DRN-3584330

The complaint

Mrs O has complained about the actions of The Royal London Mutual Insurance Society Limited ("Royal London") when it transferred her personal pension to a Qualifying Recognised Overseas Pension Scheme ("QROPS") in 2014. The QROPS subsequently invested in an asset that is unlikely to realise any value meaning Mrs O has suffered a significant financial loss.

Mrs O says Royal London failed in its responsibilities when dealing with her transfer request. She says 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 O says she wouldn't have transferred, and therefore wouldn't have suffered financial losses, if Royal London had acted as it should have done.

What happened

On 29 May 2014, Harbour Pensions Limited wrote to Royal London requesting it transfer Mrs O's pension to the Harbour Retirement Scheme ("the Harbour Scheme"). Harbour Pensions Limited were the administrators of the Harbour Scheme, a QROPS based in Malta.

After a follow-up letter from Royal London, Harbour Pensions Limited wrote to Royal London on 26 June attaching further transfer documents. Included in all the paperwork were various forms completed by Mrs O and Harbour Pensions Limited, along with a letter from HMRC, dated 9 April 2013, which said HMRC had accepted the Harbour Scheme as a QROPS.

On 18 July, Royal London wrote to Mrs O to say her transfer value had been paid. The transfer value was approximately £13,500. By this point, Mrs O had already transferred a personal pension from another provider ("Firm B") to the same QROPS. Of the funds available to invest from the combined transfer value, 65% was invested in a Dolphin Capital Loan Note. Dolphin Capital (now known as the German Property Group) is a German property venture which has gone into liquidation. The remainder was put into an investment account managed by WH Ireland Limited. Mrs O took tax free cash from her QROPS in 2017.

Mrs O says her interest in the transfer followed a cold call, during which she was offered a free pension review. She was then referred to Servatus Ltd, a Dublin based firm, which advised her to transfer to the Harbour Scheme and invest in Dolphin.

Mrs O was, and remains, resident in the UK. She was 51 at the time of the transfer.

In November 2020, Mrs O (with the help of a claims management company) complained to Royal London. Briefly, her argument is that Royal London ought to have spotted, and told her about, a number of warning signs in relation to the transfer, including (but not limited to) the following: the transfer started with a cold call; she was offered a free pension review; she was advised by Servatus which meant she didn't have recourse to the Financial Ombudsman Service or Financial Services Compensation Scheme if its advice was unsuitable; a QROPS was a complex arrangement and not necessary for her situation, especially as she wasn't intending to move abroad; she was transferring in order to invest in high risk, unregulated, assets; and the Harbour Scheme pressured Royal London into processing the transfer quickly.

Royal London didn't think it had done anything wrong. It initially said that Mrs O hadn't provided evidence of there being any financial losses so it wouldn't be in a position to consider any redress. There were also some inaccuracies in its response. In a revised response (after the complaint had been referred to us), Royal London said, in brief, that the transfer was to a legitimate scheme; Mrs O was aware of, and willing to accept, the high level of risk she was taking on; and Servatus was regulated by the Central Bank of Ireland which would have given her reassurance about the transfer.

Mrs O remained dissatisfied. Our investigator looked into the complaint but didn't think it should be upheld. Mrs O asked for an ombudsman to make a final decision.

What I've decided – and why

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

The relevant rules and guidance

Personal pension providers are regulated by the Financial Conduct Authority (FCA). Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority (FSA). As such Royal London was subject to the FSA/FCA Handbook, and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS).

There have never been any specific FSA/FCA rules governing 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.

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

- Recognised, meaning in short that it meets specified tests applied by HMRC, including on minimum retirement age and the application of tax relief.
- Qualifying, meaning it must notify HMRC that it is a recognised overseas pension scheme; provide appropriate evidence of this; undertake to adhere to HMRC's requirements; and not be otherwise excluded by HMRC from being a QROPS.

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

The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme, which is either registered with HMRC for tax purposes or is a QROPS. Someone may also have a right to transfer under the terms of their pension contract.

The right to transfer came to be exploited, with people encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren't entitled to – for instance, because they were below minimum retirement age. This came to be known as pension liberation. At various points, regulators issued bulletins warning of the dangers of taking such action. But it was only from 14 February 2013 that transferring schemes had guidance to follow that was aimed at tackling pension liberation – the "Scorpion" guidance.

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

- An insert to be included in transfer packs (the "Scorpion insert"). The insert warns readers about the dangers of agreeing to cash in a pension early and identifies a number of warning signs to look out for.

- A longer booklet issued by TPAS which gives more information, including example scenarios, about pension liberation. Guidance provided by TPR on its website at the time said this longer leaflet was intended to be sent to members who had queries about pension liberation fraud.

- An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "look out for" various warning signs of liberation. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where transferring schemes still had concerns, they were encouraged to write to members to warn them of the potential tax consequences of their actions; to consider delaying the transfer; to seek legal advice; and to direct the member to TPAS, TPR or Action Fraud.

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

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

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

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

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

<u>What did personal pension providers need to do?</u>

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. And where the recommendations in the guidance applied, absent a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations. With that in mind, I take the view that personal pension providers dealing with transfer requests needed to heed the following:

1. When TPR launched the Scorpion guidance in February 2013, its press release said the Scorpion insert should be provided in the information sent to members requesting a transfer. It said on its website that it wanted the inclusion of the Scorpion insert in transfer packs to "become best practice". The Scorpion insert provided an important safeguard for transferring members, allowing them to consider *for themselves* the liberation threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. So, all things considered, I think the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party.

2. I also think it would be fair and reasonable for personal pension providers – operating with the regulator's Principles and COBS 2.1.1R in mind – to ensure the warnings contained in the Scorpion insert were provided in some form to a member before a transfer even if the transfer process *didn't* involve the sending of transfer packs.

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

4. 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.

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

<u>The circumstances surrounding the transfer: what does the evidence suggest happened?</u>

Mrs O told us someone cold called her to discuss her Firm B pension, which she had forgotten about, and that she was told it would perform a lot better if she transferred it, and her Royal London pension, and invested elsewhere. She says storage units were suggested initially with overseas investments recommended later on. She says the people she spoke to seemed genuine. The fact that she was able to take tax-free cash in 2017 seemed to confirm this to her.

It isn't clear who Mrs O spoke to, and when. She says a lot of people were involved, which is corroborated by the documentary evidence. I can see Royal London wrote to a business acting on Mrs O's behalf about a possible transfer in March 2013. It also wrote to a different business acting on her behalf in December 2013. And in January 2014 Mrs O wrote to Royal London requesting a transfer to a different scheme (which didn't go through). Add in Servatus and Harbour Pensions, not to mention her two existing pension providers, and I can see why some of the events and participants are now unclear to Mrs O.

Nevertheless, it seems clear that Mrs O was cold called and told about various investments. It's also clear that she was then referred to Servatus sometime in early-to-mid 2014 because she signed an application form for the Harbour Scheme on 14 May in which she agreed to pay Servatus a 0.5% fee for its advice. She says that she didn't meet Servatus but it recommended she transfer her pension to a Harbour QROPS and invest in Dolphin which she says was described as a "unique and proven investment scheme" that was involved in renovation projects in Germany. She says she was told it would return 62% over the proposed five years of the investment.

It doesn't look like Mrs O was attempting to liberate her pension. Although she told us about being subject to an IVA at the time, she hasn't mentioned being offered a cash incentive or being told about accessing her pension early or how to exploit "legal loopholes". She hasn't mentioned receiving a tax penalty from HMRC. And she didn't receive any payment from the QROPS until the payment of her tax-free cash in 2017, when she reached the age of 55. So it appears as though Mrs O transferred in order to achieve better returns on her pension. She didn't need to transfer to a QROPS to do that. But transferring to a QROPS wouldn't have necessarily indicated Mrs O was, or appeared to be, liberating her pension which, for the reasons given previously, is what the Scorpion guidance was focussed on.

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

Due diligence:

The paperwork Royal London received as part of Mrs O's transfer request showed HMRC had accepted the Harbour Scheme as a QROPS. Royal London has also provided a "transfer claim checklist" which shows it checked the credentials of the Harbour Scheme and a printout showing it was on HMRC's published list. These steps ensured that the transfer payment both qualified as an authorised payment for tax purposes and also satisfied Mrs O's statutory right, and potentially other legal rights, to transfer.

For the reasons given above, firms also needed to be aware of the Scorpion guidance and follow the action pack's check list (or take similar steps) if there appeared to be a material risk of pension liberation. That risk *wasn't* apparent in Mrs O's transfer request. Importantly, the Harbour Scheme was long-established. It had been accepted by HRMC as being a QROPS in April 2013. HMRC also said the Harbour Scheme would be put on its published list. It was showing on that list over a year later when the transfer request was made. So the Harbour Scheme wasn't a likely vehicle for early release pension liberation (and, indeed, didn't prove to be), otherwise it would likely have been removed from the QROPS list by the time of Mrs O's transfer request.

As outlined previously, firms needed to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's rights. With that in mind, there wouldn't have been a need, and it wouldn't have been proportionate, for Royal London to have conducted further due diligence along the lines of the action pack's check list. The liberation threat would have appeared minimal (and indeed was minimal – Mrs O didn't liberate her pension).

I've considered Mrs O's point that the TPR press release that accompanied the launch of the Scorpion guidance had the following statement:

"The remainder of their funds are likely to be invested in highly dubious and risky, unregulated investment structures, often based overseas. The amount that has been 'liberated' from pension schemes in this way is known to be in the hundreds of millions of pounds, with thousands of members affected."

Mrs O's point is that accessing pensions early wasn't the only concern of the guidance. In her view, overseas schemes and investments were firmly within the scope of the guidance and were warning signs in themselves. And, clearly, Royal London would have been aware that Mrs O was transferring overseas. But the context within which the above quote is framed is important here. On reading the press release as a whole, it's clear that attention isn't being drawn to overseas transfers and investments in order for ceding schemes to view them as a scam threat in their own right. Rather, the transfer of funds overseas is presented as a possible feature of scams involving the early access of pension funds – and it is the early access of pension funds that is presented as the threat ceding schemes are told to be guarding against. The point is illustrated by the 2013 Scorpion action pack which says:

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

The portrait of a scam as sketched out in the 2013 guidance isn't therefore one where the transferring member is motivated by an overseas investment or scheme. Instead, the transfer overseas is a means to misappropriate the transferred funds which were transferred for other reasons – namely to access funds in an unauthorised way. It was only after Mrs O's transfer that the emphasis of the guidance changed and schemes were directed towards members wanting to transfer because they had become interested in a particular investment opportunity. But this wasn't the issue Royal London was being asked to look out for at that time. This needs to be kept in mind when looking at what Royal London should have done.

I've also considered Mrs O's point about the Harbour Scheme pressuring Royal London into actioning the transfer. If true, this may have been unusual enough in itself to have warranted concern on Royal London's part. However, Mrs O hasn't substantiated this or even discussed it after she made her initial complaint to Royal London. I haven't seen anything from Royal London's case file to suggest it was put under pressure – just a transfer request sent on 29 May 2014, a response to that request on 11 June in which Royal London set out what it needed, a further transfer request made on 26 June and a letter from Royal London the following month confirming the transfer had completed – all of which were neutrally worded. I'm not aware from other similar complaints that Harbour Pensions Limited pressured personal pension providers to transfer quickly. And in Mrs O's parallel complaint there is no evidence of pressure being applied to Firm B. As such, I don't consider this to have been a credible argument.

Mrs O has also referred to what she believes to be an inconsistent approach between Royal London's handling of her transfer and what it said in an article from 2016 about its approach to another transfer which occurred when the same version of the Scorpion guidance was in place. Mrs O questions why Royal London appears to have endorsed a more thorough approach to due diligence in that other transfer than the one she says it deployed in her transfer. Her argument is that Royal London's approach in the other transfer was the correct one, that it is illogical for it (and us) to endorse a different approach and that Royal London has, by its own standards, treated her unfairly.

As a general point, I don't think it would be fair and reasonable for me to make a decision based on eight year old commentary relating to a transfer to a different type of pension, the specific circumstances of which I've no sight of. More importantly, I'd expect a transferring scheme to assess each transfer request on its own individual facts. So that may well result in different approaches based on what look to be similar circumstances. That doesn't necessarily mean a business has acted unfairly or has fallen short of what it should have done. With this in mind, and given the specific facts of Mrs O's transfer, I'm satisfied Royal London didn't need to undertake the detailed due diligence that she has suggested. It could reasonably have considered the threat it had been told to look out for – early release pension liberation – was low.

For similar reasons, I won't be commenting on the ombudsman decisions Mrs O has referred to. The issue before me is Mrs O's transfer and I will limit my findings to that transfer.

The Scorpion insert:

For the reasons given above, my view is that personal pension providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information. I've seen nothing to suggest Royal London did send Mrs O the Scorpion insert so, on this front, it fell short of what I'd expect. I note here that Mrs O's other pension provider – Firm B – also didn't send her the Scorpion insert.

However, I'm satisfied the Scorpion insert wouldn't have made a difference to Mrs O's decision to transfer. I say this because the focus of the insert – like the action pack – was early release pension liberation. Its opening message is as follows:

"'Pension loans' or cash incentives are being used alongside misleading information to entice savers as the number of pension scams increases. This activity is known as 'pension liberation fraud' and it's on the increase in the UK.

In rare cases – such as terminal illness – it is possible to access funds before age 55 from your current pension scheme. But for the majority, promises of early cash will be bogus and are likely to result in serious tax consequences."

It goes on to list four things for people to watch out for:

- *Being approached out of the blue over the phone or via text message*
- *Pushy advisers or 'introducers' who offer upfront cash incentives*
- *Companies that offer a 'loan', 'saving advance' or 'cash back' from your pension*
- *Not being informed about the potential tax consequences*

Mrs O was contacted out of the blue. But, otherwise, the things "to watch out for" didn't describe her situation. And neither did the overall message of the insert which was to be wary of using a pension as a means of getting hold of cash. So I'm satisfied Mrs O wouldn't have considered her transfer was the type of transfer the insert was warning about. Therefore, I think the most likely scenario is that Mrs O would have carried on with the transfer, even if she had been sent the Scorpion insert by Royal London.

In coming to that conclusion, I have considered Mrs O's "causation" argument, the gist of which is that had she been armed with specific warning signs presented to her by Royal London and the Scorpion insert, she would have backed out of the transfer or turned to her brother-in-law for a second opinion – which would have had the same result.

Whilst I've considered Mrs O's comments carefully, I have done so in the context of what I consider Royal London ought to have done, not what Mrs O thinks Royal London ought to have done. This distinction is important. For the reasons given previously, Royal London wouldn't have needed to provide any specific warnings to Mrs O beyond the Scorpion insert, the content of which wouldn't have been especially relevant to her. That is the context within which Mrs O's likely actions need to be judged, *not* Mrs O's list of what she "would have known".

It follows that I don't uphold Mrs O's complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 28 February 2025.

Christian Wood
Ombudsman