DRN-5050619

The complaint

Mr E 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 July 2014. Mr E's SSAS was subsequently used to invest in The Resort Group (TRG) in a hotel development in Cape Verde. The investment now appears to have little value. Mr E says he's lost out financially as a result.

Mr E 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 E 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 13 September 2024. I've repeated here what I said about what had happened and my provisional findings.

'On 28 May 2014 Royal London responded to a request for information about Mr E's three pension policies received from Consumer Money Matters Limited (CMM) with a letter of authority (LOA) signed by Mr E. Prior to sending the information, Royal London had contacted Mr E as the address CMM had given for him was different from the one held on Royal London's records. Royal London asked Mr E to complete and return a change of details form which Mr E did and the information was then sent to CMM.

On 9 June 2014 a limited company, which I'll call E Limited, was incorporated with Mr E as the sole director. And on 10 June 2014 he signed a trust deed establishing a SSAS with Cantwell Grove Limited (CGL) as the SSAS administrator.

On 14 July 2014 CGL wrote to Royal London with a request from Mr E to transfer his personal pension policies with Royal London to the SSAS which had been set up. CGL said it 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 14 July 2014 signed by Mr E (the contents of which I've set out below); his signed transfer in request form; 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 3 July 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 given 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 [DFM] 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 E's letter of 14 July 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 22 July 2014 Royal London wrote to CGL saying the transfer payment had been sent separately and was made up of £29,696.71, £8,854.06 and £2,370.64 – in total £40,921.

There's a letter signed by Mr E on 6 August 2014 to CGL instructing an investment of £21,875 in TRG. It said that prior to issuing the letter Mr E had obtained and considered the advice letter from Broadwood Assets Limited (Broadwood). We've seen a letter dated 31 July 2014 to Mr E from Broadwood. Mr E subsequently invested a further £14,614.91 in TRG – there's a letter dated 2 June 2015 from CGL acknowledging an investment instruction from Mr E for an investment in that amount. That brought the total he'd invested in TRG to £36,489.91. CGL also said that Mr E's details had been passed to Astute Financial Management (Astute) who offered a DFM service. Mr E's residual fund was invested in a portfolio with Aviva possibly through Astute.

Initially Mr E's TRG investment produced some returns but eventually these dried up and he became concerned about his pension. In January 2020, through his representative, Mr E 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; the sponsoring employer (E Limited) was newly incorporated and a dormant company and there wasn't a genuine employment link to the sponsoring employer; the catalyst for the transfer was an unsolicited call; Mr E had been advised by an unregulated business; and the proposed investment was in unregulated, overseas, high risk and non diversified assets.

Royal London didn't uphold the complaint. It said it received a request for information from CMM. Royal London said it appreciated CMM was an unregulated company although the FCA register showed they were an appointed representative of two regulated firms. Royal London said, as CMM had asked for information and had provided Mr E's signed LOA, Royal London had no grounds to refuse. Royal London said it had no record of any contact from First Review Pension Services Limited (FRPS) or Choices Wealth Limited (CWL), both of which had been mentioned in Mr E's complaint, and so Royal London was unaware those firms had any involvement in the transfer.

Royal London then received a transfer request from CGL with a covering letter confirming Mr E had been provided with a copy of the Scorpion leaflet and that he understood the risk of a scam. He'd signed the trust deed as a trustee and the Q&A document provided confirmed the trustee was taking and considering advice from Sequence Financial Management Limited (Sequence) – a regulated firm whose FCA registration number was given.

So Royal London deemed that Mr E had contact with at least one fully regulated independent adviser who, it was presumed, was acting in Mr E's best interest and would also have been aware of pension scam warning signs when giving the advice to invest. Against that background Royal London completed the transfer on 22 July 2014.

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 guidance to follow that was aimed at tackling pension liberation – the "Scorpion" guidance.

The Scorpion guidance was launched by The Pensions Regulator (TPR). It was described as a cross-government initiative by Action Fraud, The City of London Police, HMRC, the Pensions Advisory Service (TPAS), TPR, the SFO, and the FSA/FCA, all of which endorsed the guidance, allowing their names and logos to appear in Scorpion materials. The guidance comprised the following:

- *An insert to be included in transfer packs (the 'Scorpion insert'). The insert warns readers about the dangers of agreeing to cash in a pension early and identifies a number of warning signs to look out for.*
- *A longer booklet issued by TPAS which gives more information, including example scenarios, about pension liberation. Guidance provided by TPR on its website at the time said this longer leaflet was intended to be sent to members who had queries about pension liberation fraud.*
- *An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "look out for" various warning signs of liberation. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where transferring schemes still had concerns, they were encouraged to write to members*

to warn them of the potential tax consequences of their actions; to consider delaying the transfer; to seek legal advice; and to direct the member to TPAS, TPR or Action Fraud.

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

The FSA's endorsement of the Scorpion guidance was relatively informal: it didn't take the form of Handbook Guidance, because it was not issued under s.139A of the Financial Services and Markets Act (FSMA), which enabled the FSA to issue guidance provided it underwent a consultation process first. Nor did it constitute "confirmed industry guidance", as can be seen by consulting the list of all such FSA/FCA guidance on its website.

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

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

In those circumstances, I consider 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 E said he'd received an unsolicited call from CMM offering a free pension review with a view to investing his pension fund in a property development in Cape Verde to increase returns. He thought that sounded interesting and signed a LOA allowing CMM to obtain information about his pension with Royal London. Shortly afterwards he agreed to meet with an adviser. There were two meetings at Mr E's home, with FRPS and/or CWL. Neither firm was authorised or regulated by the FCA.

At the time Mr E was a driver, earning around £22,000 pa. He had no experience of investments. He trusted the information he was given – that it was guaranteed his investment would produce returns of more than 3% pa. It sounded to him like a realistic opportunity to achieve a significant increase on his pension savings, thereby providing for his retirement. According to Mr E, the reviewer didn't make it clear that he wasn't FCA authorised and Mr E didn't appreciate the significance of that. Nor did the reviewer warn Mr E about the risks of the investment.

Mr E agreed to go ahead. The reviewer provided him with the paperwork to establish a SSAS administered by CGL who also aren't FCA regulated. E Limited was a newly set up dormant company established solely for the purpose of holding Mr E's pension fund and wasn't an active sponsoring employer of Mr E. And the SSAS had only very recently been

set up and registered with HMRC.

Our investigator also spoke to Mr E about what had happened. Mr E confirmed his occupation and earnings in 2014. He said he hadn't attempted to transfer his pension previously. At the time, he'd only recently become aware that he had pension policies with Royal London. He'd been cold called and then visited four or five times about an investment in Cape Verde. He wasn't told he could get cash upfront or be able to access his pension before age 55. He was just told about the interest he'd get and that, the more he invested, the bigger the yield would be. The representatives who'd come to his home were very pushy and thought he should just get on with it. Nothing about scams or pension liberation was mentioned. And Mr E heard nothing from Royal London during the process. He discussed it with his wife and a different person had then come to see them – to put their minds at rest – and Mr E had then agreed to go ahead. It's had a major effect on him. He's tried repeatedly but unsuccessfully to get his money out.

About the Scorpion insert, a copy of which the investigator had sent to him, Mr E said, had he seen it, he wouldn't have proceeded. He said he'd sent what information he had, especially about the initial contacts. He later emailed to say he'd been through his paperwork and, although he hadn't found anything from Royal London, he'd found the name of the company the salesperson was from – CWL. Mr E said he hadn't been told that, unlike as with a 'normal' pension, he wouldn't be able to draw any pension at age 55 or that he'd be subject to what he termed extortionate service charges. He'd been advised by CGL to contact a company called Fractional Property Services who he thought were based in Guernsey. But they'd never responded to the telephone messages he'd left.

I note that there are some discrepancies between what Mr E's representative said and what Mr E told us. For example, in his complaint to Royal London, two visits to Mr E's home were mentioned whereas Mr E recalls there were four or five. And, from what he told us, whoever visited him were from CWL and not FRPS. But, given the time that's elapsed, I think it's understandable that some details may vary. In broad terms what seems to have happened is that Mr E was cold called and offered a free pension review. From the outset it seems that investing in TRG was mentioned. It appears Mr E may have forgotten he had pension policies with Royal London and he'd lost contact with Royal London as his address had changed. He signed a LOA for CMM to get information about his pension policies with Royal London so I think it would've been CMM who'd called Mr E.

When the information was to hand, someone then came to see Mr E and, over the course of more than one meeting, Mr E decided to transfer in order to invest in TRG. I accept what Mr E says about being given to understand the returns were guaranteed and he'd get at least 3% pa. It seems that Mr E wasn't initially sure but he was reassured about it all by a different person who'd come to see him and he agreed to go ahead. From what Mr E had said, it was CWL who visited him. Once Mr E agreed to go ahead, CGL then became involved and the SSAS was set up and the transfer request to Royal London made. And, once the transfer had been completed, TRG investment was then made.

When CGL requested the transfer from Royal London, a Q&A document was included which said that Mr E was taking appropriate advice under section 36 of the Pensions Act 1995 from Sequence. That provision requires a trustee (here Mr E) to take and consider appropriate advice on whether the proposed investment(s) were satisfactory for the aims of the scheme. Sequence was a regulated firm (although it is no longer authorised and has since been wound up) but section 36 advice isn't regulated and Sequence didn't need to be authorised or regulated if its role was limited to providing that advice. But I don't think Sequence gave any section 36 advice. It seems Broadwood did that – as I've said above, there's a letter to Mr E from Broadwood dated 31 July 2014. And Mr E's letter dated 6 August 2014 to CGL, instructing the investment of £21,875 in TRG, confirms that section 36 advice has been

given by Broadwood.

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. The Scorpion guidance gave ceding schemes an important role to play in protecting members who were considering transferring.

Royal London didn't send the Scorpion insert. Its position is that Mr E had already seen the Scorpion leaflet – CGL had confirmed that to Royal London and had said the contents had been explained to him. But it's difficult to be sure that Mr E did see either the Scorpion insert or the longer booklet. I mention both as CGL said in its letter to Royal London dated 14 July 2014 requesting the transfers that Mr E 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. I don't think Mr E is being other than honest when he says he doesn't recall seeing it. But, as I've noted, it was a long time ago now and Mr E 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 E and discussed with him that, for some reason, that didn't happen. It may be that the person who visited Mr E at home (and who was it seems from CWL) was supposed to do that but didn't.

I don't think Royal London should've just relied on what CGL had said. To put the matter beyond doubt, Royal London should've sent the Scorpion insert/booklet to Mr E. It would've been a relatively quick and easy step to take and which wouldn't have delayed the transfer unreasonably.

I've discussed below whether Mr E likely saw the Scorpion insert and, if he didn't, if it would've likely made a difference to his decision making process if he'd seen it.

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 however note that, although the action pack for businesses published by TPR at the time of the transfer here gave warning signs and a checklist of things to watch out for, it was in the context of "looking out for pension liberation fraud" (the heading under which this information was listed). Mr E's transfer took place before the guidance was given a broader scope to cover scams more generally.

Royal London could've made further enquiries using the checklist in the action pack. But I don't think Royal London was under any obligation to do that. I say that 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 E wasn't at risk of pension liberation fraud and which, as I've said, was what Royal London should've been focused on at the time.

Mr E's reason for transferring was to access a particular investment which promised much

improved returns. And Royal London had direct evidence – the letter dated 14 July 2014 signed by Mr E and submitted by CGL with the transfer request – saying Mr E knew about pension liberation and he wasn't doing that. That letter may have been given to him 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 – I note what he's said about the people he was dealing with being pushy.

But he did sign the letter. And although it appears to have been pre-prepared, it was only a page long. And the content wasn't technical. On balance, I don't see any real reason why Royal London shouldn't have taken what Mr E 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've reasonably discounted the risk that Mr E 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, in Mr E's case, Royal London should've had recourse to the checklist and delayed the transfer 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 I think it would have ultimately concluded that the liberation threat was minimal given Mr E's reasons for transferring and what he'd said in the letter dated 14 July 2014.

As discussed previously, Royal London should've sent the Scorpion insert but didn't do so. It's possible, as I've said, that Mr E did see the insert. But, even if he didn't, the insert focused on the threat posed by liberation – and the consequences of taking cash from a pension before the age of 55 in particular. The letter Mr E had signed set out that he was aware of the issues around pension liberation and he'd received 'guidance and information about that' although further details as to exactly what that might've been aren't given.

But the letter said he understood the risks of liberation, he wasn't seeking to release pension funds before age 55 and he hadn't received any cash incentive. So the evidence indicates Mr E was aware of the sort of warnings the insert contained. Even if he didn't see the Scorpion insert I'm not persuaded that, had he done, it would've changed his mind and dissuaded him from transferring and when the warnings were similar to those his letter of 14 July 2014 confirmed he'd been made aware of anyway.

In summary, I have a great deal of sympathy for Mr E. He 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 regulations and 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 accepted my provisional decision and didn't have anything further to add.

Mr E didn't agree with my provisional decision and, through his representative, made detailed comments. His main arguments were, first, that by July 2014, Royal London had received high numbers of almost identical transfer requests to single member SSASs from CGL. As early as October 2013, as evidenced by internal emails, Royal London had

identified the potential for consumer detriment and intended to refer the transfers to Action Fraud. Royal London had failed to communicate those concerns to him. Secondly, he said my interpretation of pension liberation was too narrow. He also referred to an article published by Royal London in May 2016 setting out how they'd dealt with a pension transfer request received in July 2014, so at the same time as his and before the publication of the July 2014 update to the Scorpion Action Pack. Mr E also said my provisional decision was inconsistent with a final decision we'd issued on another similar case.

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 E has – via his representative – made many points. I've considered everything he's said and all the supporting materials 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, I've addressed below why I consider the other complaint referred to isn't the same as Mr E's. But 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.

Mr E says, regardless of how pension liberation is defined, Royal London had identified clear scam warning signs in connection with CGL transfers – as evidenced by internal emails – yet there was apparently no obligation to communicate such concerns to members. From those emails I've seen that Royal London's Technical Department raised concerns about transfer requests from CGL, including the proposed investment – a hotel development in Cape Verde – in early October 2013 and the possibility of a referral to Action Fraud was mentioned. It was also noted that CGL appeared on a watchlist of a major professional services company.

Royal London then made further enquiries, including contacting one of CGL's two directors who, amongst other things, supplied confirmation that HMRC had, after investigating, confirmed that CGL could continue to register schemes and accept transfers. That's consistent with what CGL's letter of 14 July 2014 requesting the transfer said – that during August and September 2013 CGL's business model had been vetted by HMRC and received confirmation that it was operating legitimately.

Royal London considered what CGL's director had said before deciding to approach HMRC direct. Royal London discussed its concerns with HMRC who confirmed that what CGL had said (about having been authorised to continue to register schemes and receive transfers after a full audit/investigation) was correct. And, in response to Royal London's concerns about the investment HMRC said, from its point of view, the transfer couldn't be declined based on potential concerns around financial detriment or the investment as ultimately it was the policyholder's decision and they'd received advice from a regulated body.

Royal London's Technical Department considered the matter further before approving the transfer and instructing that CGL be removed from Royal London's suspicious transfer list.

Therefore, Royal London identified there might be issues with Cantwell Grove, discussed things internally, got further information from CGL and consulted with (and got a steer from) HMRC before, after further debate, agreeing to the transfer. I think that's evidence of Royal London undertaking due diligence as opposed to a lack thereof.

I also consider Royal London's actions following its due diligence to be fair and reasonable. It couldn't block the transfer (and Mr E doesn't claim it should've done). And whilst it had misgivings about how Mr E's intended investment would perform, I wouldn't have expected it to have shared those misgivings. Its findings on the investment were somewhat speculative rather than something that could've been considered, and presented, as the result of due diligence. But, more importantly, its role wasn't to advise Mr E anyway – so it couldn't give Mr E any sort of value judgement on the investment. And investigations into the wider circumstances of similar transfers had led to an "all clear" from HMRC. Furthermore, the guidance in place at the time didn't point ceding schemes to guard against the type of situation Mr E found himself in, nor did it provide a steer on what to do in such a situation. And I don't think it's reasonable to say Royal London should've picked up on, just from the witness to the trust deed, that an introducer was involved and so there was a possibility that Mr E may have been given unregulated advice. So I don't think there'd have been a clear enough sign of a scam for Royal London to have warned Mr E about the transfer or undertaken further due diligence.

I note HMRC's reference to advice having been received from a regulated adviser. That may have been a feature in the particular transfer request under review. But I don't think it would've always been the case with other transfer requests, including Mr E's. Here Royal London knew there was a regulated adviser (Sequence) who was providing the section 36 advice. It wouldn't have been apparent to Royal London that Sequence didn't provide the section 36 advice or that Mr E had been advised in connection with the transfer by an unregulated firm. And, at the time, there was no requirement to take regulated advice about transferring so I don't think Royal London could've declined transfer requests simply because it was unclear if a regulated adviser was involved.

Mr E's transfer request was made in July 2014, some nine months after Royal London had looked into transfers to CGL. In the absence of anything further having arisen in the interim, I don't think there was a reason for Royal London to delay the transfer to make further enquiries along the same lines as previously and as a result of which Royal London had formed the view that there was insufficient reason to decline the transfer or take other action.. I bear in mind that by July 2014 Royal London may have received a number of transfer requests from CGL. But I don't think that would've changed things when Royal London's concerns about CGL would've been the same as previously.

Mr E has referred to what I said in my provisional decision about the considerations of regulated firms not starting and ending with the Scorpion guidance. And that ignoring clear signs of a scam, if they'd come to the firm's attention, would breach the regulator's Principles and COBS 2.1.1R (the client's best interest rule). But I think Royal London acted accordingly here – I said, if providers suspected a scam, they needed to act rather than ignore clear signs of a scam which had come to the provider's attention. Here Royal London had suspicions which it didn't ignore – it acted on them and made further enquiries, even if the outcome was that Royal London decided it couldn't block the transfer. Against that background, I don't think there was an obligation to share with Mr E concerns Royal London had identified some months earlier and which Royal London had investigated but which hadn't led Royal London to conclude that it could decline transfer requests to CGL.

Mr E also says that I've interpreted pension liberation too narrowly – I'd said that, pre July 2014, the guidance was only directed at identifying the risk of early release pension liberation. He accepts he was aware, as evidenced by the letter he signed, that he could face a tax bill if he accessed his pension before age 55 or if he received a cash incentive, loan or direct payment out. But he maintains that guidance 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 of pension funds, particularly before age 55. And this is what it describes as pension liberation. Mr E isn't correct to say that someone is "liberating" their pension when they transfer from a UK regulated pension scheme in order to invest in high-risk investments.

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 E'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 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 E's transfer, when considering his request and deciding whether further due diligence was required.

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.

Taking into account the letter dated 14 July 2014 which Mr E had signed and which was submitted 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. Mr E says the letter was part of a large tranche of documentation he was given to sign. But although the letter was a template, it was only a page long and I don't think it was unreasonable, from Royal London's perspective, to assume Mr E had read and understood it. So I maintain Royal London could reasonably discount the risk of early access pension liberation fraud which, as I've said, is what Royal London's focus would've been on.

Mr E has also argued that my provisional decision is inconsistent with how Royal London approached a similar transfer request and as evidenced by the article referred to. But I think the facts of the other case are different. In particular, in Mr E's case, CGL submitted the transfer request on 14 July 2014 and the transfer was completed on 22 July 2014 – two days before TPR issued the updated Scorpion guidance and which, as I've said, broadened the scope of issues for pension providers to look out for. In the other case, and according to what the Pensions Ombudsman says, Royal London received the transfer request on 23 July 2014, the day before the guidance was updated and, crucially, it wasn't until September 2014, two months after the reissued guidance, that Royal London refused the transfer request. By then, and as appears to have happened, I'd have expected pension providers like Royal London to have analysed and implemented the updated guidance.

Given the specific facts of Mr E'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 E has suggested or share any misgivings it had and which had already been looked into. 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.

Mr E has also suggested that my provisional decision is inconsistent with another final decision we've issued. But again the facts in that case aren't the same as in Mr E's. In the other case the consumer concerned hadn't (and unlike Mr E) 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.

I can understand Mr E's frustration that his complaint hasn't been upheld even though I've said Royal London didn't do all it should've done. In particular Mr E says Royal London didn't send the Scorpion insert to him, which was the minimum communication expected on every pension transfer request, regardless of whether there were scam warning signs or not. But I have to take into account what the likely result of Royal London's failure was – that is, would the outcome have been any different. As to whether Mr E would've acted differently if he'd seen the insert, it focused on the threat posed by liberation and the consequences of taking cash from a pension before the age of 55. The letter Mr E had signed said he was aware of the issues around pension liberation, he understood the risks, he wasn't seeking to release pension funds before age 55 and he hadn't received any cash incentive. I maintain the letter evidences he was aware of the sort of warnings the insert contained. So I don't think he'd have changed his mind if he'd got the insert – it repeated the warnings he'd already been given and which hadn't made him think again and when he wasn't seeking to liberate.

Mr E suggests the test for causation shouldn't be confined to the Scorpion insert and what should be considered is what he'd have done if there'd been further and bespoke communication with him, explaining there were scam warning signs associated with his transfer request. But, for the reasons given previously, I don't consider Royal London had to take the steps Mr E has suggested so I don't need to address this particular argument any further.

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 E's complaint.

My final decision

I don't uphold Mr E's complaint and I'm not making any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 26 November 2024.

Lesley Stead
Ombudsman