DRN-4697158

The complaint

Mr R complains that The Royal London Mutual Insurance Society Limited (Royal London) didn't carry out adequate checks regarding a pension transfer to a small self-administered pension scheme (SSAS). Mr R then made investments into high risk and unregulated schemes and believes he's suffered a financial loss as a result of Royal London's shortcomings.

Professional representatives have supported Mr R in bringing this complaint. However, for ease of reading, all comments and actions will be noted as Mr R's.

What happened

Mr R held a personal pension with Royal London.

Through a work colleague, he heard about an investment in Park First. The colleague put him in touch with an adviser (I'll refer to him as RC). RC passed Mr R's details to another adviser (I'll call this person L). L told Mr R about an overseas property development – the Dolphin Trust. According to Mr R, both introducers/advisers were agents of a company I'll refer to as C and another company, called Return on Capital Group. They discussed his existing pension arrangements and suggested that if Mr R was to invest in the schemes they'd mentioned to him, he'd need to transfer his pension to a SSAS.

Mr R signed a pension information release form on 21 December 2015 and asked Royal London to share information about his pension policy to C, who he said were acting on his behalf concerning this transaction.

C sent Royal London an email on 4 January 2016 asking it to confirm the cash equivalent transfer value for Mr R's pension. It also asked Royal London to issue a pension projection statement and discharge forms - in other words a transfer pack. Royal London sent the requested information to C around 15 January 2016.

Mr R set up a SSAS around 25 January 2016. In order to facilitate that process, a limited company was created. That company was dissolved with effect from June 2019.

Royal London received a transfer request for Mr R's pension via Origo Options around 11 February 2016. Return on Capital Group was noted as the name of Mr R's adviser. As Mr R was still making contributions to his pension, Royal London wrote to him to ask if the transfer request was correct and when the final pension contribution would be made. Mr R confirmed on 21 February 2016 that he was aware of the transfer request and had cancelled his direct debit for pension contributions.

Royal London processed the pension transfer and sent £69,483.66 to the SSAS on 23 February 2016. Mr R had already transferred a second pension valued at £43,353.72 into the SSAS on 15 February 2016. He made a separate complaint to a different provider about that and has since received compensation from that provider amounting to £66,691.36.

Mr R complained to Royal London in April 2021. He said it had failed to meet its obligations to him by allowing the transfer of his personal pension to a SSAS, which then enabled him to invest in unsuitable, high risk and illiquid assets. He was particularly concerned that Royal London hadn't sent him a warning about pension scams produced by The Pensions Regulator (TPR) known as a 'Scorpion' leaflet because of the image on the front.

Royal London said it hadn't done anything wrong. It said it had asked Mr R to confirm whether the transfer request was correct and he confirmed it was. He also said he'd cancelled his regular contributions. As Mr R was aware of the transfer, Royal London said it processed the request and sent his pension funds to the receiving scheme on 23 February 2016. It added that as the request came via Origo Options, it wasn't required to complete any further checks, as those would have been done before the transfer request was uploaded to Origo. In addition, it said that as Mr R engaged a financial adviser, it was for the adviser to complete the necessary checks before the transfer request was submitted.

Mr R wasn't happy with Royal London's response, so he complained to the Financial Ombudsman Service. He explained that the transfer helped to finance investments promoted to him by unregulated introducers. He'd since learnt that those investments were unregulated and high-risk, despite the positive promotion he received. Mr R said Royal London failed to carry out the necessary checks and had he known of the risks involved, he'd never have invested in such schemes. He said he expected Royal London to put him back in the position he'd have been in had he left his pension where it was.

One of our Investigators looked into the complaint. She also asked Mr R for his recollections of what happened at the time.

Mr R's recollections

Mr R told us that he was aged 55 at the time. He was aware that pension rules had been relaxed as he'd seen newspaper articles about it, which mentioned taking control of your pension. So, he wanted to review his pension arrangements with the intention of taking his pension benefits at age 60.

A work colleague was thinking of going to work for Park First. He then told Mr R about the Park First investment and introduced him to RC, who he described as somebody who said very little about his position, but who was 'slick' in how he came across. RC then put him in touch with L, who he believed was connected with Park First. Mr R believes that RC and L were agents of C and Return on Capital Group. It was L who first mentioned the Dolphin Trust investment to Mr R. Mr R recalls discussing both his Royal London and another pension with RC and L and being persuaded to open a SSAS if he was interested in investing in the Dolphin Trust and Park First. Mr R didn't realise these advisers were unregulated to give such advice. And although he'd heard of Self Invested Personal Pensions (SIPPs), he didn't really understand the nature of SSASs. He says L bombarded him with lots of information at first and coached him through all of the paperwork. After the transfer had gone ahead, it was L, who told Mr R that the funds had come through from Royal London.

A key selling point for Mr R at the time was that he understood the Park First scheme was HMRC approved, so he thought that was a positive aspect. As was the fact that he was led to believe the schemes could buy back his investments after five years, which coincided with his intended retirement date.

He says he was shown evidence of the kinds of returns other investors received. But when Park First started to 'wobble' he enquired about buy back opportunities around 2018. He subsequently received letters indicating the scheme was possibly going into administration. And the more he looked into things the more they appeared 'suspect'. He was then told it would still likely be five years before he received the returns on his investment. Mr R says he didn't understand at the time that some of his investment (the Dolphin Trust part) was outside of the UK.

When asked for his reaction to the scorpion leaflet he'd since seen, Mr R described it as a "*striking*" piece of paperwork. He said that had he received this at the time there's one thing in particular that would have resonated - the references to guaranteed returns, which was exactly what the Park First promotion material suggested. 8% for the first two years and 10% plus in years thereafter. He said this was a major selling point, which was repeated throughout the process. Had he seen the scorpion leaflet at the time, Mr R says he would have asked for further explanations and would likely have been encouraged by his partner to stand back and take stock. Mr R says he feels "*manipulated"* as a result of the advice he received.

Our Investigator's assessment

The Investigator considered all of the evidence including Mr R's testimony. She referred to the guidance in place at the time of his transfer to provide relevant context. She also noted Royal London's position that if the 'scheme' had been of concern, it would have sent a Scorpion leaflet and completed a 'due diligence' call. However, in Mr R's case, Royal London relied heavily on the fact the transfer request came via Origo Options and that Mr R's financial adviser would have completed their own checks. Whilst the Investigator agreed with a point Royal London made - that it wasn't for it to check that the transfer advice was suitable - she wasn't persuaded it took reasonable action overall because it didn't follow the actions prescribed in the guidance. She set out the steps that Royal London needed to take to put things right.

Royal London didn't agree with the Investigator's assessment. Amongst other things, it pointed out that the SSAS administrator, Rowanmoor, wasn't on any 'cautious' lists at the time. So, it said it had no reason to be concerned by the nature of the transfer. It asked for an Ombudsman to consider the matter afresh. The complaint has come to me to decide.

My provisional decision

I sent Mr R and Royal London my provisional decision on 16 February 2024. I've included the relevant extracts below.

"I've taken into account relevant law and regulations; regulatory rules; guidance and standards; codes of practice; and (where appropriate) what I consider to have been good industry practice at the relevant time.

What rules or guidance was Royal London expected to follow at the time of the transfer?

As Mr R's policy was a personal pension, Royal London was regulated by the Financial Conduct Authority (FCA) in its operation. As such it's subject to its Handbook, and, under that, to the Principles for Businesses and the Conduct of Business Sourcebook (COBS). I think the following are particularly relevant here:

FCA principles

- *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.*

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 Pensions Regulator (TPR) guidance

TPR was a different regulator, covering occupational pension schemes. It published comprehensive guidance (the Scorpion campaign) in February 2013 – including an Action Pack for ceding schemes to carry out due diligence on pension transfers. Initially this was intended to prevent transfers being made to pension liberation schemes (these were schemes designed to release payments directly back to the member which weren't authorised under the pension tax rules). But it widened in scope to scams more generally in July 2014 given the increasing risk of investment scams. There have been other updates to the guidance since then and firms receiving transfer requests needed to have due regard to what the guidance said, and to keep abreast of any updates. As part of the guidance mentioned above, the following were relevant materials at the time of Mr R's transfer request:

- *An 'action pack' for scheme administrators with a list of scam warning signs, a checklist to be used when someone asked for a transfer and some suggested next steps when potential scam risks presented themselves. It also referenced the Pension Scams Industry Group (PSIG) Code of Good Practice, which was another piece of guidance.*

- *The scorpion leaflet or "insert" to issue to members following a request for a transfer pack. It warned the reader about accessing a pension before the age of 55, cold calls, one-off investment opportunities, being promised returns of over 8%, putting money into a single investment, transferring funds overseas and the use of couriers to encourage people to sign transfer documents.*

- *A longer booklet covering in more detail the same ground as the scorpion insert. This was intended to help educate members in more detail about pension scams. Sending this longer form booklet would be an acceptable alternative to sending the scorpion insert.*

The status of the scorpion guidance

When first launched in 2013, the guidance was described as a cross-government initiative by Action Fraud, The City of London Police, HMRC, TPR and the FSA/FCA (amongst other bodies) all of which endorsed the action pack. For the bodies regulated by TPR, the status of the guidance was that it provided them with information, education and/or assistance, rather than being seen as a new binding rule or legal duty.

Similarly, the scorpion guidance wasn't binding on firms like Royal London. Indeed, it would seem inconsistent to view it as representing a binding rule or legal duty on personal pension providers regulated by the FCA (or predecessor regulators) when such a duty didn't extend to those bodies that came under the regulator that drafted the guidance. My interpretation of the guidance is that it was intended to be advisory in nature and provide additional information. Therefore, deviating from it didn't necessarily mean that a firm had breached the Principles or COBS rules. Firms were allowed to take a proportionate approach to transfer requests, balancing consumer protection with the need to execute a transfer promptly and in line with a member's statutory rights.

Having said all of that, it seems to me that the launch of the February 2013 Scorpion guidance was an important milestone, as, for the first time, it provided guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take *a more active role in assessing such requests. And this remained the case with all its subsequent updates. The campaign and guidance were 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 schemes when they dealt with transfer requests in order to prevent these abuses and save their customers from falling foul of them. In those circumstances, it's my view that providers receiving pension transfer requests needed to have regard to the contents of the guidance as a matter of good industry practice.*

Taking all this into account, I think it's fair and reasonable to conclude providers should have recognised the environment had changed, and more was expected of transferring schemes. 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.

Therefore, whilst I don't think personal pension providers had to follow all aspects of the Scorpion guidance in every transfer request, I think good industry practice meant they should have paid attention to the information it contained; and, where the recommendations in the guidance applied, apart from a good reason to the contrary, it would have been reasonable and in my view good industry practice for pension providers at least to follow the substance of those recommendations.

Pension Scams Industry Group (PSIG) - "Combating Pension Scams – A Code of Good Practice" (March 2015)

This was a broader piece of guidance which was supported by bodies across the whole industry (both TPR and FCA). It was a relevant consideration for pension providers because the FCA was one of the organisations that formally "welcomed" the Code. The FCA also endorsed the scorpion guidance which from March 2015 highlighted the Code.

The Code's overall approach is similar to the scorpion guidance in the sense that it would usually expect a scheme to ask a transferring member questions in order to establish the potential risk of a scam and follow various steps when that risk couldn't be discounted. The Code also expected schemes to use the scorpion materials when sending transfer packs and pension statements. However, the Code is more detailed than the scorpion guidance. For instance, unlike the scorpion guidance, it has separate, detailed guidance for the different types of scheme (occupational scheme, SIPP, SSAS or a QROPS) a member can transfer to. There's also more guidance for schemes attempting to block a transfer.

What were providers like Royal London required to do?

In summary, providers were expected to look out for tell-tale signs of pension scams and carry out further due diligence and take action where it was apparent that a member's pension fund 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. From March 2015 this was supplemented by the PSIG Code. As I've indicated above, using the action pack and/or the PSIG Code weren't requirements, but they did set a reasonable benchmark for the level of care a provider such as Royal London was expected to take along with the specific steps that would be appropriate for them to take, if the circumstances warranted it.

It's also worth saying that the considerations for firms like Royal London didn't solely involve what was set out in the Scorpion guidance or PSIG Code. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn't involve anything specifically referred to in the guidance – then its general duties *to its customer meant it needed to act upon its concerns. Ignoring clear signs of a scam of any sort, if they came to a provider's attention, or should have done so, would almost certainly breach the regulator's Principles and COBS 2.1.1R.*

It's against this backdrop that I've considered Royal London's actions.

Did Royal London do enough in Mr R's case?

Royal London's position is that Mr R's case didn't involve pension liberation in the normal sense but related to investments in riskier funds. That's not disputed. But I don't think its point is relevant here. The TPR guidance has been referring to pension scams, and not just pension liberation since July 2014 – a significant time before Mr R's transfer happened. The PSIG Code was also very clearly aimed at preventing scams in the wider sense. And I would expect Royal London to have kept abreast of these developments in the guidance.

Royal London's contact with Mr R extended only to asking him whether he was aware of the transfer. That was prompted by the fact that Mr R was initially still making contributions to his pension. As far as I understand things, that wouldn't necessarily have given Mr R a statutory right to transfer his pension. In any event, Royal London asked Mr R when his contributions would stop and he then confirmed he'd cancelled his regular payments.

As far as Royal London is concerned, it didn't need to do anything more because:

- *The transfer request came via Origo options, so any checks would have been completed before the transfer request was submitted;*
- *Mr R received advice from a regulated IFA, so the IFA would have completed their own due diligence;*
- *Rowanmoor wasn't on its 'cautious' lists.*

I've thought very carefully about Royal London's position. But for the reasons I'll outline, I'm not persuaded by these arguments, or that it did enough in the particular circumstances of this case. I think Royal London had a much bigger part to play in satisfying itself that Mr R understood the type of scheme he was transferring to and that he was aware of some of the potential risks involved. More detailed reasoning to support my decision is set out below.

Royal London didn't issue the scorpion insert (or the longer form scorpion booklet) when it sent out transfer papers in January 2016. So, it didn't meet the expectations of the scorpion guidance and the Code in that respect. That's despite the fact that, in my view, some of the warning signs that the guidance and Code were specifically intended to guard against were present in Mr R's case (I'll return to this shortly).

The information on TPR's website suggested that transferring schemes should consider sending a transfer pack directly to the transferring member when previously they were sending it via a third party. This seems to emphasise the importance of ensuring that the member themselves received direct information, rather than relying on a third party to pass it on, as might have been the case previously.

Sending the Scorpion insert (or the whole transfer pack) to the member was probably an easy and relatively quick action for a provider to take. And I don't think it would have been something that was likely to impact their ability to deal with transfer requests efficiently. Therefore, whilst accepting that it wasn't a mandatory action, it seems reasonable to expect providers to send the insert with transfer packs to members directly as a matter of course, given the important information it contained. This also acted as an important additional safeguard.

I say that especially because the contents of the Scorpion insert were directed towards consumers themselves. And they contained warnings about dishonest intermediaries who might try to engage them in a scam. So, I think it became all the more important that information was sent directly to members, so they could see the warnings for themselves. Therefore, I consider it fair and reasonable for personal pension providers – operating with the regulator's Principles and COBS 2.1.1R in mind – to send the Scorpion insert direct to the transferring member. Royal London didn't do that.

Did Royal London do enough? - Code of Good Practice

Under the Code, certain transfer requests wouldn't have needed further due diligence because they were from an accepted "club or group" or the "administrator/scheme" had been identified as not presenting a scam risk.

The example of an accepted group or club given in the Code is the Public Sector Transfer Club. It seems to me that the bar for accepting transfers with little or no due diligence is a high one and is intended to apply to transfers to large, established, occupational schemes. Presumably that's because the scam risk in such transfers is negligible, so it's thought there's little point in holding them up in order to conduct further due diligence. I don't think the same can reasonably be said to apply to transfers to smaller, more recently established schemes that are promoted and/or run by firms who stand to benefit financially from these transfers. The scam risk (and, indeed, scam activity) is much greater in such schemes, a point that is made in the March 2015 scorpion action pack:

"Pension scam models are also changing. Many scammers are directing members to transfer into single member occupational schemes in an attempt to escape scrutiny."

So in an environment where single member occupational schemes (like Mr R's SSAS) were being used to "escape scrutiny", it's difficult to see how Royal London could suggest its reliance on Origo was sufficient. And, despite its assertions, nothing I've seen causes me to think that Royal London could have been assured that the necessary checks had already been carried out based on the limited information it received with the Origo transfer request. Also, at no point did Origo Options appear to give any undertaking that it was satisfied Mr R's receiving scheme wasn't at risk of a scam.

It seems reasonable to assume therefore that a provider like Royal London, almost a year after the 2015 action pack, should also have been aware of the regulators' comments about single member schemes and been on the look out for potential concerns. And I think some of those signs were prevalent in Mr R's case. Despite that, Royal London carried out minimal checks.

I'm also aware that the PSIG Code allows the 'clean listing' of certain schemes. However, in this case Royal London has effectively 'clean listed' a whole provider. Its basis for doing so seems to be simply the fact that Rowanmoor didn't appear on any of its cautious lists. It hasn't given any other rationale for its position. I've thought very carefully about this. I fully appreciate that Rowanmoor was a long established SSAS provider which wouldn't have been the case if it had a track record of facilitating scams. It also offered SIPPs which (unlike SSASs) are FCA regulated. So, I can certainly appreciate why Rowanmoor's involvement would have given some comfort to Royal London. But, given the limited information that Royal London had in Mr R's case, I don't think it could have fast-tracked Mr R's transfer on the basis that the "administrator/scheme" didn't present a scam risk.

And Rowanmoor's long standing history isn't enough to persuade me that Royal London didn't need to carry out its own checks. The wording in the Code refers to an "administrator/scheme" not presenting a scam risk. The reality was that Royal London didn't *know enough about Mr R's scheme to make that judgement because his SSAS was a newly created scheme whose purpose, and proposed investments, were specific to Mr R. So, unless it investigated Mr R's scheme in addition to investigating Rowanmoor – which it doesn't appear to have done – I don't think Royal London could have been sufficiently assured so as to decide not to carry out any further checks at all.*

In other words, Royal London wasn't in a position to fast-track Mr R's transfer. With the above in mind, I'm satisfied that if it was using the PSIG Code Royal London should have conducted the steps in the "initial analysis" section of the Code. This would have led to Royal London asking Mr R questions such as:

- *Will you be receiving any cash payment, bonus, commission or loan from the receiving scheme or its administrators, as a result of transferring your benefits?*
- *Did the receiving scheme/adviser or sales agents/representatives for the receiving scheme make the first contact (e.g. a cold call)?*
- *Have you been told that you can access any part of your pension fund under the receiving scheme before age 55, other than on the grounds of ill-health?*
- *Have you been told that you will be able to draw a higher tax-free cash sum as a result of transferring?*
- *Have you been promised a specific/guaranteed rate of return?*
- *Have you been informed of an overseas investment opportunity?*

A "yes" to any of those questions listed above would have been a potential warning sign. That especially applied in Mr R's case. Had Royal London contacted Mr R, it would have become apparent that one of the investments was overseas. Further, its enquiries would have revealed that Mr R had been promised significant guaranteed rates of return.

Under the Code, these factors would have prompted the need for further, SSAS-specific, due diligence focussing on areas such as the employment and geographical links between sponsoring employer and member, the marketing methods used to promote the member's interest in the SSAS, the advice that had been given and registration and governance details for the SSAS. These enquiries would have required contacting Mr R as well as other desk-based research (at Companies House for instance). As Royal London didn't conduct any such enquiries, it has again failed to meet the expectations of the Code. This would have been an important step as the act of contacting the member and asking questions about the transfer can, in itself, prompt a member to change their mind. Indeed, the Code is very clear about such a possibility:

"It is possible that, during the due diligence process, the member will withdraw their transfer request. This could be because the awareness information you have supplied and the questions you have asked have led the member to realise that the transfer is possibly connected with a pension scam and it is not in their best financial interests to proceed."

So, I think any enquiries should have been approached with that in mind. That is, not only did Royal London have to ask Mr R about his transfer in order to complete its due diligence, it had to do this and be aware that its questions could potentially help him with his decision making. I don't think it was enough in this case for Royal London to simply ask Mr R whether he was aware of the transfer. I think it also needed to ask him about his understanding of the schemes he was investing in. And it would have been appropriate, as part of a discussion, for Royal London to explain why it was asking such questions - as part of industry wide anti-scam guidance. It would have been reasonable for Royal London to have given additional context – for example, by pointing out that scams often start with the marketing of attractive sounding investments, or that members were often encouraged to set up single member schemes as part of such scams. I think this would certainly have resonated with Mr R given *the promotion material he received and the single member scheme that was set up.*

Did Royal London do enough? - Scorpion action pack

The March 2015 scorpion action pack says the following:

“If a member is asking for a scheme transfer, use the checklist on the next page to find out more about the receiving scheme and how the member came to make the request.”

The checklist of questions is similar to that of the Code, covering things such as scheme registration, whether the member was cold called and what their intended investments were. Like the Code, contacting the member is an integral part of this process. The action pack goes on to say:

“Next steps if you have concerns…Contact the member to establish whether they understand the type of scheme they’ll be transferring to and send them the pension scams booklet…”

When thinking more about what Royal London could and should have done in a situation like this, I think it would have been fair and reasonable for it to refer to the checklist included in the action pack, or undertake the similar questioning suggested in the PSIG Code. I say that because it includes a series of questions and considerations to help ceding schemes like Royal London assess the likelihood of a potential scam. It also encouraged providers to find out more about the receiving scheme and what prompted the consumer to make the transfer request. The types of things it included were:

- *The nature/status of the receiving scheme - Is the receiving scheme newly or not registered with HMRC, is it sponsored by a newly registered employer, is that employer geographically distant from the transferring member and is the receiving scheme connected to an unregulated investment company?*
- *Description/promotion of the scheme - do descriptions, promotional materials or adverts of the receiving scheme include the words ‘loan’, ‘savings advance’, ‘cash incentive’, ‘bonus’, ‘loophole’, ‘preference shares’, ‘one-off investment opportunities’, ‘free pension reviews’, ‘government endorsement’ or allude to overseas investments?*
- *The scheme member - has the transferring member been advised by an ‘introducer’ or 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? Has the member been told they can access their pension before age 55?*

Dependent on the answers to the above questions, the checklist identified actions that would help the transferring firm establish the facts.

I’m not suggesting that Royal London needed to follow the checklist, or alternatively the PSIG Code, 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 that had little information about the circumstances behind a transfer (as was the case here) would typically need to conduct investigations across several parts of the checklist to establish whether pension liberation or a wider scam was a realistic threat.

Given the warning signs that I think should have been apparent to Royal London when dealing with Mr R’s transfer request, and the relatively limited information it had about the transfer, I’d have expected Royal London’s enquiries of Mr R to have gone much further than simply asking him if he was aware of the transfer. Especially given the extract from the 2015 action pack about there being a particular risk in single-member schemes. That doesn’t mean that Royal London ought definitely to have known that the investment was a scam.

But, as Mr R's transfer clearly had some of the hallmarks – such as a newly registered scheme and sponsoring employer along with an overseas investment - that's enough in my view to show it should have had significant concerns.

In the action pack I've mentioned, there's a case study relating to 'Oliver' that appears to include some of the features present in Mr R's case. For instance, Oliver was promised better returns on his money by simply signing forms to transfer his pension to another scheme, which would then enable him to invest in a hotel complex in Spain. Oliver was keen to make the most of his money especially in light of the low interest rates causing his pension not to grow as he'd like. And whilst he was a bit concerned that things sounded too good to be true, the adviser, 'Paul', reassured him that he was government registered. Oliver received a glossy brochure that looked slick and professional and he felt that Paul seemed nice and credible too. On reviewing the paperwork, Oliver was surprised to note that he was now a company director and trustee of his pension – he didn't remember Paul telling him anything about this. However, he remembered the time-limited investment offer that Paul told him about, so he signed on the dotted line. When checking on his investments later that year, Oliver found that the phone number he'd been given was disconnected and his online searches revealed that some pension transfers were scams. After several months of trying to locate his missing money, Oliver realised he'd probably lost his pension pot.

I think this should have resonated with Royal London. And it follows that if it had acted as it should have done, it should have established Mr R's understanding of the type of scheme he was transferring to. This could have been done through the due diligence process. Royal London didn't take those additional steps.

Another point Royal London made to support its position is that it wasn't at the time required to check that suitable advice had been given. I accept that. It also said it didn't need to carry out any further checks as an FCA regulated adviser was involved. I don't think Royal London's position holds weight.

The initial request for information concerning the transfer came to Royal London from C, which said on the footer of its request that it was a division of another regulated firm, which I'll call RJ. In line with the 2015 action pack, Royal London needed to "check whether the advisers are approved by the FCA". This was more than simply seeing that they were listed on the FCA's register. The FCA authorises firms for specific activities. It's implicit in such a check to establish that the adviser had the required FCA permissions to carry out this sort of activity. I've seen no evidence that Royal London did that.

According to the FCA register, RJ was an appointed representative of another firm, I'll call F. That means RJ gets its permissions from F to perform certain activities. But F doesn't have FCA permissions to advise on investments (other than insurance contracts). So that means RJ (or C that Royal London says was supposedly connected to it) doesn't have those permissions either.

More importantly, the adviser mentioned on the Origo Options Transfer form that Royal London received was neither C nor RJ. It's Return on Capital Group, one of the firms that Mr R said was involved in the transfer process. I've seen nothing to suggest Royal London questioned this anomaly.

There were further warning signs here too. Information I've obtained on Companies House shows that the address and postcode for the sponsoring employer is the same as the information Royal London held on file for Return on Capital Group and accords with the details mentioned on the Origo transfer form. As far as I can tell, this was precisely the kind of scam activity the FCA/TPR warned against. To underline this point, the SSAS-specific questions in the PSIG Code ask on page 24, "Have a number of schemes been established *recently from sponsoring employers with the same address?". It would have been possible for Royal London to identify from Companies House records that this was the address Return on Capital was using to register the sponsoring employers for a number of SSASs.*

The fact that the sponsoring employer operated from an introducer's address clearly shows that this wasn't a scheme Mr R needed to establish for work reasons. It seems to me that it was simply a vehicle to make an investment outside of the regulated sphere. Yet Royal London doesn't appear to have questioned the clear anomalies that existed in the information it received or contacted Mr R further in order to conduct its own due diligence. That doesn't, of course, mean that Royal London should definitely have known that Mr R was exposed to a scam or risky investment. The point remains though that Royal London was heavily reliant on the actions of third parties and, realistically, I think it had too little information on which to be satisfied that everything was in order.

So, had Royal London done what the TPR guidance and PSIG Code suggest, for all of the reasons I've outlined above, I think it would have identified that Mr R was being encouraged to set up a SSAS solely as a means to make an investment, and that he'd received advice from individuals who weren't authorised to give it. That's in breach of the Financial Services and Markets Act 2000. In line with its obligations under PRIN and COBS 2.1.1R to act in Mr R's best interests, Royal London should have explained to him that he risked falling victim to a scam. The kinds of things I'd have expected Royal London to point out were that it was unusual for someone to set up a SSAS when they don't otherwise need their own company. So, it should have probed to understand what lay behind Mr R's decision to transfer his Royal London pension to a SSAS. It should also have made Mr R aware that one of the investments was overseas (Mr R says he wasn't aware of this at the time) and that promises of high returns on investments were just one of the hallmarks of a potential scam. It should also have told Mr R that he was receiving unregulated advice. Importantly, it should have explained there was a likelihood of Mr R falling victim to illegal activity.

Would additional action on Royal London's part have made a difference?

In determining the answer to this question, I've thought very carefully about Mr R's own recollections about what happened at the time. Mr R says he was looking to retire in five years' time. And whilst it seems he wasn't necessarily looking to transfer his pension, I can certainly appreciate why he might have been enticed by an investment opportunity that promised guaranteed returns set to pay out at his intended retirement date. I've seen no evidence that Mr R was experienced in investing in high-risk illiquid assets either, so I can also appreciate why he might have been persuaded by the positive promotion material he received – especially the fact that the scheme claimed to be HMRC approved. I find Mr R's testimony plausible.

And on balance, I'm satisfied that had Royal London taken the steps I've suggested above to warn Mr R about what he was getting into – and given him the Scorpion leaflet - it would have made a difference. Having seen the leaflet now, Mr R described it as "striking" and said his attention would have been drawn in particular to the warning sign about "convincing marketing materials that promise returns over 8% on your investment". He says that would have resonated in particular due to what he'd been told about the Park First investment. Royal London's warning to Mr R should also have highlighted the unusual nature of the investments and SSAS structure he was entering into, the risk he might be falling into a scam, and indeed becoming the victim of unlawful activity.

Mr R suggests that had these things been pointed out to him, he'd have taken wise counsel from his partner in particular. I don't find that an implausible thing for him to have done after being made aware of the potentially serious risks associated with what he was about to do. A key message from the Scorpion action pack for Royal London to have given him was for *him to contact TPAS's helpline directly or take further regulated advice from an adviser not associated with the investment proposal. Had Mr R done either of these things, on the balance of probabilities it's likely he would have been discouraged further from going ahead. Or he may already have changed his mind about the transfer in response to Royal London warning him, and not gone ahead at all. Either way I find it more likely than not that he would have changed his mind about transferring.*

As indicated above, in coming to this conclusion, I've taken on board what Mr R has told us about what he thinks he would have done had he received the Scorpion leaflet. But this wasn't the only thing Royal London should have done differently. I've also considered the combined effect of Royal London not acting as it should have done in communicating to Mr R that there were aspects of his transfer request that suggested it could be a scam.

The cause of Mr R's loss

Based on all of the evidence I've seen, on balance, I'm persuaded that had it not been for Royal London's failings, Mr R wouldn't have transferred his pension and suffered the losses that have followed.

As I've outlined earlier, Royal London didn't give Mr R any warnings at all about the risks of proceeding with a transfer, or what he might do to protect himself. Given how limited Royal London's actions were, as I've set out earlier, it's my view that Mr R wouldn't reasonably have known at that time that his actions were risky. It follows that I don't think Mr R bears any responsibility himself for the losses he's suffered. In reaching this conclusion, I'm also satisfied that, as the professional party, Royal London ought to have been familiar with the risks involved in pension transfers and should have done more to alert Mr R to those risks.

Putting things right

My aim is that Mr R should be put as closely as possible into the position he would probably now be in if Royal London had treated him fairly.

The SSAS seems to have been used for Mr R to make investments that I don't think he would have made had it not been for Royal London's shortcomings. So, I think Mr R would have remained in his pension plan with Royal London and wouldn't have transferred the pension to the SSAS. Ideally, to put things right, Royal London should reinstate Mr R's policy under the same terms, taking account of any additional contributions made (where applicable) and accounting for investment performance up to the date of my final decision as if the plan hadn't been disinvested.

Alternatively, if reinstatement isn't possible, Royal London should take the steps I've set out below, whilst also noting that Mr R transferred another pension into the SSAS and has received compensation in respect of the investments made with that pension from a different provider. That needs to be taken into account if the method of putting things right for Mr R is in the alternative manner set out below.

To compensate Mr R fairly, Royal London should compare the proportion of the SSAS which came from the transfer of his Royal London pension with the notional value of that pension if it had remained with Royal London. If the notional value is greater than the actual value, there is a loss.

Actual value

This means the actual amount payable from the proportion of the SSAS relating to Mr R's Royal London pension as at the date of my final decision. The same proportion of any *overdue administration charges yet to be applied to the SSAS should also be deducted from the actual value.*

This is complicated where an investment is illiquid (meaning it cannot be readily sold on the open market), as its value can't be determined. I consider that is the case for Mr R's investments held within the SSAS. Therefore, as part of calculating compensation, Royal London should give the Dolphin Trust and Park First investments a nil value as part of determining the actual value.

It's also fair that Mr R should not be disadvantaged if the SSAS cannot be closed down due to these illiquid investments preventing him from potentially moving to a cheaper and more strongly regulated arrangement. To provide certainty to all parties I think it's fair that Royal London also pays Mr R an upfront sum equivalent to five years' worth of future administration fees at the current tariff for the SSAS (pro-rated according to the proportion of the SSAS that Mr R's Royal London pension transfer represented).

When calculating the actual value, I think it's also fair for Royal London to take account of any funds remaining in the SSAS bank account equal to the proportion of the overall investment Mr R made with his Royal London pension.

Notional value

This is the value of Mr R's pension had it remained with Royal London at the date of my final decision.

The relevant proportion of any pension commencement lump sum or gross income payments Mr R received directly from the SSAS should be treated as notional withdrawals from Royal London on the date(s) they were paid, so that they cease to be part of the calculation of the notional value from those point(s) onwards.

Payment of compensation

There doesn't appear to be any reason why Mr R needed a pension arrangement that wasn't privately held, administered by an established insurance company and under FCA regulation. So, I don't think it's appropriate for further compensation to be paid into the SSAS.

Again, assuming reinstatement isn't an option, Royal London should set up a new plan for a value equal to the amount of any loss. The new plan should have features, costs and investment choices that are as close as possible to Mr R's original pension. If Royal London considers that the amount it pays into a new plan is treated as a member contribution, its payment may be reduced to allow for any tax relief to which Mr R is entitled based on his annual allowance and income tax position. However, Royal London's systems will need to be capable of adding any compensation which doesn't qualify for tax relief to the plan on a gross basis, so that Mr R doesn't incur an annual allowance charge. If Royal London cannot do this, then it shouldn't set up a new plan for Mr R.

If it's not possible to set up a new plan, Royal London must pay the amount of any loss direct to Mr R. But if this money had been in a pension, it would have provided a taxable income. Therefore, compensation paid in this way should be reduced to notionally allow for any income tax that would otherwise have been paid.

To make this reduction, it's reasonable to assume that Mr R is likely to be a basic rate taxpayer at the selected retirement age, so a 75% portion of his pension would be taxed at 20% assuming he is entitled to take the remaining 25% portion tax-free. This results in an *overall reduction of 15%, which should be applied to the compensation amount if it's paid directly to Mr R. If Mr R has already taken a tax-free cash sum, the relevant reduction would be 20%.*

Royal London may ask Mr R to provide an undertaking in return, to account for the relevant proportion of the net amount of any payments he may receive from the illiquid investments in future, after withdrawing those amounts from the SSAS. Royal London will need to meet any costs in drawing up the undertaking. If Royal London asks Mr R to provide this undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

If payment of compensation is not made within 28 days of Royal London receiving Mr R's acceptance of my final decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.
Income tax may be payable on any interest paid. If Royal London deducts income tax from the interest, it should tell Mr R how much has been taken off. Royal London should give Mr R a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

Details of the calculation must be provided to Mr R in a clear, simple format"

Responses to my provisional decision

Mr R hasn't given me any new evidence or comments in relation to the findings I reached in my provisional decision.

Royal London accepted the provisional decision and indicated it may be able to reinstate Mr R's policy. However, it said it wanted to ensure that by following the redress method I set out in my provisional decision, it wouldn't also incur costs in respect of future SSAS fees.

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.

As Mr R and Royal London accepted the substance of my decision, I see no reason to change the findings I reached.

I've thought carefully about Royal London's point concerning the SSAS fees. But I'm not minded to change that part of the redress award. I have to keep in mind that had it not been for Royal London's failure to take the action I've set out in my provisional decision, Mr R wouldn't have gone ahead with the transfer. So, he wouldn't have needed to open the SSAS and incur the fees he did. And the SSAS can't yet be closed due to the illiquid investments it holds. Therefore, to ensure that Mr R doesn't lose out, I remain of the opinion that it's fair and reasonable for Royal London to account for the SSAS fees in the way I set out in my provisional decision.

Putting things right

Whilst I note that Royal London intends to reinstate Mr R's policy, I don't know if that will ultimately be possible. Royal London should therefore follow the redress approach I set out in my provisional decision, starting with reinstatement of the policy if it's able to.

My final decision

I uphold this complaint. I direct The Royal London Mutual Insurance Society Limited to put things right as I set out in my provisional decision and as I’ve referred to above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr R to accept or reject my decision before 19 April 2024.

Amanda Scott
Ombudsman