DRN-4991238

The complaint

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

Mr C says Royal London failed in its responsibilities when dealing with the transfer request. He says it should've 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 C 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've done.

What happened

I issued a provisional decision on 16 August 2024. I've copied the relevant extracts below – what I said had happened and what I'd provisionally decided and why. I've corrected two typing errors, for which I apologise.

'Mr C had two personal pension policies with Royal London worth around £40,000 in total. On 7 February 2014 Royal London wrote to Consumer Money Matters Limited (CMML) who'd sent Royal London Mr C's authority allowing Royal London to discuss Mr C's policies with CMML. Royal London supplied information to CMML who, at the time, were authorised by the Financial Conduct Authority (FCA) as an introducer appointed representative of two FCA regulated firms.

In April 2014 a limited company which I'll call "C Limited" was incorporated with Mr C as the sole director.

On 20 May 2014 Mr C signed a trust deed and rules establishing a SSAS with Cantwell Grove Limited (CGL) as the SSAS administrator.

On 5 June 2014 CGL wrote to Royal London on behalf of Mr C about transferring his pension policies to the SSAS, administered by CGL. The letter said CGL was a professional pension administrator who specialised in SSASs. CGL went on:

'CGL is aware that concerns about pension liberation has led the UK Pension Regulator to recommend heightened levels of due diligence for pension transfers involving schemes and administrators that are newly registered or established. CGL supports the efforts of the pension industry to tackle pension liberation and complies with the Regulator's guidance on this subject. CGL, during August and September 2013, has also had its business model vetted by HMRC and received confirmation that it is operating legitimately. CGL fully complied with all aspects of the enquiry and welcomed the rationale behind it to ensure that pension liberation has not, is not and will not be at play.

Furthermore CGL actively supports the Scorpion campaign instigated by the cross *government initiative and is committed to raising awareness with trustees and members, and taking all reasonable steps in its power to ensure that no one connected with or serviced by CGL becomes exposed to the threats posed by pension liberation. To this end, we can confirm we have spoken to the Member and explained what pension liberation is and the dangers posed. The Member has confirmed that no cash inducement or other incentive has been offered and that no access whatsoever is being sought prior to age 55.*

We can also confirm that the 'Scorpion' information leaflet 'Predators Stalk Your Pension' had been explained and sent to the Member by us. You will also see that the enclosed confirmation letter from the Member confirms both an understanding of the pension liberation issue, and also that this transaction is in no way connected to pensions liberation.'

CGL also enclosed a letter dated 5 June 2014 signed by Mr C (the contents of which I've set out below); a transfer in form completed and signed by Mr C; the SSAS trust deed and rules; a copy of HMRC's scheme registration confirmation (giving the Pension Schemes Tax Reference (PSTR) number and showing the SSAS had been registered on 22 May 2014); and a key scheme details Q&A document. The latter included a question about the scheme's proposed investment provider(s), the answer to which was as follows:

'As per the requirement under section 36 of the Pensions Act 1995, the trustee of the scheme is taking and considering appropriate advice on whether the proposed investment(s) are satisfactory for the aims of the scheme.

The appropriate advice is being taken from Sequence Financial Management Limited (an Independent Financial Adviser [FCA register number given], and under consideration are the following investments:

A discretionary fund management service provided by Parmenion Investment Management (a trading name of Parmenion Capital Partners LLP [FCA register number given]. Please see enclosed a 'Parmenion Due Diligence' document for information.

A commercial property investment provided by The Resort Group plc [a link to TRG's website was given].'

Mr C's letter of 5 June 2014 said he was writing in connection with his request to transfer his pension policies from Royal London to the SSAS and continued:

'The purpose of this letter is to provide you with additional confirmation of the basis upon which I have made this request and to seek to provide a record of the fact that I am aware of the issues relating to pensions liberation. Indeed I have carefully considered my decision to request a transfer to the scheme and have not made it lightly.

I confirm that the scheme is a registered pension for HMRC purposes [PSTR number given] and that the trust deed and rules governing it only allow standard benefit options such as annuities and drawdown in accordance with the applicable legal requirements.

From guidance and information I have received in connection with this decision I appreciate that there has recently been a significant rise in cases of 'pensions liberation' fraud. As a result there is increased concern and scrutiny around transfer requests being made, to ensure members fully understand the implications of making a transfer.

I therefore wish to confirm that the transfer request is being made in order that I can take advantage of investment opportunities available under the scheme, none of which are in any way connected with pension liberation. I have received detailed information about the Scheme, how it operates, who administers it and the risks associated with making a transfer *out of my existing pension arrangement.*

In making this transfer I am not seeking to access my pension benefits before age 55 and I am aware of the potentially significant tax liabilities that would arise were I to attempt to do so. Indeed the trust deed and rules of the Scheme do not permit benefits to be taken prior to age 55, except in circumstances of ill health which meet HMRC requirements. I also confirm that I have not been offered any cash or other incentive by any person as part of my decision to transfer my pension to the Scheme.

On this basis I would be grateful if you could please proceed to transfer my pension to the Scheme requested as soon as possible.'

On 11 June 2014 Royal London wrote to Mr C to confirm that the values of both of his pension policies had been transferred to his SSAS. In total £40,751.67 had been paid over. Royal London also wrote to CGL on the same date to confirm the transfers and the amounts paid.

On 18 June 2014 Broadwood Assets Limited (Broadwood) wrote to Mr C. The letter said he'd appointed Broadwood to provide advice, as required under section 36 of the Pensions Act 1995, on whether the proposed investment with TRG was satisfactory for the aims of the scheme. The letter pointed out that Broadwood weren't FCA authorised or regulated and they weren't providing advice that would be deemed regulated under the Financial Services and Markets Act 2000 (FSMA). If Mr C wanted regulated advice on the suitability of the proposed investment for his specific needs as an individual and member of the SSAS, he should request that from an IFA (independent financial adviser). Broadwood said TRG was a suitable investment for Mr C's SSAS. There were some caveats, including that it was for more adventurous investors.

Mr C signed an instruction to CGL on 1 July 2014 to invest £20,000 of his SSAS fund in TRG. The next day CGL wrote to Mr C confirming that investment had been made. Mr C signed Sequence/Parmenion forms on 11 August 2014 to invest an initial contribution of £18,440 in a Parmenion (Strategic Passive 5) portfolio. That investment was made on 14 November 2014.

Initially Mr C's TRG investment produced some returns but eventually these dried up and he became concerned.

Mr C complained, through his representative, to Royal London in September 2019. 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 as was the sponsoring employer (C Limited) and wasn't Mr C's genuine employer but a company set up solely to facilitate the SSAS; the catalyst for the transfer was an unsolicited call; Mr C had been advised by an unregulated business; and the proposed investment was in unregulated, overseas, high risk and non diversified assets. Further, Mr C had no recollection of getting the Scorpion insert or booklet (I refer further below to what that was) and wasn't contacted by Royal London to establish the extent of his understanding of the proposed scheme.

Royal London didn't uphold the complaint. It was satisfied it had conducted an appropriate level of due diligence given the requirements at the time. It had been contacted by CMML who was regulated at the time as an appointed representative of two regulated firms. When CGL contacted Royal London CGL's covering letter confirmed that a copy of the Scorpion leaflet had been provided to Mr C and he understood the risk of a scam. He signed the SSAS trust deed as a trustee and the scheme Q&As provided confirmed the trustee (Mr C) was taking and considering advice from Sequence Financial Management Limited

(Sequence) – whose FCA reference number was given and the FCA register confirmed that firm was regulated. Royal London added that, at the time it completed the transfers, the industry guidance wasn't as prevalent as it is now. Mr C had provided a letter of authority for information to be sent to a regulated advisor, Royal London then received a transfer request which confirmed Mr C had seen the Scorpion leaflet and that there was a regulated advisor providing advice about the new scheme's investment. So Royal London completed the transfers in good faith.

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

What I've provisionally 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

Personal pension providers are regulated by the 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 content 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 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.

<u>What did personal pension providers need to do?</u>

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.*
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> *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.*
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> *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.*
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> *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.*

<u>The circumstances surrounding the transfer – what does the evidence suggest happened?</u>

At the time, Mr C was receiving unsolicited telephone calls offering a free review of his pension arrangements with a view to increasing returns. Eventually he agreed to meet with someone. There was a meeting at his home with a representative from CMML. Over the course of a number of discussions the reviewer recommended that Mr C transfer his pensions to a SSAS and invest in TRG.

Mr C was a driver/labourer earning about £15,600 pa, with no experience of investments. He trusted the information he was given, which was that his existing pensions were 'frozen' and that he was guaranteed higher returns if he transferred and invested as recommended. The reviewer didn't make it clear he wasn't FCA authorised and Mr C didn't appreciate the significance of that. (Just to clarify here CMML's status, it was regulated through its two principals but those firms were engaged in insurance, credit and mortgage activities and weren't authorised to provide pensions advice.) In addition, in the meeting, Mr C wasn't warned about the risks of the proposed investment.

At first, Mr C wasn't interested in transferring but the reviewer pressed him on a number of occasions to accept the recommendations made to him and, eventually, Mr C agreed to go ahead. The reviewer provided him with the paperwork to establish a SSAS with CGL, contacted Royal London for information about Mr C's existing pensions and liaised with Royal London to arrange the transfer.

Royal London corresponded directly with CMML and CGL and not directly with Mr C. He didn't receive a copy of the Scorpion insert/leaflet from Royal London and his attention wasn't drawn to the contents in any way. He doesn't recall receiving any other paperwork or contact, by way of phone, email or otherwise prior to the eventual transfer.

Our investigator also spoke to Mr C about what had happened. Mr C said that someone had contacted him asking if he wanted to review his pensions and Mr C agreed. He was told he could put his pension in different investments, including abroad and that it might make more money. Mr C said he hadn't wanted to do it. But his girlfriend thought it sounded a good idea and that he should switch, although he now wishes she hadn't said that. The same person had visited Mr C twice before he'd agreed to go ahead.

The investigator explained that Royal London should've sent a Scorpion insert. Mr C didn't recall getting anything like that. The investigator said the firm Mr C had transferred to – CGL – had said he'd been given it and asked if Mr C could have a look at the Scorpion insert (a copy of which the investigator had sent) in case it jogged his memory. Mr C said he didn't recall seeing it and neither did his girlfriend. But he said, if he'd seen it at the time, he didn't think it would've made him act differently.

I accept that what's been said by and on behalf of Mr C is a reasonably accurate account of what happened. And bearing in mind that it was all about ten years ago now, so it's understandable if there are some inconsistencies in the details. I accept Mr C received an unsolicited call, offering a free pension review, to which he agreed. There were then a couple of visits to his home by a representative from CMML, before he decided, initially not having been keen on the idea, to go ahead. That led to C Limited and the SSAS being set up and CGL's transfer request to Royal London, followed by the investments in TRG and Parmenion. I'd just add that, although, when the transfer application was submitted, Sequence would be providing Mr C with advice under section 36 of the Pensions Act 1995, it seems Sequence was later replaced by Broadwood. The Parmenion investment was however made through Sequence.

However, an area of uncertainty is whether Mr C saw the Scorpion insert or the longer booklet. I mention both as CGL said in its letter to Royal London requesting the transfers that Mr C had been shown a copy of the Scorpion leaflet 'Predators Stalk Your Pension'. It's unclear if that was a reference to the insert or the longer version – both have that title.

Leaving aside exactly which it was, it's specifically mentioned in CGL's letter and I don't have any real reason to say that CGL would've said something which wasn't correct. On the other hand, I don't think Mr C is being other than honest when he says he doesn't recall *seeing it. That said, as I've noted, it was a long time ago and Mr C would've been given a lot of documents to read and/or sign. So it might be that he did see it, even if he can't now remember. But it's also possible, although CGL intended for the Scorpion insert/booklet to be shown to Mr C and discussed with him, for some reason, that didn't happen. It may be that the person who visited Mr C at home (and who was it seems from CMML) was supposed to do that but didn't. In the circumstances I can't be confident that Mr C did see the insert.*

But there's also Mr C's letter of 5 June 2014 which was also submitted by CGL with the transfer request. It set out why he wanted to go ahead with the transfer, declared that he understood the risks of liberation and was not seeking to release pension funds before age 55 (he was 46 at the time of the transfers).

<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. Royal London didn't do that. Its position is that Mr C had already seen the Scorpion leaflet – CGL had confirmed that and had said it had been explained to him. But I've explained above why I can't be sure the insert/longer booklet was shown to him. So here Royal London's reliance on what CGL said appears to have been misplaced. To put the matter beyond doubt, Royal London should've sent the Scorpion insert/booklet to Mr C. It would've been a relatively quick and easy step to take and which wouldn't have delayed the transfer unreasonably.

But it would also have appeared to Royal London – from the letter Mr C signed on 5 June 2014 – that steps had been taken to make him aware of the risks of pension liberation fraud.

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. I would just note though that the action pack for businesses published by TPR at the time of the transfer here gave warning signs and a checklist of things to look out for in the context of "looking out for pension liberation fraud" (the heading under which this information was listed). And the transfer here took place before the guidance was given a broader scope to cover scams more generally.

Here Royal London didn't undertake any further due diligence. But, and bearing in mind what I've just said about the focus being on pension liberation fraud, I think the information that Royal London had received would've reasonably reassured it that Mr C wasn't at risk of that. I acknowledge that there were some signs of potential pension liberation: Mr C was transferring to a recently established scheme with a newly incorporated sponsoring employer. And, although he was a director of the sponsoring employer, it was unlikely to have been genuinely trading and providing him with an income – I note C Limited is recorded as dormant on Companies House and Mr C was employed elsewhere. It was, essentially, a means to establish a pension arrangement, which the Scorpion guidance indicated could be a sign of liberation activity. Further, the intended investment was overseas and likely to be unregulated. So I've considered whether it was reasonable to expect Royal London to make further enquiries.

But Mr C's reason for transferring was to access a particular investment which promised *much improved returns. And Royal London had direct evidence – the letter dated 5 June 2014 signed by Mr C – saying he knew about pension liberation and he wasn't doing that. That letter may have been given to Mr C as part of a large number of documents that he was asked to sign and he may not have paid too much attention to it. And it may be that he was encouraged to simply sign what was put in front of him and not given enough time to read everything. But he did sign the letter. And although it appears to have been pre-prepared, it was only a page long. On balance, I don't see any real reason why Royal London shouldn't have taken what Mr C had signed to say was his position at face value. In addition, there was the letter from CGL, setting out its position about pension liberation.*

In the circumstances, I consider that Royal London could reasonably have discounted the risk that Mr C could be about to become a victim of pension liberation fraud which was, at the time, what ceding providers should've been focused on. So I don't see that Royal London should've had recourse to the checklist and delayed the transfers to undertake further checks aimed at establishing if there was a risk of pension liberation fraud when, from what Royal London had already seen, that outcome could reasonably be discounted.

So whilst Royal London would've (had it conducted thorough due diligence) found there to be some liberation warning signs, I think it would have ultimately concluded that the liberation threat was minimal given Mr C's reasons for transferring. So, even if it had chosen to go further, I'm satisfied Royal London wouldn't have considered there to be reason to provide any further warnings to Mr C.

In saying that, I bear in mind there's an argument that some of the circumstances behind the transfer were unusual enough in themselves that Royal London should've done more to warn Mr C about what he was intending to do, even if the liberation threat would have appeared minimal. Specifically (and as I've noted above as also being potential liberation warning signs) Mr C says Royal London should've warned about the unusual nature of the receiving scheme (established not long before the transfer), the lack of a real employment link to the sponsoring employer and the nature of Mr C's intended investments (non-standard and high risk).

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 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).

So, I'm satisfied Mr C wouldn't have stopped the transfer even if Royal London had done more thorough due diligence in line with the Scorpion action pack. The end result of any such due diligence wouldn't have resulted in any warnings being given to Mr C.
Similar considerations apply to the sending of the Scorpion insert. As discussed previously, Royal London should've sent this but didn't do so. And I can't be sure that Mr C was provided with a copy as CGL claimed. However, the insert was focused on the threat posed by liberation – and the consequences of taking cash from a pension before the age of 55 in particular. So I don't think it would've dissuaded Mr C from transferring given he was

transferring for different reasons and when his letter of 5 June 2014 confirmed he'd been made aware of the risks of pension liberation fraud. Further, when we shared the insert with Mr C, he told us he didn't think, if he'd have seen it at the time, it would've changed his thinking.

Very recently Mr C's representative has given us some further information about Mr C's circumstances and which meant he was vulnerable at the time of the transfer. I'm sorry to learn what had happened to Mr C in 2005 and the problems he's had since. And I note what's been said about how he was impacted in 2014 when the transfer took place. But, as I haven't seen anything to suggest that [Royal London] *was or should've been aware of the issues referred to when it received his transfer request, I can't say that there was a failing on* [Royal London's part] *to treat Mr C as vulnerable in connection with the transfer request.*

I have a great deal of sympathy for Mr C. He's suffered a loss as a result of transferring away from Royal London and investing as he did. But all I'm considering here is Royal London's part in the matter and if it acted as it should've done and in line with the guidance in place at the time which, as I've stressed, focused on the risk of consumers falling victim to a pension liberation scam. Here I think Royal London had sufficient information to discount that. Royal London didn't do all it should've – it didn't send the Scorpion insert – but, for the reasons I've explained, I don't think that would've changed the outcome.'

<u>Comments in response to my provisional decision</u>

Royal London confirmed its acceptance of my provisional decision and didn't have any substantive comments.

Mr C, via his representative, disagreed with my provisional decision and submitted a detailed response. In summary he said my provisional decision was contrary to an article published by Royal London themselves about how they'd dealt with an almost identical transfer request in mid July 2014. And my provisional decision ran counter to the 2013 TPR guidance on the interpretation of "pension liberation". Further my provisional decision was contrary to two final decisions we'd issued.

I've summarised Mr C's main points.

- CMML had only ever been an introducer appointed representative and weren't authorised to provide advice themselves. Neither of CMML's principals were authorised to provide investment or pensions advice. So there was no possibility of Mr C receiving regulated advice through CMML/its principals. He'd been advised by the representative from CMML who'd witnessed his signature on the trust deed and who gave unregulated advice.
- In their response to the complaint Royal London had said they'd completed the transfer 'in good faith' and that they were comfortable that Mr C had received FCA regulated advice and was aware of the risk of a scam. But on other transfer cases from about the same time, Royal London had said they'd "checked with HMRC's Counter Fraud Team" about CGL's authority to register pension schemes. The fact that Royal London made that referral confirms they did have fraud/scam concerns about these transfers.
- Mr C directed me to an article published by Royal London in May 2016 describing what they'd done on a transfer request received in July 2014, so in the same time period as Mr C's and before the publication of the update to the Scorpion action pack and so, he said, subject to the same, February 2013, guidance. In his case Royal London had carried out no due diligence specific to his transfer and hadn't communicated directly with him, either by providing the Scorpion insert or otherwise. In the case referred to in the article, Royal London said they'd identified eight scam

warning signs and had stated “we could have been failing in our duty if we had not raised our concerns”.

- Because he was transferring to a SSAS, Royal London should’ve ensured he was employed in some capacity – if he wasn’t he had no statutory right to transfer. Reference was made to two Pensions Ombudsman’s decisions in support.
- He agreed with what I’d said about what had led up to the transfer, including that he’d been cold called, which, in the article, Royal London listed as a scam warning sign. Royal London had a questionnaire available to use at the time in conducting due diligence enquiries – a copy had previously been disclosed. One of the questions was about how the consumer had become aware of the receiving scheme. That questionnaire should’ve been used in connection with his transfer request.
- Royal London had been contacted by CMML in February 2014 but then accepted, without question, a reference to an entirely different firm in the transfer pack. Had he been asked, Mr C would’ve confirmed he'd only dealt with CMML.
- The SSAS had been registered just a couple of weeks before the transfer request was made, C Limited was also a newly established and a dormant company with no genuine employment connection to Mr C, and the proposed investments included an overseas property development run by TRG, which was clearly an unregulated company. So in the circumstances, and as we’d said in another case, Royal London should’ve used the checklist in the action pack to structure its due diligence. It was inconsistent for us to say the checklist should’ve been used in December 2013 but not necessary in May/June 2014.
- Royal London was receiving numerous similar transfer requests from CGL (and other providers who operated similarly). All the requests from CGL contained the same pre printed letter (with the individual’s name and SSAS details inserted) which was a standard tactic used by sham schemes at the time and should’ve been recognised as such by Royal London. It was wholly unreasonable for Royal London to place reliance on the document and for us to accept it as evidencing genuine knowledge on the consumer’s part of a complex pension scam or pension liberation issues. And when, in the other case that the article centred on, an equivalent letter had been included in CGL’s transfer pack.
- Royal London had acknowledged they hadn’t sent the Scorpion insert. They’d failed to meet the minimum communication expectations for every pension transfer request, regardless of whether scam warning signs were present.
- It was accepted that Royal London didn’t do any due diligence on Mr C’s transfer. I’d said the focus of the guidance in place at the time was on pension liberation fraud, but I’d interpreted that too narrowly. Mr C didn’t agree that the updated Scorpion guidance issued on 24 July 2014 broadened the types of issues pension providers should be looking out for – he didn’t think it was significantly different to the earlier version. He referred again to a final decision we’d issued on another case.
- My findings weren’t consistent with TPR’s guidance in the February 2013 action pack and which made explicit reference to ‘highly dubious and risky, unregulated investment structures, often based overseas’. So, from the earliest days of the Scorpion campaign, it was made clear that where consumers’ pension monies ended up was an intrinsic part of liberation/scam activity.
- In another case my colleague had concluded that the consumer had been subject to an orchestrated process involving several different firms with the ultimate aim of securing funding for TRG by persuading private individuals to transfer their pensions and invest the proceeds. The article referred to confirmed that Royal London had identified eight warning signs which also applied to Mr C’s transfer. It was irrational for both Royal London and this service to apply a contradictory approach to similar fact situations only a few weeks apart.

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.

In bringing this complaint, responding to our investigator's assessment and replying to my provisional decision Mr C has – via his representative – made many detailed points. I've considered everything he's said and all the supporting materials he's referred to. However, our rules don't require me to address or respond to each and every point raised. We're an alternative to the court not a substitute for it. As such my role is to decide how a complaint should be resolved with minimal formality. And I aim to present my conclusions in as clear and concise a manner as I can. In doing so I focus on the key issues and the reasons that are crucial to my decision making. So, if there's something I haven't mentioned, whether in my provisional decision or in this final decision, it isn't because I've ignored it. I haven't. It's because I'm satisfied I don't need to comment on it to be able to reach what in my view is a fair and reasonable outcome in the circumstances of this complaint.

As to consistency, although I've addressed below why I consider the other complaints referred to aren't the same as Mr C's, each case is decided on its own individual facts and merits and on the basis of what's fair and reasonable in the circumstances of that particular case. Sometimes complaints which may appear very similar aren't identical and may be decided or redressed differently. And, as Mr C acknowledges, the Pensions Ombudsman is a different organisation and sometimes we won't take exactly the same approach.

As I understand it, Mr C's main concern is that I've interpreted TPR's guidance too narrowly – I'd said that prior to July 2014, the guidance was only directed at identifying the risk of early release pension liberation. Whereas Mr C maintains it was far broader and intended to apply to both early release pension liberation and pension liberation through investment into unregulated or scam investments which resulted in the loss of the entire pension fund.

I note that the press release that accompanied the launch of the TPR guidance referred to concerns around pension funds being "invested in highly dubious and risky, unregulated investment structures, often based overseas." However, I don't think that defines the scope of the issues the campaign, at that time, was attempting to highlight. I say that because:

- The press release's opening paragraph refers to a crackdown on "predators" claiming to be able to release pension funds "before the law allows", in other words early pension release.
- The second paragraph explains methods introducers or advisers use to promise to release pension cash "before the age of 55".
- The third paragraph explains that such advisers will not inform consumers of the adverse tax charges and fees that might erode their pensions. This paragraph does refer to risky, overseas and unregulated investments but it's in the context of funds already "liberated", that is accessed in an unauthorised manner.
- Its fifth paragraph refers to warning signs for pension providers to look out for and gives the example of funds being passed to consumers before age 55.
- It contains a quote from a government minister who also refers to pension funds being intended for retirement and so should not be released before age 55.

So I think both the press release and Scorpion guidance of the time are heavily weighted towards looking out for signs of unauthorised access to pension funds, particularly before age 55. And this is what it describes as pension liberation. Therefore, my interpretation of pension liberation in my provisional decision is in line with the guidance which was available to pension providers at the time.

However, when TPR reissued the Scorpion guidance in July 2014 the focus had shifted to scams more broadly. For example, while the 2014 insert again warns about accessing funds early, its front page says: “A lifetime’s savings lost in a moment … Pension Scams. Don’t get stung”, without any emphasis on the tax consequences of early pension release. It also warns about the dangers of “one-off investment opportunities” and the potential to lose an entire pension pot. Those weren’t prominent features of the 2013 publication.

Similarly, the title of the 2013 action pack for businesses was “Pension Liberation Fraud”, whereas the 2014 action pack is titled “Pension Scams”. And the case studies in the 2013 action pack are solely about people wanting to use their pension in order to access cash before age 55, and the effects of doing so, including punitive tax charges and high administration fees. Also the warning signs it highlighted included: “accessing a pension before age 55”, “legal loopholes”, “cash bonus”, “targeting poor credit histories”, and “loans to members”. So, again, the emphasis was on accessing funds in an unauthorised manner. In contrast, the 2014 action pack included a case study about someone transferring in order to benefit from a “unique investment opportunity” which ultimately caused the consumer to lose his entire pension.

So I maintain that, at the time Royal London was considering Mr C’s transfer request, it was required to look out for the threat of pension liberation, that is unauthorised access to pension funds, rather than unregulated or high risk investment opportunities more generally. And while the 2013 guidance did refer to unregulated and high risk investments, it did so only in the context of people investing in such schemes in order to access their pension funds in an unauthorised way. But the July 2014 Scorpion guidance broadened the issue of the warning signs for providers like Royal London to look out for and incorporated scam type investments more generally.

Given the above, I’m satisfied it was reasonable for Royal London to have relied on the emphasis and focus of the February 2013 guidance, applicable at the time of Mr C’s transfer, when considering his request and deciding whether further due diligence was required. And as I've said, Royal London had to take a proportionate approach and balance any caution and due diligence with the fact that consumers were entitled to request a transfer. I don’t think delaying all transfer requests, such as Mr C’s, in order to carry out extensive due diligence in every case would’ve been proportionate. Rather I think it was fair for Royal London to make a judgement call based on the information available to it. And as I’ve explained, I think it was reasonable, based on the information which had been supplied, for Royal London to consider the risk – that is of early access pension liberation – for this transfer to be low.

As to CMML’s regulatory status, I accept that, as an introducer appointed representative, it couldn’t give advice and my understanding is that neither of CMML’s principals were authorised to give pensions and investment advice. I recognised in my provisional decision that Mr C had likely been advised by CMML during the visits to his home. Royal London would’ve seen, from the documentation received, that the SSAS was newly set up and newly registered with HMRC. And a check on Companies House’s website would’ve shown that C Limited was newly incorporated too and that it was a dormant company so there was no real employment link between it and Mr C. Had Royal London asked further questions, other warning signs might’ve come to light. Including that Mr C had been cold called and that the proposed investment was overseas.

And I think any reassurance Royal London may have taken from the fact that Sequence, then a regulated firm, was involved was misplaced. Sequence was mentioned in the Q&A document CGL supplied with the transfer request as being the firm that would be providing advice under section 36 of the Pensions Act 1995. As I’ve said Sequence seems to have been replaced by Broadwood. But advice under section 36 wasn't regulated advice in any event and would've only been given to Mr C as a trustee of the SSAS and not in a personal capacity.

So it isn't that the risk didn't exist or that there weren't other warning signs that Royal London could've become aware of if they'd asked further questions. But for the reasons given previously I think, having had sight of the letter Mr C signed on 5 June 2014, it was reasonable for Royal London, in the context of taking a proportionate approach, to decide that it didn't have good reason to delay the transfer and ask additional questions.

In saying that I note all Mr C has said about the letter. But, although I can see why he argues it was itself a sign of a scam, he did sign it. I don't think it was unreasonable, from Royal London's perspective, to assume he'd read and understood it. I acknowledged in my provisional decision that the letter was pre prepared. But it was relatively short. I think a reasonable person in Mr C's position would, even with very little financial or investment experience, take the time to familiarise themselves with the documents they'd been asked to sign to say they'd read and understood. Particularly when, as here, the document wasn't lengthy or technical. I maintain it wasn't unreasonable for Royal London to take at face value the declaration Mr C had signed.

Mr C also says Royal London should've checked his employment status to ensure he had a right to transfer. I agree that, to have a right to transfer to an occupational pension scheme, which a SSAS is, Mr C had to be earning. But my understanding is that he was working. I think the point he's making is that, had Royal London checked out C Limited, concerns ought to have been raised due to the lack of an employment link with the SSAS sponsoring employer, and which was a dormant company. But I've already acknowledged that even if Royal London had identified the nature of the sponsoring employer, that would have been outweighed by the reassurance it had that Mr C wasn't liberating his pension.

And as far as I'm aware, there was no obligation on ceding schemes to check, as a matter of course, whether the transferring member was earning (and which, in any case, Mr C was). He's also referred to two Pensions Ombudsman's decisions. But, in the first, the ceding scheme had strong evidence that the member was unemployed and in receipt of benefits. And, in the second, the Pensions Ombudsman said it "should have been clear" to the ceding scheme that there was an "earnings problem". So, in those cases, there was a clear indication that the consumer concerned wasn't earning at all – which there wasn't here.

I also note Mr C's comments that Royal London had a questionnaire they used for due diligence purposes which he thinks they should have used in his transfer. However, it was reasonable for firms to decide in the circumstances of the individual case whether more due diligence was required and what form this should take. They were entitled to take a proportionate approach weighing up the likely risks present in the transfer. I don't think this means that any questionnaire they had needed to be used on every transfer.

Mr C has also argued that my provisional decision is inconsistent with how Royal London approached a similar transfer request. In that instance Royal London refused the transfer on the grounds that the consumer did not have a statutory right to transfer. The consumer complained to the Pensions Ombudsman. He upheld Royal London's decision but the High Court overturned that decision on appeal and said the consumer concerned did have a statutory right to transfer (because they had earnings from elsewhere) – see *Hughes v The Royal London Mutual Society Ltd [2016] EWHC 319 (Ch).*

Mr C's position is that, as the circumstances in his case are very similar, Royal London should've identified the same warning signs and refused or delayed his transfer. However, I was aware of the Royal London case when coming to my provisional decision. And I did so based on the individual circumstances of Mr C's complaint. A difference in the facts can result in a different outcome. For example, although Mr C says that the transfer requests were received at more or less the same time, I don't think that was the case. CGL submitted Mr C's transfer request on 5 June 2014 and Royal London completed it on 11 June 2014. But, in the other case, according to the Pensions Ombudsman, Royal London received the transfer request on 23 July 2014. That was one day before TPR issued its updated version of the Scorpion guidance which, as I've said above, broadened the scope of issues for pension providers to look out for. And, crucially, it wasn't until September 2014, two months after the reissued guidance, that Royal London issued its decision to refuse the transfer request. By which time I'd have expected pension providers like Royal London to have analysed and implemented the updated guidance.

Similarly Mr C has said that my provisional decision is inconsistent with two other decisions issued by my colleagues. But once again the facts of those two cases aren't the same as for Mr C. In particular, in one of those cases the consumer concerned hadn't (and unlike Mr C) submitted a letter saying they were aware of the risks of pension liberation but weren't attempting to access their funds in an unauthorised way. In the other case, the ceding scheme completed the transfer in September 2014, some months after TPR issued its updated guidance.

Given the specific facts of Mr C's case – in particular the timing of the transfer request and completion of the transfer – I'm satisfied, for the reasons I've given previously, that Royal London didn't need to undertake the detailed due diligence Mr C has suggested. To reiterate, given the information Royal London had, it was reasonable to conclude that the threat of pension liberation – that is unauthorised access to funds – was low.

Lastly, I note what's been said about Royal London having referred CGL to HMRC's Counter Fraud Team. And, as I referenced in my provisional decision, CGL had said, in its letter to Royal London dated 5 June 2014 requesting the transfer, that during August and September 2013, CGL's business model had been vetted by HMRC who'd confirmed it was operating legitimately. I've seen that at least one other provider raised concerns with HMRC and received a response that HMRC held no information that the CGL schemes were at significant risk of pension liberation.

I understand that Royal London received a letter from HMRC which confirmed CGL was authorised to register pensions schemes and accept transfers. It also said a member of staff had spoken to HMRC's Counter Fraud and Avoidance Team who confirmed a full investigation had been conducted and CCL had been authorised to continue registering schemes and accepting transfers (and that is consistent with what CGL itself had said). So, although Royal London (and it seems other providers too) may at some stage have had concerns about CGL's business model or more generally, it would appear that HMRC allayed concerns. I don't see that Royal London should've been expected to repeatedly raise further enquiries along the same lines and which HMRC had already dealt with.

I don't disagree that it now appears that Mr C was the victim of what might be regarded as a fairly widespread campaign to persuade UK investors to transfer accumulated pension funds to a SSAS and invest in TRG. But my decision focuses on what Royal London did (or didn't do) and if it met its obligations and taking into account the prevailing regulatory environment at the time. In the circumstances and for the reasons I've explained I don't think it would be fair and reasonable to say that Royal London ought to have delayed the transfer process to conduct more checks simply to further safeguard against an outcome that it should've already reasonably discounted.

All in all I maintain what I said in my provisional decision. I've set that out above and it forms part of this decision For the reasons I've given I'm not upholding Mr C's complaint.

My final decision

I don't uphold the complaint and I'm not making any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 16 October 2024.

Lesley Stead
Ombudsman