DRN-4999257

The complaint

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

Mr B 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 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've done.

What happened

I issued a provisional decision on 21 August 2024. I've repeated what I said about what had happened and my provisional findings.

'*Royal London received a letter from Wise Review Limited on 26 February 2014 with a letter of authority (LOA) from Mr B. Royal London sent details of Mr B's personal pension policy to Wise Review Limited on 6 March 2014. There's also a letter from Royal London sent to Global Partners Limited on 18 March 2014 with policy information. It seems that Mr B also signed a LOA for that firm to obtain information about his policy.*

In March 2014 a limited company which I'll call B Limited was incorporated with Mr B as the sole director. On 11 April 2014 a SSAS was established with B Limited as the sponsoring employer.

There's a letter dated 12 May 2014 to Mr B from Broadwood Assets Limited (Broadwood). It said Mr B was considering an investment in TRG for his SSAS; it is a requirement under section 36 of the Pensions Act 1995 that, as a trustee, he take and consider appropriate advice on whether the proposed investment is satisfactory for the aims of the scheme; and Mr B had appointed Broadwood to provide that advice which was set out in the letter.

Broadwood said it wasn't providing advice that would be deemed regulated under the Financial Services and Markets Act 2000 (FSMA) and Broadwood wasn't regulated or authorised by the FCA. Broadwood wasn't advising if TRG investment was suitable for the particular needs and objectives of the SSAS members or beneficiaries. Broadwood referred to pension liberation fraud and said it was satisfied that the arrangements to establish the investment through Mr B's SSAS didn't facilitate any form of pension liberation. Broadwood concluded that TRG investment was suitable for Mr B's SSAS, albeit for more adventurous investors and subject to the caveats set out.

On 28 May 2014 Royal London received a request from Cantwell Grove Limited (CGL) to transfer Mr B's pension policy to his SSAS which would be administered by CGL, 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 28 May 2014 signed by Mr B (the contents of which I've set out below); a transfer in form completed and signed by him; the SSAS trust deed and rules; a copy of HMRC's scheme registration confirmation (showing the SSAS had been registered on 15 May 2014 and giving the Pension Schemes Tax Reference (PSTR) number); 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 Central Markets Investment Management Limited [FCA registration number given] and under consideration are the following investments:

A discretionary fund management service provided by Central Markets Investment Management Limited ... .

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

The letter dated 28 May 2014 and signed by Mr B read as follows:

'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 as requested as soon as possible.'

Mr B signed Broadwood's letter of 12 May 2014 on 7 June 2014 to confirm he'd read and understood the advice.

The transfer was completed on 10 June 2014. A transfer value of £38,602.95 was paid to CGL.

Initially Mr B's SSAS received some returns from his TRG investment – a fractional share of hotel accommodation at the Dunas Beach resort in Cape Verde. But these eventually dried up. And there's no secondary market for the investment which is illiquid.

Through his representative, Mr B complained to Royal London in November 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 B Limited and there wasn't a genuine employment link to the sponsoring employer – B Limited was dormant and set up solely to facilitate pension holdings; the catalyst for the transfer was an unsolicited call offering a free pension review; Mr B had been advised by an unregulated business (neither Wise Review Limited nor FRPS were regulated); and the proposed investment was in unregulated, overseas, high risk and non diversified assets.

Royal London didn't uphold the complaint. It said it had no record of any contact from First Review Penson Services Limited (FRPS) who'd been named in the complaint. Royal London had been contacted by Wise Review Limited which it said were also known as We Review Limited who were on the FCA register. At the time We Review Limited was an appointed representative of Sorensen Financial Services Limited (Sorensen), whose FCA reference number was given. Royal London also received a request for transfer information from Global Partners Limited (now Tourbillion Limited) based in Gibraltar on 12 March 2014. And shown on the FCA register as being able to offer certain products and services in the UK.

Royal London said it had been contacted by independent adviser firms fully regulated by the FCA. Royal London isn't regulated to provide advice itself. So, when contacted by a correctly registered adviser firm or their appointed representative, Royal London deem it reasonable to presume they are providing advice when they ask for transfer paperwork. And presume they're acting in the best interest of the mutual client and would've also been aware of

pension scam warning signs when giving the advice to transfer.

Royal London then received a transfer request from CGL. The covering letter confirmed CGL had provided a copy of the Scorpion leaflet to Mr B and that he understood the risk of a scam. It was also confirmed that he (as the trustee of the SSAS) was taking advice from Central Markets Investment Management Limited (CMIM), a registered firm. So Mr B was transferring to a SSAS which wasn't required to be regulated but at least two UK FCA regulated adviser firms (Wise Review Limited and CMIM) were linked to the transfer so Royal London didn't feel that CGL not being regulated was grounds for concern.

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

In considering the complaint I've borne in mind the comments made by Mr B's representative in response to the investigator's view that the complaint shouldn't be upheld.

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 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 FSMA, which enabled the FSA to issue guidance provided it underwent a consultation process first. Nor did it constitute "confirmed industry guidance", as can be seen by consulting the list of all such FSA/FCA guidance on its website.

I take from the above that the contents of the Scorpion guidance was essentially informational and advisory in nature and that deviating from it doesn't necessarily mean a firm has broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's legal rights.

That said, the launch of the Scorpion guidance was an important moment in so far it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing those requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance's specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

In those circumstances, I consider 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.*

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

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

5. *The considerations of regulated firms didn't start and end with the Scorpion guidance. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn't involve anything specifically referred to in the Scorpion guidance – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's principles and COBS 2.1.1R.*

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

In his complaint to Royal London Mr B said he received an unsolicited telephone call from Wise Review Limited offering a free pension review with a view to increasing returns by investing in a property development in Cape Verde. Mr B thought that sounded interesting and signed a LOA to allow Wise Review Limited to obtain information about his pension

savings with Royal London. Shortly afterwards he agreed to meet with an adviser. That led to two meetings at his home with a representative from FRPS. Neither Wise Review Limited nor FRPS were authorised or regulated by the FCA.

Over the course of the discussions, the reviewer recommended that Mr B transfer to a SSAS and invest in TRG. Mr B, a driver earning around £23,000 pa, had no experience of investments and trusted the information he was given which was that his investment would produce guaranteed returns of 8% to 10% pa. That sounded to Mr B a realistic opportunity to achieve a significant increase to his pension savings, thereby providing for his future retirement. The reviewer didn't make it clear that he wasn't FCA authorised and Mr B didn't appreciate the significance of that. Nor did the reviewer warn Mr B about the risks of the proposed investment.

Mr B agreed to go ahead and the reviewer provided him with paperwork to establish a SSAS with CGL. B Limited was a newly set up dormant company established solely for the purpose of holding Mr B's pension fund. The SSAS had only been very recently registered with HMRC when the transfer was requested. Royal London corresponded with CGL and not with Mr B regarding the intended transfer. He didn't get a copy of the Scorpion warning document from Royal London and his attention wasn't drawn to its contents in any way. After the transfer had been made, CGL organised the investment of £29,300 in a fractional ownership of a suite at the Dunas Beach Resort, Cape Verde.

Our investigator also spoke to Mr B about what had happened. Mr B confirmed he'd been contacted by FRPS by phone and an appointment was then arranged to visit him. He wasn't put under any pressure to proceed. He wasn't really sure what he wanted but he was told he'd get a return of between 8% and 12% pa. The Cape Verde resort had been discussed at the outset. He wasn't offered any incentives or told that he could get access to his pension before age 55. He was now being chased for charges.

He didn't recall getting the Scorpion insert or booklet or getting anything from Royal London about scams. The investigator explained that CGL had said they'd given him the leaflet. Mr B queried why they'd have done that when CGL was 'in on it', that is involved in what he termed the scam. Our investigator sent Mr B a copy of the longer Scorpion booklet and asked Mr B what he'd have done if he'd seen it before his pension had been transferred away from Royal London. Mr B called the investigator to say he'd never seen the booklet before but, if he'd seen it, he wouldn't have proceeded with the transfer given what he termed the 'horror stories' set out.

All in all I don't doubt Mr B's recollections and which seem consistent with the paperwork we've seen. In broad terms what seems to have happened is that Mr B got a cold call from Wise Review Limited who, when Mr B agreed to a review, got him to sign a LOA and then contacted Royal London for information. It seems that at about the same time Mr B also signed a LOA in favour of Global Partners Limited (now Tourbillion Limited) based in Gibraltar. I don't know how that came about. But I haven't seen anything to suggest that company was further involved in any way. So I've concentrated on what happened as a result of the LOA Mr B signed in favour of Wise Review Limited.

Mr B recalls having been visited at home by someone from FRPS. That fits with other cases we've seen where information was passed on by Wise Review Limited to FRPS. I think once Mr B agreed to go ahead with the transfer and the investment in TRG, CGL then became involved in assisting in setting up the SSAS and making the transfer request to Royal London.

Broadwood was also involved – from what I've seen, it gave advice under section 36 of the Pensions Act 1995. It seems, from the key scheme details Q&A document supplied by CGL

in support of the transfer request, that CGL understood CMIM would be giving that advice. But, by then, Broadwood had already advised – its letter of 12 May 2014. I haven't seen that any advice was given by CMIM. I'm unsure exactly what happened and why Broadwood and not CMIM gave the section 36 advice but I don't think anything turns on this.

An area of uncertainty is whether Mr B saw the Scorpion insert or the longer booklet. I mention both as CGL said in its letter to Royal London requesting the transfer that Mr B 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, Mr B says he wasn't shown anything. It was a long time ago and Mr B 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 said in its letter to Royal London that Mr B had been shown the Scorpion insert/booklet and it had been discussed with him that, for some reason, that didn't happen. In the circumstances I can't be confident that Mr B did see the insert/booklet.

But there's also Mr B's letter of 28 May 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 that he wasn't seeking to release pension funds before age 55.

<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. I think Royal London's position is that it appeared from CGL's letter of 28 May 2014 that Mr B had been given a copy of the Scorpion leaflet. As I've said, it's unclear if that was the insert or the longer booklet but Royal London may have thought there was little point in sending the insert given that Mr B had seen it (or the longer version) anyway. But I've explained above why I can't be sure the insert/longer booklet was in fact shown to Mr B. To put matters beyond doubt, Royal London should've sent the Scorpion insert to Mr B. It would've been a relatively quick and easy step to take and which wouldn't have delayed the transfer unreasonably.

But, as I've said, Mr B also signed a separate letter explaining why he wanted to go ahead with the transfer and that he understood the risks of liberation and wasn't seeking to release pension funds early. So, although Royal London should've sent the Scorpion insert, I don't think it would've made a material difference if it had – because Mr B, even if he hadn't been shown the insert/booklet was aware of the risks that the insert/booklet warned about.

Due diligence:

In the light of the Scorpion guidance, I think firms ought to have been on the look-out for the tell-tale signs of pension liberation and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk of pension liberation. 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.

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 B wasn't at risk of that. I acknowledge there were some signs of potential pension liberation: Mr B 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 B Limited was recorded as dormant on Companies House and Mr B 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 Royal London could've made some further enquiries using the checklist provided.

But Mr B's reason for transferring was to access a particular investment which promised much improved returns. And Royal London had direct evidence – the letter dated 28 May 2014 signed by Mr B – saying he knew about pension liberation and he wasn't doing that. That letter may have been given to Mr B 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 he didn't 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 B had signed to say was his position at face value.

In the circumstances, I consider that Royal London could reasonably have discounted the risk that Mr B 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 B's reasons for transferring. So, even if it had done all it should've done, I'm satisfied Royal London wouldn't have considered there to be reason to provide any further warnings to Mr B.

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 B 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 B 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 B'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).

As discussed previously, Royal London should've sent the Scorpion leaflet but didn't do so. And I can't be sure that Mr B 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, none of which featured in Mr B's case. So I don't think it would've dissuaded him from transferring given he was transferring for different reasons and when his letter of 28 May 2014 confirmed he'd been made aware of the risks of pension liberation fraud.

I say that bearing in mind, when we shared the longer booklet with Mr B, he told us, if he'd have seen it, it would've changed his thinking. I note his reference to 'horror stories' but, as I've said, the focus was on cashing in a pension early and the tax consequences that could result. Mr B wasn't doing that. Nor had he been offered a pension loan or a cash incentive. There were some warning signs and which, with hindsight, Mr B now recognises were present in his case. But, at the time, I don't think he'd necessarily have thought he was in danger of becoming a victim of a pension liberation scam. And Royal London only had to supply the Scorpion insert which didn't include the examples given in the longer booklet.

I have a great deal of sympathy for Mr B. 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.'

Responses to my provisional decision

Royal London said it accepted my provisional decision and had nothing further to add.

Mr B, 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". And was contrary to two final decisions we'd issued.

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 of it and replying to my provisional decision Mr B 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 as 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 I think is a fair and reasonable outcome in the circumstances of this complaint.

As to consistency, 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 B acknowledges, the Pensions Ombudsman is a different organisation and sometimes we won't take exactly the same approach.

As to the parties who were involved and their regulatory status, I accept what Mr B says about what happened and that all the parties that were actually involved were unregulated.

But I don't agree that means, when Royal London received the transfer pack in late May 2014 from CGL, there was uncertainty as to which firms were or might be involved and which in itself justified further enquiry. As explained in my provisional decision I think based on the information they had it was reasonable to conclude that the risk of pension liberation was minimal and so I don't think further enquiries were needed.

That brings me to what, as I understand it, is Mr B's main concern – that I've interpreted TPR's guidance too narrowly – that prior to July 2014, the guidance was only directed at identifying the risk of early release pension liberation. Whereas Mr B 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.

It is the case 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 in the context of funds already "liberated", that is accessed in an unauthorised manner.
- The 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, in my view, both the press release and Scorpion guidance at the time were 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.

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" – and 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 their entire pension.

Against that background I maintain that, at the time Royal London was considering Mr B’s transfer request, it was required to look out for the threat of pension liberation, that is unauthorised early access to pension funds, rather than unregulated or high risk investment opportunities more generally. And while it did refer to those type of investments, the 2013 guidance 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 that 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 B’s transfer, when considering his request and deciding whether further due diligence was required. I recognise that may feel unfair to Mr B – if his transfer request had been made later and/or the transfer hadn’t been processed so promptly, his complaint would’ve been decided against the background of the updated guidance. But it’s only fair to judge what Royal London did (or didn’t do) in the light of the prevailing regulatory regime at the time in question – and which I don’t think, for the reasons I’ve explained, was as broad as Mr B has argued.

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, in order to carry out extensive due diligence in every case, would’ve been proportionate. Rather I think it was fair that Royal London made a judgement call based on the information available to it and against the background of what I’ve said Royal London should’ve been looking out for – the risk of pension liberation fraud.

And, given the letter dated 28 May 2014 which Mr B had signed and which was submitted to Royal London with his transfer request, I think it was reasonable for Royal London, taking a proportionate approach and bearing in mind what I’ve said Royal London needed to have been looking out for, to have concluded that there wasn’t sufficient reason to delay the transfer by making further enquiries. In saying that I note all Mr B has said about the letter – that 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 which was a standard tactic used by sham schemes at the time and should’ve been recognised as such by Royal London. And that it was 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.

But, although I can see why Mr B 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 B’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. So I maintain it wasn't unreasonable for Royal London to take at face value the declaration Mr B had signed.

Mr B also says Royal London should've checked his employment status. I agree that, to have a right to transfer to an occupational pension scheme, which a SSAS is, Mr B had to be earning. But my understanding is that he was working. And 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 B was).

Given the specific facts of Mr B'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 B 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.

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 28 May 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 that CGL 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 CCL to continuing registering schemes and accepting transfers. 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 and raised enquiries, it would appear that HMRC responded and allayed providers' concerns.

I also note Mr B'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.

I don't disagree that it now appears Mr B 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 further 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 in my provisional decision and this decision, I'm not upholding Mr B'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 B to accept or reject my decision before 16 October 2024.

Lesley Stead
Ombudsman