DRN-4993083

The complaint

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

Mr B 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 B 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

I set out the background to this complaint and my provisional findings in a provisional decision which is included below and forms part of this decision:

'*According to Mr B's representatives, he signed a letter of authority allowing Consumer Money Matters to obtain details, and transfer documents, in relation to his pension. Mr B says this followed an unsolicited approach. He said he was told about an investment opportunity in a development in Cape Verde and felt it sounded good. Shortly after he's told us he agreed to meet with an adviser from a firm called Your Choice Pensions Limited – neither firm were regulated to give advice.*

On 6 September 2013, a company was incorporated with Mr B as director. I'll refer to this company as B LTD SSAS. On 24 October 2013, Mr B signed the trust deeds to open a SSAS with Cantwell Grove. B LTD SSAS was recorded as the SSAS's principal employer.

On 8 May 2014 Mr B's transfer papers were sent to Royal London. These were sent in by Cantwell Grove. Included in the transfer papers were: the completed transfer paperwork signed by Mr B, a copy of the scheme's trust and deeds, a copy of the HMRC registration, a Key Scheme details Q&A which included the proposed investment in TRG and that investment advice to the SSAS would be given by a regulated business. And confirmation from Cantwell Grove that it had warned Mr B about pension liberation and provided him with a copy of a leaflet (referred to as the "Scorpion leaflet") produced by The Pensions Regulator (TPR) which warned about pension liberation. It also included a signed letter from Mr B saying:

- *Cantwell Grove had explained pension liberation to him and the risks of transferring his pension*
- *Confirmation from Mr B that he hadn't been offered any cash incentive to transfer nor was he trying to access his retirement benefits before the age of 55*
- *Confirmation from Mr B that he'd understood the warning about pension liberation.*

Mr B's pension was transferred on 29 May 2014. His transfer value was around £7,300. He was 49 years old at the time of the transfer.

On 14 July 2014, Mr B signed a letter to Cantwell Grove which said he wished to make a

£27,000 investment in TRG. This referred to having previously received an advice letter from Central Markets Investment Management Limited (CMIM) in relation to the investment opportunity and its suitability as an investment in the SSAS and the need for diversification in the SSAS. We also have a declaration on CMIM headed paper, seemingly signed at the time of this advice letter, where Mr B has declared as a trustee amongst other things 'that he had read and understood the products and services being offered'. This is witnessed by the adviser Mr B has referred to in his testimony with confirmation included in the declaration that the individual worked for Your Choice Pensions Limited.

Mr B invested about £27,000 into TRG, the other funds coming from a transfer from another pension provider, he now has no access to this capital and he cannot sell it either. It is likely to have nil value.

In October 2020, Mr B complained to Royal London. Briefly, his argument is that Royal London ought to have spotted, and told him about, a number of warning signs in relation to 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 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 none of the information it had about the transfer at the time gave it cause for concern. Mr B had signed forms to say he was aware of the risk of liberation. And it had checked with HMRC's Counter Fraud Team and received a letter which confirmed that Cantwell Grove was authorised to register pensions schemes and accept transfers. It said this letter was certified by a leading corporate law firm. It also said a member of staff had spoken to HMRC's Counter Fraud and Avoidance Team who confirmed HMRC had conducted a full investigation and had authorised Cantwell Grove to continuing registering schemes and accepting transfers. It concluded its checks were in line with what was expected at the time and that it had to accept Mr B's legal right to transfer given the circumstances here.

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 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 B's recollections

Mr B explains that he was cold called and offered a free review of his pension by Consumer Money Matters, he'd previously been contacted by other firms but these hadn't progressed to transfer. Mr B said this led to a meeting at his home with a representative from another firm Your Choice Pension Limited. Mr B said the introducer from Your Choices Pensions Limited (who has witnessed some of the paperwork involved in the transfer and investment) advised him to transfer his pension to a SSAS and invest in TRG. He was told the investment would produce significantly better returns. Mr B says he had no specific financial expertise but felt the proposition sounded good.

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 B. The transfer pack included a letter that was signed by Mr B. This letter very much appears to have been pre-prepared for Mr B to

sign. Nonetheless, it is a single page and starts by explaining that Mr B 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 provided corroboration that Mr B 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 firm who were FCA registered to provide investment advice about the appropriateness of the investments to the SSAS.

What did Royal London do and was it enough?

The Scorpion insert:

For the reasons given above, my view is that personal pension providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information.

Royal London explain that it was reassured by the fact that Cantwell Grove Ltd sent Mr B the Scorpion information. And the transfer information included a letter that was signed by Mr B that explained that he was aware of the dangers of pension liberation fraud and did not wish to access his benefits prior to age 55. And it had been in touch with HMRC and received assurances about Cantwell Grove.

I understand that Mr B explains that he did not receive the Scorpion insert from Royal London (it didn't send it in any event) but he has not answered our questions about whether he received a copy from Cantwell Grove. In any event, I cannot ignore the fact that he signed the letter, part of which declared that he understood the risks of liberation and was not seeking to release pension funds before age 55. And I think it's more likely than not that he would have seen and read the content of the letter 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 B 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 B 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 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 B was likely to be at risk of that type of fraud.

Other than checking the information that it was sent and speaking with the HMRC Counter Fraud team about Cantwell Grove, 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 B's transfer would have been seen as potential warning signs of liberation activity as identified by the Scorpion action pack: Mr B's SSAS had only been registered in September 2013 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 B 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 B 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 B's transfer request was made was focussed on the risk of consumers falling victim to a pension's 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 discounted.'

In response to my provisional decision, Mr B's representatives made a number of points. Many of which have already been covered in my provisional decision or are not relevant to the outcome. So, I'll only set out the new and or relevant points to the outcome of my decision and I will only summarise the key over-riding issues it had with the decision. It said:

• The provisional decision runs contrary to an article published by Royal London where it explained it had identified eight warning signs of a scam in relation to a case in mid-July 2014. Before the publication of the July 2014 update to the Scorpion Action Pack. In this case Royal London had said "we could have been failing in our duty if we had not raised our concerns".

• My decision is made on the basis that the July 2014 update to the February 2013 guidance significantly broadened the types of situations and scam warnings pension providers had to look out for. It believes this to be wrong.

• It considered that my provisional decision runs contrary to a similar decision issued by our service.

• It thought that Royal London ought also to have made contact with Mr B to establish whether he had a statutory right to transfer. In doing this check and looking at his employment status, it ought to have led to due diligence enquiries regarding the pension scam/pension liberation.

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.

Is the decision contrary to Royal London's actions on another case?

Mr B's representatives point to what it believes to be an inconsistent approach between Royal London's handling of Mr B's transfer and its handling of another transfer at around the same time. They say that Royal London found a number of warning signs in another case, that were also present in Mr B's case, and this prompted it to block the transfer. But from the same time period it allowed Mr B's transfer to go through.

However, in the other case referred to, Royal London didn't receive the transfer request until 23 July 2014 and didn't block the transfer until September 2014. Mr B's representatives say this was before the updated Scorpion Action pack but in reality the transfer request was received one day before the update was published – and so Royal London would've been aware of the updated guidance when considering the transfer. Mr B's transfer request was received and completed in May 2014. So before the updated guidance was issued. So I don't agree that the decision is contrary to Royal London's actions on the other case. I'll explain in more detail later why the difference in the timing of these two transfer requests is relevant.

Did the July 2014 update broaden the focus of the scorpion campaign?

Mr B's representatives say that the updated guidance issued on 24 July 2014 didn't broaden the focus of the scorpion campaign. And Royal London ought to have been looking for and identified the warnings of a scam present in Mr B's transfer prior to this. But I disagree, I've already explained in my provisional decision why the 2013 guidance in place at the time of Mr B's transfer meant that Royal London acted reasonably in discounting the risk of pension liberation regarding his transfer.

I think it is clear the July 2014 guidance was a broadening of the scope required of ceding schemes. The updated July 2014 guidance is for example titled 'Pension Scams' whereas the 2013 guidance is titled 'Pension Liberation Fraud'. Whilst this is quite a surface level observation, the respective contents of the two pieces of guidance further demonstrate the changing focus of the guidance from Pension Liberation to Pension Scams. We have already explained our thoughts on this matter in some detail to Mr B's representatives in previous decisions. Whilst we consider each case on its own merits this is a point not unique or specific to this case. And I, like our other ombudsman who have considered this point, do not agree that the 2013 guidance can be seen to have the same scope as the 2014 guidance, which brought into focus the issue of pension scams and wasn't focussed just on liberation.

I note that Mr B's representatives have pointed to warnings issued earlier than July 2014 by the FCA that it thinks Royal London should also have been aware of. This included SSASs being used for unusual investments and customers being offered a free pension review as was present in Mr B's transfer. These warnings first appeared on the FCA website in April 2014. And I understand the argument that firms within the industry ought to have been aware of the evolving picture of pension liberation. But the only guidance in place for ceding schemes at the time was the TPR guidance from 2013 which wasn't updated to cover wider scams until 24 July 2014 after Mr B's transfer had already occurred. And the updated guidance didn't specifically mention the use of SSASs for unregulated investments. It wasn't

until September 2014 that the FCA formally notified the industry about these more specific warnings.

This isn't to say that no ceding scheme would've had any idea about the evolving picture of pension liberation and scams before the 2014 guidance was updated. But that it was only after the guidance changed that it ought to have become clear to ceding schemes that they now needed to have processes in place to be on the lookout for wider scam activity when processing a transfer. I therefore remain of the view that Royal London didn't act unreasonably in focussing their checks on preventing liberation at the time of transfer.

Is my provisional decision inconsistent with decisions on similar cases?

Mr B's representatives have said my decision is inconsistent with another decision issued by this service. Again this isn't a point it has only made in relation to this case but many others with similar circumstances. Aside from the fact each case is decided on its own merits and its own circumstances, I appreciate it is fair to expect a level of consistency in decision making on cases that are very similar in nature.

But in the decision referred to the transfer was completed in September 2014, so I don't agree the circumstances are the same and it being later is relevant for the reasons already explained. Nor do I agree that my decision is inconsistent with other cases. And in any event, as I have set out, each case is decided on its own merits and having considered this case carefully I do not agree that it should be upheld for the reasons I've previously set out.

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

Mr B's representatives have questioned the weight applied to the letter sent in from Cantwell Grove and signed by Mr B referred to in the provisional decision. It says this letter was pre-printed and simply stated that no early release pension liberation was happening and not that the provider could ignore other signs of a scam. And that it was being sent for a number of customers of Cantwell Grove, so it would have been clear it wasn't a bespoke genuine letter.

I don't disagree that Royal London would also have seen this same letter in a number of cases from Cantwell Grove and that it was a pre-printed letter. But Mr B signed and dated it to indicate he agreed with the contents. I think someone in his position ought to have read the contents of the paperwork and only agreed to sign it after doing so. I see no credible reason why Royal London shouldn't have taken Mr B's signed declarations at face value. So, I think Royal London were not unreasonable in accepting this letter as evidence that Mr B was aware of the risk of pension liberation and that this wasn't the purpose of the transfer. The fact the receiving scheme was newly registered shouldn't have caused Royal London to ignore reasonable evidence that Mr B was not about to be a victim of pension liberation.

Given it was the 2013 guidance focussing on liberation that was relevant here. Royal London already had sufficient information to conclude that pension liberation likely wasn't a risk present, so I don't think it would've been reasonable to delay matters doing further checks to establish something it already had sufficient evidence of.

Mr B's representatives have also argued that Royal London should have checked Mr B's employment status so as to ensure he had a right to transfer. They say the outcome of those checks would have caused Royal London concerns because of a lack of employment link to the SSAS's sponsoring employer. I've already outlined the obligations ceding schemes 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. Royal London had no reason to think Mr B wasn't earning either. So, I see no reason why Royal London would, or should, have probed this issue any further.
In conclusion, it is for these reasons and for those already explained in my provisional decision that I am not upholding Mr B's complaint.

My final decision

For the reasons explained I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 11 December 2024.

Simon Hollingshead
Ombudsman