The complaint

Mr F has complained about a transfer of his Standard Life Assurance Limited group personal pension to an occupational scheme in 2011. Mr F'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, both of which apply in Mr F's case.

Phoenix Life Limited is the respondent business but, for ease, I will be referring to Standard Life. Mr F says Standard Life 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 F says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Standard Life had acted as it should have done.

What happened

Mr F says a claims management company (CMC) suggested he review his pension arrangements in 2011. The CMC had previously assisted Mr F with a PPI complaint. Mr F says he was then referred to a firm which met with him at his home and told him he would get better returns on his pension if he transferred to the Pennines RBS ("the Scheme"). He recalls being told his pension would be invested overseas and in forestry, and that he could receive a £3,000 lump sum as part of a government initiative.

On 6 November 2011, Mr F signed a letter of authority allowing a company called Liquid to obtain details, and transfer documents, in relation to two personal pensions, one of which was his Standard Life pension. The other pension was managed by a different provider. On 15 November, S J Stone Limited (which was trading from the same postal address as Liquid; Liquid therefore appears to be the trading name for S J Stone Limited) faxed Standard Life, enclosing Mr F's letter of authority and information request. Standard Life sent Liquid the requested information on 21 November 2011. Neither S J Stone Limited nor Liquid were authorised to give financial advice. Mr F signed various documents to request a transfer

On 14 December 2011, T12 Administration Limited wrote to Standard Life requesting it transfer Mr F's policy to 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 22 August 2011. Details on the sponsoring employer, and trustees, were also provided. Mr F's signed transfer discharge forms were also included. Mr F says he felt under pressure to sign these because the person advising him had travelled to his house to get his signature and because the CMC had previously helped him with his PPI claim.

Mr F's pension was transferred on 19 December 2011. His transfer value was a little over £36,000. He was 48.

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 trustee wrote to members, and issued a statement on its website, with further information. Further statements from the independent trustee followed, the latest being in November 2020.

In 2016 HMRC wrote to Mr F requesting that he pay 55% tax on an estimated unauthorised payment of £18,000 made to him by the Scheme in the 2011/12 tax year.

In June 2021, Mr F (with the help of a CMC, a different one to the one he used previously) complained to Standard Life. Briefly, his argument is that Standard Life 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, the transfer followed high pressure sales techniques and he had been advised by an unregulated business.

Standard Life didn't uphold Mr F's complaint. It said Mr F had a statutory right to transfer and that 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. Mr F is no longer represented by a CMC.

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 event complained of – the transfer to the Scheme – happened in 2011. Mr F complained to Standard Life in 2021, approximately ten years later. This was more than the six years allowed under our rules (DISP 2.8.2R). However, the same rules also allow Mr F to complain within three years of when he was aware, or ought reasonably to have been aware, that he had cause to complain. I've no reason to conclude Mr F was aware, or ought reasonably to have been aware, that his losses could be attributable to potential failings at Standard Life more than three years before his complaint in 2021. That being so, I'm satisfied Mr F complained in time and that this is a complaint I can consider.

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

Before I explain my reasoning, it will be useful to set out the environment Standard Life 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.

- The possibility that this might be exploited for fraudulent purposes was not new, even in 2011 when Mr F transferred. The transfer of benefits to a fraudulent receiving scheme used to be known as "trust busting" and was, for example, specifically referred to in practice note changes made in the Inland Revenue's Pensions Update No.132 (May

2002). The Inland Revenue asked *all* pension schemes to be vigilant to the possibility of receiving transfer requests to these schemes. But, at this time, 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.

- The various different pensions tax regimes were brought under a single regime with the implementation of the Finance Act 2004, and the Inland Revenue became HMRC in April 2005. The previous Inland Revenue practice notes were replaced with a new manual which didn't specifically refer to liberation. However, the new Act only permitted a range of payments that were deemed 'authorised payments' to be made from a tax-approved scheme. It therefore rendered a transfer to a liberation scheme liable to be treated as an unauthorised payment with the possibility of tax charges both on the member and the ceding scheme.

- On 10 June 2011 and 6 July 2011, the Financial Services Authority (FSA) issued two announcements in quick succession to consumers:

  - The first warning was about the dangers of "pension unlocking" and specifically referred to consumers transferring to access cash from their pension before age 55. (As background to this, the normal minimum pension age had increased to 55 in April 2010.) The FSA said that receiving occupational pension schemes were facilitating this. It encouraged consumers to take independent advice. The announcement acknowledges that some advisers promoting these schemes were FSA authorised.

  - The second warning was about "early pension release schemes". This reflected a different concern the FSA had about transfers to other personal types of arrangement, including those registered overseas, rather than occupational schemes. It encouraged consumers to always use FSA authorised firms to provide personal pensions and give advice on, and help with, pensions. Unlike occupational arrangements, operating and advising on a personal pension – at least one in the UK – was regulated by the FSA, and so it was proper to expect FSA authorised firms to be involved.

- At around the same time, TPR published information on its website about pension liberation, designed to raise public awareness and remind scheme operators to be vigilant of transfer requests. The warnings highlighted that websites and cold callers were encouraging people to transfer in order to receive cash or access a loan.

- At the time of Mr F's transfer, Standard Life 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 F'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 F's transfer and that it wasn't until *after* Mr F's transfer that scheme administrators had specific anti-liberation guidance to follow.

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

With the above in mind, at the time of Mr F's transfer, personal pension providers had to make sure the receiving scheme was validly registered with HMRC. Standard Life 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 regulators' warnings about the threat of pension liberation and wider scams were directed at consumers, I think it's reasonable to conclude that the sources of intelligence informing those warnings included the industry itself. Personal pension providers were therefore unlikely to be oblivious to these threats. And, even if they were, a well-run provider with the Principles in mind should have been aware of what was happening in the industry. So, in adhering to the FSA's Principles and rules, I think a personal pension provider should have been mindful of announcements the FSA and TPR had made about pension liberation, even those directed to consumers. It also means if a ceding scheme came across anything to suggest the request originated from a cold call or internet promotion offering access to pension funds – which had both been mentioned by regulators as features of liberation up to that point – that would have been a cause for concern.

I'm satisfied nothing along these lines would have been readily apparent to Standard Life at the time of the transfer. Mr F'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 Standard Life to contact Mr F to see how his transfer had come about. Similarly, in the absence of those enquiries, Standard Life wouldn't have known that Mr F had felt pressured into signing transfer forms or that he was expecting a £3,000 payment following the transfer, both of which would have been a cause for concern for Standard Life. And I haven't seen anything that Standard Life would, reasonably, have been aware of about the parties involved in the transfer that would have caused it concern.

It's important to recognise that the more extensive list of warning signs issued in 2013 hadn't yet been published, and it wouldn't therefore be reasonable to use hindsight to expect ceding schemes to act with the benefit of that guidance. This means that I can't fairly expect Standard Life 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 Standard Life to have investigated, as a matter of course, the sponsoring employer's trading status, geographical location or connections to unregulated investment companies or the various parties connected to the transfer.

I'm also satisfied Standard Life didn't have to be alarmed at every contact it received from third parties that weren't authorised by the FSA (which, in this case, would apply to Liquid/S J Stone and T12). The FSA didn't regulate occupational pension schemes, so Standard Life 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 Standard Life 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 Standard Life 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 statutory 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.

In coming to this conclusion, I've taken into consideration Mr F's point that he had another pension provider that didn't progress a transfer around the same time; his point being that if one provider stopped the transfer then Standard Life should have done so too. I can't comment in detail on the position taken by that other provider because Mr F hasn't been able to provide any further information about what happened. But it seems, from the one email that has been provided in relation to this, that the other provider didn't progress the transfer because it didn't have Mr F's authority to allow it to deal with T12 rather than because it had identified a cause for concern with the transfer itself. In the circumstances, and given what I've said above, I'm satisfied it wasn't unreasonable for Standard Life to act upon Mr F's transfer request in the way it did.

I've also taken into consideration the letter T12 sent to Standard Life on 14 December 2011 requesting the transfer. The letter included a contact email address for the person sending the letter, which ended in '@tudorcapitalmanagement.com'.

Tudor Capital Management Limited (TCML) had been a corporate trustee of occupational schemes. On 4 October 2011 – just over two months before Standard Life received Mr F's transfer request – TPR had issued a Determination Notice renewing a suspension of TCML's involvement with pension schemes because of an immediate risk to the interests of members and the schemes' assets. It revealed that it had been warned by the FSA and HMRC in early 2010 that TCML had been involved in criminal activity, and this led to a previous suspension, which went on to run for a continuous period until April 2012.

With hindsight it is, sadly, not surprising that individuals associated with TCML might have attempted to set up new schemes under a different administrative umbrella (T12), having nominated new trustees. The use of TCML's email address suggests that might be what was happening here. And I find it unlikely that details of TPR's suspension of TCML hadn't been circulating in the industry even prior to October 2011.

However, Standard Life would only have been able to realise there was a potential problem if it had spotted the fact that the email address didn't match the rest of the transfer papers or it had been on the lookout for any connection to TCML or had otherwise been "on high alert" about the transfer for other reasons. Given the relatively limited steps Standard Life was expected to take at that time, the lack of other warning signs it should have been alive to, and the relative lack of prominence the email address had in the transfer papers, I don't think Standard Life's failure to pick up on the link to TCML was unreasonable in this instance. I'm also satisfied that other than the reference to TCML, no other company named during the transfer process should, reasonably, have caused Standard Life immediate concern at the time – for example, by appearing in publicly available arenas that Standard Life should have been monitoring such as regulator warning lists.

<u>Conclusion</u>

At the time of Mr F's transfer, Standard Life would have been expected to know the receiving scheme had a PSTR and was correctly registered with HMRC. Standard Life had this information. Beyond that, there was no requirement or expectation for it to have undertaken more specific, detailed, anti-liberation due diligence. The FSA's Principles and COBS 2.1.1R meant Standard Life still had to be alive to the threat of pension liberation and act accordingly when that threat was apparent. But other than the one, not especially prominent, reference to TCML which I don't think it could reasonably have picked up on, I'm satisfied there weren't any warning signs that Standard Life should have responded to. It follows that I don't uphold Mr F's complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 15 March 2024.

Christian Wood
Ombudsman