DRN-4917484

The complaint

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

Mr A 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 A 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

Mr A had two personal pension policies with Royal London. On 10 February 2014 Royal London sent Consumer Money Matters Limited (CMM) Mr A's pension transfer information. This information letter said that it was sent in response to a request from CMM which included Mr A's letter of authority.

Mr A says that he was subsequently in contact with an introducer Choice Wealth Limited (CWL). Mr A says he was attracted by the prospect of potentially better investment returns from investing in The Resort Group (TRG).

On 1 April 2014, a company was incorporated with Mr A as director. I'll refer to this company as Firm A. On 22 May 2014, a trust deed was executed for the setting up of a SSAS with Cantwell Grove Limited, with Mr A as the trustee. Firm A was recorded as the SSAS's principal employer.

On 10 June 2014 Mr A's transfer request was sent by Cantwell Grove to Royal London. Who received it on 12 June 2014. 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; key information about the scheme; a letter signed by Mr A on 10 June 2014 declaring, amongst other things, that he was aware of the dangers of pensions liberation fraud and that he didn't want to access benefits prior to age 55.

Royal London wrote to Mr A on 17 June 2014 to explain that it completed the transfer of both of his personal pensions. Royal London had sent Cantwell Grove cheques for around £25,600. This was settled in the SSAS bank account on 10 July 2014. Mr A was 43 years old at the time of the transfer.

An investment in TRG was made by the SSAS on 10 July 2014 for £15,384.62. The investment has since completely failed and is considered likely to have little value.

In October 2019, Mr A complained to Royal London via a claims management company (CMC). Briefly, his argument is that Royal London ought to have spotted, and told him about,

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 proposed investment was in a high risk unregulated overseas investment, the catalyst for the transfer was an unsolicited call and he had been advised by an unregulated business.

Royal London didn't uphold the complaint. It said that as far as it was concerned CMM were regulated as an appointed representative of an FCA regulated firm. It was contacted by Cantwell Grove who stated that it had provided the Scorpion Insert (referred to below) to Mr A and included a letter which confirmed that Mr A understood the risk of pension liberation. Within the transfer request was information that said the SSAS trustees were being advised by a regulated firm – Firm X. Royal London said Mr A 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. I issued a provisional decision to let both parties know my thoughts on Mr A's complaint.

What I said in my provisional decision

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 formal 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 2000 (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 as 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.

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 of pension liberation that 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 and Mr A's recollections

Mr A explains that he was cold called and offered a free review of his pension. Mr A appears initially to have had contact with CMM who initially made contact with Royal London on his behalf. But Mr A explains that he later met with a representative from CWL. And he explains that CWL took him through the process of applying for the SSAS and the subsequent

investments.

Mr A had no specific financial expertise. He explains that his motivation to transfer was the fact that he was told that he would have better investment returns. He did not receive any unauthorised payments from his SSAS after the transfer. And explains that was not something that he was promised by the introducer.

The information that Royal London received from Cantwell Grove Limited was quite comprehensive. In addition to the transfer request it provided a cover letter explaining that it had already provided Scorpion materials to Mr A. The transfer pack included a letter that was signed by Mr A. This letter very much appears to have been pre-prepared for Mr A to sign. Nonetheless, it is a single page and starts by explaining that Mr A 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 10 June 2014, provided corroboration that Mr A 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 advice had been 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.

<u>What did Royal London do and was it enough?</u>

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. But Royal London have explained that it didn't send Mr A the Scorpion insert in response to either the request for information from CMM or the transfer request from Cantwell Grove. Royal London explain that it was reassured by the fact that Cantwell Grove Ltd sent Mr A the Scorpion information.

Mr A hasn't confirmed whether or not Cantwell Grove provided him with the Scorpion insert. And I am not certain that Cantwell Grove saying that it shared it with him is conclusive evidence that it did. But I cannot ignore the fact that Mr A signed the letter on 10 June 2014, part of which declared that he understood the risks of liberation and was not seeking to release pension funds before age 55. It was only a page long and I think it's more likely than not that he would have seen and read the content of the letter that he signed. Therefore, in this case, even though Royal London should have sent the Scorpion insert, I don't think that it would have made a material difference if it had. This is because the evidence suggests that Mr A was, more likely than not, already aware of the very risks that the Scorpion insert was intended to warn him of.

Due diligence:

*In light of the Scorpion guidance that was in force at the time of the transfer, 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 Cantwell Grove would have correctly reassured it that Mr A **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 – Cantwell Grove Ltd – had set out its position in relation to the Scorpion guidance. And provided information for Royal London to make its assessment of whether Mr A was likely to be at risk of that type of fraud.

Royal London's complaint response implies that it also considered that CMM was a regulated firm. But I don't think that was right. CMM had some regulatory permissions by being an 'introducer appointed representative' to two regulated firms. But neither of these firms had permissions to provide the type of advice that was required for Mr A's transfer. Which Royal London could have ascertained by checking the FCA register. At the point of providing pension information however, there was no requirement for CMM to be regulated. So, whilst I don't think it was reasonable to take comfort from CMM's involvement, neither do I consider that was a warning sign at that stage. That's because Royal London also had evidence in the transfer pack that indicated advice was being provided by Firm X. This was a regulated entity so would not, on face value, have raised concern. I have seen that Mr A's CMC has explained that Mr A did not in fact have contact with firm X until after the transfer. But the question I am considering is what Royal London knew and what was reasonable for it to then conclude.

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 A's transfer would have been seen as potential warning signs of liberation activity as identified by the Scorpion action pack: Mr A's SSAS was recently registered and there appeared to be urgency to carry out the transfer quickly. 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 A 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. I think that 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 reasonably discounted then I think it reasonable for ceding schemes to consider the risk of pension liberation 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 or its reasons why it might have thought at some point liberation was a possibility. 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 A 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 A'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 should already have considered to be unlikely.

Responses to my provisional decision

Royal London offered no further evidence or arguments.

Mr A's CMC responded to explain that Mr A did not agree with my provisional decision. It provided a detailed submission setting out the reasons that it thought Mr A's complaint should be upheld. I have read and considered its submission in full although I have only summarised those arguments here:

- It considered that the provisional decision is contrary to the 2013 Pensions Regulator's guidance on the interpretation of pension liberation.

- It thought that my provisional finding that the TPR guidance prior to 24 July 2014 was only directed at the risk of early release pension liberation was incorrect. It considered that a correct interpretation of the 2013 TPR guidance was that "pension liberation" also applied to pension liberation through investment into unregulated / scam investments.

- It highlighted an article that Royal London published where it explained that it identified scam warnings in a similar transfer which was submitted to them on 23 July 2014 before the Scorpion guidance was updated and where they had identified eight warning signs. It suggested that Royal London ought to have been aware of more than two warning signs in Mr A's transfer.

- It thought that Royal London ought also to have made contact with Mr A to establish whether he had a statutory right to transfer, which, it said, may have led to Royal London identifying warning signs for this transfer.

- It considered that my provisional decision is contrary to another decision with similar circumstances issued by our service.

Mr A's CMC then made a further submission to highlight that the FCA issued a warning to customers about free pension reviews, cold calling and being promised higher returns by investing, through SIPPs and SSASs, into unregulated investments. It pointed to an article in the '*FT Adviser*' about this in May 2014. It says this shows the industry should have been aware of scams with these features before the TPR update in July 2014.

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.

What did the 2013 guidance ask ceding schemes to look out for?

In my provisional decision I set out what I thought the relevant rules and guidance were and

what they meant for Royal London. I've considered Mr A's additional arguments but I haven't changed my mind on what the implication of these rules were on Royal London in this case. I will explain why.

I am aware that the Pensions Act 2004 defines 'pension liberation' from a legal perspective. It is, in summary, where an amount is taken from a pension in an unauthorised way. It would include any unauthorised use, although it was generally the case that it involved money being obtained from a pension before a member reached their normal minimum pension age. Which is why, in my provisional decision, I described it as, "*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*".

Mr A's CMC suggests that TPRs revised guidance of July 2014 didn't broaden the focus of the Scorpion campaign. But I disagree. It appears far more likely that update was made in response to an evolving understanding in the industry of the risks to consumers. I still think that the changing focus of the Scorpion guidance in 2014 is clear. It is indicated by the titles of the respective action packs. In 2013 the action pack is titled "*Pension liberation fraud"*, but in July 2014 the title is "*Pension scams*".

To further clarify this I think it's helpful to refer to the content of the February 2013 Scorpion guidance (which is relevant for Mr A's complaint) and the content of the Scorpion guidance that was issued in July 2014:

- The front page of the 2013 Scorpion insert has the following message: "*Companies are singling out savers like you and claiming that they can help you cash in your pension savings.*" Whereas the front page of the 2014 Scorpion insert says the following: "*A lifetime's savings lost in a moment… Pension Scams. Don't get stung.*"

- The 2013 Scorpion insert goes on to say: "*Pension loans or cash incentives are being used alongside misleading information to entice savers as the number of pension scams increases. This activity is known as 'pension liberation fraud' and it's on the increase in the UK. In rare cases – such as terminal illness – it is possible to access funds before age 55 from your current pension scheme. But for the majority, promises of early cash will be bogus and are likely to result in serious tax consequences.*" The 2014 Scorpion insert also warns about taking cash from a pension before age 55. But it additionally warns about the dangers of "*one-off investment opportunities*" and the potential to lose an entire pension pot. Adverse tax implications aren't mentioned at all.

- The case studies in the 2013 Scorpion action pack are solely about people wanting to use their pensions in order to access cash, the repercussion of which were tax charges and the loss of some pension monies to high administration fees. The warning signs that were highlighted followed suit: "*legal loopholes*", "*cash bonus*", "*targeting poor credit histories*", "*loans to members*". In contrast, the 2014 Scorpion action pack included a case study about someone transferring in order to benefit from a "*unique investment opportunity*" – an overseas property development – which subsequently failed causing the consumer to lose his entire pension.

The reference that Mr A's CMC made to TPR's press release, that accompanied the launch of the 2013 Scorpion guidance, helps to further illustrate the point. It highlighted the following statement from the press release:

"*The remainder of their funds are likely to be invested in highly dubious and risky, unregulated investment structures, often based overseas. The amount that has been*

'liberated' from pension schemes in this way is known to be in the hundreds of millions of pounds, with thousands of members affected."

Mr A's CMC's point is that accessing pensions early wasn't the only concern of the guidance – unregulated, overseas, investments were also a concern. But the context within which the above quote is framed is important here. On reading the press release as a whole, it's clear that attention isn't being drawn to overseas investments in order for ceding schemes to view them as a scam threat in their own right and to act accordingly. Rather, overseas investments are presented as a possible feature of scams involving the early release of pension funds – and it is the early access of pension funds that is presented as the threat ceding schemes are told to be guarding against. The point is mirrored in the 2013 Scorpion action pack and insert which say:

> "*One technique that pension fraudsters use is to send a large portion of the pension transfer overseas. This makes the funds harder to trace and retrieve when the arrangement is closed down.*"
>
> "*Ask for a statement showing how your pension will be paid at retirement, and question who will look after your money until then.*"

The portrait of a scam as sketched out in the 2013 guidance isn't therefore one where the transferring member is motivated by a specific investment of the type Mr A invested in. Instead, the investment is a means to misappropriate transferred funds which were transferred for other reasons – namely to access pension savings in an unauthorised way. The investment is framed as being more of an afterthought in the member's mind. As explained above, I think that it was only in 2014 that the emphasis of TPR guidance was broadened and schemes were directed towards members wanting to transfer because they had become interested in a particular investment opportunity. So my view remains that the presence of unregulated investments wouldn't have been a reason, in itself, for a firm to consider a scam was in progress at the time Mr A's transfer request was being considered.

On this point, I note that Mr A's representatives have pointed to FCA warnings issued earlier than July 2014 that it thinks Royal London should also have been alive to, including warnings about SSASs being used to house unusual investments and people being offered 'free' pension reviews.

I am aware of these warnings which the FCA first issued to customers on their website in late April 2014. And I recognise the argument, which is that the nature of pension scams was evolving and businesses ought to have been aware of that. But I also think it's fair to recognise that TPR guidance – which was the only guidance in place for ceding schemes at the time – wasn't updated to cover wider scams until July 2014. And even then TPR didn't specifically point to the increased use of SSAS as vehicles for unregulated investments like the FCA had done. The FCA formally informed the industry about the more specific warnings to customers only in September 2014.

I acknowledge that this doesn't mean all ceding schemes would have been completely unaware of any scam activity starting to evolve beyond pension liberation before the TPR guidance changed in July 2014. However, I think it was only in July 2014 with the updated TPR guidance that it ought to have become clear to all ceding schemes, including Royal London, that they now needed to more systematically look out for wider scam activity.

I remain satisfied that at the time that Royal London dealt with Mr A's transfer it wasn't unreasonable to still focus any checks on preventing pension liberation.

Is my provisional decision inconsistent with decisions on similar cases?

Mr A's CMC has drawn my attention to two other cases that it considers my provisional decision to be inconsistent with. In Mr A's case I have considered the evidence and likely circumstances that relate to this case in order to reach a fair and reasonable decision. But I have also considered relevant legislation, rules, guidance and industry best practice. I also understand that, faced with similar enough circumstances I would expect decisions from the ombudsman at our service to be broadly similar.

I'll start by commenting on the other final decision that Mr A's CMC has chosen to refer to. I am aware of the circumstances of that case and the transfer in question did not complete until September 2014. That was more than two months after Mr A's transfer completed. And was firmly in the period where the standard that I think it's fair to hold Royal London to would be based on the 2014 Scorpion guidance.

Mr A's CMC has also pointed to what it believes to be an inconsistent approach between Royal London's handling of Mr A's transfer and its handling of another transfer, some of the details of which entered into the public domain following judgements by the Pensions Ombudsman and the High Court (*Hughes v The Royal London Mutual Insurance Society Ltd [2016] EWHC 319 (Ch))*. Mr A's CMC points out that Royal London unearthed a number of warning signs in that other transfer which prompted it to block it. The CMC says that the circumstances of the two transfers are very similar so it questions why Royal London did very little in Mr A's transfer but undertook a "more interventionist" approach in the other transfer. The argument is that Royal London's approach in the other transfer was the correct one, that it is illogical for it (and us) to endorse a different approach and that Royal London has, by its own standards, treated Mr A unfairly.

I'm not persuaded by these arguments. I'd expect a transferring scheme to assess each transfer request on its own individual facts. So that may well result in different outcomes based on what looks to be similar circumstances. That doesn't necessarily mean the business has acted unfairly or has fallen short of what it should have done.

In the case it has drawn to my attention, Royal London received the transfer request on 23 July 2014 and made the decision to stop the transfer in September 2014. It meant that Royal London would have been receiving and then considering that application against updated Scorpion guidance. And I have already explained why I think that guidance was broader in its scope.

Should Royal London have done more in the case of Mr A's pension transfer?

I have set out in my provisional decision why I don't think Royal London sent Mr A the Scorpion insert. And nothing I have seen on this case has changed my mind on this point. But I also don't think that will have likely made a difference in this case. As I explained in my provisional decision, Mr A signed a letter to explain that he was aware of the information that insert would have given him.

Mr A's CMC has asked me to comment on its views on this letter. But I consider that I did that in my provisional decision where I acknowledged that letter was most likely a pro-forma. I accept that Royal London would also have seen this same letter in other transfers to schemes administered by CGL. But Mr A still signed and dated it. So my decision is that he was, more likely than not, aware of the risks associated with pension liberation and was not at risk of that. And, just as importantly, I think its fair and reasonable to conclude that Royal London were entitled to accept Mr A had signed because he'd read and agreed to the contents.

For the reasons that I gave in my provisional decision and expanded on above, I think that the relevant Scorpion guidance that Royal London ought to have been considering in this

case was the guidance from 2013. The action pack didn't provide mandatory obligations on Royal London, but provided useful guidance to help it fulfil its responsibilities to consumers like Mr A. My decision is that the guidance that TPR had put in place at the time that Mr A's transfer request was made was focussed on the risk of consumers falling victim to a pension liberation scam.

The action pack in place in 2013 required businesses to look out for warning signs that pension liberation fraud was occurring. That list included the following 6 warning signs that a transfer may be to a scheme about to liberate its member's funds:

- Receiving scheme not registered, or newly registered with HMRC
- Member attempting to access their pension before age 55
- Member has pressured trustee/administrator to carry out the transfer quickly
- Member was approached unsolicited
- Member informed that there is a legal loophole
- Receiving scheme previously unknown to you, but now involved in more than one transfer request

A ceding scheme then had to use its judgement to decide whether or not to move on to use the checklist provided in the action pack. I identified the warning signs on this list in my provisional decision. At this stage of the action pack it need not have specifically been considering whether Mr A was being advised by a regulated party, or the likely investments that were intended. Those considerations would have formed part of the checklist if Royal London ought to have moved to that stage of the action pack.

For the reasons I explained in my provisional decision, I think there was already enough information in the transfer request Royal London received for it to discount the risk that the 2013 Scorpion action pack was in place to guard against. And I don't think that it's reasonable to conclude that the fact the receiving scheme was newly registered should have caused Royal London to ignore reasonable evidence that Mr A was not about to be a victim of pension liberation.

It therefore follows that I don't think Royal London had cause to go on to refer to the check list in the Scorpion action pack. 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 in line with the check list in the action pack simply to further safeguard against an outcome type that it should already have reasonably discounted.

Finally, Mr A's CMC has argued that Royal London should have checked Mr A's employment status so as to ensure he had a right to transfer. The outcome of those checks would, in the view of Mr A's CMC, have caused Royal London concerns because of a lack of employment link to the SSAS's sponsoring employer. I've outlined the obligations businesses had in my provisional decision. I won't repeat them here other than to say they didn't include an obligation for ceding schemes to check, as a matter of course, whether the transferring member was earning. And Royal London had no reason to think Mr A wasn't earning either. Indeed, it would have been surprising if it had thought this – his representative has told us he was employed at the time. So, I see no reason why Royal London would, or should, have probed this issue any further.

My final decision

For the above reasons I am not upholding Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 22 August 2024.

Gary Lane
Ombudsman