DRN-4803747

The complaint

Mr B has complained about a transfer of his personal pension provided by The Royal London Mutual Insurance Society Limited to an occupational pension scheme in January 2013. Mr B's occupational scheme was subsequently found to be a vehicle for pension liberation, the process by which pensions are accessed in an unauthorised way (before minimum retirement age, for instance). This can leave victims paying punitive tax charges to HMRC and having to deal with the consequences of having their pension invested in an inappropriate way, both of which apply in this case.

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. 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

Royal London has recorded that on 9 November 2012 Mr B rang it and requested the documents to transfer the cash equivalent transfer value of his personal pension. Royal London sent him the required information three days later, with instructions on how to complete the transfer, including that the receiving scheme would need to complete forms.

Mr B signed a form to authorise the transfer of his personal pension funds to the Dominator 2012 pension scheme on 19 November 2012. On 18 December 2012 an administrator for the Dominator scheme, T12 Administration, competed the required forms.

Royal London's since told us that owing to an administrative error it no longer holds all the transfer documents. However, it does still hold the form where T12 provided the Scheme's HMRC Pension Scheme Tax Reference number and Mr B's signed transfer discharge forms. The completed forms showed that the scheme was a registered occupational pension scheme

Mr B said that in 2012 he held discussions with a named adviser who worked for a regulated financial advising firm. He said the adviser recommended he invest his current pension funds in the Dominator pension scheme. Mr B said that his interaction with the adviser was all done orally and he cannot produce any documentary evidence that the regulated adviser gave him advice.

On 21 December Royal London recorded that it had received the forms from the scheme's administrator. On 2 January 2013 Royal London confirmed that it had completed the transfer of £49,597.08 to the Dominator scheme. Mr B was 50 years old at the time.

Mr B's told us that he received a lump sum payment from the pension funds at that time. But he wasn't informed that it was taxable and subsequently HMRC required him to pay 40% tax on the sum. It also charged him a further £500 in penalties.

I understand that the Dominator scheme trustee used the pension funds to invest in Norton Motorcycle Holdings Limited where the trustee was the CEO. The investments failed and Mr B's pension now has little value.

The Pensions Regulator (TPR) became concerned about the actions of the scheme administrator, T12 Administration, in 2013. I'm aware that two of T12's directors received criminal convictions that year and T12 was replaced as the scheme administrator. TPR then began looking at the operation of the Dominator scheme (amongst others). TPR eventually decided that the scheme funds had been invested inappropriately. It took action to remove the previous scheme trustee and replace him with Dalriada Trustees Limited (DTL) in May 2019.

Shortly after DTL wrote to members to a advise of its appointment. It then issued regular updates on its progress. The previous trustee has been successfully criminally prosecuted for his involvement with the scheme. I also understand that DTL is working to try to secure assets for scheme members from various sources. In 2021 it advised scheme members that they may have the right to complain to their previous pension provider, which in Mr B's case is Royal London.

In 2022 Mr B complained to Royal London. Briefly, his argument is that Royal London failed to carry out adequate checks; to engage with him; or warn him of the concerns it should have had if it had adequately assessed the situation. He said that if it had done so it would have identified warning signs with the Dominator scheme.

Royal London didn't uphold Mr B's complaint. It initially said it believed Mr B had brought his complaint outside of the time limits for doing so. It added that Mr B had approached it directly and asked for the transfer forms. He had then authorised it to transfer the funds to the Dominator scheme. It said that at that time there was no guidance in place, which was subsequently introduced, which required it to take additional action. It added that, at that time, the only reason it could have prevented the transfer to an occupational scheme was if Mr B was not working and earning. But he was. So he had a statutory right to transfer. It suggested other routes Mr B could pursue to recover his funds.

Mr B brought his complaint to the Financial Ombudsman Service. One of our Investigator's looked into it. He first said why he believed that Mr B had not brought his complaint too late. In particular our Investigator felt the point at which Mr B first ought to have reasonably been aware that he had cause to complain about Royal London's actions was in 2021. That was when DTL advised that scheme members may be able to complain to their previous pension provider. Mr B had complained within three years of that date so he was not out of time.

The Investigator then explained why he didn't think the complaint should be upheld. Mr B didn't agree with that assessment. As our investigator was unable to resolve the dispute informally, 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.

I will briefly say that I agree with our Investigator that Mr B was within time to bring his complaint to the Financial Ombudsman Service, for the same reasons. And as Royal London hasn't disputed our Investigators' assessment on that point I don't intend to address it in more detail here. So I've gone on to consider the merits of Mr B's complaint.

The relevant rules and guidance

Before I explain my reasoning, it will be useful to set out the environment Royal London was operating in at the time with regards to pension transfer requests, as well as any rules and guidance that were in place. Specifically, it's worth noting the following:

- 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). The possibility that this might be exploited for fraudulent purposes was not new even at the time of this transfer. However, the obligation on the ceding scheme (in this case Royal London) was limited to finding out the type of scheme the transfer was being paid to and that it was a tax-approved scheme.

- On 10 June 2011 the Financial Services Authority (FSA) issued a warning about the dangers of "pension unlocking" which specifically referred to consumers transferring to access cash from their pension before age 55. (As background to this, the normal minimum pension age had increased to 55 in April 2010.) The FSA said that receiving occupational pension schemes were facilitating this. It encouraged consumers to take independent advice. The announcement acknowledges that some advisers promoting these schemes were FSA authorised.

- At around the same time, the TPR published information on its website about pension liberation, designed to raise public awareness and remind scheme operators to be vigilant of transfer requests. The warnings highlighted that websites and cold callers were encouraging people to transfer in order to receive cash or access a loan.

- At the time of Mr B's transfer, Royal London was regulated by the FSA. As such, it was subject to the FSA 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 rules governing pension transfer requests, but the following have particular relevance:

  – 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.

For context, it's also worth noting that on 14 February 2013, TPR launched its "Scorpion" campaign, so called because of the imagery it contained. The aim of the campaign was to raise awareness of pension liberation activity and to provide guidance to scheme administrators on dealing with transfer requests in order to help prevent liberation activity happening. The Scorpion campaign was endorsed by the FSA (and others). The campaign

came after Mr B's transfer, but I highlight it here to illustrate the point that the industry's response to the threat posed by pension liberation was still in its infancy at the time of Mr B's transfer and that it wasn't until *after* his transfer that scheme administrators had specific anti-liberation guidance to follow.

What did Royal London do and was it enough?

With the above in mind, at the time of Mr B's transfer, personal pension providers had to make sure the receiving scheme was validly registered with HMRC. Royal London had the Scheme's HMRC PSTR, although it no longer holds the other transfer paperwork. So it's not clear whether or not it verified with HMRC that the scheme was an occupational pension scheme. But, the scheme administrator had confirmed it was an occupational scheme. And information currently available, for example from DTL and TPR, verifies that information. So we can be satisfied that the scheme was an appropriately registered occupational pension scheme.

There was also a need to remain vigilant for obvious signs of pension liberation or other types of fraud. Even though some of the regulators' warnings about the threat of pension liberation and wider scams were directed at consumers, I think it's reasonable to conclude that the sources of intelligence informing those warnings included the industry itself. Personal pension providers were therefore unlikely to be oblivious to these threats. And, even if they were, a well-run provider with the Principles in mind should have been aware of what was happening in the industry. So, in adhering to the FSA's Principles and rules, I think a personal pension provider should have been mindful of announcements the FSA and TPR had made about pension liberation, even those directed to consumers. It means if a ceding scheme came across anything to suggest the request originated from a cold call or internet promotion offering early access to pension funds – which had both been mentioned by regulators as features of liberation up to that point – that would have been a cause for concern.

I'm satisfied nothing along these lines would have been apparent to Royal London at the time of the transfer. Mr B had requested the transfer documents himself, and his evidence is that it was an adviser from an appropriately authorised firm who made the recommendation to transfer. Although he is unable to produce evidence to support that. So it seems more likely than not that, if asked, he would have told Royal London that a regulated adviser had recommended he transfer. But, in any event, there's no evidence that Royal London asked him why he'd decided to transfer or how he'd chosen the receiving scheme and nor did it have to.

In response to our Investigator's complaint assessment Mr B has said, via his representatives, that the fact that there wasn't any evidence he'd taken regulated advice and was acting under his own 'unadvised instruction' indicated it was likely he was taking part in pension liberation. But I disagree.

I'll explain that firms like Royal London had to be aware of the possibility of pension liberation, but, at that time, there was little in the way of guidance for pension providers like Royal London as to exactly what warning signs they should be looking out for. And an individual moving their personal pension to a validly HMRC registered occupational pension scheme without taking advice was unlikely to raise any red flags for a number of reasons not least because:

- Occupational pension schemes were not regulated by the FSA and so there was no requirement to involve an FSA authorised adviser. So it's not unusual for them to be operated or administered by unregistered firms.

- A common reason for people to transfer pension funds to a multi-member occupational pension scheme was because they had changed jobs and joined their new employer's scheme.

- Many people join occupational schemes on the advice of other professional such as employers, accountants, tax or legal advisers etc and it's unlikely that any of those professionals would be FSA authorised.

Mr B also said that it would be 'highly unusual' for someone like him, a blue collar worker:

"to have specialist financial knowledge to be considered as a sophisticated or high net worth investor and able to make the decision to transfer a [personal pension] *to a QROPS without outside advice/guidance*."

I'll explain that a QROPS is a Qualifying Recognised Overseas Pension Scheme. That is a pension scheme registered and operated abroad which HMRC considers eligible to accept transfers from UK pension schemes. But, Mr B wasn't transferring to a QROPS. He was transferring to a validly registered multi-member occupational pension scheme. That is the standard type of employers' scheme which I believe most PAYE employed workers in the UK usually have the option to join. And there's no requirement to be a high net worth or sophisticated investor to join such a scheme. So I don't think there was anything alarming or unusual about Mr B's transfer request that should have caused Royal London to do further Investigation.

Mr B added that if Royal London had queried the reason he was to receive a lump sum on completion of the transfer then the threat of pension liberation would have been obvious. Mr B was 50 years old at the time of the transfer and the minimum age he could access his pension was 55. So if Royal London had become aware that Mr B would receive a lump sum when transferring then that would have been a very clear warning sign. Mr B told us that the Dominator scheme paid him a lump sum payment, which he wasn't entitled to at that time. As a result HMRC applied a 40% tax charge and £500 in penalties. But, while I'm sympathetic to Mr B's position there's no evidence he brought this lump sum to Royal London's attention at the time of the transfer. The relevant documents certainly don't give any indication that he'd been offered the possibility of early access to pension funds. And, given the guidance in place, there was no expectation for Royal London to ask Mr B how his transfer had come about. So I don't think there were any warning signs that should have caused Royal London to investigate further and to warn Mr B of the dangers of pension liberation.

It's important to recognise that the more extensive list of warning signs issued in 2013 hadn't yet been published, and it wouldn't therefore be reasonable to use hindsight to expect ceding schemes to act with the benefit of that guidance. And it means I don't expect Royal London to have investigated, as a matter of course, the sponsoring employer's trading status, geographical location or connections to unregulated investment companies or the various parties connected to the transfer.

As I've said above the FSA didn't regulate occupational pension schemes, so Royal London wouldn't have expected to find the parties running those schemes or helping to administer them (which may include liaising with a member about a transfer-in) to be authorised by the FSA. And when Royal London received the transfer request, Mr B had authorised it and it came directly from the occupational scheme's administrator, which again did not require FSA authorisation.

I would expect an FSA-regulated personal pension provider at that time to take a

proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer request promptly (and in line with a member's legal rights). Taking all of this into account, and particularly where transfers to occupational schemes were concerned, my view is that it wouldn't have been practicable for a personal pension provider at that time, to have queried the regulatory status of every contact it had from third parties – or presume that there was a risk of harm from a third party involved in an occupational pension transfer purely because it was not FSA authorised.

Conclusion

At the time of Mr B's transfer, Royal London would have been expected to know what type of scheme it was transferring to and that it was correctly registered with HMRC. While it's not clear if Royal London checked that the scheme was registered, we know that if it had it would have learned that the Dominator scheme was a registered occupational pension scheme. Beyond that, there was no requirement or expectation for Royal London to have undertaken more specific, detailed, anti-scam due diligence. The FSA's Principles and COBS 2.1.1R meant Royal London still had to be alive to the threat of pension liberation, and other types of scam, and act accordingly when that threat was apparent. But I'm satisfied there weren't any warning signs that Royal London should, reasonably, have spotted and responded to.

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 B to accept or reject my decision before 18 July 2024.

Joe Scott
Ombudsman