

The complaint

Mr J has complained about the transfer of his personal pension from The Royal London Mutual Insurance Society Limited to a Qualifying Recognised Overseas Pension Scheme ("QROPS") in 2016.

Mr J, who has professional representation in bringing this complaint, says he lost his entire pension as a result of the transfer. He is complaining about Royal London because he says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Royal London had acted in line with its responsibilities when he requested the transfer.

What happened

In early 2016, First Review Pension Services (which appears to be an unregulated 'introducer' of investments to individuals) contacted Royal London requesting information on Mr J's personal pension. Mr J had previously given First Review his authorisation to approach Royal London. He says this followed a "knock on the door" – an unsolicited approach in other words – from First Review.

On 8 February 2016, Mr J signed a letter giving authority to Integrated Capabilities (Malta) Limited and Optimus Pension Administrators Limited ("OPAL") to contact Royal London about the transfer of his personal pension to the Optimus Retirement Benefit Scheme No.1 (the "Optimus Scheme"), a Maltese QROPS. Integrated Capabilities were acting as administrators for the Optimus Scheme, with OPAL providing certain administrative functions on behalf of Integrated Capabilities. OPAL was operating from the Isle of Man. Mr J also said in his authorisation letter that he wanted to transfer "with no further delays".

OPAL wrote to Royal London on 22 February to request the transfer. It attached Royal London's overseas transfer forms, two HMRC forms (CA1890 and APSS263) and provided bank details for the transfer payment. The letter also said the Optimus Scheme information booklet had been attached, along with documents from the Maltese authorities relating to the registration of the scheme. Mr J's 8 February letter may also have been attached, or that letter may have been sent separately – either way, Royal London received the letter because it's in its casefile.

On 1 March Royal London emailed OPAL asking for a completed copy of its QROPS checklist and HMRC QROPS registration letter. OPAL provided these on 11 March 2016.

On 6 April Royal London wrote to Mr J's home address saying it needed to speak with him before it could action his transfer request. A telephone call took place on 12 April. A recording of that call is no longer available although Royal London's customer contact records confirm it did take place.

The following day, Royal London wrote to Mr J "stressing" the potential tax charges and loss of protection from the Financial Services Compensation Scheme (FSCS) that would result from transferring a pension overseas. The letter also summarised what had been discussed during the call, which included Mr J's confirmation that he understood the tax implications and loss of FSCS protection that would result from a transfer. The letter also said Mr J

wanted to transfer in order to invest in overseas property, had been cold called and wasn't intending to move overseas in the near future. Royal London also says it sent Mr J the regulator's pension scam warning leaflet (the "scorpion leaflet" – so called because of the imagery it used) with this letter.

On 26 April, Mr J called Royal London to say he didn't want to proceed with the transfer. On 17 May, he wrote to Royal London to say he did want to go ahead after all. Royal London sent a form for Mr J to sign to confirm he understood tax charges might apply because he was moving his pension overseas whilst remaining resident in the UK. The form also indemnified Royal London from any tax and/or sanction charges that could be levied against it. Mr J signed the form on 27 May and Mr J's pension was transferred shortly afterwards. Mr J was 54 at the time of transfer.

Mr J's representatives say his investment has failed and his pension now has no value.

Mr J, through his representatives, complained to Royal London in 2019. His representatives said, in brief, that Royal London didn't warn Mr J about potential pension scams or send the scorpion leaflet. They said Royal London didn't do enough to ensure the transfer was suitable or do enough to ensure Mr J had taken independent financial advice. They said providers had a duty to check advice had been given when safeguarded benefits of more than £30,000 are transferred – which they said applied in Mr J's case. They said the transfer shouldn't have proceeded because it was inherently risky. And they said Royal London didn't adhere to its regulator's principles.

Royal London didn't think it had done anything wrong. It said the Optimus Scheme was on HMRC's QROPS list. It discussed the transfer with Mr J and confirmed the details of that call with him in a follow-up letter. It said that letter reminded Mr J that he might incur additional tax charges as a result of transferring overseas and that he would lose protection from the FSCS. Royal London said it sent him a copy of the scorpion leaflet. And it said it couldn't refuse Mr J's transfer.

Mr J's complaint was referred to us. Our investigator didn't uphold Mr J's complaint. He thought Royal London had conducted the checks expected of it at the time, had given Mr J sufficient warning about some of the dangers of transferring to a QROPS and sent the scorpion leaflet which warned about the dangers of pension scams.

As agreement couldn't be reached, the complaint has been referred to me for a decision.

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.

First of all, there are number of factual errors in the complaint points raised by Mr J's representatives at various points. For instance, Mr J *didn't* transfer to a SIPP. He *didn't* have safeguarded benefits of over £30,000. Royal London *wasn't* acting as a financial adviser and therefore can't be found to have failed Mr J in not providing financial advice. Similarly, COBS 19.1.6 *isn't* a consideration here.

With this in mind, I won't address every point Mr J's representatives have made. Suffice to say, I have considered everything both parties have said. I will focus my decision on those issues I consider to be relevant to the complaint's outcome.

What was the relevant guidance and rules?

The scorpion guidance

On 14 February 2013, The Pensions Regulator launched anti-pension liberation guidance – pension liberation being the access of pension funds in a manner not authorised for tax purposes or before a person's normal minimum pension age. The guidance was updated in July 2014, March 2015 and March 2016. The updates were broader in scope than just pension liberation, encompassing pension scams in general.

The March 2016 version is the one that's relevant here. Its key components were:

- An 'action pack' for scheme administrators with a list of five actions to help protect members, a checklist to be used when someone asks for a transfer and some suggested next steps when potential scam risks presented themselves. It also referenced the Code of Good Practice, another piece of guidance that I discuss below.
- The "scorpion insert" to issue to members following a transfer request. The insert warns the reader about accessing a pension before the age of 55, cold calls, one-off investment opportunities, being promised returns of over 8%, putting money into a single investment, transferring funds overseas and using couriers to encourage people to sign transfer documents without pause for thought.
- A longer leaflet – the "scorpion leaflet" – covering in more detail the same ground as the scorpion insert. This was intended to be sent in member communications, such as annual pension statements, to help educate members about pension scams.

The scorpion campaign was a cross-government initiative which included the Financial Conduct Authority (the FCA) so it's a relevant consideration for personal pension providers such as Royal London which come under FCA regulation.

"Combating Pension Scams – A Code of Good Practice" (March 2015)

Like the scorpion campaign, the Code of Good Practice ("the Code") is a relevant consideration for personal pension providers because the FCA was one of the organisations that formally "welcomed" the Code. The FCA was also part of the scorpion initiative which highlighted the Code.

The Code's overall approach is similar to the scorpion guidance in so far as it would usually expect a scheme to ask a transferring member questions in order to establish the potential risk of a scam and follow various steps when that risk couldn't be discounted. The Code also expected schemes to use the scorpion materials when sending transfer packs and pension statements. However, the Code is more detailed than the scorpion guidance. For instance, unlike the scorpion guidance, it does reference QROPS and its guidance varies depending on the type of scheme (occupational scheme, SIPP, SSAS or a QROPS) a member wants to transfer to. There's also more guidance for schemes attempting to block a transfer.

FCA Principles

In addition to endorsing the guidance outlined above, the FCA has set out principles for firms to follow, the most relevant here being:

- 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.

I also consider COBS 2.1.1R to be relevant here. It states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

I think it was appropriate for Royal London to have regard for COBS 2.1.1R and the principles when considering Mr J's transfer.

Did Royal London do enough?

Royal London has provided us with copies of the materials it says it sent to Mr J, which includes the scorpion leaflet. I consider it more likely than not that this leaflet was sent to Mr J when it wrote to him on 13 April 2016 following its conversation with him the previous day. I say this because Royal London was showing diligence in conducting this phone call so it would be surprising if its diligence didn't extend as far as completing the less onerous task of enclosing a standard leaflet when it wrote to Mr J. I can also see the scorpion leaflet in Royal London's casefile. This doesn't prove it was sent at the time of course, but I think its presence in the casefile makes it more likely that it was sent. Sending scorpion materials was an expectation of both the scorpion guidance and the Code so, all things considered, I'm satisfied Royal London fulfilled this part of its obligations.

In addition, both the scorpion guidance and the Code expected personal pension providers to conduct further due diligence in order to better understand whether a transfer carried with it the risk of a scam. Whilst those due diligence expectations overlap to a certain extent, they are, ultimately, separate and need to be considered discretely.

But before I do this, it's worth noting that an overseas pension must meet certain requirements in order to receive QROPS status. HMRC maintains a list of schemes meeting those requirements. Mr J's receiving scheme was on that list at the time of the transfer and had been from 2014. It remains on that list to this day. If scam activity had come to light in that eight-year period it would, most likely, have been taken off the list. So, even if Royal London's due diligence wasn't thorough enough, I'm satisfied it wouldn't have found sufficient evidence of there being a scam-risk (or reason to block the transfer) even if its due diligence had been more comprehensive.

This doesn't mean the due diligence process is an irrelevance here. Contacting the member is seen as an important step in both the scorpion guidance and the Code, and the latter is aware of the strong possibility that a member could unilaterally decide to stop a transfer following questions from the transferring scheme. So Royal London had to do more than just establish whether there was a risk of a scam. It had to do this *and* be aware that its contact with the member could, potentially, help that member with their decision making.

Code of Good Practice

Under the Code, certain transfers wouldn't have needed further due diligence – for instance, those coming from an accepted “club” (such as the Public Sector Transfer Club). But because those considerations don't apply here, Royal London had to conduct further diligence into Mr J's transfer.

Royal London would already have had some information about Mr J and his transfer. It would have known his age (54) and country of residence (UK) for instance. It also had

confirmation that the receiving scheme was on HMRC's QROPS list. And the transfer paperwork would have provided further information on the receiving scheme. For instance, the scheme information booklet showed members were prohibited from accessing their pensions before the age of 55.

The Code expected the transferring scheme to answer a number of questions about the transfer and the member's reasons for requesting it:

- *Will you be receiving any cash payment, bonus, commission or loan from the receiving scheme or its administrators, as a result of transferring your benefits?*
- *Did the receiving scheme/adviser or sales agents/representatives for the receiving scheme make the first contact (e.g. a cold call)?*
- *Have you been told that you can access any part of your pension fund under the receiving scheme before age 55, other than on the grounds of ill-health?*
- *Have you been told that you will be able to draw a higher tax free cash sum as a result of transferring?*
- *Have you been promised a specific/guaranteed rate of return?*
- *Have you been informed of an overseas investment opportunity?*

The Code says transferring schemes should contact the transferring member to help answer the questions. Royal London did this, calling Mr J on 12 April 2016. As a result, Royal London also found out that Mr J was:

- transferring in order to invest in overseas property;
- wasn't looking to move overseas;
- had been cold called.

The Code suggested further action if there was a "yes" to any of the questions listed above. Clearly that applied here – Mr J was (at the very least) cold called and had been informed of an overseas investment opportunity.

In terms of further action, one of the Code's suggestions was to write to HMRC to query the status of the receiving scheme. A second option was to use intelligence from law enforcement agencies. It doesn't look like Royal London took these steps. That isn't automatically a cause for concern. The Code didn't want transferring schemes to needlessly tie up resource at agencies like HMRC. And, as discussed above, it's unlikely that research along those lines would have given Royal London grounds for thinking a scam risk was present.

However Royal London did need to take account of the third option put forward by the Code. This was headed "further due diligence" which leads on to a detailed QROPS section. Although the Code suggests the expected level of due diligence will vary on a case-by-case basis, I think it would be remiss of a transferring scheme to ignore the steps outlined in its QROPS section. These included:

- re-checking HMRC's QROPS list on the date of the transfer;

- verifying the transfer is being paid to the scheme on the HMRC list and not a scheme with a near-identical name (a clone scheme);
- establishing whether the QROPS was an occupational or personal pension;
- considering the rationale for moving funds offshore;
- ensuring the transferring member has lodged a completed APSS263 form.

I'm satisfied Mr J's receiving scheme was on the QROPS list at the time of the transfer, payment was made to that scheme and the APSS263 form was provided. Details of the scheme were also provided through the provision of the scheme's information booklet and trust deed. My copies of these documents are difficult to read but I don't consider their contents critical to the outcome of the complaint. Their presence in Royal London's casefile is important, though, in so far as it shows it did have the necessary information with which to assess the transfer and does show the receiving scheme was regulated in its home country. Royal London also knew Mr J's rationale for moving funds offshore – it was to facilitate investment in overseas property.

With all the above in mind, I'm satisfied Royal London met the expectations of the Code.

Scorpion action pack

The March 2016 scorpion action pack says transferring schemes should carry out due diligence on all transfer requests. A checklist of questions is provided to assist with this and, like the Code, contacting the member is an integral part of this process. The checklist of questions is similar to that of the Code, covering areas like scheme registration, whether the member was cold called and what their intended investments were. I'm satisfied there aren't any substantive differences between the scorpion checklist and the Code in relation to the areas the transferring scheme needed to check. So I think Royal London's telephone call with Mr J, combined with the paperwork it received during the transfer process and its checking of the HMRC QROPS list gave Royal London the information it needed.

There are similarities between the Code and the scorpion guidance in relation to what a transferring scheme needed to do when its due diligence process presented possible sources of concern which, reasonably, would have been the case here. For example, like the Code, the scorpion guidance suggests writing to HMRC to confirm the registration status of the receiving scheme. As I said before, it doesn't look like Royal London did this but doing so wouldn't have given Royal London reason to block the transfer.

There are, however, two key differences between the Code and the scorpion guidance in terms of "next steps". The scorpion guidance asks transferring schemes to direct members to Pension Wise and to The Pensions Advisory Service (TPAS) for further help, which the Code doesn't do. And the scorpion guidance also says the following:

"Proactively engage with members at risk...Contact any member who you believe may be at risk to establish whether they understand the implications of their transfer and clarify any points in the checklist tables."

On the first point, I'm satisfied Royal London sent Mr J the scorpion leaflet which did encourage transferring members to contact Pension Wise (if over 50) and TPAS.

On the second point, it's finely balanced as to whether Royal London needed to engage Mr J as suggested. Royal London would have known Mr J's QROPS was on the HMRC list

and it would have had confidence that Mr J wasn't seeking to access his pension before the age of 55 – one of the most common potential scams and an area of focus for the regulator. Against this, Royal London would have known Mr J was moving his pension overseas despite having no intention of moving from the UK. It would have known Mr J was taking that action in order to invest in overseas property – a common vehicle for scam activity. And it would likely have known that he was being guided through the transfer process by unregulated entities. And, of course, the risk of a scam couldn't be discounted, irrespective of how credible the Optimus Scheme might have appeared. I think the FCA principles would also point to the need for Royal London to have engaged with Mr J about his plans given all these potential concerns. So, however I look at things, I come to the same conclusion which is that Royal London should, reasonably, have taken the next steps detailed in the guidance and contacted Mr J to establish whether he understood the implications of his transfer.

I've considered Royal London's telephone call with Mr J on 12 April 2016 and the follow-up letter with this in mind. And I'm satisfied Royal London fulfilled its obligations in this area. It wrote to him to let him know about the potential tax implications of transferring his pension overseas and about losing FSCS protection. And that letter appears to have reflected a telephone conversation the parties had the day before. And, of course, it sent the scorpion leaflet which would have warned Mr J about cold calls, promises of high returns, transferring funds overseas and undiversified investments, as well as more general warnings about pension scams. The scorpion leaflet also includes a recommendation to seek regulated financial advice or advice from Pension Wise and TPAS.

Given all this, I think Royal London did do enough to establish that Mr J understood the implications of his transfer. The fact that Mr J contacted Royal London shortly afterwards to say he *didn't* want to transfer rather proves the point. Whilst I don't know why Mr J changed his mind, I think it's reasonable to say the conversation between the parties on 12 April 2016, Royal London's follow-up letter and the scorpion leaflet did highlight to evident effect some of the key implications of what he was doing.

Mr J's change of mind

Mr J changed his mind again a short time later. Again, I don't know what prompted this. Mr J has told us he doesn't have strong recollections about this. It's possible he was persuaded by the parties acting for the receiving scheme to continue with the transfer. Or maybe he just reflected on his decision and thought his intended investment was too good an opportunity to miss out on. Either way, it's important context in so far as it shows the momentum behind the transfer and the limited extent to which it seems Royal London could have influenced this.

When Mr J changed his mind and requested a transfer, Royal London sent a form for him to sign to confirm he understood tax charges might apply because he was moving his pension overseas whilst remaining resident in the UK. The form also indemnified Royal London from any tax and/or sanction charges that could be levied against it. Mr J signed this form. Again, I think this is further evidence that Royal London did establish Mr J's understanding of the implications of his transfer.

I recognise Mr J's representatives say Royal London should have done more at this point given Mr J had previously decided against the transfer. They say Royal London should have conducted checks into why Mr J changed his mind so as to ensure he wasn't "harassed" into the transfer or received "undue pressure." But given that Mr J doesn't strongly recall what happened, I don't consider this a likely scenario. And, clearly, Mr J knew he didn't have to proceed with the transfer because he had previously told Royal London that he didn't want to continue.

With all the above in mind, I'm not upholding Mr J's complaint.

My final decision

For the reasons given above, I'm not upholding Mr J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 17 March 2022.

Christian Wood
Ombudsman