

The complaint

Mr B has complained, via his representatives, about a transfer of his Royal London Mutual Insurance Society Limited personal pensions to a Qualifying Recognised Overseas Pension Scheme (QROPS) in September 2014. Mr B's QROPS was partially used to invest in commercial property development abroad. That investment now appears to have little value. Mr B says he has lost out financially as a result.

At the time of the events Mr B's pensions were provided by another firm. However as Royal London is now responsible for responding to Mr B's complaint I will only refer to it within this decision.

Mr B says Royal London failed in its responsibilities when dealing with the transfer request. He says it should have done more to warn him of the potential dangers of transferring, and undertaken greater due diligence, in line with the guidance he says was required at the time. Mr B says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Royal London had acted as it should have done.

What happened

Mr B held two Royal London personal pensions.

On 10 June 2013 Mr B wrote directly to Royal London requesting transfer documents for both of his pensions.

In October 2013 a firm called wefindanypension.com (WFAP) wrote to Royal London asking for a transfer pack for Mr B's pension. It enclosed Mr B's signed letter of authority (LOA) giving it permission to do so. WFAP was not authorised by the Financial Conduct Authority (FCA). But its LOA indicated it was associated with a firm called Archer Wealth management which was FCA authorised.

On 2 July 2014 Mr B signed an application to join the Harbour Retirement Scheme. This is a QROPS offered by Harbour Pensions (Harbour); a pension provider regulated by the Maltese Financial Services Authority.

Mr B's QROPS pension application form said that a named adviser from Servatus Ltd (Servatus) had provided financial advice. Servatus was an advisory firm regulated by the Central Bank of Ireland and an approved introducer to the Harbour QROPS. Servatus was at the relevant time also shown on the FCA register as authorised in the UK with passporting rights to provide financial advice here.

On the same day, 2 July 2014, Mr B completed an application to invest £30,979 of his pension funds in Dolphin¹ loan notes. The loan notes guaranteed returns of 10.2% a year over a five year period. The loan notes were a form of investment in the company which was

¹ Dolphin has issued loan notes while trading under the names Dolphin Capital, Dolphin Trust and the German Property Group, but for ease I'll only refer to Dolphin in this decision

purported to be developing properties in Germany. They were intended to pay back the capital invested plus fixed rate returns over a set period of time.

On 5 August 2014 Harbour sent a request for Royal London to transfer Mr B's pension funds to the Harbour QROPS.

Royal London transferred Mr B's pensions on 6 September 2014. The total transfer value was in excess of £67,000. He was 48 years old at the time of the transfer.

On Servatus' advice, using an SEB Asset management Bond², Mr B invested over £32,000 in Dolphin loan notes and around £29,000 in an investment fund.

Dolphin ran into financial difficulties. By 2019 it had begun to tell investors that it would be unlikely to meet its liabilities without delay. It eventually became insolvent. I understand that Dolphin's former managing director was recently indicted on 27 counts of commercial fraud in Germany in connection with his Dolphin activities. As such Mr B is unlikely to receive any return on his Dolphin investments.

In December 2019 Mr B complained, via his representatives, 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 the transfer, including (but not limited to) the following: the process began following a cold call from an unregulated adviser; the transfer of funds overseas; the lack of regulated advice; a proposed investment was unregulated, high risk and non diversified; he had been promised unrealistic returns.

Royal London didn't uphold the complaint. It said that none of the information it had about the transfer gave it cause for concern. It was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

Mr B brought his complaint to the Financial Ombudsman Service. One of our Investigators looked into it. She didn't think it should be upheld. Mr B didn't agree and asked for an Ombudsman's determination. While the complaint was waiting my attention another Investigator reviewed the complaint. He also didn't think it should be upheld. Mr B again disagreed. As our Investigators were unable to resolve the matter informally the complaint's been passed to me to decide.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In bringing this complaint Mr B, via his representatives, has made a number of points. I've carefully considered everything he or his representatives have said. However, in this decision I don't intend to address each and every point. Instead I will focus on what I see as being the key issues and the reasons for my decision.

While doing so I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is

² This is an investment platform and tax wrapper. It holds Mr B's pension investments. SEB is the trading name of SEB Life International Assurance Company Limited, a company regulated by the Central Bank of Ireland.

more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The relevant rules and guidance

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

- The Pensions Schemes Act 1993 and Personal Pension Schemes (Transfer Values) Regulations 1987 generally give a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme, which is either registered with HMRC for tax purposes or is a QROPS.
- A QROPS must already be an overseas pension scheme, defined in short as being one which is subject to specified regulatory and taxation restrictions in the country of establishment. Then it must be recognised, meaning that it meets specified tests applied by HMRC, including on minimum retirement age and the application of tax relief.
- To be a QROPS a scheme must notify HMRC that it is a recognised overseas pension scheme, provide appropriate evidence of this to HMRC, undertake to adhere to its requirements and not be excluded by it from being a QROPS.
- Schemes that have notified HMRC of this are included in a published list on its website.
- On 10 June 2011 and 6 July 2011, the FCA's predecessor – the Financial Services Authority (FSA) issued announcements to consumers about the dangers of “pension unlocking” and “early pension release schemes”. At around the same time the Pensions Regulator (TPR) put up a notice on its website termed ‘pension liberation’, referring to websites and cold callers that encouraged people to transfer in order to receive cash or access a loan. However, it was designed to raise public awareness about pension liberation, and remind trustees of their duties to members, rather than introduce any specific new steps for transferring schemes to follow.
- TPR launched its Scorpion campaign – so called because of the imagery it contained – on 14 February 2013. The aim of the campaign was to raise awareness of pension liberation activity and to provide guidance to scheme administrators on dealing with transfer requests in order to help prevent liberation activity happening. The FSA, and later the FCA, endorsed the guidance. It was subsequently updated, including in July 2014. I cover the Scorpion campaign in more detail below.
- Royal London was subject to the FCA Handbook and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA/FCA rules governing pension transfer requests, but the following have particular relevance:
 - 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.

The Scorpion guidance

The Scorpion campaign was launched on 14 February 2013, and was initially focused just on pension liberation – namely, the access to pension funds in an unauthorised manner (such as before normal minimum pension age). However, it's the update to that guidance released on 24 July 2014 that's most relevant to this complaint. It widened the focus from pension liberation specifically, to pension scams – which it said were on the increase.

The materials in the Scorpion campaign comprised:

- An insert to be included in transfer packs (the 'Scorpion insert'). The insert warns readers about the dangers of agreeing to cash in a pension early and identifies the following warning signs: being approached out of the blue by phone or text; pushy advisers or 'introducers' who offer upfront cash incentives; companies offering loans, saving advances or cash back from a pension; and not being informed about the tax consequences of transferring. It concludes by recommending actions that can be taken to avoid becoming a victim of such activity. These included background searches online, pointing out that any financial advisers should be registered with the FCA. TPR said at the time it wanted to see the use of the Scorpion insert in transfer packs become best practice.
- A longer booklet issued by TPAS which gives more information, including example scenarios, about pension scams. Guidance provided by TPR said this longer leaflet was intended to be used in ongoing communications with members so they could become aware of the scam risks they were facing.
- An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "watch out for" various warning signs of a scam. If any of the warning signs applied, the action pack provided a checklist that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where a transferring scheme still had concerns, they were encouraged (amongst other things) to contact the member to establish whether they understood the type of scheme they were transferring to and – where a member insisted on transferring – directing the member to Action Fraud or TPAS.

The 2014 update to the Scorpion campaign

This update repeated much of what was stated in the 2013 version. There was again an insert which was to be sent to members requesting a transfer of their pension and an action pack which provided guidance to scheme providers on what to look out for. And there was a

larger booklet which could be provided to members if they wanted more information about the matter.

However, the main change was that the 24 July 2014 update widened the focus from pension liberation specifically to pension scams. The action pack for trustees and administrators was entitled "Pensions Scams" whereas the action pack from 2013 was entitled "Pension Liberation Fraud". And, on the front page of the 2014 insert that was to be sent to members, it said "Pension scams. Don't get stung". The 2014 update also made references throughout to "scammers" and made comments in relation to a member losing their lifetime savings as a result of being scammed, as opposed to being subject to potential tax charges which could occur as a result of liberating a pension.

Other features of the 2014 guidance:

- It said pensions scams in the UK were on the increase. With one-off pension investments, "pension loans" or upfront cash being used to entice savers.
- Trustees, administrators and pension providers had to ensure that members received regular and clear information about the risk of pension scams and how to spot one.
- It asked for the Scorpion insert to be included in the member's annual pension statement or in any other member communications.
- It highlighted some common features of pension scams such as phrases like "one off investment opportunities", "free pension review", "legal loopholes", "cash bonus" and "government endorsement".
- It stated that consumers being approached out of the blue over the phone, via text messages or in person door-to door was a common feature of a scam.
- Transfers of money or investments overseas were also highlighted as something to watch out for. It explained this was because the money would be harder to recover.
- It said that if any of the warning signs applied, the action pack provided a checklist transferring schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request.
- If transferring schemes still had concerns, they were encouraged to contact the member to establish whether they understood the type of scheme they were planning on transferring to and to send them the pension scams booklet.
- It also encouraged transferring schemes to communicate with the member at risk – over the phone, via email or letter – this could help the transferring provider to establish answers to more of the questions on the checklist; or to direct the member to Action Fraud or TPAS if the provider thought it was a scam; or if the member insisted on proceeding the provider could contact Action Fraud itself.

The 2014 action pack also included two examples of real-life scams where the individuals concerned lost most or all of their pension savings. One of the examples involved an individual under the minimum pension age who wanted to access some of her pension early. And the other concerned an individual (again under the minimum pension age) who had been approached out of the blue with an offer for a free pension review and then offered a

“unique investment opportunity” for his pension savings specifically in a property development overseas.

The status of the Scorpion guidance

TPR issued the guidance under the powers at s.12 of the Pension Act 2004. Thus, for the bodies regulated by TPR, the status of the guidance was that it provided them with information, education and/or assistance, as opposed to creating any new binding rule or legal duty. Correspondingly, the communications about the launch of the guidance were predominantly expressed in terms that made its non-obligatory status clear. So, the tenor of the guidance is essentially a set of prompts and suggestions, not requirements.

The FSA’s endorsement of the Scorpion guidance was relatively informal: it didn’t take the form of Handbook Guidance, because it was not issued under s.139A of the Financial Services and Markets Act (FSMA), which enabled the FSA to issue guidance provided it underwent a consultation process first. Nor did it constitute “confirmed industry guidance”, as can be seen by consulting the list of all such FSA/FCA guidance on its website.

I take from the above that the contents of the Scorpion guidance was essentially informational and advisory in nature and that deviating from it doesn’t necessarily mean a firm has broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member’s statutory rights.

That said, the launch of the Scorpion guidance 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 transfer requests. TPR launched the campaign in response to widespread abuses that were causing pension scheme members to suffer significant losses. And its specific purpose was to inform and help ceding firms like Royal London 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 a turning 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.

What did personal pension providers need to do?

TPR said it wanted to see the use of the Scorpion insert in transfer packs become best practice. Sending the insert to customers asking to transfer their pensions was a simple and inexpensive step for pension firms to take and one that wouldn’t have got in the way of efficiently dealing with transfer requests. So, all things considered, I think ceding schemes should have sent the Scorpion insert as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the pack had come from a different party.

The contents of the Scorpion insert were directed towards consumers themselves and contained warnings about dishonest intermediaries who might be trying to scam them. It would have defeated the purpose of the insert if, instead of sending it to their customer, pension firms sent the insert to an intermediary in the hope that that they would then share the insert with their client. I therefore consider it fair and reasonable to say the insert had to be sent direct to the member rather than, say, to an unregulated introducer.

Under the 2014 Scorpion action pack, firms were asked to look out for the tell-tale signs of pension scams and undertake further due diligence and other appropriate action where it was apparent their client might be at risk. The action pack points to the scam warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. Therefore, as above, whilst using the action pack wasn't an inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.

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

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

Mr B told us that at the time of events he was working, earning a modest wage. He was recently separated and had stopped contributing to his pensions in order to reduce his outgoings. I've seen no evidence he was particularly experienced in pension or investment matters. He said he'd been surprised by the values Royal London had quoted as he thought his pensions were only worth around £27,000.

Mr B said that he was cold called and offered a free pension review. In his written complaint submitted via his representatives, he said that the cold call was from WFAP. However, when my colleague spoke with him, while his memory was – understandably given the passage of time – unclear, he named two other firms: Jackson Francis and Anthony Feeney Financial Services (AFFS) as possibly playing a part in the matter. AFFS was, at the time, an FCA regulated advisory firm. Jackson Francis was an unregulated introducer. I understand that in other cases we've looked at Jackson Francis has made introductions to Servatus. However, on the file I've seen there's no paperwork from either Jackson Francis or AFFS. After the initial telephone contact Mr B said advisers visited him on more than one occasion.

Mr B didn't have a clear understanding of how the Dolphin investment worked. He believed this was an investment in rental properties. He said the adviser told him he could expect to receive interest on his initial investment, over a six year period, which would increase incrementally from 8% to 12%, with an average return of 10%. He wasn't intending to take his benefits before age 55 nor was he offered any bonus or incentive to transfer. Instead he was attracted by the high level of returns. Also he wouldn't need to make any further contributions or have to buy an annuity when it came to taking benefits.

The Dolphin investments were generally considered to be high risk and illiquid and unlikely to be suitable for the majority of inexperienced retail investors like Mr B. So it's unlikely he would have known about the existence of the Dolphin investments or how to go about investing in those unless someone recommended that action to him. Making a recommendation to transfer a pension fund is an activity that can only be carried out by an FCA authorised adviser.

While it's not clear who made the initial cold call, I don't find that particularly relevant. Royal London was certainly aware of WFAP's involvement, as it responded to a request for information from it. But it's worthwhile noting that, by the time Harbour sent the transfer request WFAP had been struck off Companies House register and dissolved. In any event there's no evidence on the file of papers I've been given, that WFAP, AFFS or

Jackson Francis gave Mr B advice to invest in Dolphin via the Harbour QROPS. Instead it seems more likely that one of them introduced Mr B to Servatus.

There is compelling evidence that Servatus gave Mr B advice. I say that as: Servatus' adviser is named on the Harbour Pension application form as the professional adviser; Mr B paid a fee to it from his transferred pension funds; and his representatives have referred to Mr B relying on Servatus' report³ at the time of the transfer. So I'm satisfied that it was Servatus rather than an introducer that made the recommendation for Mr B to transfer his pension and invest as he did.

As I've said above, Mr B is unlikely to receive any return on his Dolphin investments.

I haven't been provided with up-to-date statements of how Mr B's other investment have performed. However, from information Mr B's representatives gathered in 2019 it would appear this is unlikely to have performed as well as Royal London's pensions would have done. But, my understanding is that the other fund Mr B invested in should be liquid.

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.

Royal London has confirmed that it didn't ever send the Scorpion insert to Mr B. It said it didn't do so as it had no concerns about the validity of the receiving scheme. However, I don't think that was reasonable in the circumstances, especially where the funds were being transferred to an overseas scheme and where Royal London had no knowledge of their eventual destination. And, for the reasons given above, I think Royal London should have issued the Scorpion insert with all transfer requests. So I think not doing so was a failing.

However, I don't think it would have made a difference to the outcome if Royal London had sent Mr B the Scorpion insert.

Royal London had a number of opportunities that I'm aware of to send the insert to Mr B. Those were when Mr B himself and WFAP requested transfer documents and information in 2013 and also in August 2014 when Harbour submitted the transfer request.

But even if Royal London had sent Mr B the inserts on those occasions I don't think that would have raised significant concerns with him. I say that as while both inserts warned about cold calls and offers of a pension review both the February 2013 and July 2014 versions of the insert are weighted towards warning of the risk of pension liberation – that is accessing pension funds in an authorised manner, typically before the age of 55. And, Mr B had no intention of doing that. Also both inserts advise consumers not to be rushed into making a decision, which plainly didn't happen here.

Further we asked Mr B what he thought he would have done if he'd seen the insert. He told us at the time he might have rung someone but couldn't say for certain. And, from Mr B's evidence to us, it's clear that he put his trust in the advisers, he found them professional and thought the investments legitimate and sounded like a good idea. Further, Servatus was FCA registered, albeit on a passported basis from another country. And it would be usual for third party agencies like TPAS to recommend consumers speak with a regulated adviser, which he'd

³ Mr B no longer has a copy of this report and I haven't had sight of it.

already done. So, on its own, I don't think the Scorpion insert would have prompted Mr B to change his mind about transferring.

Due diligence:

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

When it sent its transfer request Harbour Pensions provided Royal London with: transfer discharge forms; HMRC forms APSS263 and CA1890⁴; confirmation that HMRC recognised the QROPS in April 2013; and Mr B's identification documents.

Royal London also checked that the receiving QROPS was on HMRC's published list. This step ensured that the transfer qualified as an authorised payment for tax purposes and also satisfied Mr B's statutory right, and potentially other legal rights, to transfer. So, on the face of it, it had all the paperwork required to make the transfer lawfully. However, in my view, the mere fact HMRC had registered and recognised the QROPS wasn't enough to remove the need for Royal London to make further enquiries. That's because it was clear Mr B was intending to transfer his pension to an overseas scheme, which very likely would have involved overseas investments.

The 2014 Scorpion action pack listed overseas investment as a possible warning sign of a scam. And the update had taken place around a month before Harbour submitted the transfer request. So, I think it was reasonable for Royal London to have been familiar with the changes to the guidance and to have applied it to Mr B's transfer before completing it.

It's worth bearing in mind that the 24 July 2014 update to the Scorpion guidance shifted the focus away from just pension liberation to pension scams in general. This gave more prominence to overseas investments. And given that all QROPS are based overseas, the potential for those to facilitate offshore investments – which was something the Scorpion guidance advised ceding scheme to be on the look-out for – was greater. So in line with its obligations under PRIN and COBS, I think, in order to reasonably exercise its due diligence requirements, Royal London should have followed up on this warning sign. The most reasonable way of going about this would have been to turn to the 2014 action pack checklist to structure its due diligence in regard to Mr B's transfer.

The checklist 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 checklist would have required Royal London to contact Mr B. The checklist is divided into three parts (which I've numbered for ease of reading and not because I think it 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?

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',

⁴ These are forms which Harbour and Mr B needed to complete to allow Royal London to transfer Mr B's pension funds to the QROPS.

'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 checklist identified actions that should help the transferring scheme establish the facts.

I don't think it would always have been necessary to follow the checklist in its entirety. And I don't think an answer to any one single question on the checklist would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the checklist to establish whether a scam was a realistic threat. Given the warning sign that should have been apparent when dealing with Mr B's transfer request, and the relatively limited information it had about the transfer, I think in this case Royal London should have addressed all three parts of the checklist and contacted Mr B as part of its due diligence.

What should Royal London have found out – and would it have made a difference?

With a few simple enquiries, Royal London would have discovered a number of facts about the transfer. It's likely it would have found out that the prompt for Mr B to consider a pension transfer was a cold call. I also think Royal London would have learned from Mr B that he was not intending to liberate his funds and that he hadn't been offered a bonus or other cash incentive to transfer.

Royal London would also probably have learned that the transferred funds would be invested overseas. Also, given that it had provided Mr B with a written report setting out its advice and recommendations, I think Royal London would have discovered that Servatus had advised Mr B to transfer.

The Scorpion checklist recommends that, in order to establish whether a non-regulated adviser has in fact advised the consumer, the transferring scheme should consult the FCA's online register of authorised firms. Royal London should have taken that step, which is not difficult. Had it done so it would have discovered that Servatus appeared on the FCA register as a firm that was passported from Ireland to the United Kingdom. This means that for UK purposes throughout the period of this transfer 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.

So, I think it is reasonable to assume that, if Royal London had made these enquiries, Servatus role as an authorised advising firm would have indicated that the transfer was unlikely to be a scam. And, as a result, Mr B would enjoy some regulatory protections in the unlikely event it turned out to be one.

Those regulatory protections would not come via the UK's complaints and investor protection institutions: the Financial Ombudsman Service or the Financial Services Compensation Scheme (FSCS). But instead through Servatus' own regulator. 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 regulated firm (albeit by a 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. So, it would've had to meet certain required standards in all of its dealings and be subject to regulation and to investor recourse under the Irish system.

In light of this, I don't think it's unreasonable that Royal London could (and would if it had checked up on Servatus' regulatory standing) have been reassured that Servatus was regulated to EU standards that were accepted for the purpose of authorisation under UK law.

What should Royal London have done with this information?

Royal London needed to check for the risk of pension liberation and scams in a way that was proportionate to the warning signs. But a ceding scheme is not expected to act as a general pension adviser to a member who tells it they want to leave their scheme. The Scorpion guidance is aimed at spotting and averting potential pension transfer scams, rather than delivering general advice about the merits of different regulatory systems or high-risk investments.

So, for it to be reasonable to expect a ceding scheme to have concerns and raise these with its member, there must, viewed overall, appear to be a real risk their member is falling victim to a scam. For Mr B's transfer, viewed overall in that way and if Royal London had taken the steps it should, I don't consider that would have been the case.

Where a ceding scheme like Royal London thought a regulated adviser (even one operating on a passported basis) had provided appropriate financial advice it's unlikely it would intervene further. That's the case where there were other warning signs, such as a cold call or an overseas investment. That's because Royal London's role was not to give Mr B advice about the suitability of a transfer or his chosen provider or investments. Its role in doing due diligence would principally have been to ensure Mr B was transferring to an appropriately registered scheme (he was) and to give him the warnings associated with pension liberation or scams and transfer risks in general.

So, if it believed Mr B was being advised by an appropriately authorised adviser, it's extremely unlikely that Royal London, which wasn't acting – nor was it authorised to act – in an advisory capacity, would have told Mr B that he might be putting his pension at risk if he followed the advice given by a regulated adviser. And it would reasonably have assumed that, as his regulated adviser, Servatus was likely acting in his best interests and would have made him aware of the relevant risks and issues. It wasn't Royal London's responsibility to question or scrutinise that advice.

So, even if Royal London had done more thorough due diligence in line with the Scorpion action pack as it ought to have done here, the end result of any such due diligence wouldn't have resulted in any significant warnings being given to Mr B. And I don't think the mere act of contacting him and asking questions about the transfer would have prompted a change of heart. The majority of the responses Mr B would likely have provided would not have given rise to concerns. It therefore follows that I'm satisfied Mr B wouldn't have stopped the transfer even if things had happened as they should have.

Mr B's representatives have suggested that, in putting further due diligence questions to Mr B, it would have had to tell him that it was doing so in order to check for warning signs of pension scams. And, had this happened shortly after Royal London had given him the July 2014 Scorpion insert, he would have been more likely to make the connection between the warnings and his own situation. I agree that those circumstances would have made him 'more likely' to make a connection between his circumstances and the warnings than receiving almost no warnings at all. But I don't think that means he would have identified they actually applied to him and that he was putting his pension funds at risk.

I think it's worth repeating that Mr B was taking advice from a regulated firm. That firm was expected to act in his best interests. And any warnings Royal London provided would most likely have included discussing his situation with a regulated adviser. However, it was a regulated adviser that had made the recommendation to transfer and invest as he did. So, if he'd discussed those warning signs with Servatus, on balance I think it's more likely than not that it would have assuaged his fear. It most likely would have explained the due diligence it had done on his potential investments. It's also likely it would have told him of the regulatory protections he would have access to as a result of its regulated status.

Also Mr B told us that he found the advisers and the investments professional and legitimate. And he clearly found the recommended transfer and subsequent investments an attractive proposition.

In those circumstances I don't think that even if Royal London had done everything it should have the outcome would have been any different. That is, on balance, I think Mr B would have transferred his pension. It follows that he would be in the same position he is in now. So I don't think Royal London has caused the investment losses he has suffered.

My final decision

For the reasons given above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 7 March 2025.

Joe Scott
Ombudsman