

The complaint

Mr C has complained, via his representatives, about a transfer of his Royal London Mutual Insurance Society Limited ('Royal London') personal pensions to a small self-administered scheme ('SSAS') in July 2014. Mr C's SSAS was subsequently used to invest in an overseas commercial property development in Cape Verde. The investment now appears to have little value. Mr C says he has lost out financially as a result.

Mr C 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 C says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Royal London had acted as it should have done.

What happened

On 14 April 2014, Royal London received a letter of authority, signed by Mr C, allowing Consumer Money Matters Limited ('CMML') to obtain details and transfer documents in relation to his pensions. On 28 April 2014, Royal London sent that information to CMML. CMML wasn't authorised by the Financial Conduct Authority ('FCA').

Mr C says his interest in the transfer followed an unsolicited approach. He says he was attracted to transferring by the returns offered by an investment in an overseas commercial property provided by The Resort Group PLC ('TRG').

In May 2014, a company was incorporated with Mr C as director. I'll refer to this company as 'Business P'. On 3 June 2014, Mr C signed documents to open a SSAS with Cantwell Grove Limited ('Cantwell Grove'). Business P was recorded as the SSAS's principal employer.

On 20 June 2014, Mr C's transfer papers were sent to Royal London by Cantwell Grove. Included in the transfer papers were: a letter from HM Revenue & Customs ('HMRC') confirming that the SSAS had been registered on 13 June 2014; a letter from Cantwell Grove stating it had explained what pension liberation is to Mr C and provided him with the 'Scorpion' leaflet; and, a 'Key Scheme Details' document from Cantwell Grove that stated, amongst other things, that the proposed investments to be made in the SSAS included a commercial property provided by TRG and that advice was being taken from Sequence Financial Management Limited ('Sequence').

Also included was a letter addressed to Royal London that was signed by Mr C. The letter confirmed that he was aware of the issues relating to pensions liberation, he wanted to transfer to take advantage of investment opportunities, and he wasn't attempting to liberate his pensions.

Royal London transferred Mr C's pensions on 10 July 2014. His total transfer value was around £55,800. He was 44 years old at the time of the transfer.

Mr C went on to invest £37,200 from his SSAS in a fractional share of a unit at the Dunas Beach Resort in Cape Verde. The SSAS received income payments in connection with the investment over the years until March 2019 when those payments stopped. As I understand it, the investment did not perform as expected and it now has little to no value. There are legal difficulties with the title to the property and there's no market for the investment, so it has no realisable value.

In June 2023, Mr C's representatives set out his complaint 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 was newly registered, the catalyst for the transfer was an unsolicited approach, he had been advised by an unregulated business, and the proposed investment was high risk and illiquid.

Royal London didn't uphold the complaint. It said Mr C had a legal right to transfer and it acted in good faith based on the information it had at the time, which was that Mr C had been made aware of potential risks and wasn't liberating his pension, and there was a regulated financial adviser involved in the transfer.

Our Investigator thought the complaint should not be upheld. Mr C did not agree, so the matter was passed to me to decide.

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.

When considering what is fair and reasonable, I am required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The relevant rules and guidance

Personal pension providers are regulated by the FCA. Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority ('FSA'). As such Royal London was subject to the FSA/FCA Handbook, and under that to the Principles for Businesses ('PRIN') and to the Conduct of Business Sourcebook ('COBS'). There have never been any specific FSA/FCA rules governing pension transfer requests, but the following have particular relevance here:

- Principle 2 – A firm must conduct its business with due skill, care and diligence;
- Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;
- Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and
- COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme if certain conditions are satisfied (and indeed they may also have a right to transfer under the terms of the contract). This right came to be exploited, with people encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren't entitled to – for instance, because they were below minimum retirement age. At various points, regulators issued bulletins warning of the dangers of taking such action. But it was only from 14 February 2013 that transferring schemes had guidance to follow that was aimed at tackling pension liberation – the 'Scorpion' guidance.

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

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

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

The FSA's endorsement of the Scorpion guidance was relatively informal: it didn't take the form of Handbook Guidance, because it was not issued under s.139A of the Financial Services and Markets Act 2000, 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.

What did personal pension providers need to do?

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. And where the recommendations in the guidance applied, absent a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers to at least 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.

The circumstances surrounding the transfer – what does the evidence suggest happened?

Mr C explained in his complaint that he came into contact with CMML following an unsolicited approach, and they advised him to transfer his pensions and invest in Dunas Beach Resort. He expected returns from the investment that, in hindsight, were unrealistic. He also recalled coming into contact with another firm, Broadwood Assets Limited ('Broadwood'), but he hasn't recalled anything about his interactions with them.

The information Royal London received in connection with the transfer presented a similar picture. It responded to CMML's request for information about Mr C's pensions before receiving the transfer request from Cantwell Grove. The letter signed by Mr C enclosed with the request stated he wanted to transfer to take advantage of investment opportunities, he was aware of pension liberation and that he wasn't transferring to liberate his pensions. And the 'Key Scheme Details' document confirmed one of the investments under consideration was a commercial property investment provided by TRG. That document also said appropriate advice was being taken from Sequence as per the requirement under s. 36 of the Pensions Act 1995.

I accept events leading to the transfer began with an unsolicited approach from CMML in the absence of any other evidence of how they became involved. I haven't been provided with supporting evidence of the involvement of Broadwood or Sequence in the transfer. I'm aware from other cases referred to the Financial Ombudsman Service that are similar to Mr C's, that Broadwood commonly provided advice to SSAS trustees on the suitability of TRG investments in accordance with the requirement under s.36 Pensions Act 1995. That advice is not regulated, nor does it extend to the suitability of the investment for the member of the SSAS, or the suitability of a transfer to a SSAS. I think it's likely Broadwood provided this advice in Mr C's transfer, and that Sequence played no role in the transfer.

The letter signed by Mr C to Royal London appears to have been pre-prepared. But for the details that were personal to Mr C and his transfers that were written by hand, the rest of the letter was typed. Notwithstanding, all the evidence is that Mr C wasn't transferring to liberate his pensions. The SSAS account statements provided to me do not show any payments were made to him. And he explained in his complaint that it was the returns offered by the investment that led him to transfer. So, I consider Mr C was motivated to transfer by the prospect of a better investment return on his pensions.

Cantwell Grove's letter to Royal London stated they had explained pension liberation to him and provided him with the Scorpion leaflet. Mr C has disputed he was aware of pension liberation as the letter he signed said. In response to our Investigator's view on his complaint, his representatives said it must've been included *"with large stack of paperwork he was told to sign...He was confused and overwhelmed at the time due to the promises and assurances made regarding the transfer...he was just told them were permission forms to ensure the transfer occurred (sic)."*

While I'm prepared to accept the possibility of that, I'm also mindful that the events concerned took place more than a decade ago and recollections can fade over time. The letter Mr C signed was only a page in length and I think it's unlikely he would have signed it if he considered it to be untrue. And as I explained above, I've found it gave a true account of his reasons for transferring. It's therefore my view that Mr C signed that letter to confirm he had been made aware of the risks of pension liberation in some way. And that in turn corroborates what Cantwell Grove said in its letter to Royal London.

What did Royal London do and was it enough?

The Scorpion insert:

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

Royal London says it cannot evidence that it sent Mr C the Scorpion leaflet, and it effectively relied on Cantwell Grove's letter which said they had provided the leaflet to him, and the letter Mr C signed which said he was aware of pension liberation. As I explained above, my view is that Mr C was made aware of the risks of pension liberation. So whilst Royal London failed to send the Scorpion insert to Mr C, I consider the impact of its failing was mitigated.

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.

Other than reviewing the information it was sent by Cantwell Grove, Royal London didn't undertake any further due diligence on Mr C's transfer. Given the information Royal London had at the time, one feature of Mr C's transfer would have been seen as potential warning sign of liberation activity as identified by the Scorpion action pack: Mr C's SSAS was recently registered.

However, Royal London also had the letter signed by Mr C that confirmed he understood pension liberation and was not intending to access his benefits early. And the letter from Cantwell Grove stating it had explained pension liberation to Mr C and provided him with the Scorpion leaflet. In the context of "*looking out for pension liberation fraud*" (which was the heading under which the above warning signs were listed), these letters provided Royal London with significant reassurance about the risk of pension liberation fraud in the transfer. And in my view, that reassurance reasonably outweighed the warning signs I mentioned above.

Mr C argues that some of the circumstances behind the transfer were unusual enough in themselves that Royal London should have done more to warn him about what he was intending to do, even if the liberation threat would have appeared minimal. Specifically, Mr C argues that Royal London should have warned about the unusual nature of the receiving scheme (established not long before the transfer), the lack of a real employment link to the sponsoring employer and the nature of Mr C's intended investments (non-standard and high risk).

But I think those arguments misread what should, reasonably, have been expected of transferring schemes at that time. Investigations into the receiving scheme, sponsoring employer and intended investments were a means to an end: to establish the risk of liberation. But if that threat could reasonably be discounted – as was the case here - then I think it reasonable for ceding schemes to consider the scam threat as being minimal and process the transfer as normal without the need for the detailed due diligence Mr C has argued for. So I don't think Royal London would have considered some of the factors Mr C has pointed to. And, as I say, given what it did know, it could reasonably have taken the view that the thing it had been directed to guard against – pension liberation – wasn't a likely threat.

Conclusion

Royal London failed to provide Mr C with the Scorpion insert and there were warning signs of a risk of pension liberation fraud in his transfer. But the information Royal London had about the transfer reasonably led it to conclude Mr C had been provided with information about pension liberation fraud and the risk of that in his transfer was minimal.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 7 March 2025.

Asa Burnett
Ombudsman