DRN-3719411

The complaint

Mr H has complained about a transfer of his personal pension with The Royal London Mutual Insurance Society Limited to a Qualifying Recognised Overseas Pension Scheme (QROPS) in Malta in July 2014. Mr H says he has lost out financially as a result.

Mr H says Royal London failed in its responsibilities when dealing with the transfer request. He says that it should have done more to warn him of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance he says was required of transferring schemes at the time. Mr H 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

On 25 September 2013 Mr H signed a letter of authority for St Pauls to obtain details, and transfer documents, in relation to his pension. St Pauls sent this to Royal London on 10 October 2013. St Pauls were regulated as an appointed representative for City One Securities Limited.

On 6 March 2014 Mr H signed a letter of authority for Consumer Money Matters to obtain details, and transfer documents, in relation to his pension. Consumer Money Matters sent this to Royal London on 14 March 2014. Consumer Money Matters were an appointed representative of Cavere Ltd.

Then, on 26 March 2014, Mr H signed another letter of authority allowing Aspinal Chase to obtain details, and transfer documents, in relation to his pension. On 27 March 2014, Aspinal Chase emailed Royal London, enclosing the letter of authority. Aspinal Chase wasn't authorised to give financial advice. On 9 April 2014 Royal London sent Aspinal Chase Mr H's pension scheme information.

Mr H doesn't remember what interested him in the transfer or who recommended the transfer to him or why. Nonetheless Mr H applied to start a Harbour Retirement Scheme QROPS with Harbour Pensions around April 2014.

On 4 June 2014 Mr H's transfer papers were sent to Royal London. These were sent in by Harbour Pensions. Included in the transfer papers were: transfer discharge forms signed by Mr H on 13 April 2014, evidence that the Harbour Retirement Scheme was registered with HMRC from 9 April 2013, identification documents that were certified by St James International who were based in Prague.

Mr H's pension was transferred on 4 July 2014. His transfer value was around £23,000. He was 53 years old at the time of the transfer.

Mr H has not provided any evidence of the way the funds in his QROPS was invested or the current value of the QROPS.

In April 2020, Mr H complained to Royal London. Briefly, his argument is that Royal London ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including (but not limited to) the following: the QROPS was overseas and unsuitable for him, the catalyst for the transfer was an unsolicited call and he had been advised by an unregulated business.

Royal London didn't uphold the complaint. It said it had requested information from Mr H's representative and, because it hadn't been provided, it was not able to give an answer to Mr H's complaint. It gave Mr H referral rights to our service.

Our investigator was unable to resolve the dispute informally, so the matter was 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.

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.

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

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

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

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

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

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

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

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

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

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

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

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

That said, the launch of the Scorpion guidance was an important moment in so far as it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing those requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance's specific purpose

was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

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

What did personal pension providers need to do?

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

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

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

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

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

5. The considerations of regulated firms didn't start and end with the Scorpion guidance. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn't involve anything specifically referred to in the Scorpion guidance – then its general duties to its

customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's principles and COBS 2.1.1R.

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

Our investigator has spoken with Mr H who has little recollection of the way that this transfer came about now. But the evidence suggests that he was approached by a number of firms in the run up to this transfer. And these were likely to have been unsolicited approaches. Mr H explains that he had no specific motivation to transfer his pension.

I've also considered that a transfer to a QROPS in Malta was unlikely to be something that Mr H would have considered without it being brought to his attention or promoted in some way, especially as he was (and remains) resident in the UK. So I think that this transfer was more likely than not brought to his attention by one of the parties involved. As the last party involved, that was most likely Aspinal Chase. But Mr H hasn't said that Aspinal Chase recommended the transfer for him. And in many cases our service has seen this firm acting as an introducer.

The complaint that the representative brought said that Mr H was advised to transfer and then referred to St James International to complete the transfer. I think that this also reflects Mr H's inability to be specific about how the recommendation came about or why. And does not persuade me that St James International did anything more than certify the identification documents.

Overall I don't think that the evidence is sufficient to persuade me that Mr H received what amounted to a personal recommendation to transfer from any of the parties. Were that the case I would expect Mr H to have more of an understanding about why he was transferred and how he was led to believe he would be better off. I think that it's at least as likely that he was simply introduced to the idea of the QROPS. Ultimately my decision doesn't turn on this point for reasons that I will come on to.

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 this case Royal London didn't send this to Mr H. It responded to letters of authority directly to the third parties requesting pension information rather than to Mr H. And it didn't include the Scorpion insert. And even if it had sent it to the third parties I don't think that would have been sufficient to ensure that Mr H would have received the information that the guidance intended him to.

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 take appropriate action if it was apparent their customer might be at risk.

Royal London received the following information from Harbour Pensions with the transfer request: transfer forms, bank details for the QROPS, certified identification documents and

evidence that the QROPS was registered with HMRC. It also checked that the receiving QROPS was on HMRC's published list. This step ensured that the transfer payment qualified as an authorised payment for tax purposes. Royal London also requested information from Mr H in relation to his lifetime allowance.
Royal London did no further due diligence. And I need to consider whether this was reasonable in these circumstances. The Scorpion action pack provides case studies that related to pension liberation scenarios. And on page 8 provided a bullet pointed list of *'things to look out for'*. None of the things on this list would have been apparent to Royal London from the information that it received from Harbour Pensions. Which I think is key as the Scorpion action pack prompted ceding schemes to move on to use the checklist, or something equivalent, if one of the things to look out for was present. So I think that, if Royal London were following the Scorpion action pack, it would not have had cause to go to the checklist in considering Mr H's transfer request.

I've also considered that one of the case study examples used in the Scorpion action pack, mentioned 'transfers overseas'. This wasn't included in the bulleted list of *'things to look out for'*. But I agree that Royal London should have considered things in the round (including, for example, the case studies in the action pack) to decide if there was a material risk of liberation presenting itself in a transfer request. Page 8 of the action pack used the same exclamation mark graphic (denoting the 'warning signs') that was used in the example of an individual who transferred to a pension scheme which, after paying her a cash incentive, invested the rest of the funds overseas. The warning sign was shown as:

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

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

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

So, in my view, QROPS weren't evidently the focus of TPR's concerns at the time the 2013 action pack was issued. And the purpose of the action pack at that time was to direct efforts on preventing early release pension liberation, rather than anything else.

In Mr H's case the QROPS had been showing on HMRC's published list without issue for more than a year. So, in my view Harbour Retirement Scheme was even less likely to have been a vehicle for early release pension liberation – otherwise it would most probably have already been removed from the QROPS list.

That also meant that one of the key things prompting a ceding scheme to do further due diligence under the Scorpion guidance (a recently registered, or in this case recognised) scheme also wasn't present in this case. For the reasons I've already given above, the fact that the transfer went overseas wouldn't have been a cause for concern in this particular case. And no other features of the transfer stood out as being warning signs of early release pension liberation. And as far as Mr H has explained, he was not intending to liberate his

pension and any actual enquires Royal London may have done would, more likely than not, have reassured it of this.

It wasn't until the 24 July 2014 update to the Scorpion guidance that the focus shifted away from just pension liberation to pension scams in general. This gave more prominence to overseas investments. And the potential for a QROPS to facilitate investments which were at risk of a scam in that wider sense, rather than liberating funds back to the member, was greater. Mr H seems to be saying that Royal London should have spotted these issues in his transfer. But these weren't the issue Royal London was being asked to look out for at that time, so it wouldn't be fair or reasonable to expect a ceding scheme to go further than TPR's guidance was asking it to at the time.

I appreciate that a technical definition of liberation could include a high-risk investment being used to re-route a consumer's pension funds into the hands of a fraudster, without the consumer benefiting directly in any way. However, for the reasons given previously, that activity wasn't the focus of TPR's Scorpion campaign at the time of Mr H's transfer. And that's what I think it's important for me to recognise here.

The main message given both in the action pack and insert at that time was of consumers receiving upfront offers of cash, so I don't think it would be fair and reasonable for me to expect a ceding scheme to have been on the lookout for something else.

There was always a possibility that some consumers might suffer losses from making inappropriate investments as a result of transferring to a QROPS. That might also happen where they transferred to some UK schemes, such as SIPPs. So it doesn't to my mind mean it would have been a proportionate response to place *all* QROPS transfers under suspicion as soon as the February 2013 Scorpion campaign gave ceding schemes a new role to carry out due diligence.

As I mentioned, Royal London's role was to balance out the risk of enabling pension liberation with the risk of unfairly holding up legitimate pension transfers that were not for the purposes of liberation. I think it was appropriate for Royal London to concentrate on which transfers (including some of those to QROPS) were at greater risk of liberation. It was clear that TPR thought that the greatest risk lay with schemes that had only recently been registered/recognised by HMRC, and/or the member was given an unsolicited offer of early access to cash. That's for good reason, because a scheme which had remained on HMRC's QROPS list for a longer time without issue was less likely to be involved in this sort of activity.

That was consistent in my view with the approach TPR had taken to transfers to SIPPs in the 2013 action pack checklist. Not all SIPPs were under suspicion – only those claiming to be a SIPP but which were not authorised by the Financial Conduct Authority. They would rightly be seen as at greater risk of liberation. A QROPS in another EU country will generally be authorised by the equivalent regulator to the FCA in its country of establishment, in order to qualify for that definition.

I'm also satisfied Mr H wouldn't have stopped the transfer even if Royal London had sent the Scorpion insert. As the insert was focussed on the threat posed by liberation – and the consequences of taking cash from a pension before the age of 55 in particular – I don't think it would have dissuaded Mr H from transferring given he has given no indication that he was transferring for that reason.

I understand that Mr H's complaint says that St James International, an overseas adviser or introducer, was involved. But as he was transferring to a QROPS, it wouldn't be unusual that overseas parties would be involved. Royal London didn't know enough about its role to be in a position to conclude that it was breaching regulations or wasn't acting in Mr H's best

interests. I also note here that Mr H hasn't provided us with much information on what investments he made, or how they've performed, so it's not apparent what losses he is claiming for, the extent to which his investments were unsuitable or why Royal London should have had concerns about them.

I don't think there would have been a purpose to Royal London attempting to piece together the very limited information it had about who might have advised Mr H. The action pack set out a framework under which it would have got to the bottom of that matter by asking Mr H directly, but only if the circumstances warranted it (because the transfer had been deemed at heightened risk of liberation activity). And in this case, the circumstances didn't warrant such enquiries of Mr H. For the same reason, I don't think Royal London should have questioned whether Mr H was intending to move overseas.

I think these arguments misread what should, reasonably, have been expected of transferring schemes at that time. Investigations into the receiving scheme were a means to an end: to establish the risk of liberation. Once that threat was discounted then I think it reasonable for ceding schemes to consider the scam threat as being minimal and process the transfer as normal.

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 H to accept or reject my decision before 31 October 2024.

Gary Lane
Ombudsman