DRN-3329888

The complaint

Mr B complains that Standard Life Assurance Limited carried out insufficient checks before permitting his pension to be transferred out to a Small Self-Administered Scheme (SSAS) operated by Greenchurch Capital Ltd.

What happened

Mr B's representative says that in late 2012 Mr B was a self-employed tradesman, aged 37, earning £30,000pa and with no experience of investments. He was offered a cash incentive by an unregulated introducer (who I assume to be representing UK Pension Transfers Ltd – see below) to transfer from his Standard Life Group Personal Pension (GPP) to a Greenchurch Capital SSAS. He says the introducer told him that he would receive significant, guaranteed and risk-free investment returns which were greater than he could expect to receive from Standard Life. He was unaware the introducer was not regulated by the Financial Conduct Authority (FCA).

On 21 November 2012 Standard Life updated its records to reflect Mr B's authority to provide policy information to UK Pension Transfers Ltd and it supplied that company with plan details including projections. On 25 January 2013 it then received a request to transfer his pension to a SSAS set up for a recently-established company in his name, and administered from Greenchurch's address.

Standard Life wrote to Mr B directly on 25 February saying the following:

> *'To enable a transfer we require the following:*
> * *Verbal or written acceptance from the receiving pension scheme including BACS details for the payment, on company headed paper.*
> * *Confirmation that Greenchurch Capital are the Pension Administrators*
> * *Full details of the scheme*
>
> *…*
> *If a transfer of benefits is to go ahead we will need a letter of authority or verbal confirmation from the member. We will also need either written or verbal confirmation from the scheme the plan is transferring to. The receiving scheme should also confirm their full details (name, address, type of scheme and PSTR number)…*
>
> ***Please note:***
>
> *...*
> ➢ *If a transfer is to be made we will have to check that certain requirements can be met first. Sometimes a transfer may not be possible…'*

As this letter was produced on a Monday I expect Standard Life then subsequently received another letter dated the previous Friday, 22 February, in which Greenchurch confirmed it was willing to receive the transfer. It provided Standard Life with a copy of the HMRC registration certificate for Mr B's pension scheme, which was dated 6 February 2013. Standard Life then says Greenchurch phoned it on 28 February to check the request had been received and all requirements had been met. The transfer of about £15,900 took place on 1 March 2013.

On 14 June 2013 Mr B's Greenchurch SSAS purchased 6 class 'B' shares in a limited

company (which I'll call E) at an apparent cost of £2,000 per share. One of its quarterly updates shows this company had set up a new division in the renewable energy sector, providing energy assessment services to domestic and commercial clients and the installation of solar panels, heat pumps, wind turbines and biomass systems. E's 'welcome letter' to Mr B's home address contains a noteworthy footer:

> *'Please note: We are active supporters of 'The Pension Advisory Service'* [TPAS] *and do not support or condone pension liberation in any form. Any release of pension funds before the due date(s) will be subject to taxation and charges (as set by HMRC). Any liberation of pension funds should be declared immediately to HMRC by the individual beneficiaries.'*

This company is still trading and had (when it was last required to disclose this in April 2015) 514 'B' shares nominally worth £1 each, split between about 50 investors. As the shares are unquoted, what they're actually worth is entirely dependent on what another buyer is willing to pay for them. The sole director of the company owns 4,500 'A' (priority) shares. The company is classified under 'Other professional, scientific and technical activities'.

It appears Greenchurch was aware of what Mr B was investing in and how his business had been introduced: it wrote to him on 8 August 2013 to clarify that it did not have a copy of the share certificate and suggested that *'If you have not got a copy…please speak to your Introducer in order to obtain this.'* It went on to say:

> *'Further to our meetings with HMRC and other developments in the market, we do not feel that, as a business, we should continue to operate in this market. We therefore made the decision to close to new business 6-8 weeks ago. After further assessment, we have also now decided to unwind any existing business. As a result, we will be:*
> *1. Seeking to transfer any funds or assets of existing schemes to other Providers, and*
> *2. In due course, resigning as Administrator to those schemes*
> *…*
> *We have been discussing this development with a number of interested parties and would be happy to provide you with some potential options if you wish.'*

Mr B established a new SSAS with Cranfords in February 2014, and on 1 October Greenchurch transferred his funds (including the shares in E *in specie*).

Mr B's representative later complained to Standard Life in October 2019, including that:

- Standard Life should have sent Mr B a factsheet published by TPAS on 14 February 2013, warning him of the risk of an incentive such as the one he was offered before the age of 55 being classed as pension liberation.
- It should have noticed that the sponsoring employer to Mr B's Greenchurch SSAS was a newly established dormant company with no intention to trade.
- It should have noticed that the SSAS itself was only recently registered with HMRC.
- It should have contacted Mr B to identify further warning signs, such as being cold-called and offered incentives by unregulated party to make non-standard investments.

Notably, these are all specific requirements of guidance that The Pensions Regulator (TPR) introduced on 14 February 2013, but which Mr B's representative will be aware this service considers firms should have been allowed a reasonable amount of time to react to and implement. The transfer in this case was made within that implementation period, but I note that the representative makes a wider point that Standard Life failed in its ever-present obligations to act in Mr B's best interests under COBS 2.1.1 in the FCA handbook.

Standard Life originally didn't consent to our considering this complaint on account of the time limits set out in the Financial Conduct Authority's handbook. However I've issued a provisional decision confirming that Mr B did bring his complaint within six years from the event being complained about (the transfer) – or if later, three years from when he became

aware (or ought reasonably to have become aware) of his cause for complaint. Standard Life didn't raise any further points on that aspect of the complaint so I'm proceeding on the basis that it was raised within the time limits.

I also set out my provisional findings on the merits of the complaint, which I'll repeat 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.

As Mr B's policy was a personal pension, Standard Life was regulated by the Financial Services Authority (FSA, subsequently FCA) in its operation. There have never been any specific FCA rules on the checks transferring providers need to make before someone can transfer from a personal pension.

The FCA Handbook set out Principles and Rules that firms must adhere to. Firms must always apply the principles, even when specific rules and guidance from the FCA in a particular area are absent or evolving – as was the case with pension liberation. The most relevant principles (in the PRIN section of the rulebook) to this case were:

- 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.

As Mr B's representative has mentioned, a firm must also act honestly, fairly and professionally in accordance with the best interests of its client, which is known as the client's best interests rule at COBS 2.1.1R in the handbook.

The FSA had issued a number of warnings on its website in June and July 2011 about the dangers of what it referred to as 'pension unlocking'. This included that consumers might be cold-called by unregulated advisers and encouraged to release cash from their pensions ahead of retirement. At the time, the FSA said it was working closely with HMRC and TPR (which regulated occupational pension schemes) to address this. In turn, TPR confirmed on its website in December 2011 and March 2012 that it was working with HMRC and FSA to prevent and disrupt liberation, and urging consumers to be vigilant. I gather that TPAS and/or the National Fraud Intelligence Bureau (NFIB) began sharing lists of suspicious schemes from a certain point in time.

As a result, I think it's clear that Standard Life would have been aware that liberation was a problem affecting the industry. But it's important to note that before 14 February 2013 the awareness promoted by both FSA and TPR, internal industry 'watchlists', and potentially its own experience of transfers that had turned out poorly, were the only real sources of information Standard Life had as to the extent of this problem. As no formal guidance had been circulated it was a matter for its own judgement how to apply this awareness in a way that was consistent with the FSA/FCA's principles and rules.

When guidance was published by TPR on 14 February 2013, I think it was also directly relevant to FSA/FCA regulated firms. It might not have been set out specifically by reference to those firms' PRIN or COBS obligations – so in that sense it represented a step-change in how all businesses were expected to approach pension transfers after that point. But it was endorsed by the FSA, so it was clearly relevant to how Standard Life could comply with its PRIN and COBS obligations *in future*. The issue in Mr B's case is whether Standard Life could reasonably have been expected to apply this guidance (including sending the TPAS

leaflet) on a transfer request it was literally assessing a little over a week after that guidance was published. And I find that this is not a reasonable expectation.

A provider couldn't know whether suspending all transfers was the right or proportionate thing to do until it had read and digested what TPR had published. And ideally, assessed whether it was practicable to introduce some safeguards promptly enough that the majority of bona fide transfers would not need to be delayed, whilst focusing on the ones that were likely to be of concern. It would also need some time to incorporate the TPAS leaflet into its mailings (although I would additionally make the point here that TPR expected the leaflet to be included with a transfer quotation – and in Mr B's case policy information had already been issued to UK Pension Transfers Ltd *before* the guidance was even published).

It's notable that the particular warning signs Mr B's representative considers Standard Life should have identified *are* largely drawn from the steps the February 2013 TPR guidance expects businesses to take. For example: from investigating addresses at Companies house, gathering further information from the consumer directly to assess the risk of liberation, checking how recently the receiving scheme was registered (rather than *whether* it was registered) and so on.

In order to reach a decision that is fair and reasonable to both parties, I've considered how Standard Life should have reacted to Mr B's transfer request largely in light of knowledge it would reasonably already have had from previous TPR and FSA announcements about liberation – not specifically from the recently introduced guidance of February 2013. And I've considered that knowledge in light of Standard Life's existing PRIN and COBS obligations.

However even in this regard I do think it's fair to say that the unprofessional nature of Greenchurch's original approach to Standard Life would have at least generated some curiosity. I doubt Standard Life would have heard of Greenchurch as a SSAS administrator, as we know the company was set up about two months before it first requested Mr B's transfer. I make this point as an observation, not because the age of a company or scheme had been flagged up as something Standard Life should have specifically have been concerned about until it implemented the TPR guidance. But it would broadly be reasonable to say a company that Standard Life is unlikely to have heard of before would have warranted at least a slightly closer look, in light of industry-wide concerns about liberation.

From what I can see, Greenchurch did have a website which prominently displayed a notice dated 'February 2013' that it was not facilitating pension liberation[1]. Whilst the wider circumstances of Mr B's complaint and Greenchurch's withdrawal from the industry after dialogue with HMRC might call that statement into question, I have to consider whether such a statement would have been likely to raise suspicion in February 2013.

Greenchurch was providing SSASs which are a more bespoke pension arrangement for small businesses, and not thought at the time to be the focus of pension liberation activity. That's not surprising given that a consumer establishing a SSAS will already need to have their own company, and hold the roles of director and also trustee of the SSAS. Whereas none of these more onerous requirements were needed for them to participate in the classic type of 'multi-member' occupational scheme being commonly used for pension liberation activity at that time.

Apart from one or two major SSAS administrators in the industry, most others were relatively small. And before it had implemented the TPR guidance, I'm not satisfied Standard Life should have concluded a newly established scheme was a warning sign in itself. Or that the administrator's denial that it was involved in liberation activity should automatically be

[1] http://web.archive.org/web/20130615104953/http://www.greenchurchcapital.co.uk:80/

suspected as meaning the opposite. Mr B's representative may point out that an unregulated introducer had been in contact with Standard Life previously, but I've taken into account that this was a request for information – and such companies could legitimately be involved with occupational pension schemes which weren't regulated by the FSA.

Mr B's representative argues that Standard Life could not have satisfied its COBS (or PRIN) obligations without asking Mr B further questions. Standard Life did ask Mr B some questions at a time when it wasn't yet satisfied it had enough information to make the transfer. However, those questions were adequately answered by Greenchurch. On balance and taking into account that this transfer was made at a very early stage in the introduction of the TPR guidance, I'm satisfied that any initial curiosity prompted by the manner of the first transfer request would have been adequately resolved by the second request.

Greenchurch appeared to be a legitimate SSAS administrator, which HMRC had allowed to register a new scheme for Mr B. That scheme was not, at that time, likely to be seen as anything other than a typical pension arrangement that carried specific advantages for a small company like Mr B's. Without the benefit of hindsight, it would have seemed that Mr B had a statutory right to transfer to such an arrangement which he would likely be intent on exercising having already established a pension scheme for his own company. Given Standard Life couldn't reasonably have implemented the TPR guidance at the time it transferred Mr B's pension, I'm not satisfied it had a reason to ask Mr B for anything else.

Overall, I'm satisfied that the overarching requirements under the FCA Principles and COBS 2.1.1R were adequately met by the steps Standard Life took to check Mr B's SSAS was HMRC registered and to request that properly prepared paperwork was submitted. As such, I consider these steps were also consistent with good industry practice at the relevant time.

My final decision

Neither party raised any further comments to the conclusions which were reached in my provisional decision as set out above. Having reviewed the matter again I haven't found any grounds to depart from those conclusions. I do not uphold Mr B's complaint or make any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 23 March 2022.

Gideon Moore
Ombudsman