DRN-3398810

The complaint

Mrs D has complained about a transfer of her The Royal London Mutual Insurance Society Limited personal pension to a Qualifying Recognised Overseas Pension Scheme ("QROPS") in Malta in June 2016. Mrs D's QROPS was subsequently used to invest in a range of investments including hotel accommodation administered by The Resort Group plc (TRG), loan notes and other managed funds. Some of the investments now appear to have little value. Mrs D says she has lost out financially as a result.

Mrs D says Royal London failed in its responsibilities when dealing with the transfer request. she says that it should have done more to warn her of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance she says was required of transferring schemes at the time. Mrs D says she wouldn't have transferred, and therefore wouldn't have put her pension savings at risk, if Royal London had acted as it should have done.

What happened

On 16 September 2015 Royal London received a request for QROPS transfer forms from a firm called Capital Facts Ltd, carrying Mrs D's authority. The footer on its letter stated that it doesn't provide any financial or investment advice and isn't authorised by the Financial Conduct Authority (FCA).

On 23 September 2015 Royal London replied to Capital Facts with details of Mrs D's policy into which she was paying regular contributions of about £93 per month net. Royal London wrote to Mrs D the following day to confirm it had provided this information. Its letter didn't refer to any enclosures but said, *"Please think carefully if choosing to transfer to another pension provider and ensure that this is in your best interests."*

After this, Mrs D met with a different firm (First Review Pension Services – 'FRPS') who she says encouraged her to transfer. Mrs D applied to join the Optimus Retirement Benefit Scheme No.1 - a QROPS operated by Integrated Capabilities (Malta) Ltd.

On 17 December 2015 Strategic Wealth Limited (an independent adviser based and regulated in Gibraltar) was appointed as financial adviser to the QROPS. Mrs D's Claims Management Company (CMC) says in its submissions that Strategic Wealth gave Mrs D advice alongside FRPS. It has obtained details of a risk profiling exercise Strategic Wealth carried out which determined that Mrs D had a 'balanced' attitude to risk.

On 11 January 2016 Royal London received a transfer request from Optimus Fiduciaries / Optimus Pension Administrators – both companies were authorised by the Isle of Man Financial Services Authority and had delegated authority to administer the QROPS on Integrated Capabilities (Malta)'s behalf. The request included the discharge form signed by Mrs D and a full scheme information pack about the scheme - confirming it met HMRC's requirements for a QROPS. The Optimus administrators also submitted further documents which Royal London received on 18 February 2016. One such submission contained an identification document certified for Mrs D by FRPS for Optimus' purposes.

On 24 March 2016 Royal London provided a second transfer pack to the Optimus

administrators. Mrs D signed the necessary forms on 8 April 2016. Royal London was shown that the QROPS had been registered with both the Maltese Inland Revenue and Malta Financial Services Authority (MFSA) on 3 July 2014. The administrators also signed a supplementary checklist to confirm that the QROPS was adhering to the requirements made of it by HMRC in order to maintain QROPS status.

Royal London paid the transfer value on 24 June 2016. Mrs D was aged 47 at that time. On 7 July Optimus confirmed it received two transfers: of about £30,100 from Royal London and about £27,500 from Prudential (which is subject to a separate complaint). Its confirmation letter suggests Mrs D had also been sent a suitability report by Strategic Wealth as it said, *'… we shall begin processing the investments as detailed in your suitability report.'* A suitability report for Mrs D wasn't provided to this service.

By December 2018 the QROPS was nominally invested as follows:

Cash (including in discretionary managed account)	4%
Athena Global Opportunities Fund	35%
Energy Circle 8% Loan Note	8%
Escher Marwick PLC Series	15%
Falcon Investment SICAV plc- Resort Development	7%
Resort Group - Property (directly held)	29%
Via Capital 5yr Loan Note	2%

However by this point Optimus was disclosing that the Falcon Investment had been suspended due to illiquidity and was being wound down. There have since also been concerns that investments in TRG don't have an established market and are therefore of little value.

In January 2020 the CMC complained that Royal London hadn't assessed Mrs D's transfer properly in line with guidance to prevent pensions liberation and scams. The relevant guidance was the Pensions Regulator (TPR)'s Scorpion guidance and the Pension Scams Industry Group (PSIG) Code.

The CMC said Royal London already knew of the involvement of one firm that wasn't regulated (Capital Facts); but it could also have found out from Mrs D that FRPS and Strategic Wealth, who it also regarded as unregulated, were involved. It thought Royal London established that Mrs D had been cold-called and didn't intend to move abroad, but didn't act on that information. Nor did Royal London establish what investments she was going to be making – which it should have noticed were warning signs of a scam. The CMC said Royal London should have sent Mrs D a factsheet or leaflet provided by TPR, and followed up on its concerns by alerting her to the warning signs present in her transfer request, so that she had an opportunity to change her mind.

Royal London responded that the QROPS transfer had been duly authorised by Mrs D and the QROPS had answered all its questions satisfactorily. It confirmed that the transfer had been referred for additional due diligence checks involving a phone call to Mrs D, because she did not reside in the country in which the QROPS was located. Following that phone call it sent a further letter to her and required her to sign a disclaimer. It also claimed it sent her the longer Scorpion booklet at that time, rather than the shorter factsheet or leaflet.

Our investigation so far

I've already issued a provisional decision not to uphold this complaint, which I'll summarise in the following paragraphs.

I noted that Royal London checked that Mrs D didn't appear to have recently been based outside the UK, which prompted it to carry out further due diligence by phoning her. A written

log of this call survives. Although it is undated, I was satisfied the call did take place. The key points clarified in this call were:

- It was important for Mrs D to be fully aware of potential tax implications of transferring funds overseas and withdrawing pension benefits whilst residing in the UK.
- She wanted to transfer her funds overseas to have them in one place for consolidation purposes, and had shopped around for this QROPS.
- She wasn't planning on moving overseas in the near future.
- On being asked if she had been cold called, she responded that Royal London was now cold calling her.
- She understood that despite having a QROPS, she may be treated as a UK resident for tax purposes; and what the implications were.
- She had been given full information about the scheme she was transferring to.
- She knew *'if'* she would be covered by an appropriate compensation scheme if the QROPS defaulted on its obligations.
- She did still wish to proceed with the transfer request.

I concluded from Mrs D's answer to the 'cold calling' question that she may not have been particularly receptive to Royal London's approach. So I couldn't be sure that she was entirely forthcoming with the remaining answers noted. However that was not the only further step Royal London took.

Its process involved sending a letter back to Mrs D following this phone call. At the time of my provisional decision we only had a template of this letter, but we knew it was sent because Mrs D returned the disclaimer on the final page. Royal London has now located an actual copy of Mrs D's letter dated 23 May 2016, worded the same as the template I quoted in the provisional decision as follows [with my comment added]:

> *'On receipt of a transfer request from the policyholder we are required by our regulator, the Financial Conduct Authority (FCA) to carry out high-level checks. The checks are to satisfy ourselves that the receiving pension scheme is appropriate, in terms of the pensions legislation.*
>
> *As a mutual company, we place our policyholders at the centre of everything we do, and being a customer owned business, we work entirely in the interests of our customers. The checks carried out are to ensure that you reach the outcome which is best for you.*
>
> *Prior to making a final decision of your transfer we would again like to stress the following -*
>
> *1. In order to be released from UK tax obligations you must have been a non-resident of the UK for a minimum of 5 years. If you draw pension benefits before this 5 year period ends you will be subject to UK income tax. In addition tax in the country you now reside may also be due.*
>
> *2. Are you aware that by transferring overseas that you will no longer be covered by the Financial Services Compensation Scheme which protects your benefits if Royal London were to default?*
>
> *[Need to outline any possible other concerns we have relevant to the specific case in question]*
> **[this is a note to the letter drafter – no further concerns were added in Mrs D's case]**
>
> *If after fully considering these factors you still wish to go ahead with the proposed transfer, please sign below. By signing below you are acknowledging that you are fully aware of the potential tax charges involved with transferring funds overseas but remaining in the UK.'*

Mrs D signed this disclaimer on 25 May 2016. I thought two key risks of transferring to an overseas pension (whether or not it turned out to be a scam), were covered in Royal London's phone call and letter exchange:

- She was warned that she might have to pay tax on the benefits when they were paid out from Malta, but they would also be assessable for income tax in the UK. No ceding scheme could assure Mrs D that double taxation agreements would protect her, or avoid the inconvenience of reclaiming overpaid tax. So it was appropriate for them to point out that there could be these financial consequences.

- She was warned that she had protection under the FSCS in the UK, which she would not have (either at all or to the same degree) overseas.

I found that highlighting these risks didn't fully cover the risk of Mrs D falling victim to pension liberation or a scam. However, in terms of pension liberation, if that were to happen in future it would likely jeopardise the scheme's inclusion on HMRC's list. So I thought that would have been viewed as an unlikely possibility for a QROPS that was properly regulated in another EEA country, and wanted to remain recognised by HMRC – which it had already been for about two years at the time of this transfer. I also took into account that Mrs D signed HMRC forms acknowledging that the risk of this outcome, leading to unauthorised payment tax charges being levied by HMRC, was present in the transfer.

However with scams more broadly, risks can be present in the investments themselves just as much as they can be in the scheme. The initial triage stage in the PSIG Code, as well as some of the questions in TPR's Scorpion checklist, suggested asking Mrs D about the investments and whether she was taking FCA regulated advice. It was apparent that Royal London didn't ask Mrs D about the investments or her adviser. I considered that was a failing on its part.

TPR also expected a shorter leaflet or 'insert' produced by the Pensions Advisory Service (TPAS) to be sent to the consumer in response to a transfer request. Royal London said it had gone further and sent Mrs D a longer booklet. Given that this information material was integral to TPR's guidance, I expected Royal London to have retained key evidence of the date this booklet was dispatched and how its relevance was explained to Mrs D. As that couldn't be provided in this case I considered that was a further failing.

However I also considered whether these failings would have made any difference. That is, whether Mrs D would have acted any differently if Royal London had sent her the leaflet, asked her in particular about the investments she was making, and who was advising her. I wasn't persuaded that Mrs D would have acted any differently because of the key involvement of Strategic Wealth, which was a regulated firm appearing on the FCA register.

I noted that Optimus had referred to a suitability report from Strategic Wealth that Mrs D's CMC hadn't provided, and that it was free to obtain and/or provide that evidence in response to the provisional decision, which I would then be prepared to consider further.

Responses to the provisional decision

On behalf of Mrs D, the CMC didn't accept the provisional outcome. The bulk of its response listed all the warning signs that it considered were apparent in Mrs D's transfer request, so I won't repeat those I had already covered. But it expanded on these points:

- It disagrees that Mrs D initiated the enquiries about her pension – the cold-call from Capital Facts happened to coincide with an interest she had in consolidating them.
- This doesn't prove she would always have wanted to move outside the FCA regulated environment. She requested a transfer pack in 2005 and did not go ahead. Her regular contributions are *'indicative of a prudent and reasonable approach to pension saving'*.
- Royal London was aware from the transfer request of unregulated firms' involvement, and it failed to obtain answers from Mrs D on cold-calling or who her adviser was.
- It should also have established from Mrs D that she'd been given the expectation of very high investment returns from unregulated overseas investments.
- My conclusion that Mrs D was not particularly receptive to Royal London's phone call was fair. In fact the answers written in brackets on its call log suggested its agent had assumed answers from her non-response. But Royal London could have identified most of these warning signs from the correspondence.

- Royal London's disclaimer letter was unclear and misleading – its purpose appeared to only be to check that Mrs D had a valid transfer right. As she isn't complaining about the tax implications of a QROPS, the letter's main other effect was to inform her of the lack of FSCS protection. But she would have needed extensive knowledge to equate this to the risk of a scam from unregulated advice.

The CMC also thought considered I'd approached the issue of causation wrongly. There was no explicit finding as to what Royal London *should* have done in order to then ascertain whether that was likely to change Mrs D's mind. In its view, *'The clarity of the communication that Royal London ought to have made would have broken the spell for* [Mrs D] *in respect of the mis-information she was being given ...'.* Royal London should have sent the Scorpion booklet after the phone call, and sent 'specific communication' that there were scam warning signs in her transfer request. It concluded that had Royal London done all of this, a 'reasonable person' would have backed out of the transfer and sought regulated advice.

Royal London said the following in response to the provisional decision:

- At the time of issuing the transfer discharge form it would have sent the 7-page TPAS booklet dated March 2015 and 2-page insert dated July 2014.
- When its 'disclaimer letter' was issued following the phone call it was standard practice to include the 5-page TPAS booklet (in this case the March 2016 version).
- It was standard practice to ask all 8 questions noted in its phone call with Mrs D with the majority being a Yes / No answer. It could not say why certain answers to questions are in brackets.

I apologise to both parties for the extensive delay since that point. They will both be aware that we received objections from various representatives (including Mrs D's) that the involvement of overseas advisers wouldn't have given sufficient comfort, if those advisers didn't in fact hold the specific permissions necessary to provide investment advice. As noted above, my provisional decision was that it would have given Royal London sufficient comfort as Strategic Wealth was on the FCA register. Having thought about that carefully I haven't altered my position, as I'll go on to explain below.

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.

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 how personal pension providers deal with pension transfer requests, but the following have particular relevance here:

- Principle 2 – A firm must conduct its business with due skill, care and diligence;
- Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;
- Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and
- COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

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

The Scorpion guidance was described as a cross-government initiative by Action Fraud, The City of London Police, HMRC, the Pensions Advisory Service (TPAS), TPR, the SFO, and the FSA/FCA, all of which endorsed the guidance, allowing their names and logos to appear in Scorpion materials.

The FSA's endorsement of the Scorpion guidance was relatively informal: it didn't take the form of Handbook Guidance, because it was not issued under s.139A of the Financial Services and Markets Act (FSMA), which enabled the FSA to issue guidance provided it underwent a consultation process first. Nor did it constitute "confirmed industry guidance", as can be seen by consulting the list of all such FSA/FCA guidance on its website. So the content of the Scorpion guidance was essentially informational and advisory in nature. Deviating from it doesn't therefore mean a firm has necessarily broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's right to transfer.

That said, the launch of the Scorpion guidance in 2013 was an important moment in so far it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing those requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance's specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

In those circumstances, I consider firms which received pension transfer requests needed to pay regard to the contents of the Scorpion guidance as a matter of good industry practice. It means February 2013 marks an inflection point in terms of what was expected of personal pension providers dealing with transfer requests as a matter of fulfilling their duties under the regulator's Principles and COBS 2.1.1R.

The Scorpion guidance was updated in July 2014. It widened the focus from pension liberation specifically, to pension scams more generally – which included situations where someone transferred in order to benefit from "too good to be true" investment opportunities such as overseas property developments. An example of this was given in one of the action pack's case studies. There were further updates to the Scorpion guidance in March 2015 and March 2016, which is relevant for this complaint.

At the same time, a broader piece of guidance was initiated by an industry working group covering both TPR and FCA regulated firms: the Pension Scams Industry Group (PSIG) Code of Good Practice. The intention of the PSIG Code, also introduced in March 2015, was to help firms achieve the aims of the Scorpion campaign in a streamlined way which balanced the need to process transfers promptly with the need to identify those customers at material risk of scams.

The March 2015 and March 2016 Scorpion guidance

These updates to the Scorpion guidance referenced the potential dangers posed by greater flexibility the government had given people in relation to taking pension benefits, and explained that pension scams were evolving. They asked ceding schemes to ensure they

provided their members with “regular, clear” information, including the pensions scam “leaflet”, in annual pension statements and whenever they requested a transfer pack.

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

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

The March 2015 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 Code to have been a reasonable starting point for most ceding schemes because it provided more detailed guidance on how to go about further due diligence, including steps to potentially fast-track some transfers which – where appropriate – would be in the interest of both parties.

The considerations of regulated firms didn't start and end with the Scorpion guidance and the PSIG Code. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn't involve anything specifically referred to in either the Scorpion guidance or the Code – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's principles and COBS 2.1.1R.

The circumstances surrounding the transfer: what does the evidence suggest happened?

Mrs D says that in autumn 2015 she received a phone call persuading her to explore a transfer of her Royal London pension to a QROPS in order to make certain investments including in TRG's Cape Verde hotel complex. The initial call appears to have been from Capital Facts, which is supported by the request for a transfer pack in its name. But Mrs D's account says that at some subsequent stage she was passed to FRPS. This can also be confirmed from FRPS certifying her identity and passing that to Optimus. We also know that both Capital Facts and FRPS were connected to the TRG investment and therefore had a commercial interest in this proceeding.

She explains that she had several pensions and was already contemplating transferring them into one pension, to make them easier to manage. However, her CMC objects to this not being characterised as a 'cold call', because it was nonetheless an unsolicited approach that just happened to coincide with Mrs D thinking about doing something with her pension. I accept that is a fair analysis. As the Scorpion guidance itself warned, unregulated parties calling people were seeking to capitalise on recent interest in pensions following the government's announcement of 'pensions freedoms' earlier that year.

Mrs D's original complaint explains she was promised that the recommended investments would "work for her" as opposed to "just sitting there" and would be actively managed on her behalf. Her CMC adds in response to my provisional decision that *"*[she] *had been told by the non-FCA regulated advisers (First Review and Strategic Wealth) that she could expect very high returns on investments to be made through the QROPS, significantly better than her existing scheme…*[Her] *pension transfer and investment followed a methodology exactly replicated by First Review/ Optimus in many transfer cases whereby individuals were directed into exactly the same very limited set of investments, always including a high weighting of The Resort Group fractional property…"*

As I noted in my provisional decision, Mrs D appointed Strategic Wealth to advise on her QROPS *before* the transfer from Royal London was requested. So it is indeed probable that this Gibraltar-based firm advised her on whether to transfer from her ceding schemes to the QROPS. The CMC will be aware that the largely standardised suitability report from Strategic Wealth makes comparisons between an individual's ceding schemes and the perceived advantages of a QROPS, and that is indicative of such advice being given.

Mrs D also feels she was put under pressure to secure the investments within a certain time period, which she was told would then be locked away until her retirement date. She "*felt the advice was legitimate, due to the extensive amount of documentation* [including graphs and brochures] *that was shown to her at multiple face to face consultations with the IFA".* She wasn't offered any immediate financial incentives to make the transfer.

In my view Strategic Wealth's involvement was likely to be a condition of (or would more easily facilitate) Optimus accepting Mrs D's business. It also appears Optimus was in possession of Mrs D's suitability report from Strategic Wealth as it refers to the same in its correspondence with Mrs D. That's consistent with the comments Mrs D has made above about the level of consultation and documents she received.

I also note from her recollections that Mrs D recalls being warned (she says, by the QROPS) that her ceding schemes would warn her not to transfer as a standard procedure in order to retain her business. I think it's more likely such a warning would come from the intermediaries involved. But it does suggest that Mrs D may have been preconditioned to place less weight on Royal London's intervention than she might otherwise have.

What did Royal London do and was it enough?

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. In my provisional decision I wasn't satisfied Royal London had done this. Royal London has since said it would have sent Mrs D two sets of information at different points.

Firstly, Royal London says both the 7-page TPAS booklet dated March 2015 *and* 2-page insert dated July 2014 would have been sent at the time of its transfer pack. I've established it sent two letters at this point – one to Capital Facts enclosing the transfer pack itself, and one sent to Mrs D to confirm that it had replied to Capital Facts. Only the Capital Facts letter mentions enclosures specifically, but none of these is a Scorpion insert or booklet. In any event, the purpose of the TPR guidance was to ensure this documentation was issued to policyholders directly: it stands to reason that an intermediary not acting in their interest was unlikely to pass it on to them.

The letter to Mrs D doesn't mention enclosures at all, and in neither letter is any reference made to an insert or booklet, or the importance of reading the same. Against this evidence I can't fairly accept an unsubstantiated statement from Royal London simply that its process was always to include this documentation. And it would be an unusual process anyway to include both documents, given that the longer booklet already encompasses the warnings in the short insert. So, Royal London's position lacks adequate explanation and my finding is that it didn't provide either of these documents at the time of the transfer pack.

Turning to the subsequent 'disclaimer letter' Royal London sent to Mrs D on 23 May 2016, Royal London again says it was standard practice to include the longer booklet, which by that point would have been the March 2016 booklet. I can't reasonably accept an unsupported claim, for the same reasons given above. However I've considered the content of the letter itself.

Again, there is no reference to enclosures. I accept that the letter was evidently sent through Royal London's awareness of its regulatory responsibilities, so it could be seen as a logical step to enclose the relevant campaign material. But strangely the letter doesn't mention the

TPR campaign or the booklet by name – it only refers to the FCA. As the whole purpose of the letter was to provide Mrs D with warnings about the potentially serious implications of her transfer, it seems more likely to me that the importance of also reading any attachment would have been flagged up in the body of the letter itself (if one was included). Overall, therefore, I haven't revised my conclusion from the provisional decision that there's no persuasive evidence that Mrs D was sent the Scorpion warning material at either point.

Due diligence:

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 Mrs D'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 hasn't argued that it fast-tracked Mrs D's transfer request in line with the "Initial analysis" section (section 6.2.1) of the Code. The transfer request didn't come from an accepted club such as the Public Sector Transfer Club and Royal London hasn't shown that it already identified the receiving scheme/administrator as being free from scam risk. In fact, other than the destination, it's apparent that Royal London knew very little about Mrs D's transfer.

So, the initial triage process under the Code should (if deployed) have led to Royal London asking Mrs D further questions about the transfer as per Section 6.2.2 ("Initial analysis – member questions"). I won't repeat the list of suggested questions in full. However, one of them was *"Did receiving scheme/adviser or sales agents/representatives for the receiving scheme make the first contact (e.g. a cold call)?"* Notably this was very similar to one of the questions Royal London actually asked Mrs D and she responded, *"You cold called".* So I think, as her CMC accepts, Mrs D displayed some reluctance to answering this line of questioning.

I've been unable to draw any firm conclusions on why some of the answers to Royal London's questions were written in brackets, but the CMC again seems to accept this could be indicative of it Royal London's agent finding it difficult to obtain answers from her. I can't fairly take that to be a failing on Royal London's part. The agent would have followed a script which made clear it was *'to make sure you are aware of the potential dangers of transferring your pension overseas… overseas pension scams are becoming more and more common'.* I see no reason why, as a result, its agent would not have proceeded through all the questions had Mrs D allowed them to do so.

Although I accept Mrs D *was* most likely cold called, she doesn't appear to have been willing to confirm this to Royal London. I've considered the CMC's point that Mrs D was being asked these questions *after* she'd already transferred her Prudential pension. But whilst Prudential didn't contact Mrs D, Royal London explained to Mrs D that it was getting in touch because it was concerned about the risk of a scam. It's reasonable to expect Mrs D to have taken that explanation at face value rather than to assume that because Prudential had not raised any concerns, there were none to be concerned about. I think the explanation for her reaction to Royal London's questions lies more in her being forewarned by those who advised her that her ceding schemes would intervene in an attempt to retain her business.

However productive the call might have been, however, Royal London would already have known (without needing to ask Mrs D) that she had been informed of an overseas investment opportunity - one of the other PSIG filter questions. 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 a scheme to choose the most relevant questions (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 addressed all four areas of concern in the questions it asked Mrs D.

Royal London did establish the legitimacy of the QROPS. Before phoning Mrs D, it had already checked on 19 April 2016 that:

- all the necessary forms including HMRC forms had been properly completed;
- the scheme provided the necessary HMRC registration certificate, which it checked against a list on HMRC's website on the day of transfer;
- the scheme evidenced that it was not only registered with the MFSA but the administrators were registered with the Isle of Man Financial Services Authority;
- this cross-checked against the MFSA's website, which confirmed Integrated Capabilities' role as administrator and Optimus Pension Administrators' role as 'back-office administrator' with effect from 2 March 2016;
- the scheme had completed Royal London's 'QROPS checklist' to confirm it would adhere to QROPS requirements and protect Mrs D from adverse tax charges.

Royal London also contacted Mrs D, but in my view that was to ask her a more limited range of questions than envisaged by the Scorpion action pack or PSIG Code. One of the questions it asked did address her rationale for transferring. Its notes were that she wanted to consolidate her pensions in one place, which based on Mrs D's testimony is a likely sounding answer that she would have given. So Royal London knew that Mrs D was transferring to an arrangement that was primarily designed for people living overseas even though she wasn't intending to do that, in order to consolidate her pensions.

The wider range of questions would include who was advising her and what the proposed investments were. However Mrs D's apparent reluctance to fully answer Royal London's questions at the time means that, had it asked her this wider range of questions, I can't be confident that it would always have obtained meaningful or insightful answers. I'll illustrate this with two contrasting scenarios, which I'll then consider in turn:

1. Mrs D might not have given substantially more information than Royal London was already able to obtain and record in the existing call note. Namely, that she understood the tax implications, had full documentation for the QROPS and knew if she would be covered by compensation arrangements. But she wouldn't have been prepared to share details of the investments or her adviser (or would have given the impression she wasn't being advised). ***Or*:**

2. Mrs D would have been forthcoming with details of those who advised her – her CMC says in response to my provisional decision that this was FRPS *and* Strategic Wealth – and that the investments involved such things as TRG, loan notes, and a managed fund for example.

Would the answers Mrs D gave in either of these scenarios have made a difference?

I don't think the first of these scenarios would assist in the outcome Mrs D is seeking for her complaint to be upheld. I say this as the less Royal London was able to ascertain about her transfer, the less specific warnings it would have been able to communicate to her.

From what she had already said, Mrs D gave the impression she had shopped around to decide on this QROPS provider; understood how the scheme would work and its tax implications; and appeared to be motivated to combine her pensions together rather than necessarily to make a particular investment. I appreciate there would likely still have been cause for some concern that there appeared to be a lack of advice (or unclear advice), when the knowledge to make such a transfer is likely to come from third party involvement.

Royal London could have suspected the involvement of Capital Facts as that firm obtained details of Mrs D's pension. If it had been particularly vigilant, it could have seen that FRPS had certified Mrs D's identify as part of the Optimus transfer request. However I'm not persuaded that it would have been in a position to confidently conclude that either firm must have *advised* Mrs D to transfer out of her personal pension (a regulated activity that would be in breach of FSMA) without her being prepared to share that information.

There weren't grounds to attempt to block Mrs D's transfer even if she didn't provide all the information Royal London required, as she had a statutory right to make a transfer. As a result, I think the extent of the warning Royal London could have provided Mrs D in this scenario was that QROPS aren't normally intended for people who are remaining in the UK, and she ought to consider getting proper, regulated advice on what she was doing.

I haven't been able to reasonably conclude that Mrs D would have changed her mind as a result of a fairly generalised warning like this. I say this because asking the questions in itself was a key part of meeting the aim of the Scorpion guidance to *"establish whether they understand the type of scheme they'll be transferring to".* But Mrs D admits in her testimony that she thought that she was getting legitimate advice – including from Strategic Wealth. That would have been with good reason: the standard suitability report I'm aware Strategic Wealth was issuing at the time is a good indication, in my view, of how it would have described its regulatory status in the documents and discussions Mrs D says she had. This explained that the firm was registered with the Gibraltar Financial Services Commission.

So even if Mrs D hadn't given Strategic Wealth's name to Royal London, by the time it gave her this generalised warning I think she would already have known that she was getting advice from a firm that was regulated in Gibraltar. And she appears to have been advised, by that regulated firm, that there were advantages in moving her pension to Malta which it's already fair to say she wouldn't have expected Royal London to agree with. On balance therefore, I don't think Royal London highlighting that the QROPS wasn't a typical pension arrangement for someone remaining in the UK, and that she needed to seek regulated advice from someone different, would likely have altered Mrs D's inclination to proceed.

Turning to the second scenario above, I've considered what would likely have happened if Royal London knew that Strategic Wealth and a TRG investment in particular was involved. This was an overseas property scheme of the type that was highlighted as an area of concern in the PSIG Code. It's likely Mrs D would also have been aware that other investments were included in the QROPS proposal, some of which might have appeared to be more conventional (and in turn be at lower risk of a scam). But overall it would have

seemed she had been told to expect high returns from the recommended portfolio.

I appreciate that if Royal London had asked Mrs D a wider range of questions then the due diligence process wouldn't have necessarily followed a neat, linear, path. But I think it is fair to say that if full answers had been provided, Royal London wouldn't have needed to ask too many questions of Mrs D for the warning signs about the investment or high returns to have become apparent. And if Royal London had followed the Scorpion guidance, similar findings would have followed. Indeed, an earlier action pack had also included a case study, in which the victim – like Mrs D – transferred (albeit not to a QROPS and not using a regulated adviser) in order to invest in an overseas hotel development.

However and as I've previously said, the mention of Strategic Wealth would also have given Royal London some comfort. To explain this further, I'm not satisfied that Mrs D would only have mentioned FRPS who she had earlier been in contact with. That's because by the point Royal London would have been discussing this with her, Mrs D had appointed Strategic Wealth Limited in Gibraltar as her QROPS adviser. And Mrs D getting advice from that firm seems to have been a prerequisite for Optimus then requesting the transfer from Royal London directly.

The PSIG Code (and Scorpion guidance) recommends checking the FCA's online register of authorised firms. Royal London would have established that Strategic Wealth Limited was on that register. It was regulated by the Gibraltarian equivalent of the FCA and had passported into the UK under a services passport. The Code and the checklist didn't contain any warnings at that time about using overseas advisers that are, nonetheless, on the FCA register. They also didn't at that time ask ceding schemes to determine the precise nature of an adviser's involvement or their regulatory permissions – just that they were showing as authorised on the FCA register.

It's possible that Mrs D might have mentioned FRPS in addition to Strategic Wealth, given that her testimony says both firms advised her. But I can't fairly say Royal London should have become concerned about this because it would have appeared most likely that the extent of any other firms' involvement was to refer Mrs D on to receive regulated advice from Strategic Wealth. Once Royal London had confirmed a regulated adviser was involved, and the legitimacy of the receiving scheme, I don't think it needed to look any further. It would have substantively met the requirements of the Scorpion guidance, the Code and its wider obligations under the Principles and COBS 2.1.1R.

Therefore under the second scenario where Mrs D had been willing to openly answer a wider range of questions, I'm satisfied Royal London would have ultimately concluded that the threat posed by the transfer was minimal. Not only was she transferring to a legitimate scheme – one that hadn't done anything over the preceding two years to attract the attention of HMRC – but there was also the involvement of an advising firm on the FCA register. So unlike the first scenario, Mrs D wouldn't have been given any specific reason by Royal London to question what she was doing.

I recognise that the mere act of Royal London asking Mrs D more about the nature of the investments she was making – and the high returns she was told to expect – may have caused her to have second thoughts. But from what I can ascertain, Mrs D would have known she was investing in a range of assets and the outcome of her transfer wasn't reliant solely on the performance of one investment. Although I accept that Strategic Wealth's recommendations were likely unsuitable for her, and Mrs D lacked the experience to appreciate that for herself, it wasn't Royal London's role to question a regulated adviser's recommendations. Intervening to that degree isn't implied by any of the guidance it was being asked to follow at the time.

Royal London's questions would have done no more in my view than to cause Mrs D to think a little more about whether she was doing the right thing. Under this second scenario, there were no explicit warnings that Royal London should, reasonably, have given to Mrs D. Against the backdrop where she says she had already received detailed paperwork and advice from Strategic Wealth – which a key part of Royal London's questioning would have re-confirmed to her was a regulated firm appearing on the FCA register – I'm again not persuaded overall that Mrs D would have decided against transferring.

The CMC has argued that the letter Royal London *did* send Mrs D was insufficient because its purpose appeared to only be to check that Mrs D had a valid transfer right, and that she knew what she had already confirmed in the phone call about the tax implications and that she wasn't protected by the FSCS. However as I've shown, even if Royal London had attempted to obtain more information from Mrs D, and to the extent that she would have been willing to give that information, I don't think it would have led to a materially more impactful warning because she already knew she was getting regulated advice.

The additional impact of the Scorpion insert or booklet

As I've noted above, Royal London can't show that it actually sent Mrs D either of the March 2015 or March 2016 booklets, or Scorpion insert. By the time Royal London was issuing the transfer pack it should have sent the March 2015 insert.

On receipt of this insert, I think Mrs D would have recognised in the infographic it contained that she had been cold-called and advised to expect high returns from transferring funds overseas. I can see why that might have led a person to have concerns and re-think what they were doing. However, there were also warning signs listed which Mrs D would have been able to appreciate *weren't* present in her transfer: she wasn't accessing her pension before age 55, and she wasn't affected by *"A proposal to put your money in a single investment. In most circumstances, financial advisers will suggest diversification of assets."*

Mrs D would also reasonably have had confidence in the advice she was going on to receive because Strategic Wealth was a regulated firm and the QROPS was also appropriately registered and regulated. So all things considered together, I'm insufficiently persuaded that seeing this version of the Scorpion insert would have led Mrs D to back out of making the transfer at that point.

I've carefully considered the impact of the 2016 booklet given that Royal London believes it would (or should) have sent this to Mrs D. It's important to say that it wasn't required by the guidance to send this booklet in all cases – and I don't think it would have been required in the second scenario above, because Royal London would have had no specific warnings it needed to give Mrs D. However the booklet would have worked well alongside the more generalised warning Royal London should have given Mrs D under the first scenario above (in the event it hadn't been able to establish who, if anyone, was advising her).

This booklet contains the example of 'Geoff', who combined two pensions together in order to invest in an overseas hotel complex, and was under some time pressure to do so. However Geoff was also offered cash upfront, which Mrs D would have known didn't apply to her. And the type of scam being illustrated was where Geoff was made a company director and trustee of the new pension scheme, which wasn't the situation with a QROPS. It also suggests the adviser falsely claimed they were regulated, whereas in Mrs D's case she was dealing with an adviser that she could have checked was on the FCA register.

A checklist at the end of the booklet includes some of the warning signs that were already on the Scorpion insert Mrs D would (if Royal London had acted appropriately) have received the previous year. It also warns about pressure to act quickly and being promised 'guaranteed' returns. It would have invited Mrs D to check the proposed investments against a list of

known scams, which particularly singles out overseas hotels. (Albeit this wouldn't amount to confirmation that the very development Mrs D was investing in was a scam.) The booklet also shows Mrs D how to check her adviser is regulated, and specifically warns of situations where *"all your money is all in one place – and therefore more at risk"*, which again wasn't a feature of her transfer.

As it took from January to June 2016 to transfer her pension, I can't say on balance Mrs D was under undue pressure. Her testimony also doesn't strongly indicate that the returns she was told to expect, whilst high, were 'guaranteed' as highlighted in this booklet. The reference Royal London made to a lack of protection if things didn't turn out as intended, which Mrs D acknowledged – isn't in my view consistent with this.

It's therefore fair to say some potentially concerning aspects, but others that were more comforting, would have been flagged up by this booklet. But I think it's important to bear in mind Mrs D would likely have been receiving this booklet if she already hadn't been forthcoming with answers to Royal London's questions. So this scenario is already predicated upon Mrs D continuing to trust in the advice she was getting, despite the questioning process Royal London should have taken her through.

I've also taken into account that Mrs D wasn't deterred by the warnings Royal London did give her about the tax implications of transferring to a QROPS. She told us that she had *'requested a medium risk investment, to ensure the safety of her capital'*. The second part of that statement doesn't sit with her acknowledgement at the time of the potential loss of compensation coverage from making an overseas transfer, and Strategic Wealth assessing her as 'balanced risk'.

Obviously I'm not assessing here whether Strategic Wealth adhered to that risk profile with its recommendations, but it's reasonable to conclude that Mrs D was willing to take risks to achieve better returns with her pension and had taken advice from a regulated firm to do so. When taken together, I think all of this means that Mrs D would more likely have remained of the view that she was getting trustworthy advice from a regulated adviser rather than at significant risk of being scammed.

My final decision

I do not uphold Mrs D's complaint or make any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 17 March 2025.

Gideon Moore
Ombudsman