DRN-5099822

The complaint

Mr B has complained, with the help of a professional representative, 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 July 2014. Mr B's SSAS was subsequently used, in the main, to invest in the purchase of an overseas property with The Resort Group (TRG). The investment now appears to have little value. Mr B says he has lost out financially as a result.

Mr B says Royal London failed in its responsibilities when dealing with the transfer request. He says that it should have done more to warn him of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance he says was required of transferring schemes at the time. Mr B says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Royal London had acted as it should have done.

What happened

Mr B says he was cold called and offered a free pension review by a business called Consumer Money Matters Limited (CMML) – a business that at the time was registered with the Financial Conduct Authority (FCA) as an introducer of an authorised firm. On 7 February 2014, Mr B signed an authority to allow CMML to request details of his pension from Royal London. Royal London provided it with the requested information on 7 March 2014. Mr B says he was then introduced to a business called Your Choice Pensions Limited (YCPL). Mr B, who was 49 at the time, says they told him his pension wasn't performing well and he could achieve better returns by moving it and investing in a property development through TRG.

Mr B says he had no experience of investments and the presentation about the TRG investment sounded good. He says it sounded like a realistic opportunity to achieve a significant increase on his pension, thereby providing for his future retirement. It was on this basis Mr B says he agreed to proceed. YCPL was not subject to FCA regulation.

On 25 April 2014, a company was incorporated with Mr B as director. I'll refer to this company as D Limited. On 27 May 2014, a SSAS with established and then duly registered with HMRC. D Ltd was recorded as the SSAS's principal employer and Cantwell Grove Limited (CGL) was recorded as the administrator. CGL was not subject to FCA regulation.

On 27 June 2014, CGL wrote to Royal London enclosing documents to allow Mr B's pension to be transferred to the SSAS. The letter said that CGL was aware of concerns around 'pension liberation', it supported the efforts of the pension industry, and that its business model, as a pensions administrator, had been vetted by HMRC. It also said CGL supported the 'Scorpion' campaign of The Pension Regulator (TPR) and that the 'Scorpion' information leaflet, which warned about the risks of pension liberation, had been shared with Mr B.

CGL enclosed the completed application for the transfer, copies of the scheme trust deed and rules, the HMRC registration confirmation and a scheme details Q&A document, which gave answers to some general questions, including which investments were under consideration.

The Q&A document said that the investments under consideration were a commercial property investment provided by TRG and a discretionary fund management service. The document said that appropriate advice, about whether the investments were satisfactory for the aims of the scheme, was being taken by the trustees of the SSAS from Central Markets Investment Management Limited (CMIM). The letter said CMIM was registered with and regulated by the FCA.

I note at this point there is no evidence that CMIM did in fact provide any advice to Mr B. The trustee advice was provided by another business, which I'll refer to below.

CGL said, also enclosed with the transfer request paperwork was a letter signed by Mr B. This letter hasn't been provided. But also enclosed with the transfer papers was another letter signed by Mr B. The primary purpose of this letter was to encourage Royal London to process the transfer as soon as possible otherwise Mr B said he would make a complaint about the delay. But it also referred to his other letter and what he'd said in it. Mr B said the letter stated he was aware there had been a rise in cases of pension liberation fraud and he was aware of the issues relating to this. He said the letter said the transfer request was being made to take advantage of investment opportunities, none of which were connected with pension liberation. And it said he was not looking to access his pension before age 55.

Royal London then actioned Mr B's transfer and according to Mr B's SSAS bank account statement, on 18 July 2014, an amount of just over £31,200 was credited to the SSAS. Shortly afterwards, an investment of around £22,000 was made in TRG.

I mentioned above that another business provided the trustee advice. That business was Broadwood Assets Ltd (BAL.) On 14 July 2014, it issued a letter to Mr B, which said it was providing him with advice, in his capacity as trustee of the SSAS, on the potential suitability of the TRG investment "both as a specific example of an overseas commercial property investment, and more generally as an investment to be held within a SSAS." It said it had not advised on the establishment of the SSAS, was not providing advice that would be deemed regulated – BAL was not regulated or authorised by the FCA – and it wasn't advising on whether the TRG investment was "suitable for the particular needs and objectives of the members or beneficiaries of the SSAS."

From account statements provided, it appears that the TRG investment was providing credits to the pension intermittently. I understand the TRG investment has since failed and as such has little or no value.

In 2015, it appears Mr B received advice from another firm – a FCA regulated firm – to invest an amount of around £6,700 held in cash within the SSAS in investment funds with a mainstream investment provider.

On 31 January 2020, Mr B complained to Royal London. Briefly, he said it ought to have spotted, and told him about, a number of warning signs in relation to the transfer. These included but were not limited to: the involvement of unregulated businesses, Mr B having been cold called, CGL not being regulated, the intended investment being overseas and unregulated, and the SSAS being newly registered with no genuine employment link to the sponsoring employer. Mr B said if Royal London had properly informed him of these warning signs, he wouldn't have transferred.

Royal London didn't uphold the complaint. In summary it said none of the information it had about the transfer at the time gave it cause for concern. It was satisfied it had acted in good faith at the time.

Mr B then referred his complaint to the Financial Ombudsman Service. I issued my provisional decision in which I explained why I intended to not uphold Mr B's complaint. Included below are the key extracts from my provisional findings, explaining why.

Extracts from my provisional decision

<u>The relevant rules and guidance</u>

Personal pension providers are regulated by the FCA. Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority (FSA). As such Phoenix Life 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>

Mr B says he agreed to a review of his pension arrangements following an unsolicited phone call from CMML. Royal London received a request to release information about Mr B's pension on his authority to CMML.

As I said above, CMML was registered with the FCA as an introducer.

Mr B says he was then introduced to YCPL and it was this business that told him his current pension wasn't performing well, and he could achieve better returns by investing elsewhere. I can see Mr B signed YCPL's 'Terms of Business for the Pension Review Service' which said that CMML had introduced him to them and it had shared the details of his pension it had obtained. The document then set out the service that YCPL would provide.

The Q&A document that CGL sent to Royal London referred to CMIM, an FCA regulated adviser, potentially being involved. But the document indicates that its involvement, if there was any, was only to give advice to the trustees of the SSAS about whether the proposed investment was appropriate to its aims, not to advise Mr B as a consumer about the transfer. And it appears that CMIM wasn't ultimately involved in that capacity. The advice to Mr B, in his capacity as trustee, about the investment in the SSAS actually ended up being given by BAL, an unregulated business.

So, taking all of this into account, I think it was YCPL that carried out the pension review in which Mr B agreed to transfer his pension to a SSAS.

Mr B says YCPL told him his pension could achieve better returns if he moved it and invested in an overseas commercial property investment – TRG. He says he had no experience of investing. He says the presentation about the potential investment sounded interesting and seemed like a realistic opportunity to increase the returns on his pension for his future retirement. He says he wasn't told about the risks involved and didn't appreciate the significant of the unauthorised businesses he was dealing with.

Mr B wasn't offered a cash or other incentive to transfer, nor was accessing his benefits before age 55 something that was promoted to him. Mr B says he did not receive a copy of the Scorpion leaflet from Royal London and doesn't recall receiving any other correspondence from them whether by post or email.

I think Mr B's recollections are supported by the other evidence about the transfer that is available. For instance, I haven't seen anything to suggest that he was offered or received a payment or other incentive to transfer or that he's received funds from the pension. I also can't see any evidence of Royal London contacting him during the transfer process. And as a result, I think the reason Mr B transferred appears to have been the prospect of the higher investment returns he was told he'd receive.

Mr B signed a letter as part of the application, saying that he was aware of the risks of pension liberation and he'd decided he wanted to proceed with the transfer for the investment opportunities this provided. The letter also said he wasn't planning to access his pension before age 55. I said above that I haven't seen the letter in question, although from experience I'm familiar with its typical content and format. Nevertheless, Mr B referred to it in another letter, which appears to have been submitted at the same time as the transfer paperwork instructing Royal London to complete the transfer quickly otherwise he'd raise a complaint. And while this letter appears to have been pre-prepared for him to complete, it nevertheless reiterated that he'd expressed he was aware of what pension liberation is, and that crucially he wasn't planning to access his pension early.

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

The Scorpion insert:

For the reasons given above, my view is that personal pension providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information. But I can't see any evidence that Royal London sent Mr B the Scorpion insert or the information it contained in another format. Instead, Royal London appears to have relied on what CGL said when it submitted the transfer paperwork, that it had shared the Scorpion leaflet with Mr B. But given it was an unregulated business that stood to gain from the transfer, I don't think it should have generally relied on passing this important information on to Mr B.

Having said that, Mr B signed a letter explaining why he wanted to go ahead with the transfer, part of which declared that he understood the risks of liberation and he was not seeking to release pension funds before age 55. Therefore, in this case, even though Royal London should have sent the Scorpion insert, I don't think that it would have made a material difference if it had. This is because the evidence suggests that Mr B was, more likely than not, already aware of the very risks that the Scorpion insert was intended to warn him of. And as those risks were focussed on the threat posed by liberation – and the consequences of taking cash from a pension before the age of 55 in particular – I don't think it would have dissuaded Mr B from transferring given he was transferring for different reasons.

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 of pension liberation. I would just note though that the action pack for businesses published by the 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.

It isn't clear what, if any, further due diligence Royal London undertook here. But I think that the information it had received from CGL would've reasonably reassured it that Mr B was not at risk of a pension liberation scam. It had documentary evidence that suggested Mr B was aware of pension liberation fraud and was not about to become a victim of it in the form of the letter that he signed. From experience, I think it's likely the letter was pre-prepared much like the other letter he wrote referring to it. But I don't think Royal London would reasonably have considered the nature of the paperwork indicated a scam was in progress. And I see no persuasive reason why it shouldn't have taken Mr B's signed declarations at face value.

So, I think it was fair and reasonable for Royal London to accept the information and consider the threat of pension liberation – which was the focus of the Scorpion guidance at that time – to have been discounted. And I think it was reasonable for Royal London, in the specific circumstances of this transaction, to go ahead and proceed with the transfer.

Responses to my provisional decision

Royal London said it had nothing further to add.

Mr B's representative said he disagreed with my provisional decision. In summary, they said the following:

- They disagreed with me that the July 2014 Scorpion guidance update broadened the types of situations pension providers were asked to look out for. They said Royal London should have been looking out for warning signs of a wide range of scams from when the guidance was first published, not just signs of early release pension liberation scams.

- My decision was inconsistent with Royal London's practice at the time and the way it was applying the guidance. They referred to and sent a copy of the published findings about a different consumer's transfer it handled, which Mr B's representative says has relevance here because his transfer was request was received at exactly the same time as that one.

- My findings were inconsistent with TPR's guidance and runs contrary to an almost identical case decided by the Financial Ombudsman Service on another complaint.

- They referred to and enclosed internal email evidence that Royal London had identified concerns associated with CGL transfers as far back as 2013. The emails refer to 'significant consumer detriment' and question whether an Action Fraud referral was appropriate in light of its concerns. Because Royal London did not communicate those concerns to Mr B, they ask why this is not a breach of PRIN and COBS 2.1.1R.

- My causation test was wrong – I should've considered what Mr B would've done if Royal London had provided him with more bespoke communication and explained to him the presence of scam warnings signs associated with his transfer.

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.

Having done so, I've decided to not uphold this complaint for the same reasons I gave in my provisional decision. I've addressed below, where I've felt it is necessary to do so, some of the points Mr B's representative has made in response to my provisional decision.

The crux of the points Mr B's representative has raised is that I've interpreted TPR's guidance about what ceding schemes should have been on the lookout for at the time incorrectly – they believe the definition of pension liberation I have applied is too narrow. They don't accept the July 2014 guidance update broadened things to include pension scams more widely – rather they believe Royal London should always have been on the lookout for more than just early access to pensions.

When the Scorpion guidance was initially published in February 2013, the campaign referred to pension liberation fraud. And TPR talked about this being a transfer to a fund that allowed members to gain access to pension funds not by way of a regular payment at retirement, which could be considered an unauthorised payment. That doesn't mean unauthorised payments were just confined to a scenario where someone was offered a loan or cash incentive to transfer before age 55. But these scenarios were the focus of the literature at the time. The messaging changed in 2014.

By way of example, the front page of the 2013 Scorpion insert has the following message: "Companies are singling out savers like you and claiming that they can help you cash in your pension early. If you agree to this you could face a tax bill of more than half your pension savings."

So, it singled out early access to a pension, and cash incentives and enticements to do this as the area of concern. Whereas the front page of the 2014 Scorpion insert says: "A lifetime's savings lost in a moment…Pension Scams. Don't get stung."

The 2013 Scorpion insert goes on to say: "Pension loans or cash incentives are being used alongside misleading information to entice savers as the number of pension scams increases. This activity is known as ‘pension liberation fraud’ and it’s on the increase in the UK. In rare cases – such as terminal illness – it is possible to access funds before age 55 from your current pension scheme. But for the majority, promises of early cash will be bogus and are likely to result in serious tax consequences.” Again, the emphasis is on the promise of ‘early cash’ and ‘early access’ to pension benefits before the pension scheme age and the associated tax consequences that could follow. The 2014 Scorpion insert also warns about taking cash from a pension before the age of 55 but without a mention or emphasis on tax consequences. And it also warns about the dangers of “one-off investment opportunities” and the potential to lose an entire pension pot.

The 2013 Scorpion action pack for businesses was titled ‘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, the repercussions of which were tax charges and the loss of some pension monies to high administration fees. The warning signs that were highlighted followed suit: “accessing a pension before age 55”, “legal loopholes”, “cash bonus”, “targeting poor credit histories”, “loans to members”. Once again therefore the focus, and what TPR was emphasising that pension liberation was, was around enticements promising access to pensions before age 55. In contrast, the 2014 action pack included a case study about someone transferring in order to benefit from a “unique investment opportunity” which subsequently failed causing the consumer to lose his entire pension.

I think this shows that at the time of Mr B’s transfer, transferring schemes were being directed to the threat posed by people wanting to take cash from their pensions in an unauthorised manner, which was seen as being most likely when someone was under the age of 55. The potential for people to lose money, and suffer tax charges, from suspect investments was commented upon, but only in so far as it was seen as being part and parcel of someone taking an unauthorised payment from their pension, rather than being something to look for in isolation. That particular concern came more into focus later on.

So, I’m satisfied that it was reasonable for Royal London to have relied on the emphasis and focus of the February 2013 guidance, which was applicable at the time of Mr B’s transfer, when considering his request and deciding whether further due diligence was required. It’s important to stress, indeed Mr B’s representative accepts, that Royal London had to take a proportionate approach and balance any caution and due diligence with the fact that consumers, like Mr B, were entitled to request a transfer. I don’t think, for example that delaying all transfer requests in order to carry out extensive due diligence in every case can reasonably be said to be proportionate.

I think it was fair that Royal London considered Mr B’s request and made a judgement call based on the information available to it at the time. And as I’ve explained, I think it was reasonable, based on the information given to it, for Royal London to have considered that the risk of pension liberation in Mr B’s case was low.

I think in the particular circumstances of this case, including having had sight of the letter Mr B signed, it was fair and reasonable for Royal London, in the context of taking a proportionate response, to decide here that it didn’t have good reason to delay Mr B’s transfer and ask additional questions.

Mr B’s representative has pointed to what they believe was an inconsistent approach between Royal London’s handling of Mr B’s transfer and how it handled another consumer’s transfer at the same time applying the same guidance, some of the details of which entered into the public domain following judgements by the Pensions Ombudsman and the High Court. Mr B’s representative highlights that in this case Royal London unearthed a number of warning signs in that case, which prompted it to block the transfer. The argument is that

Royal London's approach in the other transfer was the correct one. And while they're not suggesting Royal London should've stopped Mr B's transfer, they say it should've carried out some due diligence checks followed by a carefully worded letter informing him that a due diligence check had been carried out and that a number of warning signs had been identified.

I've reached my decision based on the specific circumstances of Mr B's individual complaint. In my view no two complaints are exactly the same. So, while on the face of it they might look similar, Mr B's circumstances are different to those in complaints and transfer requests made by other consumers even if they were carried out at the same time.

I'd expect a transferring scheme, like Royal London in this case, to assess each transfer request on its own individual facts. And while that might result in different outcomes based on what look to be similar circumstances, it doesn't necessarily follow that Royal London has acted unfairly or fallen short of what was reasonably expected of it at the time. Given the specific facts and circumstances of Mr B's transfer, I'm satisfied – for the reasons I've already given – that Royal London did not need to undertake the detailed due diligence Mr B's representative has suggested. This is because as I've also already said, I think in Mr B's case it could reasonably have discounted the threat of the thing it had been told to lookout for – i.e. pension liberation.

Mr B's representative has provided internal email evidence, which shows that Royal London had concerns about CGL transfers and was worried about significant consumer detriment with the investments being made, as far back as 2013 yet they say it did not communicate those concerns to Mr B. They say Royal London should've shared its concerns with Mr B, which wouldn't have been difficult to do. And they've asked why its failure to do so is not a breach of the regulator's rules and Principles.

I've read and carefully considered the evidence Mr B's representative has provided. Having done so, I can see Royal London did have concerns about the schemes CGL was setting up and the investments being made within them. But the email evidence also shows that it debated the issues internally, spoke with CGL and liaised with HMRC to determine the best way forward. In my view this demonstrates that Royal London did carry out due diligence. And in the transfer request referred to in the email evidence, Royal London ultimately decided that having carried out that due diligence, because the guidance was aimed at pension liberation fraud, and the suitability of the investments wasn't its responsibility, it had no reason to refuse the transfer.

Royal London was right that the suitability of the investments being made as part of the transfer was not its responsibility. It was not in a position to express any kind of value judgement on the investments being made, or indeed the transfer itself, because it ran the risk of straying into the territory of giving advice – something it could not do. And while the email evidence suggests that its thoughts on the investment were considered, they were ultimately suspicions. I don't think in the circumstances Royal London was reasonably in a position to share its suspicions with Mr B of what might happen – in my view, this would again likely stray into advice and in any event would be fraught with risk.

Royal London should have given warnings in a situation where a consumer, like Mr B, was likely in danger of being scammed. But, Royal London had liaised with HMRC over its concerns with CGL and their fraud team had given reassurance that nothing was untoward. I don't think it was unreasonable for Royal London to have taken on-board the fact that HMRC had given the all-clear. Furthermore, and crucially in my view, the emphasis and focus of the February 2013 Scorpion guidance, which was applicable at the time in question, and the thing the various regulators told businesses like Royal London to lookout for, was pension liberation fraud. It was not until later on and the updated guidance of July 2014 that things changed and businesses were told to lookout for more than just liberation.

So, in light of this and in the specific circumstances of Mr B's case, because I think Royal London could reasonably have discounted the threat of pension liberation taking place and there was nothing else to have given it cause for concern, I don't think it acted unreasonably in handling Mr B's transfer. For the reasons above, I don't think Royal London needed to share its concerns with Mr B or undertake the detailed due diligence in this case, as his representative has suggested. I don't think Royal London acted unfairly or unreasonably here or that it failed to meet its obligations under PRIN and COBS 2.1.1R as Mr B's representative argues.

My final decision

For the reasons above, I've decided to not uphold this complaint so I make no award in Mr Bs' favour.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 25 November 2024.
Paul Featherstone
Ombudsman