

The complaint

Mr T has complained about a transfer of his personal pension with The Royal London Mutual Insurance Society (Royal London) to a small self-administered scheme (SSAS) in October 2016. Mr T's SSAS was subsequently used to invest in The Resort Group (TRG) in a hotel development in Cape Verde. The investment now appears to have little value. Mr T says he's lost out financially as a result.

Mr T says Royal London failed in its responsibilities when dealing with the transfer request. He says Royal London should've 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 T 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've.

What happened

In May 2014 a limited company was incorporated with Mr T as the sole director. I'll call the company T Limited. There's an agreement dated 30 May 2014 saying T Limited had appointed Mr T as its managing director. Mr T's signature on the agreement was witnessed by a consultant with First Review Pension Services Limited (FRPS).

On 26 June 2014 Mr T signed a trust deed to establish a SSAS. T Limited was the principal employer, Mr T was the sole trustee and Bespoke Pension Services (BPS) was the SSAS administrator. Mr T's signatures on the trust deed were witnessed by the same FRPS consultant. There's also an administration services agreement for the SSAS between Mr T as the SSAS trustee and BPS dated 26 June 2014.

I've seen a letter to Mr T from Broadwood Assets Ltd (Broadwood). It's undated but Mr T signed it on 2 July 2014 to confirm he'd read and understood it. The letter said section 36 of the Pensions Act 1995 requires a SSAS trustee to take and consider appropriate advice on whether a proposed investment is satisfactory for the aims of the scheme. Mr T had appointed Broadwood to provide that advice. Broadwood's advice was limited to that and it hadn't advised Mr T on the establishment of his SSAS. The nature of the advice Broadwood was providing wasn't regulated under FSMA (Financial Services and Markets Act 2000) and Broadwood wasn't authorised to provide regulated financial advice. Broadwood wasn't advising whether TRG Cape Verde investment was suitable for the particular needs and objectives of the members or beneficiaries of the SSAS. If Mr T preferred advice on the suitability of the investment for him personally, he should seek regulated financial advice from an independent financial adviser.

Broadwood said the TRG investment was a legitimate, credible and substantive arrangement that didn't facilitate liberation and was suitable to be held in a SSAS. But there were a number of risks and it wasn't suitable for a cautious investor. Broadwood concluded the investment was suitable only for more adventurous investors, ideally with diversification across alternative holdings according to Mr T's attitude to risk and capacity for loss.

On 25 July 2014 BPS wrote to Royal London requesting the transfer of Mr T's pension fund to the newly established SSAS. Enclosed were a number of documents, including:

- A letter from HMRC showing the SSAS had been registered on 30 June 2014 and giving the Pension Scheme Tax Reference (PSTR) number.
- A copy of The Pensions Regulator's (TPR) 'Scorpion' leaflet (I mention the Scorpion campaign further below) signed by Mr T on 30 June 2014 underneath a printed statement which said: 'I can confirm I have read this document. I am not party to any such pensions liberation activity in anyway whatsoever.' That was the longer February 2013 booklet entitled 'Predators stalk your pension'.
- Confirmation that Mr T was employed by T Limited – the agreement dated 30 May 2014.
- A letter signed by Mr T dated 30 June 2014 (to which I've referred further below).
- The SSAS trust deed and rules dated 26 June 2014 which had been drafted by a large London law firm. There was also a letter from that firm confirming the trust deed and rules conformed to the Finance Act 2004 as a registered pension scheme and hadn't been drafted in a way which knowingly allowed the scheme to be operated other than as a registered pension scheme.
- BPS's Policy on Pension Liberation document dated 1 April 2014.

The letter from Mr T dated 30 June 2014 included the following:

'The purpose of this letter is to provide you with additional confirmation of the basis upon which I have made this request and to seek to provide a record of the fact that I am aware of the issues relating to pensions liberation. Indeed I have carefully considered my decision to request a transfer to the scheme and have not made it lightly.'

I confirm that the scheme is a registered pension for HMRC purposes [reference number given] and that the trust deed and rules governing it only allow standard benefit options such as annuities and drawdown in accordance with the applicable legal requirements.

From guidance and information I have received in connection with this decision I appreciate that there has recently been a significant rise in cases of 'pensions liberation' fraud. As a result there is increased concern and scrutiny around transfer requests being made, to ensure members fully understand the implications of making a transfer.

I therefore wish to confirm that the transfer request is being made in order that I can take advantage of investment opportunities available under the scheme, none of which are in any way connected with pension liberation. I have received detailed information about the Scheme, how it operates, who administers it and the risks associated with making a transfer out of my existing pension arrangement.

In making this transfer I am not seeking to access my pension benefits before age 55 and I am aware of the potentially significant tax liabilities that would arise were I to attempt to do so. Indeed the trust deed and rules of the Scheme do not permit benefits to be taken prior to age 55, except in circumstances of ill health which meet HMRC requirements. I also confirm that I have not been offered any cash or other incentive by any person as part of my decision to transfer my pension to the Scheme.

On this basis I would be grateful if you could please proceed to transfer my pension to the Scheme as requested as soon as possible.'

Following an initial review of the transfer request, Royal London wrote to Mr T on 20 August 2014, explain there may be additional risks associated in transferring his pension funds.

Royal London asked (in bold) that Mr T read the enclosed leaflet. The letter explained that benefits cannot normally be taken prior to age 55 and doing so may result in tax charges. Royal London also included a link to TPR's website for more information and highlighted the importance of obtaining financial advice from an adviser registered with the Financial Conduct Authority (FCA). A link to a website where Mr T could find an adviser in his area was given. If, after reading the important information provided and seeking appropriate professional advice he still wished to proceed, he should complete and return the enclosed form (transfer out member consent form), along with the other documentation requested. Royal London added that if, after reviewing the information and documentation, it wasn't satisfied a payment to the new pension scheme would be used to provide appropriate benefits under a registered pension scheme, Royal London wouldn't allow the transfer to go ahead.

It looks like the letter may have been sent to an old address for Mr T. Royal London has explained that the letter and its contents were resent to the correct address in November 2014. It appears Mr T received it as on 23 December 2014 BPS forwarded to Royal London Mr T's completed transfer out member consent form which he'd signed on 7 December 2014. Amongst other things he confirmed he was a member of the receiving scheme; he wouldn't be taking benefits before age 55 (other than on the grounds of ill health); and that accessing directly or indirectly the transferred benefits earlier would mean the payment would constitute an unauthorised payment for tax purposes.

Mr T also completed Royal London's further information form. The first question was about how he'd been made aware of the receiving scheme. Mr T said he was contacted by FRPS and he'd expressed an interest in transferring to a SASS through which he'd have the opportunity to invest in Cape Verde and other investments. FRPS had then introduced him to BPS as a SSAS administrator. In response to the next question – about the receiving scheme's investment providers – Mr T said the funds would be invested in TRG investments (commercial property). The third question included a request for copies of the promotional materials. Mr T supplied a copy of TRG's due diligence report and FRPS's SSAS key features document.

The latter said FRPS was the introducer. Its role was to guide Mr T through the process whereby a third party would be authorised to establish the limited company and appoint Mr T as a director; help with establishing the SSAS under a trust deed; liaise with existing providers to arrange for transfer value quotations to be provided so Mr T could decide if he wanted to transfer those funds into his SSAS and how he wanted to invest them; and guide Mr T through the process to authorise BPS to complete the transfer to the SSAS if that's what he'd decided to do.

The document included the following:

'The Introducer will provide you with information about the main advantages and disadvantages of a SSAS and information about certain investment products and opportunities. The Introducer is not authorised to, and does not provide, legal advice or investment advice. It is not regulated by the [FCA] and it does not provide advice on any investment products that are regulated by the FCA.'

If you wish to get independent investment advice about the features of a SSAS or any of the investment opportunities or investment products that the Introducer brings to your attention, the Introducer will refer you to an independent financial adviser (or you can appoint your own financial adviser).'

Royal London wrote to Mr T on 7 January 2015. Royal London said it wasn't satisfied that a payment to Mr T's SSAS would be used for the purpose of providing appropriate pension

benefits and so it wasn't prepared to transfer his pension to the SSAS. Royal London said it strongly recommended that Mr T seek financial advice from a FCA registered adviser. A link to a website where he could find an adviser in his area was given.

On 14 April 2015 BPS wrote to Royal London saying Mr T wished to raise a complaint following the refusal to transfer his pension funds to the SSAS. In his complaint letter Mr T said he appreciated that good industry practice meant Royal London had to investigate suspected pension liberation and other circumstances but information had been provided that the SSAS was legitimate. In particular, he referred to his letter in support of the transfer request which said he was aware of the dangers of pension liberation fraud; he didn't wish to access his pension benefits before age 55; and his request had been made so he could take advantage of investment opportunities which weren't available under his existing plan and which had no connection with pensions liberation. Mr T said the delay meant he was losing out on potential investment returns.

Royal London responded to Mr T on 27 August 2015. Royal London referred to recent reported cases of pension scams and highlighted TPR's ongoing campaign and provided a link to TPR's website, as well as an additional copy of TPR's Scorpion 'poster' which explained tactics used by scammers and ways to 'scamproof' pension savings. Royal London didn't think Mr T had a right to transfer and needed to see evidence he was receiving a salary from the sponsoring employer (T Limited). Payslips were requested if Mr T still wished to proceed with the transfer. Royal London recommended Mr T visit the Pensions Ombudsman's website (a link to which was given) and view recent decisions where the scheme administrator had refused to transfer pension savings to a new arrangement.

Royal London also said it was concerned about the structure of Mr T's SSAS, the complex relationship between the parties involved and that there was nothing to indicate Mr T had received financial advice. Royal London stressed how important independent advice was for Mr T to understand what he was proposing to do and the risks he might be facing. Royal London referred to policyholders being contacted (sometimes by cold call) and setting up a SSAS to facilitate investment in an overseas property development – considered a high risk investment. Mr T could contact Royal London for more information. Or The Pensions Advisory Service (TPAS) whose telephone number was given.

On 5 January 2016 BPS wrote to Royal London enclosing Mr T's response to the information request. In the letter Mr T explained that he wasn't in receipt of an income as the sponsoring employer was dormant but pointed out a dormant company could still establish a SSAS. Royal London has said it refused to process the transfer following this letter but has been unable to evidence this. But the transfer didn't go ahead and there's nothing to indicate that Mr T and/or BPS were chasing it up so it seems both were aware that Royal London wasn't going to proceed with the transfer.

After the High Court's decision in February 2016 in *Hughes v Royal London* [2016] EWHC 319 Ch Royal London reviewed transfers for BPS's clients. BPS asked for confirmation that Royal London was proceeding with the transfers, a timescale, an update on Royal London's reviewed transfer procedures and what, if any, further information was required. BPS sent a list of outstanding transfer requests which included Mr T's.

On 28 June 2016 Mr T signed Royal London's declaration saying he was currently in receipt of earnings and wished to proceed with the transfer. He confirmed he'd been provided with a copy of TPR's *'Scammed out of his retirement. Don't be next'* booklet; that Royal London had advised him of the concerns they'd identified; recommended he take independent advice from a financial adviser authorised by the FCA; and review all of the circumstances before deciding if he still wished to proceed with the transfer. BPS sent it to Royal London the same day.

Royal London wrote to Mr T on 6 September 2016 confirming receipt of the signed declaration and requesting proof of Mr T's earnings. Royal London wrote to Mr T on 19 September 2016 returning six payslips, having taken copies for its file. Royal London completed the transfer on 22 October 2016. A transfer payment of £27,022.23 was made to Mr T's SSAS.

Mr T signed an investment instruction to BPS on 1 November 2016 for £22,000 to be invested in Cape Verde with TRG. That investment was made on 8 November 2016. The remainder of Mr T's pension funds were retained in the SSAS bank account. Initially Mr T's investment – a fractional share of accommodation at a resort in Cape Verde – produced some returns. But there were then delays before the payments eventually dried up altogether. I understand that development of the resort was beset with problems and there are problems with the legal title to the property. Mr T's investment is illiquid as there's no market for it.

In January 2023, Mr T, through his representative, complained to Royal London. He said he'd been contacted by an unregulated financial adviser, Broadwood, about a pension review. He'd been advised to transfer his Royal London pension to a SSAS with BPS on the basis his existing pension was underperforming. Briefly, Mr T's argument was that there'd been a lack of due diligence by Royal London in allowing the transfer – a SSAS wasn't a suitable pension product for him and the underlying investment wasn't suitable. Royal London shouldn't have allowed an unregulated firm to advise Mr T about the transfer and investment.

Mr T's representative also said that Mr T was 50 at the time of receiving advice – from Brunel & Lewis. He had little time to rebuild his pension fund if he suffered losses. He had no previous investment experience and no pensions knowledge. He had a low capacity for loss and a low attitude to risk. Royal London should've ensured he'd understood the advice he'd been given and he was aware of the higher fees he'd be paying. Royal London had sent him the pension liberation leaflet but had still failed him by allowing the transfer to go ahead and the investment in unsuitable investments.

Royal London didn't uphold the complaint. It set out a timeline and said it had in early January 2016 refused the transfer as Mr T had no earnings from T Limited and Royal London's view was that he didn't have a statutory right to transfer. Following the High Court's decision in the Hughes case, Royal London deemed Mr T did have a statutory right to transfer if he could confirm he was in receipt of earnings – which didn't have to be from T Limited. Evidence of earnings was received and so Royal London released the funds. Warnings and the Scorpion leaflet had been given but Mr T wanted the transfer to go ahead and Royal London had to release the funds. Royal London said it couldn't have been clearer – see its letter of 27 August 2015 – that it was concerned about the proposed investment.

Our investigator was unable to resolve the dispute informally, so the matter was passed to me to decide. In doing so, I've taken into account the points made by Mr T, through his representative, in response to the investigator's view not upholding the complaint. In summary, Mr T said Royal London should've ensured he'd had independent financial advice before he transferred. As a retail client, Mr T didn't have the necessary experience to determine whether the investment was in his best interest.

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 FCA. Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority (FSA). As such [RESPONDENT BUSINESS] 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 how personal pension providers deal with 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.

In February 2013, The Pensions Regulator (TPR) issued its Scorpion guidance to help tackle the increasing problem of pension liberation, the process by which unauthorised payments are made from a pension (such as accessing a pension below minimum retirement age). In brief, the guidance provided a due diligence framework for ceding schemes dealing with pension transfer requests and some consumer-facing warning materials designed to allow members decide for themselves the risks they were running when considering a transfer.

The Scorpion guidance 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 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. So the content of the Scorpion guidance was essentially informational and advisory in nature. Deviating from it doesn't therefore mean a firm has necessarily 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 right to transfer.

That said, the launch of the Scorpion guidance in 2013 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.

The Scorpion guidance was updated in July 2014. It widened the focus from pension liberation specifically, to pension scams more generally – which included situations where someone transferred in order to benefit from “too good to be true” investment opportunities such as overseas property developments. An example of this was given in one of the action pack’s case studies.

In a similar vein, in April 2014 the FCA had also started to voice concerns about the different types of pension arrangements that were being used to facilitate pensions scams. In an announcement to consumers entitled “Protect Your Pension Pot” the increase in the use of SIPP’s and SSAS’s in pensions scams was highlighted, as was an increase in the use of unregulated and/or illiquid investments. The FCA further published its own factsheet for consumers in late August 2014. It highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.

There was a further update to the Scorpion guidance in March 2015. This guidance referenced the potential dangers posed by “pension freedoms” (which was about to give people greater flexibility in relation to taking pension benefits) and explained that pension scams were evolving. In particular, it highlighted that single member occupational schemes were being used by scammers. At the same time, a broader piece of guidance was initiated by an industry working group covering both TPR and FCA regulated firms: the Pension Scams Industry Group (PSIG) Code of Good Practice. The intention of the PSIG Code was to help firms achieve the aims of the Scorpion campaign in a streamlined way which balanced the need to process transfers promptly with the need to identify those customers at material risk of scams.

The Scorpion guidance was updated again in March 2016, with the insert being updated in June 2016 – about three months before Mr T’s transfer was completed.

The March 2015 and the March 2016 Scorpion guidance

The March 2015 update to the Scorpion guidance asked schemes to ensure they provided their members with “regular, clear” information on how to spot a scam. It recommended giving members that information in annual pension statements and whenever they requested a transfer pack. It said to include the pensions scam “leaflet” in member communications.

In the absence of more explicit direction, I take the view that the member-facing Scorpion warning materials were to be used in much the same way as previously, which is for the shorter insert (which had been refreshed in March 2015) to be sent when someone requested a transfer pack and the longer version (which had also been refreshed) made available when members sought further information on the subject.

When a transfer request was made, transferring schemes were also asked to use a three-part checklist to find out more about a receiving scheme and why their member was looking to transfer.

The 2016 update contained similar messages to those from 2015 but emphasised some of the actions it suggested more directly. The update asked schemes to direct members to TPR’s “booklet” which set out how to spot a scam. The action pack included a link to this information online which indicates that the “booklet” referenced was the shorter of the warning materials. The update also said to use its checklist and carry out due diligence on all transfer requests. It said ceding schemes should proactively engage with members they considered at risk and if, after due diligence, they suspected that a receiving scheme may be involved with a scam, this should be communicated to members and a record kept of this communication.

The PSIG Code of Good Practice

The PSIG Code was voluntary. But, in its own words, it set a standard for dealing with transfer requests from UK registered pension schemes. It was “welcomed” by the FCA and the Association of British Insurers (amongst others). And several FCA regulated pension providers were part of the PSIG and co-authored the Code. So much of the observations I’ve made about the status of the Scorpion guidance would, by extension, apply to the PSIG Code. In other words, personal pension providers didn’t necessarily have to follow it in its entirety in every transfer request and failure to do so wouldn’t necessarily be a breach of the regulator’s Principles or COBS. Nevertheless, the Code sets an additional benchmark of good industry practice in addition to the Scorpion guidance.

In brief, the PSIG Code asked schemes to send the Scorpion “materials” in transfer packs and statements, and make them available on websites where applicable. The PSIG Code goes on to say those materials should be sent to scheme members directly, rather than just to their advisers.

Like the Scorpion guidance, the PSIG Code also outlined a due diligence process for ceding schemes to follow. However, whilst there is considerable overlap between the Scorpion guidance and the PSIG Code, there are several differences worth highlighting here, such as:

- The PSIG Code includes an observation that: “A strong first signal of [a scam] would be a letter of authority requesting a company not authorised by FCA to obtain the required pension information; e.g. a transfer value, etc.” This is a departure from the Scorpion guidance (including the 2015 guidance) which was silent on whether anything could be read into the entity seeking information on a person’s pension.
- The Code makes explicit reference to the need for scheme administrators to keep up to date with the latest pension scams and to use that knowledge to inform due diligence processes. Attention is drawn to FCA alerts in this area. (I noted the contents of some of those alerts earlier in my decision.)
- Under the PSIG Code, an ‘initial analysis’ stage allows transferring schemes to fast-track a transfer request without the need for further detailed due diligence, providing certain conditions are met. No such triage process exists in the 2015 Scorpion guidance – following the three-part due diligence checklist was expected whenever a transfer was requested.
- The PSIG Code splits its later due diligence process by receiving scheme type: larger occupational pension schemes, SIPPs, SSAs and QROPS. The 2015 Scorpion guidance doesn’t distinguish between receiving scheme in this way – there’s just the one due diligence checklist which is largely (apart from a few questions) the same whatever the destination scheme.

TPR began referring to the Code as soon as it was published, in the March 2015 version of the Scorpion action pack. Likewise, the PSIG Code referenced the Scorpion guidance and indicated staff dealing with scheme members needed to be aware of the Scorpion materials.

Therefore, in order to act in the consumer’s best interest and to play an active part in trying to protect customers from scams, I think it’s fair and reasonable to expect ceding schemes to have paid due regard to both the Scorpion guidance and the PSIG Code when processing transfer requests. Where one differed from the other, they needed to consider carefully how to assess a transfer request taking into account the interests of the transferring member. Typically, I’d consider the Code to have been a reasonable starting point for most ceding

schemes because it provided more detailed guidance on how to go about further due diligence, including steps to potentially fast-track some transfers which – where appropriate – would be in the interest of both parties.

The considerations of regulated firms didn't start and end with the Scorpion guidance and the 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 either the Scorpion guidance or the Code – 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?

I've considered the contemporaneous documentation, what was said when Mr T's complaint was made to Royal London and what we've been told happened, including what Mr T told our investigator during a telephone call. In summary, Mr T said he'd received a cold call and a meeting was then arranged. There'd been two meetings, both at the site where he was working at the time, during his lunch breaks and in his car or the other person's car. The first meeting was to get information about his 'frozen' pension with Royal London and the second was to sign all the paperwork. After that, although he had contact with other people from the same company, he didn't have any further interaction with the person he'd met with. Mr T was unable to recall the name of the company and thought they no longer existed. He'd passed all the paperwork he had to his representative.

He said he'd trusted the person he met with who said he'd make good returns by setting up a limited company and investing in a hotel resort overseas. He was told the income would be paid into his pension and could double his pension pot and he could withdraw his pension funds when he retired. He was at one point told the investment had been moved from one hotel to another as the original one was closed but he was assured it was all fine. He hadn't been told about all the charges and he was now unable to access his money.

Mr T said Royal London had sent him a letter warning him about doing what he proposed. But he'd been prewarned that Royal London would tell him it was risky because they wanted to retain his policy. And he should ignore all that just sign the paperwork anyway. So he didn't give what Royal London said much weight at the time and he carried on anyway. But he now felt he should've taken note as about a year after he'd transferred he saw something either on the internet or on TV about pension scams and the overseas investment was named. At this point he began to be worried about the transfer but it was by then too late. He'd tried contacting those involved but they wouldn't answer the phone. He also spoke with TRG but he was told he couldn't get his money back.

The investigator said several businesses were mentioned in the paperwork and asked if Mr T remembered them when given their names. Mr T recalled FRPS and thought it was the company who'd contacted him and got him to transfer. He did say he recalled the company was in Wales. He thought Broadwood was the business running the pension but he wasn't sure. He recognised BPS and suggested that maybe Broadwood had taken over from them. Mr T hadn't been given or promised any incentives to transfer such as cash or a loan.

When his complaint was made to Royal London Mr T's representative said Mr T had been advised by Broadwood and pointed to the letter Mr T had signed on 2 July 2014. The letter of complaint also mentioned another firm, Brunel & Lewis. That firm was based in Cyprus and is no longer authorised but had previously been passported into the UK and could undertake regulated business in the UK. But Mr T hasn't mentioned that firm, nor is there

any reference to Brunel & Lewis in the paperwork. So I'm inclined to think that the reference to that firm was a mistake. Further, as to what was said about Broadwood's role, that firm was involved as demonstrated by the letter Mr T signed. But, as I've noted above, Broadwood explained that its advice was limited to section 36 of the Pensions Act 1995, which advice wasn't regulated and Broadwood wasn't authorised to provide regulated financial advice. I think Broadwood's role would've been limited to providing the section 36 advice and after Mr T had agreed to transfer.

Mr T's recollections are somewhat sketchy. But, as to who'd told him about transferring to a SSAS, he recalled, albeit triggered by FRPS being mentioned, that it had been FRPS who'd contacted him and it had been someone from that firm he'd met with and suggested that he transfer. That's consistent with the contemporary documentation – in particular the further information form Mr T completed for Royal London and his response to the question about how he'd been made aware of the receiving scheme – he said he was contacted by FRPS. So I think it's likely to have been FRPS who cold called him and then met with him to discuss his pension arrangements. FRPS's involvement is also evidenced by the fact that someone from FRPS witnessed Mr T's signatures on the documents.

At the time of the transfer in 2016 Mr T was 50 and employed as a maintenance engineer. He says he had no experience of pensions and investments, which I accept. I can't see he'd have decided to transfer to a SSAS, or even known that sort of pension vehicle might be available to him, unless he'd been told about it. A SSAS is a relatively complicated pension arrangement. It involves the setting up of a limited company, which brings responsibilities as a company director. And there are also duties as a trustee of the SSAS. And TRG investment was unusual too. I don't think Mr T, an unsophisticated and inexperienced investor, would've thought about investing his accumulated pension savings in an overseas property development by way of fractional ownership of hotel accommodation unless that sort of arrangement had been specifically brought to his attention.

And I think he'd only have been prepared to consider it if he was given to understand he'd be better off as a result – and here Mr T has said he was told his pension pot could double in value. I think that would amount to a recommendation or advice to transfer. That would be regulated advice which should only be given by a FCA authorised adviser or firm. I've referred above to FRPS's SSAS key features and which said that FRPS wasn't regulated and wouldn't be giving advice. But what FRPS said in a meeting with Mr T could easily have strayed into advice territory. Here I think it's likely that FRPS recommended that Mr T transfer so he could invest in TRG.

In saying that I've noted Mr T's recollection that whoever he was dealing with was based in Wales, which FRPS wasn't. But BPS's registered office is in Wales. And it seems Mr T recalls the company being in Wales when he was trying to trace what had happened to his money. So there may be some confusion there. From what I've seen, I think it was FRPS who Mr T dealt with initially and who advised him to transfer to a SSAS and invest in TRG.

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. And the PSIG Code agrees that the insert should be included in transfer packs and sent directly to consumers.

From what I've seen Royal London sent Mr T several versions of the insert or booklet. Royal London's letter of 20 August 2014 said a leaflet was enclosed. As has been noted, the letter

wasn't correctly addressed and Royal London says it was resent in November 2014. Either way Mr T seems to have received it as he returned the enclosed form.

I think that would've been the Scorpion insert or booklet. I'm not sure if 'leaflet' denotes the insert or booklet so I'm going to assume it was the insert. I'd also assume it was the updated July 2014 insert – 'A lifetime's savings lost in a moment'. But, even if that's wrong and it was the earlier (February 2013) version 'Predators stalk your pension' (and which Mr T clearly did see as he signed a copy which was included with the transfer request) I don't think anything turns on this, given what I go on to say about Mr T having been given further Scorpion inserts or booklets later.

Royal London's letter of 27 August 2015 in response to Mr T's complaint about the refusal to process the transfer said a copy of a 'poster' with tactics used by scammers and ways to 'scamproof' pension savings was enclosed. I think that would've been the March 2015 insert which had the title 'How to scamproof your savings' and had a 'How to spot the warning signs' pictorial. And the declaration Mr T signed on 28 June 2016 confirmed he'd seen the 'Scammed out of his retirement. Don't be next' booklet, which was the title of the updated June 2016 insert and booklet. And I think the reference to booklet indicates that – the longer version – was sent. So I think Royal London did comply with its obligations to provide Mr T with the Scorpion insert or booklet.

Due diligence:

As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes. I've therefore considered Mr T's transfer in that light. But I don't think it would make a difference to the outcome of the complaint if I had considered Royal London's actions using the Scorpion guidance as a benchmark instead.

The Code provides for an initial triage process when dealing with a transfer request – section 6.2.2 ('Initial analysis – member questions'). I won't repeat the list of suggested questions in full. Suffice to say, at least two of them would have been answered "yes":

- Did receiving scheme/adviser or sales agents/representatives for the receiving scheme make the first contact (e.g. a cold call)?
- Have you been informed of an overseas investment opportunity?

Under the Code, further investigation should follow a "yes" to any question. The nature of that investigation depends on the type of scheme being transferred to. The SSAS section of the Code (Section 6.4.3) points to the following as being potential areas of concern:

- a) Employment link: a lack of an employment link to any member of the SSAS.
- b) Geographical link: a sponsoring employer that is geographically distant from the member.
- c) Marketing methods: a SSAS being marketed through a cold call or an unsolicited approach.
- d) Provenance of receiving scheme: a SSAS registered within the previous six months or a recently registered sponsoring employer or administrator operating from 'virtual' offices, or using PO Boxes for correspondence purposes.

Underneath each area of concern, the Code set out a series of example questions to help scheme administrators assess the potential risk facing a transferring member.

Not every question would need to be addressed under the Code. Indeed, the Code makes the point that it is for scheme administrators to choose the most relevant questions to ask

(including asking questions not on the list if appropriate). But the Code says a transferring scheme would typically need to conduct investigations into a “wide range” of issues to establish whether a scam was a realistic threat. In my view, Royal London should’ve addressed all four areas of concern by contacting Mr T.

What should Royal London have found out?

Royal London clearly had concerns about the transfer and did get in contact with Mr T for more information. But, importantly, Mr T told Royal London that he’d been advised by FRPS. FRPS wasn’t authorised. Being advised by an unauthorised firm to transfer benefits from a personal pension plan would have been a breach of the general prohibition imposed by FSMA, which states no one can carry out regulated activities unless they’re authorised or exempt. Anyone working in this field should have been aware that financial advisers need to be authorised to give regulated advice in the UK. The PSIG Code (and the Scorpion guidance) make much the same point. Indeed, the PSIG Code says firms should report individuals appearing to give regulated advice that aren’t authorised to do so.

Royal London should’ve been concerned by FRPS’s involvement because it pointed to a criminal breach of FSMA. On the balance of probabilities I’m satisfied such a breach occurred here.

What should Royal London have told Mr T and would it have made a difference?

I think it’s clear that, from the outset, Royal London had concerns about the transfer. And Royal London did give Mr T warnings. What I need to consider is whether further warnings would have changed his mind about the transfer. For the reasons I go on to explain, I don’t think they would’ve done.

As I’ve said above, Royal London sent Scorpion inserts or booklets which Mr T ought reasonably to have read. It seems he received three versions, all of which drew to his attention that his pension savings might be at risk. For example, the March 2015 ‘Scamproof your savings’ insert set out some of the most common tactics used by scammers to trick people out of their savings. These included cold calls, overseas transfers of funds and a proposal to put all the money in a single investment. All featured in Mr T’s case.

And the June 2016 insert and booklet, ‘Scammed out of his retirement. Don’t be next’, set out ten steps to protect a pension. Which included being wary of cold calls, checking the FCA’s register to make sure any adviser was registered (with the website address given) and steering clear of overseas investment ‘deals’ – which said well known scams included unregulated investment in a hotel and where the money was all in one place. Again, those were factors in Mr T’s transfer. Given he’d signed the declaration to say he’d read the booklet I think he did read it. So he’d have seen the similarities with his own situation but he remained prepared to go ahead with the transfer and without checking out the firms that were involved, including FRPS.

Royal London’s letter of 20 August 2014 said Mr T should seek regulated advice and gave details as to how he could find a registered adviser in his area. After Royal London had looked into the transfer further, its concerns weren’t allayed and it told Mr T on 7 January 2015 that it wasn’t prepared to process the transfer and repeated the recommendation to seek financial advice from a FCA registered adviser. Mr T then complained to Royal London about its refusal to transfer his funds. I appreciate that the complaint was driven by BPS but Mr T was prepared to go along with it. And, when Royal London revisited the transfer request after the court case, Mr T had to sign a declaration before Royal London would proceed with the transfer. As well as confirming he’d been provided with a copy of the ‘Scammed out of his retirement. Don’t be next’ Scorpion booklet, he also confirmed that

Royal London had identified areas of concern and had recommended he take independent advice from a FCA authorised financial adviser and review all the circumstances before deciding whether he still wished to proceed with the transfer. Again Mr T wasn't put off.

Mr T might say that he didn't know FRPS wasn't regulated and he didn't check that they were. And I recognise that a warning that those who'd been advising him weren't authorised to do so and could be acting unlawfully is a serious issue. But Mr T could've checked FRPS's regulatory status for himself. The Scorpion inserts/booklets highlighted the need to check the FCA's register, the website address for which was given. Further, looking at the paperwork Mr T received, I think he'd have known that FRPS wasn't regulated. I've referred above to FRPS's SSAS key features document which Mr T provided in response to Royal London's request for further information. I've set out above what it said about FRPS's role (as introducer) and that FRPS wasn't regulated and not authorised to provide advice. And there's no suggestion that the advice Broadwood gave was regulated either – Broadwood's letter made it clear that the advice it was giving was limited and not regulated advice.

I've taken into account what Mr T said about having been told to expect Royal London to warn him about transferring because they wanted to retain his business and so he should ignore it and that's why he didn't pay much attention to what was said. But Royal London didn't just warn Mr T once – Royal London gave him several warnings and indeed at one stage refused to process the transfer. But, despite multiple warnings, Mr T was prepared to go ahead. I think that shows he was convinced by the people he was dealing with. I don't doubt that they came across as professional and knowledgeable and that Mr T trusted them and so he was prepared to ignore the repeated warnings which Royal London gave.

However, in the circumstances, I can't see he'd have paid attention to any further warnings Royal London might've provided and even if such warnings had been more specific in terms of FRPS's unregulated status. Mr T was prepared to disregard the clear warnings given by Royal London, coupled with information from TPR which Mr T should've recognised as being directly relevant to his situation. And which suggested that those he was dealing with might not be as trustworthy as he'd thought and might not be acting in his best interest and so his pension fund could be at risk. Mr T failed to heed those warnings and take the steps recommended – which included checking that any adviser was registered with the FCA – to ensure he wasn't about to fall victim to a scam. I don't see that he'd have heeded further warnings and which would've been along the same lines as what he'd been told already.

Mr T has said that Royal London should've refused to make the transfer. But, once the position about a statutory right to transfer not being dependent on earnings from the SSAS sponsoring employer had been confirmed and Royal London had seen evidence that Mr T was in receipt of earnings, Royal London had to concede that Mr T had a statutory right to transfer. Royal London had taken appropriate steps to warn him and tell him how he could access further information and/or advice before deciding if he wanted to go ahead with the transfer. Mr T confirmed that he wanted to proceed and I don't think, in the circumstances, that Royal London could do other than comply with his transfer request.

I have sympathy for Mr T. He's lost out financially by giving up the relative security of his pension arrangement with Royal London and investing in TRG, a higher risk investment which it seems has failed. But I don't think he'd have heeded any further warnings from Royal London so I don't think a different outcome would've prevailed. Hence I'm unable to uphold his complaint.

My final decision

I don't uphold the complaint and I'm not making any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 18 March 2025.

Lesley Stead
Ombudsman