DRN-3249398

Financial Ombudsman Service

The complaint

Mr B has complained about the actions of The Royal London Mutual Insurance Society Limited when it transferred his personal pensions to a Qualifying Recognised Overseas Pension Scheme ("QROPS") in 2015. The QROPS subsequently invested in an asset that now has a nil value meaning Mr B has suffered a significant financial loss.

Mr B says Royal London failed in its responsibilities when dealing with his transfer requests. He says that Royal London should have done more to warn him of the potential dangers of transferring, and undertaken greater due diligence on the transfers, in line with the guidance he says was required of transferring schemes at the time. Mr B says he wouldn't have transferred, and wouldn't have suffered financial losses, if Royal London had acted as it should have done.

What happened

On 17 February 2014, Royal London responded to a letter of authority that gave it permission to share information on one of his policies with a regulated firm I will refer to as "AF Financial". Royal London provided the requested information to AF Financial and told it what steps Mr B needed to take in order to transfer his policy. It said that it didn't need Mr B to complete any Royal London discharge forms. It just needed confirmation that the receiving scheme could accept funds and a signed copy of the new provider's application form. Mr B had three Royal London policies. The letter from Royal London referenced just the one, which I will refer to as "Policy 1".

On 11 July, Mr B signed to say he was satisfied with the recommendations contained in a report written by Servatus Limited, an EEA authorised adviser.

On 26 August, Harbour Pensions Limited ("Harbour Pensions") wrote to Royal London. It said it was following up on Royal London's 17 February letter in order to confirm that it could receive transfer funds and to say it was looking forward to receiving those funds in due course. The letter didn't refer to any enclosures but it looks like it enclosed paperwork to allow Mr B to transfer his pension to the Harbour Retirement Scheme ("the Harbour Scheme"), a QROPS based in Malta. Harbour Pensions were the administrators of the Harbour Scheme. Further transfer papers were sent in on 29 December. Included in all the paperwork was a letter from HMRC to Harbour Pensions, dated 9 April 2013, which said it had accepted the Harbour Scheme as a QROPS.

In January 2015, Royal London completed a "transfer claim checklist". It also checked whether the Harbour Scheme was still on HMRC's QROPS list – which it was. On 13 January, a CHAPS payment was organised and Mr B's transfer value (for Policy 1) was paid to the Harbour Scheme. The transfer value was approximately £51,000. Shortly afterwards, Mr B transferred a policy from a different provider – Provider S – to the same scheme. The transfer value for that pension was approximately £5,000.

Mr B was 51 at the time of the transfers. He wasn't planning on living overseas.

On 5 May 2015, Royal London says it received a signed letter of authority from Servatus in relation to Mr B's two other policies – Policy 2 and Policy 3. On 9 June 2015, Harbour Pensions wrote two letters to Royal London requesting it transfer Policy 2 and Policy 3 to the Harbour Scheme. Enclosed with both letters was transfer paperwork, including two letters of authority allowing Royal London to share information on each policy with Harbour Pensions.

Royal London responded on 10 July, writing to Mr B asking for a QROPS checklist to be completed by the scheme manager so that it could validate the Harbour Scheme as a QROPS. The letter went on to warn Mr B about the possible tax implications of transferring to a QROPS if remaining a UK resident.

The QROPS checklist was completed by Harbour Pensions and returned to Royal London on 11 August. On 28 August, Royal London wrote to Mr B to say the following:

"I note from the correspondence we have received that, although you are transferring to an overseas pension scheme, you continue to be resident in the UK."

It went on to warn Mr B (as it did previously) about the potential tax implications of transferring to a QROPS whilst resident in the UK. It asked Mr B to complete a short questionnaire, which he did, signing it on 8 September to say he wasn't planning on living abroad by the time he took his pension benefits, he wouldn't have been non-resident in the UK for at least five years by that point, he understood the tax implications of being treated as a UK resident and the implications of this had been explained to him by an adviser.

Further documents were sent in by Harbour Pensions on 5 October. On 20 October, Royal London spoke to Mr B. According to the call notes, Mr B told Royal London he wasn't satisfied with the service he had been receiving (in particular the withdrawal of visits from agents), he hadn't been cold called by the scheme, he wasn't intending to move overseas, he was aware of the potential tax implications of staying in the UK and he was aware that he would no longer be covered by the Financial Services Compensation Scheme ("FSCS").

On 1 December, Royal London wrote to Mr B to warn him – again – about the potential tax implications of transferring to a QROPS whilst remaining in the UK and about the loss of FSCS protections that had hitherto applied whilst at Royal London. It asked Mr B to sign a declaration to say he understood the potential tax charges that may result from transferring to an overseas scheme whilst remaining in the UK.

Mr B signed the declaration on 2 December. Royal London then completed its transfer claim checklist for the two policies and organised a CHAPS payment for both transfers. The transfer values were approximately £11,000 and £22,000. The amounts were credited to Mr B's Harbour Scheme account on 15 December 2015.

Of the combined transfer value (including the earlier transfer of Policy 1 and the transfer from Provider S), 30% was invested in a Dolphin Capital Loan Note. Dolphin Capital (now known as the German Property Group) is a German property venture which has gone into liquidation. The remainder of the transferred funds was put into an investment account managed by WH Ireland Limited. Mr B says this portfolio has been eroded by fees.

In 2020, Mr B (with the help of a claims management company) complained to Royal London. Briefly, his argument is that Royal London ought to have spotted, and told him about, a number of warning signs in relation to his transfers, including (but not limited to) the following: the transfer started with a cold call; unregulated introducers and advisers were involved; he was advised by Servatus, an EEA authorised adviser; a QROPS was a complex arrangement and not necessary for his situation, especially as he wasn't intending to move abroad; and he was transferring in order to invest in high risk, unregulated, assets.

Royal London didn't think it had done anything wrong. In relation to Policy 1, it said it had checked the receiving scheme was on HMRC's QROPS list which was the extent of the requirements at the time. In relation to Policies 2 and 3, it set out the steps I've outlined above to show it had done thorough checks into Mr B's transfer.

Mr B referred his complaint to us. Our investigator didn't think it should be upheld. Mr B asked for an ombudsman to make a decision. Mr B also complained about the transfer of his Provider S policy which is being looked at separately.

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 Financial Conduct Authority ("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 people transferring to pension liberation schemes; pension liberation being 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 as 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. The July 2014 guidance is a relevant consideration for the first of Mr B's Royal London transfers – Policy 1.

There was a further update to the Scorpion guidance in March 2015, which I consider to be relevant for Mr B's later transfers – Policy 2 and Policy 3. 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 PSIG Code of Good Practice. The intention of the 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 Code is also a relevant consideration for Mr B's later transfers.

<u>The March 2015 Scorpion guidance</u>

When the Scorpion guidance was launched in 2013, it included two standard documents that scheme administrators could use to warn their members about some of the potential dangers of transferring: a short "insert", intended to be sent to members when requesting a transfer, and a longer booklet intended to be used where appropriate (for instance, when members requested more information on the subject). When a transfer request was made, transferring schemes had an action pack to refer to which included a three-part checklist to help administrators find out more about a receiving scheme and why their member was looking to transfer.

Broadly speaking, the updates to the Scorpion guidance that are relevant to this complaint followed the same overall approach. That is, ceding schemes had warning materials that they could send to transferring members (including an insert to be included in transfer packs) and a three-part check list which they could use to help structure their due diligence. Changes were limited to the messages contained in the member-facing warning materials, and the overall emphasis of those materials and action pack.

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.

- 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 PSIG 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 a member's interest.

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 transfers: what does the evidence suggest happened?</u>

For ease, I'll open this section by summarising Mr B's four transfers:

Ceding Scheme	**Policy**	**Date received by Harbour Scheme**	**Approximate transfer value**
Royal London	"Policy 1"	15 January 2015	£51,000
Provider S	The only policy transferred from Provider S	22 January 2015	£5,000
Royal London	"Policy 2"	15 December 2015	£11,000
Royal London	"Policy 3"	15 December 2015	£22,000

When Mr B complained to Royal London, his representatives said he had received a cold call from a business, thought to be Jackson Francis, offering him a free pension review. Mr B agreed to participate in the review and was referred to Servatus. At least one meeting took place at his home – it isn't clear who that meeting was with – during which Mr B said he was told his pension would perform better if he transferred to a new scheme and invested in line with the adviser's recommendations. He said it wasn't made clear what those investments were. Mr B went on to say in his complaint letter that the "eventual transfer and subsequent investment of his funds was made on the advice of Servatus".

When Mr B (and his wife, Mrs B) spoke to our investigator, he said it was Harbour Pensions that initially contacted him. He mentioned something about having earlier seen someone on television although he wasn't especially clear about that and he went on to say he was cold called. He didn't mention Jackson Francis or any other business other than Harbour Pensions. He says he met a representative from Harbour Pensions who told him he could get a better rate of return on his pensions if he transferred and he would be able to pass on more to his wife on his death. He said he wasn't satisfied with Royal London who he had tried to contact in order to discuss his options. He says he didn't get a response from Royal London so, having taken into account what Harbour Pensions said, he decided to transfer. He said he transferred his Provider S pension – which was relatively small in comparison – in order to keep all his pensions together.

Mr B's recollections as recounted in his complaints to Royal London and Provider S, and to our investigator, don't really differentiate between the various transfers, which took place in two main tranches nearly a year apart. So, in that respect, the circumstances behind each tranche were – in Mr B's recollections at least – broadly indistinguishable despite the time lags.

In response to our investigator's first assessment, Mr B's representatives mentioned (amongst other things) the involvement of another unregulated firm, Portia Financial Limited, in transfers such as this.

I've seen documents recording the involvement of Servatus as Mr B's adviser, including application forms recording Servatus as his IFA, a QROPS statement showing "IFA fees" being paid to Servatus, and extracts of a recommendations report that Servatus sent to Mr B and which Mr B signed. So, in that respect, Mr B's recollections as made in his complaint to Royal London ring true: Mr B was advised by Servatus.

However, I haven't seen any evidence of the two unregulated businesses named by Mr B's representatives – Jackson Francis and Portia – on his casefile. The same applies to the casefile in relation to his complaint to Provider S. Mr B didn't mention them either when he discussed the transfers with our investigator – just Harbour Pensions. I would expect to see *some* evidence of Jackson Francis and Portia being involved – even if it's just a letter of authority in their favour early on in the process. But the only letters of authority I've seen, or been made aware of, are in favour of AF Financial, Servatus and Harbour Pensions. Whilst I recognise the possibility that the representative from Harbour Pensions was actually someone from Jackson Francis, there isn't enough evidence to draw that conclusion. On balance, therefore, I don't consider it likely that Jackson Francis or Portia were involved.

It's also not especially clear cut as to whether Mr B was cold called. Royal London spoke to Mr B in October 2015 as part of its due diligence following his request to transfer policies 2 and 3. In that call, Mr B said he *wasn't* cold called. Royal London's summary records Mr B saying the following about his transfer:

"[Mr B] confirmed that he wishes to transfer away from Royal London as he has heard nothing from us as we no longer have any agents. He believes it is no longer hands on from Royal London as the agent he did have visited him and was very good.

He was not cold called by the scheme his wife decided it would be best to transfer and chose Harbour Pensions.

He is aware that he will still be liable for UK tax and has no intentions of moving abroad.

He also states that he is aware he will no longer be covered by the FSCS."

Generally speaking, I consider contemporaneous evidence to be more compelling than someone's recollection of events several years later. This isn't a criticism of Mr B. Memories inevitably do fade over time and become less reliable as a result. It would be unusual if that wasn't the case. However, it means I consider it more likely that Mr B wasn't cold called in the run-up to the transfers of policies 2 and 3.

In response to our investigator's assessment, Mr B's representatives said much the same thing, pointing to the likelihood that in relation to policies 2 and 3 Mr B *wasn't* cold called because the decision to transfer those policies had effectively already been made when he decided to transfer the first tranche of policies. In other words, there wasn't a cold call because there didn't need to be one – Mr B was already a client of Harbour Pensions and already looking to transfer his remaining Royal London policies.

The point Mr B's representatives make is about the likelihood of a cold call happening ahead of the initial tranche of transfers and, in that light, being the catalyst for all that followed. Or to put it another way, Mr B can say there was no cold call in the run-up to the transfer of his later policies but plausibly also argue that doesn't matter because the initial cold call in 2014 is the root cause of *all* Mr B's transfers and the losses that followed.

I think it's a reasonable argument in so far as I consider it likely Mr B was cold called in the run-up to the initial transfers, which included Policy 1. Whilst Mr B's recollections haven't been especially clear on this front, it doesn't seem likely to me that Mr B (or more likely Mrs B) did their own research and approached Harbour Pensions themselves. Mr B does mention seeing someone on television which may have been a prompt for him to contact Harbour Pensions. But Mrs B goes on to say they weren't especially comfortable with using the internet. So I don't think I can reasonably say they did the initial research into their options here. Taking everything into account, including Mr B's recollections of the transfer and what I know of similar transfers, I consider it likely that Mr B was cold called ahead of his initial transfers.

Mr B says the cold call came from Harbour Pensions. I consider this to be the most likely scenario given the absence of any corroborating evidence – including Mr B's recollections – pointing to the involvement of Jackson Francis (or Portia). It's unclear whether he was offered a free pension review. Mr B didn't mention one as being something that initially piqued his interest. His interest was in the better returns Harbour Pensions was offering and the opportunity to move from Royal London. And, as outlined above, the businesses that were supposedly offering and/or completing such reviews – Jackson Francis and Portia – are absent from Mr B's casefiles. I'll proceed on the basis that Mr B was at least offered a free review of his pensions which is consistent with what I know of other similar transfers but, ultimately, my decision doesn't turn on this.

It would seem Mr B met someone at home to discuss his pension. His recollections are clear on this and I can see a fact-find was completed and signed by Mr B on 8 May 2014, which would suggest (albeit not incontrovertibly) that a meeting took place.

The fact-find doesn't shed any light on who Mr B met because it doesn't refer to the name of the firm or the adviser that conducted it. And it may well be, as Mr B says, that he only met with Harbour Pensions. But on 17 February 2014 Royal London responded to a letter of authority sent in on the behalf of Mr B by AF Financial. When Harbour Pensions wrote to Royal London to request a transfer on 26 August 2014, it referred back to the information Royal London had provided on 17 February. So it seems likely that Harbour Pensions was referring to the letter Royal London had sent to AF Financial and, therefore, those two businesses – AF Financial and Harbour Pensions – were likely working together. As such, Mr B may have met someone from AF Financial. Alternatively, Mr B signed the Servatus recommendations report on 11 July 2014 and there isn't anything else that points to any substantive involvement from AF Financial. So it may be that Mr B met with just Servatus.

As an aside, Royal London wrote to AF Financial at an address in Liverpool and Mr B's representatives have pointed to the "involvement of initial introducing and advising firms which were not regulated (including unregulated Liverpool based businesses called Portia Financial Limited and Jackson Francis Limited)". So they may have been right about the involvement of a Liverpool based business, but incorrect about the identity of that business. That's understandable – Portia and Jackson Francis were involved in similar transfers. Ultimately, for reasons that I will come on to, my decision doesn't turn on whether Mr B was cold called and/or whether he was offered a free pension review and/or on whether Portia and Jackson Francis were involved. It's the role played by Servatus that is key here and, on that, there is no ambiguity, and no difference of opinion between me and Mr B's representatives, about Servatus being Mr B's adviser.

It's clear from all the evidence that it was Mr B's wife, Mrs B, that was the driving force behind the decision to transfer to Harbour Pensions. In that sense, Mr B's comment to Royal

London that Mrs B “chose” Harbour Pensions rings true. It reflects the fact that Mr B delegated a lot of the decision making – and the final say-so – to his wife. It doesn’t mean Mr and Mrs B acted entirely independently and without outside help.

The motivation for transferring was because of frustrations with a lack of personal contact from Royal London (a point made consistently by both Mr and Mrs B); to generate better returns by investing, in part, in Dolphin Capital; and for the death benefits that were discussed. Mr B’s Provider S policy was relatively small in comparison so part of his motivation for transferring that policy was to keep all his pensions together.

Although under the age of 55 at the time of all the transfers, Mr B wasn’t transferring in order to access his pension early or to receive any other form of unauthorised payment from it. He wasn’t intending to move overseas.

<u>What did Royal London do and was it enough?</u>

Policy 1

Royal London completed its checks in January 2015. The paperwork it had been sent included a letter from HMRC dated 9 April 2013 that showed it had accepted the Harbour Scheme as a QROPS. The Harbour Scheme was still on HMRC’s published list at the time of Mr B’s transfer request – and I can see Royal London checked this. This ensured the transfer payment both qualified as an authorised payment for tax purposes and also satisfied Mr B’s statutory right, and potentially other legal rights, to transfer.

In light of the Scorpion guidance, I think firms also ought to have been on the look-out for the tell-tale signs of a pension scam and would have needed to undertake further due diligence, and take appropriate action, if it was apparent their customer might be at risk.

Given the information Royal London had at the time, one feature of Mr B’s transfer would have been a potential warning sign of a scam under the relevant (July 2014) Scorpion action pack – there was a transfer of money overseas. Royal London should therefore have followed up on that to find out if other signs of a scam were present. I think it would have been fair and reasonable – and good practice – for Royal London to have turned to the check list in the action pack to do this.

The check list provided a series of questions to help transferring schemes assess the potential threat by finding out more about the receiving scheme and how the consumer came to make the transfer request. Some items on the check list could have been addressed by checking online resources such as HMRC. Others would have required contacting the consumer.

The check list is divided into three parts (which I’ve numbered for ease of reading and not because I think the check list was designed to be followed in a particular order):

1. The nature/status of the receiving scheme

   Sample questions: Is the receiving scheme newly registered with HMRC, is it sponsored by a newly registered or dormant employer, an employer that doesn’t employ the transferring member or is geographically distant from them, or is the receiving scheme connected to an unregulated investment company?

2. Description/promotion of the scheme

   Sample questions: Do descriptions, promotional materials or adverts of the receiving scheme include the words ‘loan’, ‘savings advance’, ‘cash incentive’, ‘bonus’, ‘loophole’ or ‘preference shares’ or allude to overseas investments or unusual, creative or new investment techniques?

3. The scheme member

   Sample questions: Has the transferring member been advised by an ‘introducer’, been advised by a non-regulated adviser or taken no advice? Has the member decided to transfer after receiving cold calls, unsolicited emails or text messages about their pension? Have they applied pressure to transfer as quickly as possible or been told they can access their pension before age 55?

Opposite each question, or group of questions, the check list identified actions that should help the transferring scheme establish the facts.

There were a number of parallels between Mr B’s transfer and the warning signs identified by the check list, including the unsolicited contact that prompted Mr B’s initial interest in transferring and the investment that lay behind his decision to transfer which was overseas and could, potentially, also be described as being “unusual” or “creative”. Mr B was also transferring to a QROPS even though he was resident in the UK and didn’t appear to be contemplating a move overseas. Whilst the action pack didn’t specifically address such a scenario, it’s reasonable to say this should have appeared unusual to Royal London – indeed it thought as much when it considered Mr B’s later transfers.

However, in aggregate, I’m satisfied Royal London wouldn’t have thought Mr B was likely falling victim to a scam. I say this because investigations into who had advised him would have revealed the presence of Servatus, which was an advisory firm regulated by the Central Bank of Ireland. Importantly, Servatus was also shown on the FCA’s register as authorised in the UK with passporting rights. This means that for UK purposes Servatus was an authorised person under s.31(1)(b) of the Financial Services and Markets Act (FSMA) 2000 and Schedule 3 to that Act.

The presence of Servatus as an authorised person advising Mr B would have indicated to Royal London that the transfer was unlikely to be a scam and that Mr B would enjoy some regulatory protections in the event it turned out to be one. This wouldn’t have been via the UK’s complaints and investor protection institutions, the Financial Ombudsman Service or the FSCS. But The Republic of Ireland also has a complaints system, financial services and pensions ombudsman and a statutory investor compensation scheme, which EU countries are required to have under the EU’s Investor Compensation Directive.

Furthermore, as a firm that was regulated (albeit by a home-state regulator in another EU jurisdiction) the regulatory protections included the fact that Servatus would have been held to a high standard, mandated throughout the EU, by its own regulator. And as an authorised firm, Servatus would have had to follow the applicable European regulatory standards and conduct its practice in accordance with those standards. Its operations would have been under some oversight by its regulator to ensure it was acting in the best interest of its client. It therefore would have had to meet certain required standards in all of its dealings and be subject to regulation and to investor recourse under the Irish system. So, in light of this, it isn’t unreasonable that, had it checked up on its regulatory standing, Royal London could have been reassured that Servatus was regulated to EU standards that were accepted for the purpose of authorisation under UK law.

As outlined previously, firms needed 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 rights. I’m satisfied the fact that Mr B was being advised by a properly authorised adviser would reasonably have given Royal London comfort the transfer was unlikely to be a scam. With that in mind, there wouldn't have been a need, and it wouldn't have been proportionate, for Royal London to have given Mr B any warnings beyond the warnings contained in the Scorpion insert (which I discuss below). With that in mind, I see no reason why Mr B would have changed his mind about the transfer even if Royal London had conducted further due diligence.

In coming to that conclusion, I have considered whether the act of contacting Mr B and asking questions about his transfer – which Royal London should have done – would have prompted him to change his mind. Those questions would, for instance, have reminded Mr B of the fact that a significant financial decision had been set in train by a cold call and that he was moving his pension outside of his country of residence – both of which may have seemed less judicious on questioning and therefore potential prompts, in themselves, for further thought.

But I consider it unlikely that Mr B would have reconsidered his transfer. I say this for two reasons. First, we know Mr B didn't change his mind in response to being asked some questions about his transfer in October 2015. Whilst the questions Royal London should have asked here aren't the same as the questions it asked in October 2015, and the circumstances behind the transfers are different, I still think the comparison is a pertinent one. The questions Royal London asked Mr B, and the correspondence that surrounded those questions, ought reasonably have given Mr B pause for thought. The fact that he continued with the transfer strikes me as being a good guide to what Mr B would have done had Royal London asked him questions about his first transfer. Second, I see no reason why Mr B wouldn't have taken comfort from the fact that he had been advised by a regulated adviser.

On this, I recognise the points Mr B's representatives have made about the potential downsides of using an overseas adviser. Specifically, they point to not having access to the Financial Ombudsman Service or the FSCS. For the reasons given above, I don't think this necessarily negates the value Royal London or Mr B could legitimately have attributed to Servatus. And in relation to the FSCS, whilst I recognise Royal London's warnings about this were in the context of the Harbour Scheme, it nevertheless doesn't appear as though Mr B considered the loss of FSCS protections as being a cause for concern.

As discussed previously, I don't consider it likely that Jackson Francis (or Portia, who Mr B's representatives also mention in passing) were involved here. But even if they had been, it wouldn't have seemed unusual for an unregulated party to introduce someone to a regulated party for advice. And that's how it would have looked to Royal London had Mr B mentioned either business. It would have considered Jackson Francis and/or Portia as having introduced Mr B to Servatus and that it was Servatus that went on to advise Mr B. So Royal London could, reasonably, have considered Mr B was ultimately following the advice from a regulated adviser. As such, it wouldn't have thought Mr B might be about to become the victim of a scam.

Royal London should also have sent Mr B the Scorpion insert. It says it didn't do so. The version of the insert at the relevant time was the February 2013 version, which was the version in use when Royal London sent out transfer information to AF Financial. This version covered the narrow threat posed by pension liberation – specifically accessing pension funds before the age of 55. As such, it wouldn't likely have deterred Mr B from transferring.

Given the length of time over which the transfer process took place, our investigator also referred to the July 2014 version of the insert which contained scam warnings of a more general nature. Specifically, it highlighted the following warning signs for someone to look out for:

- claims that a pension pot can be accessed before age 55;

- being approached out of the blue over the phone, via text message or in person door-to-door;

- being enticed by upfront cash; and

- being offered a free ‘pension review’ or being lured by ‘one off’ investment opportunities.

It went on to say that if someone thought they were being targeted by scammers, they should not be rushed or pressured into a decision and that they should call TPAS before signing anything – or Action Fraud if an offer had already been accepted.

Mr B wasn’t attempting to access his pension before the age of 55 and he wasn’t receiving upfront cash. So two of the four bulleted warning signs listed above *didn’t* apply to him. But he was cold called and likely offered a free pension review. It’s fair to say the prospect of high returns from Dolphin Capital played a part in his decision making too. And the insert warned about scams in general so, at the very least, that was a warning to all readers – Mr B included – to proceed with caution.

However, on balance, I don’t think the July 2014 insert would have changed Mr B’s mind. Even if the insert had prompted him to review things, it strikes me as doubtful that he would have just aborted the transfer without further research. Indeed, Mr B says he would have turned to his son for advice. He may well have done. But Mr and Mrs B also refer repeatedly to seeking help (albeit unsuccessfully) from Royal London and to their disappointment at no longer having its agents visit them. So, in the same vein, I think it’s likely that further research would ultimately have led them to their regulated adviser – Servatus – and any concerns they may have had would have been neutralised (to use the word of Mr B’s representatives) as a result.

I’ve considered whether being asked due diligence questions by Royal London would have primed Mr B to have been more receptive to the messages contained in the Scorpion insert and prompted him to “join the dots” about the risks he was taking (or, depending on when it was sent, primed him to have been more concerned when asked those due diligence questions). In other words, I’ve considered the likely *cumulative* impact of everything Royal London should have done and not just the impact a due diligence process, and the Scorpion insert, would have had in isolation. But I return to what I said before which is that Mr B was being advised by a regulated adviser so I’m satisfied he would, ultimately, have taken comfort from that.

It follows that I am not upholding this aspect of Mr B’s complaint.

Policies 2 and 3

The initial transfer request for these policies came in June 2015. They weren’t transferred until the December. It means the PSIG Code is a relevant consideration here alongside the Scorpion guidance. As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes dealing with transfer requests. I’ve therefore considered Mr B’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.

Royal London didn’t fast-track Mr B’s transfer request in line with the “Initial analysis” section (section 6.2.1) of the Code. So it should have asked Mr B further questions about the transfer as per Section 6.2.2 ("Initial analysis – member questions"). One of those questions relates to whether Mr B was cold called. Royal London asked Mr B this, the answer to which was "no" as previously discussed. I think it was reasonable for Royal London to have accepted that. Nevertheless, one of the questions in this section would have been answered with a "yes": "Have you been informed of an overseas investment opportunity?"

Under the Code, further investigation should follow a "yes" to any question. The nature of that investigation depends on the type of scheme being transferred to. The QROPS section of the Code (Section 6.4.4) has the following statement:

"The key items to consider are the rationale for moving funds offshore, and the likelihood that the receiving scheme is a bona fide pension scheme, as if HMRC determine retrospectively that it is not, there may be a scheme sanction charge liability regardless of whether the receiving scheme was included on the list or not."

In order to address those two items – the rationale for moving funds offshore and the legitimacy of the QROPS – the Code suggests the transferring scheme should broadly follow the same due diligence process as for a SSAS, which outlined four areas of concern under the following headings: employment link, geographical link, marketing methods and provenance of the receiving scheme. Underneath each area of concern, the Code set out a series of example questions to help scheme administrators assess the potential risk facing a transferring member.

Not every question would need to be addressed under the Code. Indeed, the Code makes the point that it is for scheme administrators to choose the most relevant questions to ask (including asking questions *not* on the list if appropriate). But the Code makes the point that a transferring scheme would typically need to conduct investigations into a "wide range" of issues to establish whether a scam was a realistic threat. With that in mind, I think in this case Royal London should have considered, as far as they were applicable, all four areas of concern and contacted Mr B in order to help with this.

I can see Royal London established the legitimacy of the QROPS. But it didn't *quite* address Mr B's rationale for transferring. Royal London asked whether Mr B had been cold called. He said he hadn't been and that his wife had chosen the Harbour Scheme. It asked Mr B whether he was moving overseas. Mr B replied that he wasn't. And it asked whether Mr B knew about the potential tax, and FSCS, implications of moving his pension overseas. Mr B said he was aware of those implications and signed a declaration to confirm that, which included a declaration to say he had seen an adviser about the potential tax implications of the transfer.

Armed with that information, Royal London could have taken the view that Mr B wasn't falling victim to a scam as it wouldn't have appeared as though he was being led through a process by unscrupulous entities. Instead, it would have appeared as though Mr B had, with the help of his wife, independently chosen to transfer to the Harbour Scheme because he had grown disillusioned with Royal London's service. And Royal London could have taken the view that Mr B was aware of some of the downsides of that decision and had taken advice about the tax implications of his decision. So it *nearly* did enough here.

However, Royal London wouldn't have been aware of the reasons why Mr B was transferring to the Harbour Scheme – that is, the "rationale for moving funds offshore" referred to in the PSIG Code. Yes, Royal London would have known Mr B wanted to transfer because he was unhappy with its service. But it wouldn't have known why the Harbour Scheme was the answer. And the reason why it was the answer was because Mr B wanted to invest in a certain way and the QROPS was the best way to do that. Royal London wouldn't have known this. And, in this respect, I think it fell short.

If it had asked about this, it would have found out the reason for transferring to the Harbour Scheme was to invest, in part, in TRG – an overseas property scheme of the type that was highlighted as an area of concern in the PSIG Code. It should also have asked Mr B about who was advising him because I don't think it could, reasonably, have accepted Mrs B as being his adviser which, at face value, is what Mr B had said. Had Royal London asked Mr B about his adviser, I'm satisfied he would have said Servatus for the reasons given previously.

The Code and the checklist don't contain any warnings about using overseas advisers that were on the FCA register. Therefore, if Royal London had conducted further due diligence, I'm satisfied it would have ultimately concluded that the scam threat posed by the transfer was minimal. Mr B was transferring to a legitimate scheme – one that hadn't done anything to bring it to the attention of HMRC since its establishment over two years previously. And he had taken advice from a regulated firm. As such, it would have been reasonable for Royal London to have taken the view that Mr B had engaged the services of a relevant, regulated, professional acting in his best interests and therefore not someone likely to allow, or be involved with, a scam – which is what Royal London was tasked with guarding against.

As outlined previously, firms needed 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 rights. With that in mind, there wouldn't have been a need, and it wouldn't have been proportionate, for Royal London to have given Mr B any warnings about a potential scam. I therefore see no reason why Mr B would have changed his mind about the transfer even if Royal London had conducted further due diligence.

Royal London should still have sent the Scorpion insert. This had been updated by the time Mr B indicated to Royal London he was thinking about transferring policies 2 and 3. The updated (March 2015) version of the insert included an infographic that highlighted the following warning signs for someone to be on the lookout for:

- Unsolicited contact and being offered a 'free pension review', 'one-off investment opportunity' or 'legal loophole'.
- Accessing a pension before the age of 55.
- Overseas transfer of funds.
- Convincing marketing materials that promise returns of over 8%.
- Paperwork delivered by courier that requires an immediate signature.
- A proposal to put money in a single investment.

Many of the bullet points listed didn't apply to Mr B. He wasn't cold called ahead of his later transfers and, therefore, was unlikely to have been offered a free pension review. He wasn't accessing his pension before the age of 55. He hasn't mentioned being promised returns of over 8%. He hasn't mentioned signing documents in the presence of a courier or being put under any particular pressure to agree to the transfer. And he wasn't putting his pension in a single investment. In that light, there would seem little reason to conclude Mr B would have changed his mind because of the Scorpion insert.

Of course, Mr B was transferring overseas so that particular warning did apply. One of the reasons for him transferring was the prospect of improved returns so the warning about 8% returns may also have resonated with him. And Mr B was likely cold called and offered a free pension review ahead of his first two transfers. It seems doubtful to me that the warning about cold calls would have resonated by the time he was transferring policies 2 and 3 because he told Royal London he hadn't been cold called. As discussed previously, that may have been a reasonable response given the circumstances at that time. But I don't think Mr B can, reasonably, have answered that way to Royal London *and* argue the Scorpion insert would have nevertheless prompted him to be concerned about being cold called. He can't have it both ways in that respect. Nevertheless, the broader point is a valid one, which is *some* of the warning signs – not to mention the overall tenor of the insert – may have given Mr B reason to rethink his actions.

However, Mr B was already given some reasons to rethink his transfer. He was told about the potential tax implications of moving to an overseas scheme whilst residing in the UK. Whilst that was a warning about tax, it's difficult to conclude Mr B wouldn't have been aware of the incongruity of moving his pension overseas given the number of messages Royal London gave him on this. He was also told about losing FSCS protections. So I don't think the Scorpion insert would have made a difference here. Few of its warning signs applied to Mr B. He was given other, pertinent, warnings – which didn't impact on his decision. And if Mr B did have any concerns, it seems likely he would have taken comfort from having taken advice from a relevant, regulated, professional.

Finally, I recognise there's a cumulative aspect to Mr B's actions in so far as a more thorough due diligence process with regards to the first tranche of transfers, and receipt of the Scorpion insert, could have made Mr B more receptive to a later due diligence process and a later version of the Scorpion insert. Similarly, his reactions to that later due diligence process would inevitably have been tempered by the knowledge that his earlier transfer had gone through without much scrutiny and hadn't – at that point – caused him any problems. With all that in mind, one could argue that looking at the later transfer as a discrete event is misleading because Royal London's previous actions had, to a certain extent, undermined its later efforts.

I'm not persuaded by this argument. First, for the reasons given previously, I'm satisfied Mr B wouldn't have changed his mind about the first transfer even if Royal London had done all it should have. It would be a stretch, therefore, to argue he would have nevertheless carried residual concerns into the second transfer that would have coalesced into something firmer had Royal London acted as it should have done in that later transfer. Second, Mr B's argument rests on the notion that Mr B would have realised the risks he was running in his later transfers had he been given the right information, and been asked the right questions, during his first transfer. But that seems unlikely given the way Mr B answered his due diligence questions in October 2015. As Mr B's representatives argue, Mr B answered those questions as though it was a discrete event unconnected with what had gone on before. The answers he gave were reasonable in that context – but they don't indicate he would have "joined the dots" in the way Mr B's representatives argue.

It follows that I am not upholding this aspect of Mr B's complaint.

My final decision

For the reasons given above, my final decision is to not uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 16 April 2025.

Christian Wood
Ombudsman