DRN-4908989

The complaint

Mr W has complained about a transfer of his personal pension with The Royal London Mutual Insurance Society Limited (Royal London) to a small self-administered scheme (SSAS) in June 2014. Mr W's SSAS was subsequently used to invest in an overseas property investment with The Resort Group (TRG). The investment now appears to have little value. Mr W says he has lost out financially as a result.

Mr W says Royal London failed in its responsibilities when dealing with the transfer request. He says that it should have done more to warn him of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance he says was required of transferring schemes at the time. Mr W 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

On 3 February Royal London received a letter of authority, signed by Mr W, allowing Wise Review to obtain details, and transfer documents, in relation to his pension. Royal London explains that it sent Wise Review the requested information. Wise Review wasn't authorised to give financial advice.

Mr W says his interest in the transfer followed an unsolicited approach by First Review Pension Services (FRPS). He says he was told that his pensions were frozen and he could get better returns, through rental income and capital growth, by transferring them.

On 20 March 2014, a company was incorporated with Mr W as director. I'll refer to this company as Firm A. In May 2014, Mr W opened a SSAS for Firm A with Cantwell Grove Limited (CGL). Firm A was recorded as the SSAS's principal employer.

On 27 May 2014 Mr W's transfer papers were received by Royal London. These were sent in by CGL, who were the pension administrator for the Firm A SSAS. Included in the transfer papers were:

- completed and signed transfer forms;
- a copy of the Firm A SSAS Trust Deeds and Rules;
- HMRC registration confirmation for the Firm A SSAS, of 14 May 2014;
- key information about the scheme;
- a letter signed by Mr W on 15 May 2014 declaring, amongst other things, that he was aware of the dangers of pension liberation fraud and that he didn't want to access benefits prior to age 55.

Mr W's pension was transferred on 5 June 2014. His transfer value was around £18,000. He was 52 years old at the time of the transfer.

An initial investment of £13,767 was made in TRG, followed by subsequent investments into TRG that, by January 2015 totalled around £17,900. Two further contributions appear to have been received by the SSAS from other schemes in that time, one for around £1,100 and the other for around £2,400.

The investments in TRG returned sporadic monthly income but that stopped. The investment has since completely failed and is considered likely to have little value.

In April 2023, Mr W complained to Royal London. Briefly, his argument is that Royal London ought to have made enquiries of Mr W given the rising number of pension scams. If it had it would have spotted a number of warning signs in relation to the transfer, including (but not limited to) the following: the SSAS was newly registered, there wasn't a genuine employment link to the sponsoring employer, the transfer followed high pressure sales techniques, the purpose of the transfer was to invest in overseas investments, the catalyst for the transfer was advice by an unregulated business. Had it done that, Mr W argues it should then have warned him of the potential risk to his transfer.

Royal London didn't uphold the complaint. It explained that it was contacted by CGL who stated that it had provided the Scorpion Insert (referred to below) to Mr W and confirmed that Mr W understood the risk of pension liberation. It accepted this. It said that Mr W had a legal right to transfer and that none of the information it had about the transfer 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 events complained of occurred more than six years before Mr W's complaint was made. However Royal London have consented for us to consider his case so I have not needed to consider the implications that time limits may have on our jurisdiction.

The relevant rules and guidance

Personal pension providers are regulated by the Financial Conduct Authority (FCA). Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority (FSA). As such Royal London 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 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.

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 indeed they may also have a right to transfer under the terms of the contract). This right came to be exploited, with people encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren't entitled to – for instance, because they were below minimum retirement age. At various points, regulators issued bulletins warning of the dangers of taking such action. But it was only from 14 February 2013 that transferring schemes had guidance to follow that was aimed at tackling pension liberation – the "Scorpion" guidance.

The Scorpion guidance was launched by The Pensions Regulator (TPR). It 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 guidance comprised the following:

- An insert to be included in transfer packs (the 'Scorpion insert'). The insert warns readers about the dangers of agreeing to cash in a pension early and identifies a number of warning signs to look out for.

- A longer booklet issued by TPAS which gives more information, including example scenarios, about pension liberation. Guidance provided by TPR on its website at the time said this longer leaflet was intended to be sent to members who had queries about pension liberation fraud.

- An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "look out for" various warning signs of liberation. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where transferring schemes still had concerns, they were encouraged to write to members to warn them of the potential tax consequences of their actions; to consider delaying the transfer; to seek legal advice; and to direct the member to TPAS, TPR or Action Fraud.

TPR issued the guidance under the powers at s.12 of the Pension Act 2004. Thus, for the bodies regulated by TPR, the status of the guidance was that it provided them with information, education and/or assistance, as opposed to creating any new binding rule or legal duty. Correspondingly, the communications about the launch of the guidance were predominantly expressed in terms that made its non-obligatory status clear. So, the tenor of the guidance is essentially a set of prompts and suggestions, not requirements.

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.

I take from the above that the contents of the Scorpion guidance was essentially informational and advisory in nature and that deviating from it doesn't necessarily mean a firm has 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 legal rights.

That said, the launch of the Scorpion guidance 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 that 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.

What did personal pension providers need to do?

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. And where the recommendations in the guidance applied, absent a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations. With that in mind, I take the view that personal pension providers dealing with transfer requests needed to heed the following:

1. As a first step, a ceding scheme needed to check whether the receiving scheme was validly registered.

2. When TPR launched the Scorpion guidance in February 2013, its press release said the Scorpion insert should be provided in the information sent to members requesting a transfer. It said on its website that it wanted the inclusion of the Scorpion insert in transfer packs to "become best practice". The Scorpion insert provided an important safeguard for transferring members, allowing them to consider *for themselves* the liberation threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. So, all things considered, I think the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party.

3. I also think it would be fair and reasonable for personal pension providers – operating with the regulator's Principles and COBS 2.1.1R in mind – to ensure the warnings contained in the Scorpion insert were provided in some form to a member before a transfer even if the transfer process *didn't* involve the sending of transfer packs.

4. The Scorpion guidance asked firms to look out for the tell-tale signs of pension liberation scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The action pack points to the warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. Therefore, whilst using the action pack wasn't an inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.

5. The considerations of regulated firms didn't start and end with the Scorpion

guidance. 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 the Scorpion guidance – 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?

Mr W has explained that he received an initial, unsolicited approach, from FRPS who then visited him at home regarding his pensions. He recalls being then passed to Broadwood Assets to provide him with investment advice. Mr W explains that his motivation to transfer was the fact that he was told that he would have better investment returns. And he accepted what he was being told by FRPS and Broadwood Assets. Mr W did not receive any unauthorised payments from his SSAS after the transfer. And explains that was never something that he was promised.

The information that Royal London received from CGL was quite comprehensive. In addition to the transfer request it provided a cover letter explaining that it had already provided Scorpion materials to Mr W. The transfer pack also included a letter that was signed by Mr W. This letter very much appears to have been pre-prepared for Mr W to sign and is very similar to the letters on other CGL transfers of this period. Nonetheless, it explains that Mr W was aware of the risks of pension liberation and was not intending to access his pension before age 55. I think that the signing of this letter, dated 15 May 2014, provided corroboration that Mr W had already been made aware of the risks of pension liberation fraud in some way. The letter goes on to express a desire for the transfer to be processed quickly.

The transfer pack also included a sheet entitled Key Scheme Details. It indicated that suitable trustee advice (for the purposes of s.36 of the Pensions Act 1995) would be taken by a named firm – Firm X (who were FCA registered to provide investment advice). And indicated that investments were intended in a discretionary fund management service and a commercial property in TRG. Although there is no other evidence to indicate Firm X as having any actual role in the advice to transfer or in the advice to invest in TRG once the transfer completed. Subsequent evidence suggests that trustee advice was in fact provided by Broadwood Assets and not Firm X as the key facts suggested would be the case. It is also worth noting that advice to trustees is not the same as advice to a retail customer on transferring a personal pension. So I don't think that advice to a trustee of a SSAS implies that same firm must also have advised on the transfer of personal pension funds to the SSAS.

Our service has seen similar transfer complaints that have arisen in identical circumstances, where FRPS have been involved. So I'm persuaded by Mr W's testimony that he was acting on its recommendation rather than Broadwood Assets, whose involvement appears more likely to have been after the transfer.

What did Royal London 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. Royal London did not send this to Mr W. It said it was reassured by CGL's statement that it had shared it with him.

In this case Mr W has also confirmed that he recalls receiving the Scorpion insert, which would tend to corroborate what CGL had stated in its letter to Royal London. I'm therefore persuaded that Mr W had seen the information in the Scorpion insert, and around the time of the transfer, so I don't think that Royal London's failure to send it to him would have had an impact in this case.

Due diligence:

In light of the Scorpion guidance, I think firms ought to have been on the look-out for the tell-tale signs of pension liberation and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk of pension liberation. This was based on the guidance introduced in February 2013 referred to earlier and before the guidance was given a broader scope to cover scams more generally. In this case however, I think that the information that Royal London had received from CGL would have correctly reassured it that Mr W **was not** at risk of a pension liberation scam.

Royal London had the letter signed by him that confirmed that he understood pension liberation fraud and was not intending to access his benefits early. The Firm A SSAS administrator – CGL – had set out its position in relation to the Scorpion guidance. And provided information for Royal London to make its assessment of whether Mr W was likely to be at risk of that type of fraud.

Other than checking the information that it was sent, Royal London didn't undertake any further due diligence. So I've considered whether that was reasonable.

I've considered the fact that, given the information Royal London had at the time, two features of Mr W's transfer would have been seen as potential warning signs of liberation activity as identified by the Scorpion action pack: Mr W's SSAS was recently registered and there appeared to be urgency to carry out the transfer. But I am not persuaded that, in the context of "looking out for pension liberation fraud" (which was the heading under which these warning signs were listed) that it's fair or reasonable to say that Royal London ought to have weighed these more heavily than documentary evidence that suggested Mr W was aware of and not about to become a victim of pension liberation fraud.

I am aware that the Action Pack included a check list that could be used if the warning statements applied. It was optional and I need to be convinced that, faced with the information Royal London had, it should have been taking the next steps. And I'm not persuaded that moving to the check list should have been a necessary step in this case.

Mr W argues that some of the circumstances behind the transfer were unusual enough in themselves that Royal London should have done more to warn him about what he was

intending to do, even if the liberation threat would have appeared minimal. Specifically, Mr W argues that Royal London should have warned about the unusual nature of the receiving scheme which he says would only be suitable for very few customers.

But I think those arguments misread what should, reasonably, have been expected of transferring schemes at that time. Investigations into the receiving scheme, sponsoring employer and intended investments were a means to an end: to establish the risk of liberation. Once that threat was discounted then I think it reasonable for ceding schemes to consider the scam threat as being minimal and process the transfer as normal.

I also see no persuasive reason why a ceding scheme needed to share with its members the liberation warnings signs it found – but discounted – during its due diligence process. As I've said previously, a firm needed 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. Expecting a firm to share its due diligence "workings" in this way would cut across this (and could potentially be viewed as a self-serving tactic to hold on to a customer).

Summary

I understand that Mr W has suffered a loss as a result of what happened after this transfer so will be disappointed with this provisional decision. But the guidance that TPR had put in place at the time that Mr W's transfer request was completed focussed on the risk of consumers falling victim to a pension liberation scam. And for the reasons I've explained above, I think there was enough information for Royal London to discount the risk of that in the transfer request it received. So I don't think it would be fair or reasonable in these circumstances to suggest that Royal London ought to have delayed the transfer process to conduct further checks simply to further safeguard against an outcome type that it reasonably considered to be unlikely.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 6 September 2024.

Gary Lane
Ombudsman