DRN-3190386

The complaint

Mr D has complained, with the help of a professional third party, about the transfer of his personal pension to a Qualifying Recognised Overseas Pension Scheme (QROPS) in Malta in March 2014. The QROPS was subsequently used to invest with Blackmore Global PCC, a company incorporated in the Isle of Man.

The Royal London Mutual Insurance Society Limited is responsible for the complaint, even though Mr D's personal pension was previously held with a different business, so for ease of reading, I'll largely just refer to Royal London throughout my decision.

Mr D 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 D 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.

Mr D also transferred pension benefits he held with another business, which I'll call Firm L, to the QROPS at around the same time. That transfer is the subject of a separate complaint with our service. But as some of the circumstances are relevant to Mr D's complaint about Royal London, I'll refer to them below.

What happened

On 3 January 2014, Royal London wrote to The Review Business ('TRB') acknowledging its request for information and providing an illustration for Mr D's pension. TRB appears to have been a trading name of EGB Financial Ltd, which was authorised by the regulator, the Financial Conduct Authority ('FCA'). However, TRB was not mentioned in any further correspondence.

On 18 January 2014, Royal London wrote to Aspinal Chase. This letter was similar to that sent to TRB – acknowledging a request for information and providing a pension illustration. A transfer pack was also provided. Aspinal Chase was not authorised or regulated by the FCA.

On 7 February 2014, Mr D signed an application form to join the Harbour Retirement Scheme ('HRS'), the QROPS based in Malta. This form was directed to the administrators of the HRS, Harbour Pensions Limited ('Harbour'), and doesn't appear to have been provided to Royal London at any stage. Harbour was authorised by the Maltese Financial Services Authority to act as a retirement scheme administrator.

On 20 February 2014, Harbour wrote to Royal London enclosing an application to transfer Mr D's pension benefits to the HRS. Amongst the documents provided was an LOA authorising Royal London to correspond with Harbour, identity documents certified by St James International ('SJI'), signed transfer discharge and HMRC forms and confirmation from HMRC that the HRS was entered onto its recognised list in April 2013. The discharge forms were from the transfer pack previously sent to Aspinal Chase.

An application to transfer Mr D's pension held with Firm L was made at a similar time. Firm L accepted the application and transferred the proceeds of the pension Mr D held with it to the HRS on 4 March 2014.

Royal London wrote to HRS on 6 March 2014 enclosing a cheque for £18,610, representing the transfer value of Mr D's Royal London pension, and confirmed that the transfer had been completed. Mr D was 62 at the time.

The funds in Mr D's QROPS were then invested with Blackmore Global. Information given to Mr D said that this fund invested in a broad range of asset classes and provided a medium to long term investment vehicle with a balanced risk approach.

Mr D complained to Royal London in March 2020. Briefly, his representative said Royal London ought to have spotted, and told him about, a number of warning signs in relation to the transfer. These included that he'd been cold called, there were a number of unregulated introducers and advisors involved, Mr D hadn't received regulated advice, the transfer involved investment overseas, this was in an unregulated, high-risk area and Mr D had been told he'd receive unrealistic returns. His representative said they understood Blackmore Global PCC operated an unregulated collective investment scheme. And, although they didn't have access to a current valuation, they believed the investment was now likely illiquid and worthless.

Royal London didn't uphold the complaint. It said it had undertaken appropriate checks at the time, in particular confirming that the receiving scheme was recognised by HMRC. As it had received a genuine request to transfer from Mr D, it didn't think it had done anything wrong.

The complaint was subsequently referred to the Financial Ombudsman Service.

In April 2021, The Isle of Man Financial Services Authority published information about Blackmore Global PCC saying it thought it might be operating outside of the parameters under which it was established, and it was considering its next steps. I understand a winding up order was obtained and liquidators were appointed in August 2022.

The complaint was considered by two separate Investigators, both of whom didn't think it should be upheld. As agreement could not be reached, the complaint has been 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.

Having done so, my view largely echoes that our Investigator explained in December 2024, so their view and my decision are correspondingly similar.

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.

An overseas pension scheme is defined in HMRC regulations as being one which is subject to specified regulatory and taxation restrictions in the country of establishment. To become a QROPS it must also be:

- Recognised, meaning in short that it meets specified tests applied by HMRC, including on minimum retirement age and the application of tax relief.

- Qualifying, meaning it must notify HMRC that it is a recognised overseas pension scheme; provide appropriate evidence of this; undertake to adhere to HMRC's requirements; and not be otherwise excluded by HMRC from being a QROPS.

Overseas schemes that have notified HMRC that they qualify to be a QROPS are included in a published list on HMRC's website.

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, which is either registered with HMRC for tax purposes or is a QROPS. 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. 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.

2. 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.

3. 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.

4. These were additional requirements over and above what a ceding scheme would always have needed to when processing a QROPS transfer. Those requirements included checking whether the QROPS was on HMRC's published list, and ensuring the necessary HMRC forms were completed.

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 D says he was cold called and offered a free pension review. His representatives have said he believes it was Aspinal Chase that did so. He says he was told his pension was frozen and not performing as well as it could. Mr D says he was told a transfer to an alternative pension providing better returns could be arranged. He says a meeting subsequently took place at his house and he was advised to transfer to the QROPS. He says he doesn't recall what investments were discussed and he wasn't told how returns would be generated.

Mr D says he doesn't remember any risks being discussed with him but he thought the adviser he spoke to was trustworthy and he was unaware that Aspinal Chase were not regulated. Mr D says because he trusted the adviser he agreed to proceed and was then introduced to an adviser from SJI, who completed the relevant forms. Mr D doesn't recall receiving any warnings or direct contact from Royal London.

As I noted, Royal London provided pension information to a different business, TRB, before Aspinal Chase. It appears therefore that Mr D may have already been considering options for his pension before he was in contact with Aspinal Chase. But there is no further mention of TRB in the available information. The transfer forms used were those provided to Aspinal Chase. And I have no reason to doubt that Aspinal Chase initiated contact with Mr D.

Mr D doesn't appear to have had any prior connection with the QROPS. And he hasn't indicated he intended to move overseas – either to Malta, where the QROPS was registered, or anywhere else. And I think it is unlikely he'd have sought to transfer his benefits to the QROPS on his own. So, on balance, I think it was the discussion he had with the business he spoke to that led to the transfer.

Mr D has said that he was persuaded to transfer by the offer of improved pension returns. Again I don't have any reason to doubt this in the circumstances. And I think what Mr D has said he was told, that his existing pension was frozen or underperforming, and that he'd get better returns by transferring, represented advice to transfer.

I've also seen documentary evidence that supports what Mr D has said about SJI becoming involved. The application form he signed to join the HRS, which again wasn't sent to Royal London, noted that SJI was Mr D's adviser.

SJI was a business registered in Czechia. It is unclear if it was authorised by the financial regulator in Czechia but it wasn't shown on the FCA's register as authorised in the UK with passporting rights. I've seen a recommendation letter from SJI to Mr D, advising him to transfer his pension benefits to the HRS and invest with Blackmore Global PCC. So, I'm satisfied that it did play a part in recommending the transfer.

I've seen a covering letter that appears to have accompanied the application form which was sent to Harbour, from a business called Worldwide Broker ('WB'). This letter said SJI had fully assessed Mr D's circumstances and attitude to risk in order to make the recommendation. And WB's letter said its role was providing *"regulated oversight of pension transfers undertaken by SJI".* WB appears to have been registered in the Netherlands. Again I've been unable to find any evidence that WB was regulated in the Netherlands and it was also not shown on the FCA registered as authorised with passporting rights in the UK. But I can't see that WB had any direct contact with Mr D. Overall therefore, I think what Mr D has said about him dealing with Aspinal Chase and SJI appears correct.

Mr D's representatives have said that the investment made through his QROPS, is illiquid and worthless. I haven't seen a recent statement for Mr D's pension to support this, and I'd note the HRS still appears on HMRC's recognised list. But based on the announcements and information available about Blackmore Global PCC, I think the representative is correct that the investment has likely run into trouble.

<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.

I haven't seen anything to suggest that Royal London sent Mr D the Scorpion insert. And indeed it has said that its process at the time wasn't to issue this as a matter of course and it would only have sent it if it "*had concerns about the provenance of the receiving scheme"*. So, I'm satisfied that Royal London did not send Mr D the Scorpion insert.

I've also seen no evidence that Firm L provided Mr D with this information during his application to transfer his pension from that business to the QROPS, which occurred at around the same time.

Due diligence:

When the Scorpion guidance was first published in February 2013 the campaign referred to pension liberation fraud. TPR talked about this being a transfer to a fund that allowed members to gain access to pension funds in an unauthorised manner. Unauthorised payments weren't just confined to a scenario where someone was offered a loan or cash to transfer before age 55. But these scenarios were the focus of the literature at the time.

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. It 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."* So again, the emphasis is on the promise of 'early cash' and 'early access' to pension benefits before pension age and the associated tax consequences that could follow.

The 2013 Scorpion action pack for businesses was titled 'Pension Liberation Fraud'. And the case studies in the 2013 action pack are 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"*. The action pack for businesses listed some warning signs that firms should be on the look out for. And suggested if any of these applied, businesses could use a more detailed checklist, included in the action pack, to help structure due diligence.

So, transferring schemes were being directed to the threat posed by people wanting to take cash from their pensions in an unauthorised manner – pension liberation – which was seen as being most likely when someone was under the age of 55. And, in light of the Scorpion guidance, Royal London ought to have been on the look-out for the tell-tale signs of pension liberation when it received Mr D's request to transfer. But it also had to take a proportionate approach and balance any caution and due diligence with the fact that consumers were entitled to request a transfer.

Royal London has provided evidence that it checked that the receiving scheme was on HMRC's QROPS list. This step ensured that the transfer payment both qualified as an authorised payment for tax purposes and also satisfied Mr D's statutory right, and potentially other legal rights, to transfer.

That appears to be the extent of the due diligence carried out. But, in the specific circumstances of Mr D's transfer, I think that was fair and proportionate.

Mr D was 62 at the time the application to transfer was made. So, there was no threat of him accessing his benefits from the pension before age 55. And I don't think any of the warning signs that the action pack for businesses said to look out for in the first instance would have been evident to Royal London.

The application to transfer was received in February 2014. The receiving scheme had been registered with HMRC in April 2013, almost a year previously. So, it wasn't a newly established scheme. And in my view was less likely to have been a vehicle for liberation, otherwise its likely HMRC would've taken steps to remove it from its recognised list. There is also nothing to indicate that the receiving scheme was previously unknown to Royal London. And in any event, I think it could've taken reassurance from the HRS being on the QROPS list.

Mr D hasn't said that he was pressured to go ahead or that he was informed about a 'legal loophole'. And again, due to his age, he wasn't transferring to access benefits before age 55.

Mr D has said he was cold called, which was on the list of potential warning signs. But none of the documents provided to Royal London gave any information that indicated this was the case. As I've said it needed to take a proportionate approach to due diligence. And as none of the initial warning signs were apparent, Mr D was already beyond age 55 and it had evidence that the HRS was a QROPS meaning it could be reasonably satisfied of its status and validity, I don't think Royal London needed to confirm how Mr D had been contacted before proceeding.

I've thought about whether there was anything else about the transfer or in the information Royal London received that ought to have given it reason for concern. It is true that one of the case study examples used in the Scorpion action pack, mentioned 'transfers overseas'. This wasn't though included in a bulleted list of *'things to look out for'*, each represented by an exclamation mark graphic. But I think businesses should have considered things in the round (including, for example, the case studies in the action pack) to decide if there was a material risk of liberation presenting itself in a transfer request. Page 8 of the action pack used the same exclamation mark graphic (denoting a 'warning sign') in the example of an individual who transferred to a pension scheme which, after paying her a cash incentive, invested the rest of the funds overseas. The warning sign was shown as:

"Transfers overseas

One technique that pension fraudsters use is to send a large portion of the pension transfer overseas. This makes the funds harder to trace and retrieve when the arrangement is closed down."

Clearly where an UK occupational scheme transfers funds overseas, that was being highlighted by TPR as a potential warning sign of pension liberation activity. Many such schemes that I'm aware of have employed that strategy. However it doesn't seem to me that TPR was referring here to the type of transfer Mr D was making, to a QROPS.

The reference to a ‘portion’ of the funds being transferred overseas makes clear, in my view, that it’s referring to a UK pension scheme – *i.e.* the entire transfer from the ceding scheme isn’t directly to an overseas arrangement. The case study goes on to indicate beyond doubt that it was a UK occupational scheme, as it says the scheme was subsequently closed down after both HMRC and TPR took action. Also, the case study follows someone who transferred in order to take cash from her pension, not someone who transferred with the intention of investing in a specific way.

So, in my view, QROPS weren’t evidently the focus of TPR’s concerns at the time the 2013 action pack was issued. There was always a possibility that some consumers might suffer losses from making inappropriate investments as a result of transferring to a QROPS. But that might also happen where they transferred to some UK schemes, such as SIPPs. So, it doesn’t to my mind mean it would have been a proportionate response to place all QROPS transfers under suspicion as soon as the February 2013 Scorpion campaign gave ceding schemes a new role to carry out due diligence. And so, I don’t think Mr D requesting to transfer to the HRS was reason for Royal London to be concerned.

Royal London had been asked for information by Aspinal Chase, an unregulated business. But non-regulated businesses were not prevented from asking for information. And I understand Mr D had provided authority to release information to Aspinal Chase.

The identification documents that were provided by Harbour when it submitted the application were certified by someone representing SJI – another unregulated business. But I don’t think Royal London had reason at the time to believe that SJI’s involvement went beyond certifying documents for the receiving scheme. Or that this meant there was a greater risk of pension liberation – the thing it had been asked to look out for.

Mr D’s representative has said that when the Royal London pension was first established, Royal London had advised Mr D. And they said that annual reviews had taken place, so Royal London had an advisory role. But in the documents the representative provided, there was a letter included, signed by Mr D, transferring servicing rights for his pension to a different business in 2012. And that notwithstanding, I don’t agree that Royal London’s obligations extended to scrutinising the suitability of any transfer Mr D subsequently decided to make or advice from a different business he decided to take.

Taking all of this into account, I think it was reasonable for Royal London, based on the information it had – particularly about Mr D’s age and the HRS being recognised by HMRC for almost a year – its judgement and the need to take a proportionate approach to due diligence, to deem that the risk of pension liberation in respect of Mr D’s transfer was low and that further due diligence was not required.

And, while I think Royal London should have sent Mr D the Scorpion insert, I’m also satisfied this likely wouldn’t have resulted in him stopping the transfer. The insert, in the same way as the action pack and indeed the Scorpion guidance as a whole at the time, was focussed on the threat posed by liberation – and the consequences of taking cash from a pension before the age of 55 in particular. But this wasn’t something Mr D was doing or a reason for transferring. He was transferring for different reasons and so I don’t think the contents of the leaflet would have dissuaded him from transferring. As a result, I don’t require Royal London to take any action.

My final decision

For the reasons given above, I don’t uphold Mr D’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr D to accept or reject my decision before 11 March 2025.

Ben Stoker
Ombudsman