DRN-5180429

Financial Ombudsman Service

The complaint

Mr G has complained about a transfer of his personal pension with The Royal London Mutual Insurance Society Limited to The Incartus Investments Pension Scheme 2 ("The Scheme") which was a multi-member occupational pension scheme in July 2016. Mr G says he has lost out financially as a result.

Mr G 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 G 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 G had a personal pension with the Co-Operative Insurance Society Ltd. These pensions were later taken over by Royal London in 2013, who are the respondent business for this complaint.

On 18 May 2015 Mr G's transfer papers were sent to Royal London. These were sent in by The Scheme administrators – AFM Administrators ("AFM"). There followed correspondence between Royal London and AFM in order to provide further necessary information for the transfer, including transfer discharge forms.

Royal London wrote directly to Mr G on 24 August 2015. This letter explained to Mr G that it needed to conduct checks and referred him to a booklet produced by The Pensions Regulator (TPR) which it said was enclosed. This letter strongly recommended that Mr G consult a financial adviser that was registered with the Financial Conduct Authority (FCA). It additionally sent its '*Transfer out information request and declaration'* that it required before it would process the transfer.

On 28 September 2015 AFM wrote to Royal London providing further transfer forms, which included evidence that The Scheme was registered with HMRC on 6 June 2014 and the *Transfer out information request and declaration* that Royal London has sent directly to Mr G. Mr G signed the declaration on 25 September 2015 and I summarise his answers to the questionnaire as follows:

- Were you given advice about the transfer – "*No*"
- Have you been offered a loan, cash back or other incentive – "*No*"
- Have you been advised you can access funds before age 55 – "*No*"
- Have you been told your transfer proceeds will be invested overseas – "*No*"
- Have you been promised a specific/guaranteed rate of return – "*No*"
- Are you being put under pressure to carry out a transfer quickly – "*No*"
- Are you aware of costs and fees involved, and in the ongoing investment – "*Yes*"
- Did the receiving scheme make the first contact (i.e. cold call) – "*No cold call*"
- Why are you looking to transfer – "*consolidation of various pensions*"

On 17 October 2015 Royal London wrote directly to Mr G regarding his transfer request. It explained that it needed to determine whether he had a statutory right to transfer. And it asked for evidence that he was employed by the sponsoring employer – AFM Administrators.

On 4 November 2015 Bluefin Trustees (the trustees for The Scheme) wrote to Royal London regarding Mr G's transfer request. It explained that the trustees had reviewed the correspondence Royal London had sent Mr G on 17 October 2015. It explained that The Scheme was an occupational pension scheme and explained the legitimacy of the transfer request Mr G had made. And provided advice it had received from legal counsel on that matter.

On 19 January 2016 Bluefin Trustees wrote to Royal London again explaining why Mr G had a statutory right to transfer his pension and that Royal London should proceed.

On 24 February 2016 Bluefin Trustees wrote to Royal London providing a copy of the High Court ruling in the case of *Hughes v Royal London* using this to further evidence its position that Mr G had a legitimate statutory right to make the transfer that had been requested.

Mr G's pension was transferred on 16 July 2016. His transfer value was around £2,383.

In 2017 The Pensions Regulator (TPR) replaced Bluefin Trustees with independent trustees as a result of concerns over the management of member's funds. The independent trustees continue to attempt to recover member's funds.

In January 2022, Mr G complained to Royal London. Briefly, his argument is that Royal London ought to have conducted due diligence and asked Royal London to demonstrate that it had. It pointed out the obligations that Royal London had and implied these may not have been met.

Royal London didn't uphold the complaint. It said that it had conducted enhanced due diligence in response to Mr G's transfer request. It referred to its letter to Mr G on 24 August 2015 which provided the Scorpion booklet (referred to below) as well as a questionnaire asking for more detailed information. Both highlighted the risks of transferring. It said Mr G had a legal right to transfer and that none of the information it obtained about the transfer at the time gave it cause for concern. It was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

Our investigator was unable to resolve the dispute informally, 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.

<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 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 how personal pension providers deal with 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.

In February 2013, The Pensions Regulator (TPR) issued its Scorpion guidance to help tackle the increasing problem of pension liberation, the process by which unauthorised payments are made from a pension (such as accessing a pension below minimum retirement age). In brief, the guidance provided a due diligence framework for ceding schemes dealing with pension transfer requests and some consumer-facing warning materials designed to allow members decide for themselves the risks they were running when considering a transfer.

The Scorpion guidance 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 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. So the content of the Scorpion guidance was essentially informational and advisory in nature. Deviating from it doesn't therefore mean a firm has necessarily 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 right to transfer.

That said, the launch of the Scorpion guidance in 2013 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.

The Scorpion guidance was updated in July 2014. It widened the focus from pension liberation specifically, to pension scams more generally – which included situations where someone transferred in order to benefit from "too good to be true" investment opportunities such as overseas property developments. An example of this was given in one of the action pack's case studies.

In a similar vein, in April 2014 the FCA had also started to voice concerns about the different types of pension arrangements that were being used to facilitate pensions scams. In an announcement to consumers entitled "Protect Your Pension Pot" the increase in the use of SIPPs and SSASs in pensions scams was highlighted, as was an increase in the use of unregulated and/or illiquid investments. The FCA further published its own factsheet for consumers in late August 2014. It highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.

There was a further update to the Scorpion guidance in March 2015, which is relevant for this complaint. This guidance referenced the potential dangers posed by "pension freedoms" (which was about to give people greater flexibility in relation to taking pension benefits) and explained that pension scams were evolving. In particular, it highlighted that single member occupational schemes were being used by scammers. At the same time, a broader piece of guidance was initiated by an industry working group covering both TPR and FCA regulated firms: the Pension Scams Industry Group (PSIG) Code of Good Practice. The intention of the PSIG Code was to help firms achieve the aims of the Scorpion campaign in a streamlined way which balanced the need to process transfers promptly with the need to identify those customers at material risk of scams.

The March 2015 Scorpion guidance

The March 2015 update to the Scorpion guidance asked schemes to ensure they provided their members with "regular, clear" information on how to spot a scam. It recommended giving members that information in annual pension statements and whenever they requested a transfer pack. It said to include the pensions scam "leaflet" in member communications.

In the absence of more explicit direction, I take the view that the member-facing Scorpion warning materials were to be used in much the same way as previously, which is for the shorter insert (which had been refreshed in March 2015) to be sent when someone requested a transfer pack and the longer version (which had also been refreshed) made available when members sought further information on the subject.

When a transfer request was made, transferring schemes were also asked to use a three-part checklist to find out more about a receiving scheme and why their member was looking to transfer.

The PSIG Code of Good Practice

The PSIG Code was voluntary. But, in its own words, it set a standard for dealing with transfer requests from UK registered pension schemes. It was "welcomed" by the FCA and the Association of British Insurers (amongst others). And several FCA regulated pension providers were part of the PSIG and co-authored the Code. So much of the observations I've made about the status of the Scorpion guidance would, by extension, apply to the PSIG Code. In other words, personal pension providers didn't necessarily have to follow it in its entirety in every transfer request and failure to do so wouldn't necessarily be a breach of the regulator's Principles or COBS. Nevertheless, the Code sets an additional benchmark of good industry practice in addition to the Scorpion guidance.

In brief, the PSIG Code asked schemes to send the Scorpion "materials" in transfer packs and statements, and make them available on websites where applicable. The PSIG Code goes on to say those materials should be sent to scheme members directly, rather than just to their advisers.

Like the Scorpion guidance, the PSIG Code also outlined a due diligence process for ceding schemes to follow. However, whilst there is considerable overlap between the Scorpion guidance and the PSIG Code, there are several differences worth highlighting here, such as:

- The PSIG Code includes an observation that: "*A strong first signal of [a scam] would be a letter of authority requesting a company not authorised by FCA to obtain the required pension information; e.g. a transfer value, etc*." This is a departure from the Scorpion guidance (including the 2015 guidance) which was silent on whether anything could be read into the entity seeking information on a person's pension.

- The Code makes explicit reference to the need for scheme administrators to keep up to date with the latest pension scams and to use that knowledge to inform due diligence processes. Attention is drawn to FCA alerts in this area. (I noted the contents of some of those alerts earlier in my decision.)

- Under the PSIG Code, an 'initial analysis' stage allows transferring schemes to fast-track a transfer request without the need for further detailed due diligence, providing certain conditions are met. No such triage process exists in the 2015 Scorpion guidance – following the three-part due diligence checklist was expected whenever a transfer was requested.

- The PSIG Code splits its later due diligence process by receiving scheme type: larger occupational pension schemes, SIPPs, SSASs and QROPS. The 2015 Scorpion guidance doesn't distinguish between receiving scheme in this way – there's just the one due diligence checklist which is largely (apart from a few questions) the same whatever the destination scheme.

TPR began referring to the Code as soon as it was published, in the March 2015 version of the Scorpion action pack. Likewise, the PSIG Code referenced the Scorpion guidance and indicated staff dealing with scheme members needed to be aware of the Scorpion materials.

Therefore, in order to act in the consumer's best interest and to play an active part in trying to protect customers from scams, I think it's fair and reasonable to expect ceding schemes to have paid due regard to both the Scorpion guidance and the PSIG Code when processing transfer requests. Where one differed from the other, they needed to consider carefully how to assess a transfer request taking into account the interests of the transferring member. Typically, I'd consider the Code to have been a reasonable starting point for most ceding schemes because it provided more detailed guidance on how to go about further due diligence, including steps to potentially fast-track some transfers which – where appropriate – would be in the interest of both parties.

The considerations of regulated firms didn't start and end with the Scorpion guidance and the PSIG Code. 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 either the Scorpion guidance or the Code – 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 G has explained that he wasn't cold called or approached out of the blue by someone offering him a pension review. Rather, he says that he heard about the scheme through someone he knew. Other than that Mr G can provide little detail about the process. As he was not approached by an introducer but, as is more likely, he made direct contact with the scheme. This is supported by the absence of any evidence of any third party making initial contact with Royal London to request a transfer pack. The first contact in this case appears to come from AFM.

It is also worth noting that, when presented with Royal London's *Transfer out information request and declaration* Mr G declared that he had not received financial advice nor had he been cold called. So I am persuaded that was most likely the case. This questionnaire was sent directly to Mr G, not the administrator. So he had the opportunity to read and consider the questions. I don't think that Mr G would have signed to certify the responses as true if they were not.

Mr G has said he thinks that he was told there would be guaranteed better returns, he cannot be more specific. I am, nonetheless, persuaded that Mr G was motivated by the promise of better investment performance and was not offered any financial incentives to transfer his Royal London pension.

<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.

The PSIG Code re-iterated the point that ceding schemes should include a copy of TPR's latest pension scams awareness material with transfer packs. Although Royal London do not appear to have received a request for a transfer pack prior to AFM's transfer request, it has shown that it still made direct contact with Mr G in response to AFM's request. Which I think was evidence of practice in line with the guidance.

Royal London's correspondence refers to the enclosure of the TPR booklet. This language would indicate the inclusion of the longer Scorpion booklet. I think that this is persuasive evidence that it was sent, which again, I think was evidence of good practice by Royal London.

The up to date Scorpion insert at that time was the March 2015 revision. This set out, in a graphic on page three, how to spot warning signs used by scammers. Mr G clearly did not react to the contents in a way that prevented the transfer. So I have considered the warnings to determine whether it should have made a difference.

The signs it warned Mr G to look out for included:

- Being cold called and offered a free pension review
- Convincing marketing materials promising returns of over 8%
- Paperwork delivered to your door requiring immediate signatures
- Accessing pension before age 55
- Overseas transfer of funds
- Putting money in a single investment

As I set out above, I am not persuaded that the likely circumstances at the time would have indicated that these warnings were significant. Key being that Mr G appears to have come to the decision to transfer of his own accord having discussed it with an associate rather than some form of cold call or specific advice. The length of time it took to process the transfer doesn't indicate Mr G was under any specific pressure to transfer.

In this case, I don't think it's fair or reasonable to say that provision of the Scorpion booklet should have resonated with Mr G's circumstances.

Due diligence:

As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mr G's transfer in that light. But I don't think it would make a difference to the outcome of the complaint if I had considered Royal London's actions using the 2015 Scorpion guidance as a benchmark instead.

I've firstly looked at what due diligence Royal London carried out in this case to consider whether it was sufficient.

Royal London have shown us the questionnaire that was sent directly to Mr G in this case. I think this was a reasonable approach. The guidance meant that investigating the circumstances would likely require direct contact with Mr G. But it was up to Royal London how it did that. Providing it obtained the correct kind of information and then assessed it and responded to it accordingly.

The questions it asked of Mr G in its *Transfer out information request and declaration* very closely followed the types of questions that the relevant guidance expected. So I think that this was a reasonable approach to take.

I have indicated above the information that Royal London received back from Mr G. I note here that Mr G has said that it had been pre-populated for him to sign. That may be the case, but the fact it was sent to him, rather than to AFM persuades me that he was not denied the opportunity to read and consider the responses in it. And he signed it as being accurate. On the whole, I think Royal London were entitled to accept the answers it was given here.

Royal London were therefore in a position where the information it had eliminated many of the risk warnings that were highlighted in the relevant guidance. It had effectively eliminated:

- The risk that Mr G was likely to receive any cash payment as a result of transferring
- Being cold called
- Being advised by an unregulated party to transfer
- Being rushed to make the transfer
- The risk of overseas investments
- The receiving scheme being newly registered

Overall, I am not persuaded that this information gave Royal London specific reason to consider that Mr G's transfer should be blocked or that further specific warnings needed to be provided.

This was evidently not the full extent of Royal London's enquiries. It identified that AFM were also the sponsoring employer for The Scheme. Royal London however explored this by asking Mr G to provide evidence of his employment link with AFM. I think this was also a reasonable line of enquiry and is further evidence that Royal London were carrying out due diligence that was quite close to the guidance in place.

At this stage Mr G could have responded to Royal London to explain that he had no direct employment link with the sponsoring employer. Instead the letter that Mr G received was forwarded to AFM. And there followed lengthy arguments to explain why Mr G had a legitimate statutory right to transfer. It included the provision of legal arguments to Royal London as well as evidence of a list of firms that were included, in The Scheme's rules, as 'Scheme Employers'. This was in reference to a part of the rules that defined the Scheme Employer as the Sponsoring Employer (AFM) and any other person declared to be a

Scheme Employer. Included in this list of Scheme Employers was Mr G's employer at the time, and Royal London were provided a pay slip as evidence of Mr G's employment status.

Whilst the position in this case was not clear, it is evidence that Royal London explored the question over Mr G's employment status, and subsequently his statutory right to transfer his pension, in considerable detail.

I am certainly sympathetic to the consequences Mr G suffered as a result of this transfer, but for the reasons I've given, I do not think that was as a consequence of any failure by Royal London here. It sent Mr G the correct warning information at the correct time and made genuine attempts to obtain the information necessary to identify any risk warnings. Overall, I don't think that the information it obtained gave it cause to determine that there was a material risk of a scam in Mr G's transfer. So I don't think it had cause to deny Mr G's transfer or to give him any further specific warnings.

My final decision

For the above reasons I am not upholding Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 27 December 2024.

Gary Lane
Ombudsman