

The complaint

Mrs H says The Royal London Mutual Insurance Society Limited (Royal London) has acted incorrectly in refusing to allow her to transfer her personal pension into a Small Self-Administered pension Scheme (SSAS).

Mrs H is represented by her husband.

What happened

At the time of the events complained about Mrs H was an employee of a company (Z) providing cleaning services. She was contracted on a zero-hours basis. She was also the director of Z, which was incorporated in September 2021. The company established a SSAS and confirmed registration of such with HM Revenue & Customs in March 2022.

Mrs H approached Royal London in the summer of 2022 requesting her personal pension be transferred to her employer's SSAS. There were several exchanges between the parties over the course of the following months, but essentially Royal London refused her request.

In its final response to Mrs H on 23 September 2022, Royal London said:

"My team has reviewed the documentation that you sent to us on 14 September and have unfortunately concluded that you have not provided us with evidence of earnings – therefore you do not have a statutory right to transfer. The decision to allow a transfer is therefore down to Royal London as trustees of your plan. Our decision is to decline the transfer request based on the following concerns:

- *The pay slips that you provided indicate that salary payments are made from [Z] to you personally. As such, this should correspond with salary payments being made from [Z's] bank account..., into your personal bank account... The bank statements that you have provided do not show these payments being made, therefore you have not evidenced taxable earnings. To have a statutory right to transfer to an occupational pension scheme you have to be an 'earner' within the definition of 'transfer credits' under S181 of the Pension Scheme Act 1993.*
- *The documents that you sent to us on 14 September were not certified by an authorised person.*
- *The suitability report that you have been provided with recommends the SSAS administered by [X] because "it offers the features you require for your chosen investment strategy i.e., 3rd party loans, commercial property purchases, loan back facility". The bank account for the sponsoring employer shows personal use, which you have confirmed to us...If you were to loan back SSAS funds to the bank account, there is a risk that this would be used for personal expenditure, constituting an unauthorised payment under UK tax law.*
- *The suitability report, that you have been provided with, names the sponsoring employer of the SSAS as [Y]. Given that this is incorrect, we would question the quality of the advice you have received.*
- *The product that you have requested to transfer to is designed for people categorised*

as sophisticated investors...”

Mrs H didn't accept Royal London's decision. In summary her position was that:

“The crux of my ‘appeal’ rests on whether or not my request to transfer my pension falls within my Statutory Rights, as laid out by legislation... If it is deemed that my Statutory Rights are valid and where the relevant legal requirements are met, the transferring scheme has a statutory obligation to make the transfer within six months of the application. We are now 2 months beyond that. I would also like to point out that under this particular piece of legislature, it would be perfectly reasonable to infer that, should Royal London have had any cause to refuse transfer by citing that Statutory Rights were not satisfied, their right to do so became invalid at the six-month point. To do so almost two months later actually invalidates this refusal. In simple terms, Royal London had 6 months to decide whether or not I have statutory rights to transfer my pension, and they did not fulfil this time frame.”

“Having fully digested The Occupational And Personal Pension Schemes (Conditions For Transfers) Regulations 2021, I am more than satisfied that I have full Statutory Rights to transfer my pension from Royal London. This is a direct quote from that piece of legislature. ““These powers will enable trustees and managers of transferring schemes to prevent transfers where one or more of the indicators of high scam risk have been identified (“red flags”), or in other circumstances (“amber flags”), to mandate that the member take prescribed pension transfer scams guidance, from the Money and Pensions Service (MaPS), before the transfer can go ahead.””

An Investigator considered Mrs H's complaint but didn't uphold it. He said given the information she'd provided to Royal London, it wasn't being unreasonable in refusing to transfer her pension funds to her employer's SSAS. Mr H responded on his wife's behalf, disagreeing with the Investigator's view and stating that Royal London were in material breach of the regulations.

As both parties couldn't agree with the Investigator's findings and conclusions, Mrs H's complaint has been passed to me to review afresh and to provide a 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.

Where there's conflicting information about the events complained about and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm not upholding Mrs H's complaint. I'll explain why.

The first thing I've considered is the extensive regulation around transactions like those performed by Royal London for Mrs H. The Financial Conduct Authority's (FCA) Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.

- Principle 6, which requires a firm to pay due regard to the interests of its customers.
- Principle 7, which requires a firm to 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.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms. As such, I need to have regard to them in deciding Mrs H's complaint.

Both parties are aware of the provisions of the Pension Scheme Act 1993 and the associated Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021. As such I won't rehearse these in full here. Suffice to say I've reviewed the content.

It is worth reflecting on the policy context for the regulatory changes made in 2021. An individual's statutory right to transfer their pension benefits to another pension scheme of their choice is important in giving individuals control over their pension savings and supports the Government's wider agenda of pensions freedom and choice.

However, there have been instances where fraudsters have exploited that freedom to their advantage. Until the implementation of new regulations in 2021 trustees and managers of pension schemes had no power to prevent a transfer where they had concerns that it may be a scam.

Both the Pensions Regulator (TPR) and the FCA expect trustees and scheme managers to carry out effective due diligence before a transfer is processed. This due diligence is a legal requirement for trustees in as much as they must carry it out as part of their wider fiduciary duty to act in the best interests of the member. Personal pension scheme managers have a contractual obligation to act in their customers' best interests.

Royal London has set out on several occasions and in some detail why it won't allow the transfer of Mrs H's personal pension funds to her employer's SSAS. Its position relies on requirements in the Pension Scheme Act, the regulations related to conditions for pension transfers from 2021 and the wider regulatory duties placed on it to act with due care, skill and diligence and to act in the best interests of its customers.

While I know Mrs H is frustrated by Royal London's refusal to action her request to transfer her personal pension into her employer's SSAS, given the regulatory obligations placed on it, I've concluded it hasn't acted unreasonably.

My final decision

For the reasons I've set out, I'm not upholding Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 5 September 2023.

Kevin Williamson

Ombudsman