

The complaint

Mrs M, with the help of her representative, has complained about a transfer of her Aviva Life & Pensions UK Limited (“Aviva”) stakeholder pension to a Qualifying Recognised Overseas Pension Scheme (“QROPS”) in May 2016. Mrs M’s QROPS was subsequently used to invest in inappropriate assets, including The Resort Group (“TRG”), an overseas hotel venture that has since run into trouble.

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

What happened

Mrs M held a stakeholder pension with Aviva since 2003. Her representative has stated that in or around December 2015 she was contacted out of the blue by Capital Facts Limited (CF), an unregulated firm, and offered a free review of her pensions. But in a conversation with our investigator Mrs M stated that First Review Pensions Services (FRPS) contacted her initially – this will be covered in more detail later in this decision.

Mrs M has said that she was told that her existing arrangements were not performing to their maximum potential and that there were better alternatives for her.

Following this Mrs M agreed to meet a representative of FRPS at her home when she was told that she could make more on her fund if she transferred her pensions.

She was advised to invest in the Bourse Retirement Scheme (Malta) which was a QROPS and then subsequently invest in the TRG development in Cape Verde, a corporate bond, two equity-based funds and to keep a small amount in cash.

At the time Mrs M was 53 years of age. She was unemployed and reliant on sick pay. She had no savings or investments nor did she have any investment experience. When making her complaint she has said that she didn’t know what type of investments were involved but she knew that the majority would be held overseas. She also says she wasn’t planning to move abroad.

CF appears to have sent Aviva a letter of authority (LOA) signed by Mrs M on 14 December 2015 and requested information about Mrs M’s pensions. Aviva responded with the required information in the same month and also included the relevant forms which needed to be completed and returned to enable the transfer.

Between this time and Aviva receiving the request to transfer the pension, see below, a firm called Felicitas Management Services Limited (Felicitas) issued a recommendation letter, advising Mrs M to transfer her pensions away from Aviva into the QROPS and then make the recommendations noted above. The copy of this letter that I have seen is dated January 2016.

Mrs M completed the application form for the QROPS and signed it on 3 February 2016. In this there was a section where the financial adviser associated with the transfer was to be recorded. In this section Felicitas was noted as being the adviser.

Aviva then received a pension transfer request from the administrators of the QROPS, Bourse Pension Trustees Ltd based in Guernsey dated 11 March 2016. This letter confirmed the request to transfer. It also confirmed the scheme was a QROPS and enclosed the following:

- The plan transfer documents – this made it clear that the scheme was a QROPS based in Malta and that Mrs M did not live overseas;
- HMRC APSS263
- HMRC CA1890
- HMRC QROPS recognition letter
- The authority letter - in this form Mrs M signed a declaration confirming she had taken independent financial advice and that she was aware of the potential risks and benefits of transferring her pension to the receiving scheme. She signed this form and dated it as 3 February 2016; and
- The receiving bank's details.

It would appear that upon receipt of this information Aviva proceeded with the transfer process and in a letter date 5 May 2016 it sent a letter to the scheme administrators confirming the transfer of Mrs M's pension – a total of just over £6,000.

Mrs M has said the investments in TRG are entirely illiquid now and incapable of sale on the open market and therefore considered to be of nil value.

Aviva didn't uphold the complaint. It explained it had checked the scheme was registered with HMRC as a QROPS and was satisfied that it had carried out the checks required by the pension regulations at the time. It had no knowledge of the intended investments within the QROPS so it had no reason to be concerned about the request. It also said that it wouldn't normally contact a member directly during the process unless this had been requested or there was an issue with any of the paperwork. But as there were no issues and it had no reason to be concerned about the transfer it proceeded with it as Mrs M had requested. It also explained that there was a servicing agent named on the plan for Mrs M so Mrs M could have taken advice from them if she had wanted to at the time.

Its worth noting here that Mrs M seems to have transferred at least one other pension that she held with a different provider. Mrs M has also complained about that transfer, however due to the nature of that scheme the complaint has been dealt with by a different dispute resolution body.

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 is set out below and forms part of this decision:

The relevant rules and guidance

Personal pension providers are regulated by the FCA. Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority (FSA). As such Aviva was subject to the FSA/FCA Handbook, and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA/FCA rules governing how personal pension providers deal with pension transfer requests, but the following have particular relevance here:

- Principle 2 – A firm must conduct its business with due skill, care and diligence;
- Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;
- Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and
- COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

In February 2013, The Pensions Regulator (TPR) issued its Scorpion guidance to help tackle the increasing problem of pension liberation, the process by which unauthorised payments are made from a pension (such as accessing a pension below minimum retirement age). In brief, the guidance provided a due diligence framework for ceding schemes dealing with pension transfer requests and some consumer-facing warning materials designed to allow members decide for themselves the risks they were running when considering a transfer. The Scorpion guidance was described as a cross-government initiative by Action Fraud, The City of London Police, HMRC, the Pensions Advisory Service (TPAS), TPR, the SFO, and the FSA/FCA, all of which endorsed the guidance, allowing their names and logos to appear in Scorpion materials.

The FSA's endorsement of the Scorpion guidance was relatively informal: it didn't take the form of Handbook Guidance, because it was not issued under s.139A of the Financial Services and Markets Act (FSMA), which enabled the FSA to issue guidance provided it underwent a consultation process first. Nor did it constitute "confirmed industry guidance", as can be seen by consulting the list of all such FSA/FCA guidance on its website. So the content of the Scorpion guidance was essentially informational and advisory in nature. Deviating from it doesn't therefore mean a firm has necessarily broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's right to transfer.

That said, the launch of the Scorpion guidance in 2013 was an important moment in so far it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing those requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance's specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

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

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

There was a further update to the Scorpion guidance in March 2015, which is relevant for this complaint. 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. 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. A further update to the Scorpion guidance (but not the PSIG Code) followed in March 2016.

The March 2016 Scorpion guidance

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 where appropriate (for instance, when members requested more information on the subject).

The March 2016 Scorpion guidance asked schemes to direct their members to the Scorpion booklet. 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 and the longer version (which had also been refreshed) made available where appropriate.

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 PSIG Code of Good Practice

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 require 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 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.

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

Mrs M has told us that she was cold called by FRPS who then visited her home for a first meeting and then a second meeting took place within weeks.

She has said she was told she would make more if she transferred her pension to the QROPS. She says she was put under pressure, and everything happened very quickly. She said the representative said he would deal with Aviva, that she would be able to get money from the pension and that the scheme was backed by the FCA. She has said she had no contact with Aviva. She accessed her 25% tax free cash lump sum because at the time she hadn't worked for two years and was struggling financially. She said she felt vulnerable at the time. She didn't have any credit cards/loan or a mortgage. She doesn't recall receiving the Scorpion insert either but when presented with a copy by the investigator who initially assessed this complaint, she said that had she seen this at the time of the transfer she would have been prompted to call for guidance (she didn't confirm who) and to find out whether FRPS was a scam.

Firstly, to address the anomaly of who had first contacted Mrs M, the complaint submission from her representative has said it was in fact CF that contacted her initially.

I have seen a response from Aviva to CF dated December 2015 which refers to an email that it was sent by CF, providing the information about Mrs M's pension that it had requested. And there is nothing in the information provided to me that shows the involvement of FRPS before this date. So, while I appreciate what Mrs M has said I am satisfied that it was CF that had first contacted her.

In terms of FRPS being involved I have seen evidence of it carrying out liaison and administrative duties in relation to setting up the transfer to the QROPS. So, I am also satisfied of its involvement in this regard.

In any event the presence of either of these parties don't impact my findings because the information I have seen indicates that Mrs M received advice from Felicitas.

In the complaint submission there is mention of Felicitas but not in an advice capacity as Mrs M's representative has said FRPS gave Mrs M the advice to transfer. And when asked Mrs M has said she doesn't recall ever dealing with Felicitas and FRPS gave her advice. However, I have seen a recommendation letter from Felicitas dated January 2016 which is directed to Mrs M and sets out some details about her pension planning. It explains she had three options, one of them being to transfer to a QROPS. It sets out the advantages and disadvantages of taking the first two options and sets out the advantages of investing into the QROPS. The letter also explains details about the recommended investments within the QROPS.

In addition to this, in the Bourse application form, Felicitas is named as Mrs M's financial adviser who assisted with the application. This form also shows that Felicitas received a fee. This form was signed by Mrs M on 3 February 2016 so I am satisfied that she would have or at least should have read it before signing it and therefore would have seen mention of Felicitas. She also signed a form confirming that she had taken independent financial advice on transferring her pension to the QROPS.

So overall I am not convinced when Mrs M said she had never heard of Felicitas and think its more likely that she doesn't remember due to how long ago all these events took place. Furthermore, given Mrs M's lack of experience in investing I think its more likely than not that she was given advice to transfer because I can't see how she would have come across the mere concept of a QROPS on her own nor do I think she would have known about the TRG investments. And in light of the evidence, I think that Felicitas was the firm that gave her the advice.

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.

In the information provided to me there is enclosed a copy of the Scorpion insert. Aviva has also provided internal documents (from 2015) which record all the documents that would have had to be sent to members when transfer requests were made and included in this pack was the requirement to send the "TPR booklet on pensions scams".

While Mrs M has said she doesn't recall seeing this guidance I am persuaded that Aviva

more likely than not did send the guidance as a standard insert in its transfer related communications at the time. I appreciate the documents provided by Aviva are from 2015 but given this transfer took place in 2016 it seems likely that if sending the Scorpion guidance was standard procedure in 2015 it would remain so a year later.

However, from all the information I cannot see anything that confirms this insert was sent directly to Mrs M, which it should have been, rather than being sent to CF which is what seems to have happened.

So in this regard this is a failing on Aviva's part because the insert should have been sent directly to the transferring member, as set out clearly in the guidance and at this stage it cannot be said with any certainty Aviva sent the insert to Mrs M directly rather than including it in the pack which looks to have been sent to CF only.

However, as will come onto later in this decision whether the insert was in fact sent directly to Mrs M or not doesn't impact the findings I have reached on this complaint so I don't intend to explore this point any further.

It's also worth mentioning that while Mrs M told our investigator that she would have been prompted to call for guidance on the transfer had she seen the insert at the time and to find out if FRPS was scam, had she called Aviva she wouldn't have been able to get any advice because that wasn't its role. Nor would Aviva have been able to tell her anything about FRPS. Furthermore, FRPS was not a scam and nor was the QROPS so it's unlikely she would have found anything out about the parties involved that would have caused her concern.

Due diligence:

As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mrs M'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 transfer request didn't come from an accepted club such as the Public Sector Transfer Club and Aviva hadn't already identified the receiving scheme/administrator as being free from scam risk. So the initial triage process should have instead led to Aviva asking Mrs M further questions about the transfer as per section 6.2.2 ("Initial analysis – member questions"). I won't repeat the list of suggested questions in full, suffice to say, at least two of them would have been answered "yes":

- Did the receiving scheme/adviser or sales agents/representatives for the receiving scheme make the first contact (e.g. a cold call)?*
- 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 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, 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, I think in this case Aviva should have addressed all four areas of concern and contacted Mrs M in order to help with this.

What should Aviva have found out – and would it have made a difference?

Aviva knew Mrs M was transferring to a QROPS and it did establish the legitimacy of the QROPS. But that was the extent of its due diligence. It didn't enquire about Mrs M's rationale for transferring or who advised her. If it had asked her about this, which it reasonably should have done, using the framework outlined above it would have found that she was transferring her pension following an unsolicited approach and that she wasn't intending to move overseas. Aviva would also have found out that the reason for transferring overseas was to invest for higher returns and, in part, in TRG – an overseas property scheme of the type that was highlighted as an area of concern in the PSIG Code.

However, Aviva would also have discovered the involvement of Felicitas and the advice Mrs M had received from them about the QROPS and the investments within it.

Enquiries into Felicitas would have shown that it was passported from Cyprus to the UK and so during the period of this transfer they were authorised persons under FSMA 2000. The right to passport financial services from an EU country to another is a feature of the EU's internal market which applied to the UK at the time. The right was underpinned by the introduction of the EU-wide standards of investor protection and harmonised the conduct of business rules.

The UK's regulatory system permitted EU passported firms, if duly registered with the FCA on its public register, to operate here as authorised persons under FSMA 2000 and I think that in this complaint that could have provided sufficient comfort for Aviva's purposes that despite the presence of some warning signs (cold call, overseas investments, moving to a QROPS without moving abroad) the risk of a scam here was minimal as a regulated adviser had been involved in advising on the transfer and providing Mrs M with information about it. So overall I don't think if Aviva had made further enquiries this would have likely resulted in warnings to Mrs M that she was at risk of a scam. And this was essentially the purpose of the PSIG and Scorpion guidance, for ceding schemes to take additional steps if they thought a customer was likely being scammed. They weren't expected to provide general advice to the customer about the transfer, the investment risks or the possible differences in regulatory protection when using an EEA regulated firm with service passporting rights.

I am therefore of the view that Aviva's due diligence would therefore have given it sufficient comfort that Mrs M wasn't falling victim to a scam. She was transferring to a legitimate scheme and she wasn't liberating her pension. And an EU regulated adviser was involved in advising on the transfer.

Keeping in mind a firm needed to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer properly and in line

with a member's statutory rights I think Aviva would reasonably have taken comfort from the aggregate picture here which is that Mrs M didn't appear to have been falling victim to a scam.

What would have happened if Aviva had asked further questions about the transfer? I recognise the simple fact of asking someone about why they wanted to transfer, and how they came to be interested in transferring in the first place can prompt a change of heart. But I don't think that would have applied here because I think it's more likely than not that Mrs M would have taken some comfort from the fact that Felicitas was involved and was a regulated party. They had informed her that whilst it wasn't common in the UK to have a QROPS there were certain advantages and benefits having a QROPS including various tax benefits. So, I don't think Mrs M would have had reason to have concerns about that. And as I have already said I don't think it would have been unreasonable for Aviva not to have provided further risk warnings once it had learned a regulated adviser was involved. So I think Mrs M would have proceeded with her transfer.

So, despite there being some warning signs in Mrs M's transfer the presence of a regulated advisory firm would have reasonably provided enough comfort that a scam likely wasn't taking place. The fact that a non-UK firm was involved in an overseas transfer wouldn't be unusual and Mrs M had been advised about the advantages of transferring into a QROPS. It wasn't for Aviva to question whether this advice was suitable or not. And I don't think Aviva needed to provide further individual warnings to Mrs M about the warnings they had identified after they had reasonably discounted the likelihood of a scam. And even if Aviva had I don't think it would have changed her mind about transferring because of the presence of Felicitas – being an EU regulated firm which at the time wouldn't have been of concern. Furthermore, the information I have about the outcome of Mrs M's other complaint about the transfer of another of her pensions to the same scheme show that she was advised to not transfer that pension by an FCA regulated advisory firm due to the findings of a transfer value analysis report. However, she disregarded this advice and continued with the transfer anyway.

So I think this indicates quite clearly that Mrs M would have continued anyway regardless of what Aviva should have told her about the transfer to the QROPS.

Summary

Overall therefore, as set out in detail above I can't be sure at this stage that Mrs M was sent the Scorpion insert directly by Aviva which she should have been and I do accept that Aviva could have done more in terms of asking Mrs M for further information about the transfer and what had led her to it, in other words acting in line with the PSIG Code which it should have followed at the time.

However, even if Aviva had done these things, I don't think it would have felt Mrs M was at risk of a scam because an EU regulated firm was involved in this transfer and therefore any concerns Aviva may have had had it followed the correct process would have been assuaged by its presence.

Furthermore, again because of Felicitas' involvement any questions Aviva should have asked Mrs M wouldn't have caused her to change her mind.

Aviva didn't respond to the provisional decision and made no further comments. Mrs M, through her representative, didn't accept the provisional findings and made several comments. I have summarised these briefly below:

- The contemporaneous evidence shows that the primary adviser on both the decision

to transfer the pension to the QROPS and to make the specific investments was FRPS – they had visited Mrs M in her home and persuaded her to take these actions which were then presented in turn to Felicitas who provided an information only document/report to her recording the decision already made. Mrs M was taken through a lengthy pack of detailed documentation and asked to sign numerous documents to effect this process by FRPS before this was all packaged up and submitted to the QROPS administration and Felicitas for action.

- It follows therefore that Aviva should not nor could not have derived any comfort from the involvement of Felicitas given FRPS was the primary adviser which Aviva should have discovered, along with the warning signs it should have picked up on.
- The likelihood is that if asked who her adviser was she would have said FRPS raising clear concerns of a breach of prohibition.
- Mrs M transferred into what effectively was a pension scam situation – a transfer to an overseas scheme where there was no rationale for her to do so on the advice of an unregulated firm connected with the ultimate unregulated and overseas investment provider. Everything invested into TRG has been lost. Despite this fact the provisional findings are that there was no scam and that Aviva need not have taken any further action - a finding that is unfair and unreasonable.
- The advice Mrs M received in relation to the other pension she was planning to transfer was specifically related only to the critical yield which needed to be achieved to exceed her then current provider's scheme. It didn't take into account any personal objectives, spouse benefits or attitude to investment risks. So, the advice was of a very technical and limited nature easy to explain away for FRPS and of a completely different nature to Mrs M being informed that the pension transfer she was contemplating carried scam warning signs. So, it is not accepted that this report can be considered supportive evidence that Mrs M would have ignored scam warning signs.

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've taken into account relevant: law and regulations; regulatory 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 or inconclusive, (as it is here), I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened given the available evidence and wider circumstances.

I appreciate the comments Mrs M's representative has made about FRPS being the primary adviser. However I disagree.

I don't doubt that FRPS introduced Mrs M to the concept of transferring her pension to the QROPS and possibly then on to TRG however the evidence shows me that it was Felicitas that assumed the role of the adviser for both the transfer and the investments within the QROPS.

The recommendation report from Felicitas dated 22 January 2016 is of a type I would expect to see from a firm conducting a suitability assessment on a client.

The report does state that *you have requested to transfer your existing pension plan to a QROPS*. However contrary to what the representative has said I think this only indicates that a discussion had taken place about transferring to the QROPS (most likely between Mrs M and FRPS) rather than full advice had already been given and Felicitas was just there to formalise the decision.

The report goes on to confirm that the contents of the report are restricted to information on pensions, the pension plan [Mrs M] had requested to transfer to and appropriateness. So from this it seems clear enough to me that both the transfer of her pension and the further investments were to be considered.

The report goes on to set out Mrs M's personal circumstances and current financial position including any pensions and investments held at the time along with her pension objectives. It also explained what options she had - to leave the plans where they were; transfer to a UK SIPP or transfer to a QROPS. It then explained the advantages and disadvantages of the first and second options with reference to her current pension plans and set out what she might get back from them if she took each option. When the report covers the QROPS only advantages of this option are set out. The report then moved on to providing information about the Bourse Trust Company. And the various other investments involved including TRG along with any applicable fees. It also detailed her risk profile and set it at "balanced". The report also set out the proposed selected investments within the QROPS along with the charges. And finally, it contained a client declaration and instructions, signed by Mrs M clearly confirming that she wished to transfer to the QROPS.

In my view it is clear that this report is in relation to the transfer as well as the investments within the QROPS. I have seen nothing from FRPS that matches this report from Felicitas so given the contents of it and taking account of how it provided recommendations and advice, setting out advantages and disadvantages of transferring the pension into a number of options I am satisfied that this constituted advice and it was Felicitas that provided that advice.

Furthermore, as described in my provisional findings, the application for the QROPS records that Felicitas is named as the Professional Financial Adviser and states that a fee of 4% was payable to the Financial Adviser in respect of the transfer. Again, to me this indicates that it was Felicitas who was providing advice to Mrs M and was being paid for it and this is more likely to be advice to transfer rather than advice on the investments.

I accept that FRPS possibly gave advice as well and Mrs M may have mentioned both firms if Aviva had asked, but, if this had happened I think it's unlikely Aviva should have become concerned about this because, more likely than not, it would have appeared – and in my view reasonable for it to hold the view – that the extent of FRPS' involvement was to refer Mrs M on to Felicitas for regulated advice.

Therefore, in light of all of this evidence I am satisfied that it was Felicitas that gave Mrs M the advice to transfer and invest and had Aviva asked her, for the reasons set out above I think Mrs M would have mentioned Felicitas. She may also have mentioned FRPS but Aviva would have known that FRPS wasn't regulated to provide advice on the transfer and so would have focused its due diligence on Felicitas.

Therefore, my findings that Aviva could have taken comfort from Felicitas due to its EU regulatory status remain as stated in the provisional decision.

In terms of the issue raised about whether this was a scam or not, the representative will note that my provisional findings simply said that the QROPS and the FRPS were not scam

entities. Which is a fact – they were a legitimate correctly registered business/scheme. If Mrs M had asked Aviva about FRPS or anything else about the transfer its unlikely it would have been able to confirm that a scam was present (if indeed it was) because it would not have been able to be certain about any scam activity.

Finally, while I note the comments the representative has made about the other pension Mrs M tried to transfer and the recommendation from the adviser involved, in my view regardless of whether the recommendation to not transfer was only based on the critical yield or not it was still a recommendation to not transfer. And this was because if she transferred that pension its likely it would not have been able to meet her financial requirements in the future due to the high critical yield.

This is in my view quite a serious warning - being told you may not get what you need at retirement should be enough for most people to think twice about the transfer. But Mrs M didn't and carried on anyway. Therefore, if something like that wasn't serious enough for her to change her mind, I think it's reasonable to deduce that it was therefore unlikely that anything Aviva could have told her would have changed her mind also.

Overall, I remain satisfied that Felicitas gave Mrs M the advice to transfer the pension to the QROPS and while FRPS clearly played a part in this too the evidence points to Felicitas being the adviser.

Therefore, with Felicitas being an EU regulated adviser despite any potential scam warning signs Aviva should have identified the presence of a regulated adviser was enough to allay any possible concerns it may have had.

Its important to note that Aviva's role was to spot and avert potential pension transfer scams against the member, 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 Mrs M'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 primarily because of the involves of Felicitas.

My final decision

For the reason set out above my final decision is that I don't uphold this complaint and I make no award.

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

Ayshea Khan
Ombudsman