This included questions like whether someone was cold called or been offered overseas investment opportunities. So, from a few simple questions I think Aviva would, most likely, have learned that the transfer process began with a cold call. But even if that information was not forthcoming I think it would certainly have learned that Mr K had been offered 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 QROPS section of the Code (Section 6.4.4) has the following statement:

"The key items to consider are the rationale for moving funds offshore, and the likelihood that the receiving scheme is a bona fide pension scheme, as if HMRC determine

retrospectively that it is not, there may be a scheme sanction charge liability regardless of whether the receiving scheme was included on the list or not."

In order to address those two items – the rationale for moving funds offshore and the legitimacy of the QROPS – the Code suggests the transferring scheme should broadly follow the same due diligence process as for a SSAS, which outlined four areas of concern under the following headings: employment link, geographical link, marketing methods and provenance of the receiving scheme. 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, it 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, I think in this case Aviva should have addressed all areas of concern and contacted Mr K in order to help with this.

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

I think Aviva had sufficient information about the Harbour scheme not to be concerned about its legitimacy. But I also think it should have questioned Mr K's motivation for transferring to a QROPS. It's likely, had it done so, it would have discovered a number of facts about the transfer including:

- *Mr K's prompt for considering a transfer was a cold call.*
- *He wasn't intending to access his pension funds earlier than age 55 or in an unauthorised manner, nor had he been offered a cash incentive to transfer.*
- *He intended to invest some of his funds overseas.*
- *He was not intending to move abroad but his interest in a QROPS arose because an adviser had told him it could better suit his needs.*

I also think that further enquiries would have uncovered that he'd taken advice from a duly regulated adviser. I say that as, given Mr K's response to provider P's question in July 2016, had Aviva asked him similar questions, he'd have given a similar reply. That is he would have said he had taken advice from FMG. As I've said above FMG was not a regulated advising entity. However, I think it would have been a fairly straightforward process for Aviva to discover that the advice had in fact come from FMIS, which was a part of FMG, rather than FMG itself.

In those circumstances Aviva would have easily identified that FMIS was an appropriately authorised advising firm in another EU country, in much the same manner as provider P had arrived at the same conclusion in July 2016. So, it would have concluded that FMIS's role as an authorised advising firm would have indicated that the transfer was unlikely to be a scam. Also that Mr K would enjoy some regulatory protections in the event it turned out to be one.

Those regulatory protections would not come via the UK's complaints and investor protection institutions: the Financial Ombudsman Service or the Financial Services Compensation Scheme (FSCS). But instead through FMIS's own regulatory system, which EU countries are required to have under the EU's Investor Compensation Directive.

Furthermore, as a regulated firm (albeit by a regulator in another EU jurisdiction) the regulatory protections included the fact that FMIS would have been held to a high standard, mandated throughout the EU, by its own regulator. And as an authorised firm, FMIS would have had to follow the applicable European regulatory standards and conduct its practice in accordance with those standards.

Its operations would have been under some oversight by its regulator to try to ensure it was acting in the best interest of its client. So, it would have had to meet certain required standards in all of its dealings and be subject to regulation and to investor recourse under the Cypriot system.

In light of this, I think it's reasonable that Aviva could (and would if it had checked up on FMIS regulatory standing) have been reassured that FMIS was regulated to EU standards that were accepted for the purpose of authorisation under UK law.

<u>*What should Aviva have done with this information?*</u>

Aviva needed to check for the risk of pension liberation and scams in a way that was proportionate to the warning signs. But a ceding scheme is not expected to act as a general pension adviser to a member who tells it they want to leave their scheme. The Scorpion guidance and PSIG code are aimed at spotting and averting potential pension transfer scams, rather than delivering general advice about the merits of different regulatory systems or high-risk investments.

So, for it to be reasonable to expect a ceding scheme to have concerns and raise these with its member, there must, viewed overall, appear to be a real risk their member is falling victim to a scam. For Mr K's transfer, viewed overall in that way and if Aviva had taken the steps it should, I don't consider that would have been the case.

Given that Aviva would have believed a regulated adviser (even one operating on a passported basis) had provided appropriate financial advice it's unlikely it would intervene further. That's the case where there were other warning signs, such as a cold call or an overseas investment. That's because, as I've already indicated, Aviva's role was not to give Mr K advice about the suitability of a transfer or his chosen provider or investments. Its role in doing due diligence would principally have been to ensure Mr K was transferring to an appropriately registered scheme (he was) and to give him the warnings associated with pension liberation or scams and transfer risks in general.

So, it's extremely unlikely that Aviva, which wasn't acting – nor was it authorised to act – in an advisory capacity, would have told Mr K that he might be putting his pension at risk if he followed the advice given by a regulated adviser. And Aviva would reasonably have assumed that, as his regulated adviser, FMIS was likely acting in his best interests and would have made him aware of the relevant risks and issues. It wasn't Aviva's responsibility to question or scrutinise that advice.

It follows that, even if Aviva had done more thorough due diligence in line with the PSIG Code as it ought to have done here, the end result of any such due diligence wouldn't have resulted in any significant warnings being given to Mr K.

Also, I don't think the mere act of contacting Mr K and asking questions about the transfer would have prompted a change of heart. The majority of the responses Mr K would likely have provided would not have given rise to concerns. It therefore follows that I'm satisfied he wouldn't have stopped the transfer even if things had happened as they should have. In fact provider P did contact him and ask further questions. But not only did that not prevent Mr K *from transferring, his representatives couldn't find any fault in its actions worthy of complaining about. And Mr K was no better informed when he chose to make the transfers from provider P's pensions as he was when he chose to transfer from Aviva's.*

I think it's worth repeating that Mr K was taking advice from a regulated firm which was expected to act in his best interests. And any warnings Aviva provided would most likely have included discussing his situation with a regulated adviser. However, it was a regulated adviser that had made the recommendation to transfer and invest as Mr K eventually did. So, if he'd discussed those warning signs with FMIS, on balance I think it's more likely than not that it would have assuaged his concerns. It most likely would have explained the due diligence it had done on his potential investments. It's also likely it would have told him of the regulatory protections he would enjoy as a result of its regulated status.

In those circumstances I don't think that even if Aviva had done everything it should have the outcome would have been any different. That is, on balance, I think Mr K would have transferred his pension. It follows that he would be in the same position he is in now. So I don't think Aviva has caused the investment losses he has suffered.'

Aviva didn't provide any further comment. Mr K's representatives, Money Redress Limited, made a number of points. I've provided my analysis of what I see as being their key issues below.

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.

<u>The advice process</u>

Money Redress has commented on my finding that it was FMIS, rather than FMG which advised Mr K on his transfer. They said that I went to *significant lengths*, involving research of corporate structures in Cyprus and reviewing numerous documents. I don't know how Money Redress arrived at the conclusion that my research went to *significant lengths*. And I can only assume that they didn't repeat the exercise for themselves.

In fact, it was a simple process to establish which entity had advised Mr K. As I set out in my provisional decision there were three Felicitas bodies named. However, Mr K only paid one of those – FMIS – for its involvement with the transfer. So it was straightforward to deduce that, as only one Felicitas entity was charging Mr K a fee, that was the entity which provided him with advice.

Further, it was FMIS that had certified Mr K's identity documents. And, in other similar cases we have dealt with, it has been FMIS, rather than any other Felicitas entity which has provided advice to transfer. In addition, FMIS was appropriately authorised to give that advice. So, it was quite easy to determine that it was FMIS, and not FMG or FMS, which provided Mr K with advice.

I did do some fairly basic online research into the other Felicitas entities referred to. I did not see that as a 'forensic analysis' as Money Redress has described it. And it didn't involve researching numerous documents, unless *numerous* means a fairly small number. I agree with Money Redress that I wouldn't have expected Aviva to carry out the same level of research as I did. But it wouldn't have needed to. The process of determining who gave advice, as provider P no doubt found out, was simple. However, I did the additional research and gave the further commentary in my provisional decision about the Felicitas entities in the context of adding robustness to my conclusions.

I’ll add that Money Redress has referred to the ‘ambiguity’ of the situation. But I didn't find it ambiguous. It is an uncomplicated process to search the FCA register. And when doing so using the name ‘Felicitas’ alone, the register brings up FMIS. Its entry shows it operated from the same address in Cyprus which Mr K said was FMG’s address. From there it is a logical process, which provider P clearly arrived at, to determine that it was FMIS which was the entity which actually gave Mr K advice. In that way any ambiguity was easy to remove. So I'm satisfied that, if Mr K had told Aviva that FMG had advised him, Aviva would have quickly and easily identified that in fact the advice came from FMIS.

Money Redress has also argued, unreasonably in my opinion, that my finding that FMIS gave advice would have been open to challenge from one or more of the other entities in the ‘Felicitas Group’. However, I'm satisfied that Money Redress’s opinion here is not grounded in any reasonable judgment unaffected by bias. As I've already said Mr K paid a single fee, to FMIS. Mr W confirmed he had given advice and certified identity documents using FMIS’s stamp, giving his position as a consultant for FMIS while doing so.

The QROPS application form refers to advice being given by FMS rather than FMIS. But, as I said in my provisional decision, as far as I can tell FMS is not an actual entity, only FMIS and FMG were. And I think that FMS was simply an abbreviated version of FMIS used on the QROPS application form. So I find the prospect of a ‘challenge’ to my conclusions that it was FMIS which gave Mr K advice – and received a fee for doing so – from a separate Felicitas Group entity be negligible and without foundation.

I appreciate that Money Redress may not have seen the same number of cases that we have involving Felicitas. However, as I said in my provisional decision, in other cases we’ve seen, FMIS uses branded stationary in its letters similar to that used in its report. That is, the letter head refers to both *Felicitas Management Group* and *Investment Services* at the top of the letter, while the footer makes it clear that the letter is from FMIS alone (and not FMG). So, I don't find the referral to the Felicitas Management Group on its report as being ambiguous.

Money Redress has also said that Aviva should have questioned the ambiguity over whether Mr K was provided with advice or just information. However, I think that’s an unreasonable position. I said in my provisional decision that Aviva should have done more due diligence. But if it had it would have learned that Mr K **had** been given advice. This was the answer he gave to provider P, he signed the QROPS application to confirm he’d received advice and Mr W also signed the application to confirm he’d given Mr K advice. So I have little reason to doubt that if Aviva had asked Mr K if he’d taken advice he would have given the same answer to Aviva that he gave to provider P. There was no ambiguity.

Further, as far as I'm aware, Mr K didn't ever submit FMIS’s report to either Aviva nor provider P. So they had no reason to question some of the report’s curious wording I referred to in my provisional decision. However, even if Aviva had received the report and raised those questions, as previously described there is a wealth of evidence that FMIS gave Mr K advice.

I’ll briefly add that the key reason I made a finding in my provisional decision that Mr K had received *advice* as opposed to just information was because Aviva had questioned this in response to our Investigator’s complaint assessment. That is, it had raised the question of whether or not an unregulated body had actually provided *advice* or not. So in order to put that matter to bed, I set out my analysis of it. I don't depart from those findings here. There is an abundance of evidence that Mr K received advice, not least from Mr K’s own complaint submission, which Money Redress drafted for him, which said that Mr W had *strongly recommended* the transfer and investment. So I don't think Aviva was under any obligation to point out any form of ambiguity in this regard.

I'll repeat that I do think that Aviva should have done further due diligence which could have raised some concerns, for example that the initial contact was by cold call – although I note that Mr K did not tell provider P this when it asked him how the contact was made. However, even if Aviva had learned of that, for the reasons already given I remain satisfied that it would also have learned that the advice to transfer came from an authorised adviser in FMIS. In those circumstances, I find it unlikely that further due diligence would have led to Aviva giving significant warning to Mr K which would have affected the outcome.

<u>The involvement of provider P</u>

Money Redress has said that "the Scorpion warning wasn't sent to" Mr K. But they're wrong on that point. It is correct to say that Aviva did not send the Scorpion warning to Mr K. But provider P did. It included the Scorpion insert with the transfer pack it sent to him on 21 January 2016. So, while I think Aviva *should* have also sent the insert to Mr K, the fact that it didn't do so does not mean that he did not have sight of the information it contained. But I note that didn't have an effect on the outcome for him.

Money Redress has taken issue with my comment that, in respect of provider P, they "couldn't find any fault in its actions worthy of complaining about." They said I was considering a complaint about Aviva not provider P. They added that it was "wholly inappropriate to make assumptions about the rationale for pursuing or not pursuing a complaint about [provider P]".

It appears that Money Redress has overlooked the entry in my provisional decision where I said:

"Mr K has not complained about the transfer of his pensions from provider P. And my findings in this provisional decision refer to Aviva alone. However, as some of provider P's actions are relevant to my findings about Aviva I have referred to them here for context purposes."

So, I was patently aware of which body I was considering a complaint about. And provider P's actions, such as issuing the Scorpion insert and asking relevant due diligence questions, didn't instigate further warnings in that case. Nor did they persuade Mr K not to continue with the transfer of his pension funds held with provider P.

Turning to Money Redress's comment that it was *wholly inappropriate* for me to make *assumptions* about their reasons for not pursuing a complaint against provider P; the evidence shows that I did not make an assumption on that point. Instead I was guided by the evidence which Money Redress presented us with. As a reminder we explicitly asked Money Redress why Mr K had not made a complaint to provider P. Their response was:

"we as Mr K's representatives were unable to find enough grounds to proceed with a complaint."

I accept that my comment that Money Redress "couldn't find any fault in [provider P's] actions worth complaining about" is not a word for word repetition of Money Redress's response. Although I did faithfully quote their actual words in my provisional decision narrative. However, I think most reasonable people acting reasonably would interpret that my summary of Money Redress's answer, and its actual response, to share the same meaning. That is, they didn't raise a complaint because they were 'unable to find enough grounds' to do so. It follows that I did not make an "assumption" of their reasons for not raising a complaint. Instead I was guided by the evidence they gave to us.

It's notable that Money Redress has not provided any counter explanation of why they thought I had misinterpreted their answer and set out what in fact they did mean. That's something I would have expected them to do if they genuinely believed I had misunderstood what they intended to say. But they haven't done so.

Instead, they've attempted to deflect the point to commenting that provider P also did not give the warnings to Mr K that they believe Aviva should have done. I agree that's the case. But as I've already said, under the circumstances I don't think that further due diligence from Aviva would have led to further significant warnings being given. And I have been unable to find enough grounds to fairly and reasonably concluded that Aviva should have given Mr K the warnings Money Redress believes it should.

Summary and Money Redress's other points

I don't think that Aviva did everything that it should have done. But even if it had I don't think the outcome would have been different.

It's not the case, as Money Redress has argued, that Mr K did not have sight of the Scorpion warning. He did because provider P gave that to him.

Money Redress has now suggested that it could have been an unregulated business in Capital Facts which gave Mr K advice. This isn't something they've alleged previously. However, there is no evidence of Capital Facts giving Mr K advice. In contrast there is a wealth of evidence, as set out above, that Mr W of FMIS made a recommendation to Mr K to transfer, much of which is in writing.

And, for the reasons already given I'm satisfied that if Aviva had done further due diligence that would have led to it establishing, in a straightforward way, that an authorised firm, FMIS, had given Mr K advice to transfer. So I don't think Aviva would have given Mr K significant additional warnings that were likely to change the outcome for him.

Money Redress has also referred to the fact that any complaint about an issue concerning a business regulated in Cyprus would have to be put through the Cypriot system. I agree that's the case. But I can't see that Aviva (or provider P) were under any obligation to bring this to Mr K's attention. Mr K was paying for an authorised advising firm to give him advice. And its notable that, as part of that advice, it explained that an investment with TRG was highly illiquid and wouldn't attract the protection of the UK system. But that didn't dissuade him from transferring and investing in line with FMIS's recommendations.

Finally, Money Redress has said that FMIS's report was unclear and ambiguous and indicated that in fact it wasn't giving advice. However, when they drafted Mr K's complaint Money Redress argued that FMG – which they said was unregulated – 'strongly recommended' that he transfer and invest as he did. At that point, Money Redress had no difficulty in determining that Mr W gave Mr K advice or what that advice was. They only appear to have changed their position on that in the realisation that in fact Mr W did represent an authorised firm. But in any event, as I've said above, Aviva didn't ever see FMIS's report. It wasn't responsible for commenting on its content or assessing the suitability of the transfer. That was what Mr K was paying FMIS to do.

The above said I do understand Money Redress's and Mr K's strength of feeling. And I have great sympathy for the position Mr K now finds himself in. I understand he has lost a significant portion of his retirement savings s a result of following advice which appears to have been unsuitable for him. But, in the specific circumstances of this case, for the reasons already given I don't think it would be fair and reasonable to attribute those losses to Aviva's actions.

My final decision

For the reasons given above I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 10 April 2025.

Joe Scott
Ombudsman