DRN-3701084

The complaint

Mr M has complained about the way The Royal London Mutual Insurance Society Limited ("Royal London") dealt with the transfer of his personal pension policies to an occupational scheme in 2011. Mr M's occupational scheme was subsequently found to be a vehicle for pension liberation, the process by which pensions are accessed in an unauthorised way (before minimum retirement age, for instance). This can leave victims paying punitive tax charges to HMRC and having to deal with the consequences of having their pension assets misappropriated.

Mr M says Royal London failed in its responsibilities when dealing with his transfer request. He says that it should have done more to warn him of the potential dangers of transferring and undertaken greater due diligence on the transfer. Mr M says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Royal London had acted as it should have done.

What happened

In around October 2011, Mr M signed a letter of authority allowing a company trading as "Liquid" to obtain details in relation to his pensions. This followed an unsolicited call. On 24 October 2011, Liquid wrote to Royal London requesting information on Mr M's policies and transfer discharge forms. It enclosed Mr M's letter of authority. Royal London sent Liquid the requested information on 1 November. Mr M had two policies. He was interested in transferring his policies because he had been told he could take cash from them by doing so. Liquid wasn't authorised to give financial advice.

On 5 December 2011, T12 Administration Limited wrote to Royal London requesting it transfer Mr M's policies to The Mendip Retirement Benefit Scheme ("the Scheme"). T12 was the Scheme's administrator. In its covering letter T12 provided (amongst other things) the Scheme's Pension Scheme Tax Reference ("PSTR") number and details of the bank account the transfer payment was to be paid into. Included in the transfer papers were the Scheme's HMRC registration certificate and further information on the Scheme. The Scheme was described as a money purchase occupational scheme and was registered by HMRC on 9 September 2011. Mr M's signed transfer discharge forms were also included.

Mr M's policies were transferred on 15 December 2011. His total transfer value was in the region of £50,000. He was 53.

On 3 April 2012, The Pensions Regulator ("TPR") announced that it had appointed independent trustees to the Scheme because of concerns that it had been used as a vehicle for pension liberation. The statement also said scheme funds had been used for purposes other than for the benefit of scheme members. Around the same time, the independent trustees wrote to members, and issued a statement, with further information. Further statements from the independent trustees followed, the latest being in November 2020.

In October 2020, Mr M complained to Royal London. Briefly, his argument is that Royal London ought to have spotted, and told him about, a number of warning signs in relation to his transfer, including (but not limited to) the following: he had been told he could

access some of his pension before the age of 55, the Scheme was newly registered, he didn't work for the sponsoring employer and he had been advised by an unregulated business. He also said he wasn't employed at the time of the transfer and therefore didn't have a statutory right to transfer.

Royal London didn't uphold Mr M's complaint. It said none of the information it had about the Scheme at the time gave it cause for concern. It was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

Our investigator was unable to resolve the dispute informally, so the matter was passed to me to decide.

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.

The relevant rules and guidance

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

- The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme if certain conditions are satisfied (and they may also have a right to transfer under the terms of the contract). The possibility that this might be exploited for fraudulent purposes was not new even at the time of this transfer. However, the obligation on the ceding scheme was limited to ascertaining the type of scheme the transfer was being paid to and that it was a tax-approved scheme.

- In June and July 2011, the Financial Services Authority (FSA) issued warnings about the dangers of "pension unlocking" which referred to consumers transferring to access cash from their pension before age 55. (As background to this, the normal minimum pension age had increased to 55 in April 2010.) The FSA said that receiving occupational pension schemes were facilitating this. It encouraged consumers to take independent advice. The announcement acknowledges that some advisers promoting these schemes were FSA authorised.

- At the time of Mr M's transfer, Royal London was regulated by the FSA. As such, it was subject to the Handbook, and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA rules governing pension transfer requests, but the following have particular relevance:

  – Principle 2 – A firm must conduct its business with due skill, care and diligence;

  – Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;

  – Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and

  – COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

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

What did Royal London do and was it enough?

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

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

I'm satisfied nothing along these lines would have been readily apparent to Royal London at the time of the transfer. Mr M's transfer papers wouldn't have given an indication that his interest in transferring followed a cold call or internet promotion offering early access to pension funds. And, given the guidance in place at the time, there was no expectation for Royal London to contact Mr M to see how his transfer had come about. I also haven't seen anything that Royal London should, reasonably, have been aware of about the parties involved in the transfer that would have caused it concern.

In coming to this conclusion, I have taken on board what Mr M says about his employment status at the time. His argument is that he didn't have any earnings and therefore didn't have a statutory right to transfer. But Royal London wouldn't have been aware of Mr M's employment status. And, for the reasons given above, it wasn't something that it should, reasonably, have checked. At the time of the transfer request, and by the expected standards of industry due diligence at that time, it was reasonable for Royal London to conclude that Mr M had an employment link to the scheme requesting the transfer.

I note here that the application form to join the Scheme asked for a box to be ticked to indicate Mr M's employment status (employed, self-employed, unemployed, in education and so on). The box for "other" has been ticked and "DISABLED" has been hand-written in the space next to the box. However, this isn't one of the documents Royal London would have seen at the time. I say this for three reasons. First, the Scheme application form wasn't included in the transfer paperwork Royal London supplied to us as part of our investigations into Mr M's complaint – which suggests to me that it didn't, likely, receive it ahead of the transfer. Second, the Scheme application form wasn't one of the items Royal London asked for when it explained to Liquid on 1 November 2011 what it needed to allow a transfer. And, third, the Scheme application form wasn't included in the list of attachments in T12's letter to

Royal London requesting the transfer.

I'm satisfied Royal London wasn't in possession of any other information that would, reasonably, have indicated Mr M had no earnings. As such, there is no basis on which I could reasonably expect it to have investigated the circumstances of this transfer further such that it would then have become concerned whether Mr M had a right to make it.

It's important to recognise that the more extensive list of warning signs issued in 2013 hadn't yet been published – in fact, they were more than a year away at the time of Mr M's transfer – so it wouldn't be reasonable to expect Royal London to have acted with the benefit of that guidance. This means that I can't fairly expect Royal London to have considered the fact that the Scheme was recently registered (which it would have known from the HMRC registration certificate it was sent) as being suspicious. And it means I don't expect Royal London to have investigated, as a matter of course, the sponsoring employer, Mr M's employment status or any of the various parties connected to the transfer.

I'm also satisfied Royal London didn't have to be alarmed at every contact it received from third parties that weren't authorised by the FSA. The FSA didn't regulate occupational pension schemes, so Royal London wouldn't have expected to find the parties running those schemes or helping to administer them (which may include liaising with a member about a transfer-in) to be authorised by the FSA. In any event, as mentioned previously, the FSA announcement about pension liberation mentioned that some advisers it regulated were involved in this very activity. So that doesn't suggest to me that, at that time, it considered the adviser's regulatory status as being a clear determining factor of whether liberation was taking place.

Where they were accompanied by the consumer's valid authority, a personal pension provider might also receive requests for information from other parties that might be engaged in some legitimate aspect of a consumer's financial affairs (accountants, tax or legal advisers, credit brokers, debt charities, introducers to authorised financial advisers and so on). But none of these other activities were required to be authorised by the FSA in 2011 either. So sending information to Liquid ahead of the transfer, which Royal London did, wasn't problematic in itself and it wasn't something it needed to be mindful of when it came to processing the transfer. And when Royal London received the transfer request itself, it came directly from the occupational scheme (or those administering it), which again did not require FSA authorisation.

I would expect a FSA-regulated personal pension provider at that time 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 rights. Taking all of this into account, and particularly where transfers to occupational schemes were concerned, my view is that it wouldn't have been practicable for a personal pension provider, in 2011, to have queried the regulatory status of every contact it had from third parties – or presume that there was a risk of harm from a third party involved in an occupational pension transfer purely because it was not FSA authorised.

It follows that I don't uphold Mr M's complaint.

My final decision

For the reasons given above, I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 2 April 2024.

Christian Wood
Ombudsman