DRN-5075372

The complaint

Mr W has complained about a transfer of his personal pension with The Royal London Mutual Insurance Society Limited trading as Scottish Life Pensions ("Royal London") to a Qualifying Recognised Overseas Pension Scheme ("QROPS") in January 2015. Mr W's QROPS was subsequently used to invest with SEB. Mr W says he has lost out financially as a result.

Mr W says Royal London failed in its responsibilities when dealing with the transfer request. He says that it should have done more to warn him of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance he says was required of transferring schemes at the time. Mr W says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Royal London had acted as it should have done.

What happened

At some point in 2014 Mr W received financial advice from Servatus about the transfer of his Royal London personal pension. Servatus was a firm that was a European Economic Area (EEA) financial adviser that was regulated in the Republic of Ireland. Servatus held passporting rights to provide financial services in the UK. Mr W explains that Servatus recommended that he transfer his pension to a QROPS.

Mr W completed an application form for the Harbour Retirement Benefit Scheme which was a QROPS administered by Harbour Pensions. The application form identified the financial adviser as being a named individual from Servatus setting out the agreed advice fee. It described the investment platform as being with SEB.

Royal London received a transfer request on 18 December 2014 from Harbour Pensions, to transfer the Harbour Retirement Benefit Scheme ("The QROPS"). The request included the following: transfer discharge forms; HMRC forms APSS263 and CA1890; confirmation that HMRC recognised the QROPS in April 2013; Mr W's identification documents certified by Servatus.

Mr W's pension was transferred on 21 January 2015. His transfer value was around £53,000. He was 55 years old at the time of the transfer.

There was a second transfer to Mr W's QROPS on 6 February 2015 from Phoenix Life for around £71,000.

In March 2015 £100,000 was transferred from the QROPS for investment with SEB. And a pension commencement lump sum of £19,160.07 was paid to Mr W on 6 March 2015.

In June 2022, Mr W complained to Royal London. In that complaint he said that, even though it had sent him the pension liberation warning leaflet, it still failed him by allowing the transfer and unsuitable investments.

Royal London didn't uphold the complaint. It said Mr W had a legal right to transfer. It explained that Servatus was regulated to provide advice in an EEA state. It noted that Mr W was already aged 55 at the time of the transfer request, so was unlikely to become victim of the type of pension liberation scam that was highlighted in the guidance of that time.

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

What I've decided – and why

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

The relevant rules and guidance

Personal pension providers are regulated by the Financial Conduct Authority (FCA). Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority (FSA). As such Royal London was subject to the FSA/FCA Handbook, and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA/FCA rules governing pension transfer requests, but the following have particular relevance here:

- Principle 2 – A firm must conduct its business with due skill, care and diligence;
- Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;
- Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and
- COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

I note that Mr W's complaint, brought on his behalf by a representative, set out other areas of regulation that it considered to be relevant to Royal London's actions. These were COBS 9 (which concerns the suitability of a personal recommendation to a client) and COBS 10 (which concerns the appropriateness of investments for a client). But a firm could not be subject to both of these parts of COBS, as they relate to different services. Nonetheless, neither of these two parts of COBS refer to a service that Royal London was providing Mr W. It was not providing any personal recommendation on the transfer that would have made COBS 9 relevant. It was administering his personal pension. Which was not a service that COBS 10 applied to either. So I do not agree that these sections were relevant to how Royal London ought to have approached Mr W's transfer request.

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

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

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

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

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

<u>The Scorpion guidance</u>

The Scorpion campaign was launched on 14 February 2013 by The Pensions Regulator (TPR), and was initially focused just on pension liberation – namely, the access to pension funds in an unauthorised manner (such as before normal minimum pension age). However, it's the update to that guidance on 24 July 2014 that's most relevant to this complaint. It widened the focus from pension liberation specifically, to pension scams – which it said were on the increase.

The materials in the Scorpion campaign comprised:

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

- A longer booklet issued by TPAS which gives more information, including example scenarios, about pension scams. Guidance provided by TPR said this longer leaflet was intended to be used in ongoing communications with members so that they could become aware of the scam risks they were facing.

- An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "watch out for" various warning signs of a scam. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where a transferring scheme still had concerns, they were encouraged (amongst other things) to contact the member to establish whether they understood the type of scheme they were transferring to and – where a member insisted on transferring – directing the member to Action Fraud or TPAS.

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

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

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

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

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

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

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. In deciding how to apply the guidance, they needed to consider the guidance as a whole, including the various warning signs to which it drew attention, the case studies that highlighted different types of scam, and the checklist and various suggested actions ceding schemes might take. And where the recommendations in the guidance applied, absent a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations:

1. As a first step, a ceding scheme needed to: check whether the receiving QROPS was validly recognised by HMRC, and ensure that the necessary HMRC forms were completed.

2. The Scorpion insert provided an important safeguard for transferring members, allowing them to consider *for themselves* the scam threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. So, all things considered, I think the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party.

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

4. The Scorpion guidance asked firms to look out for the tell-tale signs of scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The guidance points to the warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. Therefore, whilst using the action pack wasn't an

inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.

5. The considerations of regulated firms didn't start and end with the Scorpion guidance. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn't involve anything specifically referred to in the Scorpion guidance – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's principles and COBS 2.1.1R.

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

Mr W explains that he was contacted by an EEA authorised financial adviser regarding a pension review. And he's explained that firm – Servatus – was the firm that advised him to transfer to the Harbour Pensions QROPS.

Mr W has not provided any evidence of any written recommendation that Servatus provided. But Servatus's involvement in the transfer is evident from the QROPS application where that firm is listed as the adviser. And the QROPS transaction history shows an advice fee being paid. I'm therefore satisfied that Mr W's recollections are reliable and that he was, more likely than not being advised by Servatus.

I've not seen evidence that Royal London received any request for pension information from Servatus. Although it did respond to a request for transfer information in 2013 from an unregulated firm. Mr W has not made reference to this party in his account of the transfer. So I am not clear on whether or not this party was the introducer for Servatus. But I don't consider that it is key to this case because the advising party seems clear. And, if Royal London had asked Mr W, I think it would likely have been told that he was being advised by Servatus.

What did Royal London do and was it enough?

The Scorpion insert:

For the reasons given above, my view is that personal pension providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information.

In Mr W's complaint, referred to Royal London by his legal representative, it said, "*although Scottish Life did issue the pension liberation leaflet to* [Mr W] *they have still failed …"*. This causes me to believe that Mr W's recollection was of having received, what I've earlier referred to as, the Scorpion insert.

Royal London received a signed letter of authority from an unregulated firm in November 2013. I haven't seen Royal London's response to that request. But such a response should, at that time, have included the Scorpion insert that was introduced in February 2013. Which would corroborate Mr W's assertion that Royal London had sent him the insert. But I am also aware that Mr W transferred a second pension from another provider as part of the same process. I do not see why Mr W would explain in his detailed complaint submission that he had seen the pension leaflet if he had not. So I think that, on balance he was likely sent it as he said.

Due diligence:

As I have set out above, I agree with Mr W's representative that Royal London had to do more than simply send Mr W the Scorpion insert. In light of the Scorpion guidance, I think firms ought to have been on the look-out for the tell-tale signs of pension liberation and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk.

Royal London received the following information from Harbour Pensions with the transfer request: transfer discharge forms; HMRC forms APSS263 and CA1890; confirmation that HMRC recognised the QROPS in April 2013; Mr W's identification documents certified by Servatus. It also checked that the receiving QROPS was on HMRC's published list. This step ensured that the transfer payment both qualified as an authorised payment for tax purposes and also satisfied Mr W’s statutory right, and potentially other legal rights, to transfer.

Given the information Royal London had at the time, one feature of Mr W’s transfer would have been a potential warning sign of a scam: Mr W’s transfer to a QROPS obviously involved moving money overseas. Royal London should therefore have followed up on it to find out if other signs of a scam were present. Given this warning sign, I think it would have been fair and reasonable – and good practice – for Royal London to look into the proposed transfer and the most reasonable way of going about that would have been to turn to the check list in the action pack to structure its due diligence into the transfer.

The check list provided a series of questions to help transferring schemes assess the potential threat by finding out more about the receiving scheme and how the consumer came to make the transfer request. Some items on the check list could have been addressed by checking online resources such as Companies House and HMRC. Others would have required contacting the consumer. The check list is divided into three parts (which I’ve numbered for ease of reading and not because I think the check list was designed to be followed in a particular order):

1. The nature/status of the receiving scheme

   Sample questions: Is the receiving scheme newly recognised by HMRC, or is the receiving scheme connected to an unregulated investment company?

2. Description/promotion of the scheme

   Sample questions: Do descriptions, promotional materials or adverts of the receiving scheme include the words ‘loan’, ‘savings advance’, ‘cash incentive’, ‘bonus’, ‘loophole’ or ‘preference shares’ or allude to overseas investments or unusual, creative or new investment techniques?

3. The scheme member

   Sample questions: Has the transferring member been advised by an ‘introducer’, been advised by 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? Have they applied pressure to transfer as quickly as possible or been told they can access their pension before age 55?

Opposite each question, or group of questions, the check list identified actions that should help the transferring scheme establish the facts.

I don’t think it would always have been necessary to follow the check list in its entirety. And I don’t think an answer to any one single question on the check list would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the check list to establish whether a scam was a realistic threat. Given the warning sign that should have been apparent when dealing with Mr W’s transfer request, and the relatively limited information it had about the transfer, I think in this case Royal London should have addressed all three parts of the check list and contacted Mr W as part of its due diligence.

Had it done so, I think it likely that Royal London would have identified the following warning signs as being present in the transfer:

- Mr W was transferring his pension funds to a scheme not authorised by the FCA.

- Mr W's transfer funds would be invested overseas.
- Mr W's transfer may have come about as a result of an unsolicited approach.

Against this, Royal London would also have eliminated the following relevant warning signs:

- The QROPS was not a recently recognised scheme.
- The QROPS was not associated with an unregulated investment company.
- Royal London would not likely have identified reference to loans, savings advances, or cash incentives in any promotional material.
- Mr W wasn't going to be accessing his pension benefits before the age of 55.
- Mr W was getting advice from Servatus which was regulated in an EEA member state and had passporting rights to the UK.
- Mr W had not been pressured or rushed to transfer.

Royal London needed to consider the overall circumstances in order to determine whether Mr W's transfer presented a scam risk. So whilst Royal London would have (had it conducted thorough due diligence) found there to be some of the pension scam warning signs indicated in the Scorpion Action pack, I think it would have ultimately concluded that the risk was minimal. I say this because Mr W would have explained that he wanted to transfer to take advantage of the potential for improved investment performance. And, key in this case, was that he had received financial advice.

Overall, Mr W wouldn't have given the impression to Royal London that he was being led through a process by another party acting in a potentially unlawful way – which would be the usual pattern for someone falling victim to a scam. Instead, Royal London would have established that Mr W was acting on advice from a regulated party. I haven't seen anything that Royal London would, reasonably, have been aware of that should have alerted it to the potential of Mr W being misled in this way. It's an important point that goes to the heart of this case: Mr W's actions would have appeared to be following financial advice and a business could, reasonably, have taken comfort from that.

I have considered the fact that Servatus was an overseas adviser. But as Mr W was transferring to a QROPS, it wouldn't be unusual that overseas parties would be involved. The rules in place at the time allowed firms, that were properly regulated in an EEA state to have passporting rights to legitimately provide services in the UK. I see no reason why Royal London ought to have concluded that advice from a properly regulated firm with passporting rights was inferior to that of a FCA regulated firm. Or that Servatus was not acting in Mr W's best interests. I don't think it would be reasonable to expect Royal London to scrutinise the advice that Mr W had been given. It would have been enough for it to satisfy itself that Servatus was regulated and possessed passporting rights.

I've also considered if it's reasonable to expect Royal London to have done more to warn Mr W about what he was intending to do, even if the scam threat would have appeared to be minimal. But I think those arguments misread what should, reasonably, have been expected of transferring schemes at that time. Investigations into the receiving scheme, and intended investments were a means to an end: to establish the risk of a pension scam. As I've said previously, a firm needed to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's statutory rights. Expecting a firm to share its due diligence "workings" in this way would cut across this (and could potentially be viewed as a self-serving tactic to hold on to a customer). Where the scam threat was assessed as being minimal (as I think it would most likely have been in this case) I don't think it would be unreasonable for the transfer to proceed as normal.

I've also considered whether Royal London should have warned Mr W that it was unusual for him to be transferring a pension overseas – and checked whether the reason for doing that was because he was moving or planned to move overseas. At the time (unlike today) there wasn't a prospect of a tax charge that had to be levied by the ceding scheme in certain circumstances where someone transferred their pension overseas whilst remaining resident in the UK. I think whether it was appropriate for Mr W to be transferring his pension to Malta was a financial planning matter that it wasn't Royal London's role to intervene in. And, as I have said, it would have established that Mr W had separately taken advice on that.

It therefore follows that I'm satisfied Mr W wouldn't have stopped the transfer even if Royal London had done more thorough due diligence in line with the Scorpion action pack. The end result of any such due diligence wouldn't have resulted in any warnings being given to Mr W. And I don't think the mere act of contacting Mr W and asking questions about the transfer would have prompted a change of heart. The majority of the responses he would likely have provided would not have given rise to concerns.

My final decision

For the above reasons I am not upholding Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 17 February 2025.

Gary Lane
Ombudsman