DRN-5081489

Financial Ombudsman Service

The complaint

Mr T has complained, via his representatives, about a transfer of his Royal London Mutual Insurance Society Limited personal pension to a Qualifying Recognised Overseas Pension Scheme (QROPS) in 2014. Some of Mr T's QROPS funds were subsequently used to invest in an overseas commercial property development. The investment now appears to have little value. Mr T says he has lost out financially as a result.

Mr T's pension was initially branded in the name of another pension provider. However, as Royal London has confirmed it is responsible for responding to the complaint, for ease of reading I will only refer to Royal London within this decision.

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

What happened

Mr T told us that in 2014 his friend, who I'll call GT, asked him if he had any dormant pensions. GT had previously dealt with some of Mr T's affairs like insurance and mortgages. GT then 'did some digging' and found out that Mr T had the Royal London pension. GT told him that pension wasn't making anything, that he could invest the money elsewhere and after five years of being invested he could draw on the funds.

On 8 April 2014 Mr T wrote directly to Royal London and asked it to send him a transfer valuation and discharge papers for his Royal London pension. Royal London sent him the information on 17 April 2014.

On 25 July 2014 Mr T signed a letter of authority (LOA) allowing a Maltese firm called Lawsons Equity to obtain details, and transfer documents, in relation to his pension. Lawsons Equity was regulated by the Malta Financial Services Authority (MFSA). It was also, at that time, shown on the Financial Conduct Authority's (FCA) register as authorised in the UK with passporting rights.

On the same day, 25 July 2014, Mr T signed an application for membership of the Momentum Malta Retirement Trust (MMRT). The MMRT is a pension scheme administered by Momentum Pensions Malta Limited (Momentum). Both the MMRT and Momentum are authorised and regulated by the Malta Financial Services Authority (MFSA). The application named an adviser from Lawsons Equity, who I'll call Mr H, as Mr T's professional adviser. Mr H also signed the application form that day to confirm he had given Mr T advice about joining the scheme.

On 4 August 2014 Lawsons Equity wrote to Royal London, enclosing Mr T's LOA and asked for his pension valuation and discharge details.

Royal London sent Lawsons Equity the requested information, including a transfer discharge form, on 5 September 2014.

Five days later, on 10 September 2014 Mr T signed a number of documents including:

- An HMRC form authorising Royal London to pay his pension fund to Momentum's QROPS.
- A form agreeing to pay Lawsons Equity £750 for its transfer service.
- An application for an SEB Asset Management Bond[1]. The application named Lawsons Equity as Mr T's 'intermediary'. Mr H signed the form to confirm he had advised Mr T on applying for the bond.

On 15 October 2014 Momentum sent Royal London Mr T's completed transfer discharge form to enable the transfer of his pension funds to the MMRT. Momentum also included:

- Mr T's signed MMRT application form and HMRC form.
- A document showing the MFSA had registered MMRT in 2011.
- Documents showing Lawsons Equity had verified Mr T's identity.
- A letter from HMRC confirming MMRT was accepted as a QROPS in 2011.

On 27 October 2014 Royal London verified that MMRT was still registered as a QROPS. The next day, 28 October 2014, Royal London wrote to Mr T and Momentum to confirm it had transferred Mr T's pension fund of £31,015 to MMRT. Mr T was 53 years old at the time.

In December 2014 Mr T invested £14,289, via the SEB bond, in Dolphin[2] Loan notes. The loan notes were a form of investment in the company which was purported to be developing properties in Germany. The loan notes were intended to pay back the capital invested plus fixed rate returns over a set period of time.

In January 2015 Mr T invested £14,404 from his QROPS in two Marlborough International funds. The funds are Guernsey based collective investment schemes. The company that administers them, the Marlborough Group, are UK based and FCA regulated.

Subsequently, both Momentum and Lawsons Equity continued to communicate with Mr T; sending him annual statements and other information.

Mr T didn't access any funds after the initial five year investment term. At some point, presumably in 2021, GT put Mr T in touch with his representatives with a view to recovering some of the funds invested.

In June 2021, Mr T complained, via has representatives, to Royal London. Briefly, his argument is that Royal London ought to have done more thorough due diligence before making the transfer.

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[1] This is an investment platform and tax wrapper. It holds Mr T's pension investments. SEB is the trading name of SEB Life International Assurance Company Limited, a company regulated by the Central Bank of Ireland.

[2] Dolphin has issued loan notes while trading under the names Dolphin Capital, Dolphin Trust and the German Property Group, but for ease I'll only refer to Dolphin in this decision

Royal London didn't uphold the complaint. It said an appropriately registered overseas advising firm, Lawsons Equity, had sent it forms signed by Mr T requesting the transfer.

Mr T brought his complaint to the Financial Ombudsman Service. One of our Investigators looked into it. She didn't think it should be upheld. Mr T didn't agree with our Investigator's complaint assessment. As our Investigator was unable to resolve the dispute informally 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.

In bringing this complaint Mr T's representatives have made a number of points. I've carefully considered everything he or his representatives have said. However, in this decision I don't intend to address each and every point. Instead I will focus on what I see as being the key issues and the reasons for my decision.

While doing so I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

<u>The relevant rules and guidance</u>

Before I explain my reasoning, it will be useful to set out the environment Royal London was operating in at the time with regards to pension transfer requests, as well as any rules and guidance that were in place. Specifically, it's worth noting the following:

- The Pensions Schemes Act 1993 and Personal Pension Schemes (Transfer Values) Regulations 1987 generally give 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.

- A QROPS must already be an overseas pension scheme, defined in short as being one which is subject to specified regulatory and taxation restrictions in the country of establishment. Then it must be recognised, meaning that it meets specified tests applied by HMRC, including on minimum retirement age and the application of tax relief.

- To be a QROPS a scheme must notify HMRC that it is a recognised overseas pension scheme, provide appropriate evidence of this to HMRC, undertake to adhere to HMRC's requirements and not be excluded by HMRC from being a QROPS.

- Schemes that have notified HMRC of this are included in a published list on its website.

- On 10 June 2011 and 6 July 2011, the FCA's predecessor – the Financial Services Authority (FSA) issued announcements to consumers about the dangers of "pension unlocking" and "early pension release schemes". At around the same time the Pensions Regulator (TPR) put up a notice on its website termed 'pension liberation',

referring to websites and cold callers that encouraged people to transfer in order to receive cash or access a loan. However, it was designed to raise public awareness about pension liberation, and remind trustees of their duties to members, rather than introduce any specific new steps for transferring schemes to follow.

- TPR launched its Scorpion campaign ¬ so called because of the imagery it contained – on 14 February 2013. The aim of the campaign was to raise awareness of pension liberation activity and to provide guidance to scheme administrators on dealing with transfer requests in order to help prevent liberation activity happening. The FSA, and later the FCA, endorsed the guidance. The guidance was subsequently updated, including in July 2014. I cover the Scorpion campaign in more detail below.

- Royal London was subject to the 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:

  – 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.

<u>The Scorpion guidance</u>

The Scorpion campaign was launched on 14 February 2013. It 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 released 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 agreeing to cash in a pension early and identifies the following warning signs: being approached out of the blue by phone or text; pushy advisers or 'introducers' who offer upfront cash incentives; companies offering loans, saving advances or cash back from a pension; and not being informed about the tax consequences of transferring. It concludes by recommending actions that can be taken to avoid becoming a victim of such activity. These included background searches online, pointing out that any financial advisers should be registered with the FCA. TPR said at the time it wanted to see the use of the Scorpion insert in transfer packs become best practice.

- 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 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 checklist 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.

The 2014 update to the Scorpion campaign

This update repeated much of what was stated in the 2013 version. There was again an insert which was to be sent to members requesting a transfer of their pension and an action pack which provided guidance to scheme providers on what to look out for. And there was a larger booklet which could be provided to members if they wanted more information about the matter.

However, the main change was that the 24 July 2014 update widened the focus from pension liberation specifically to pension scams. The action pack for trustees and administrators was entitled "Pensions Scams" whereas the action pack from 2013 was entitled "Pension Liberation Fraud". And, on the front page of the 2014 insert that was to be sent to members, it said "Pension scams. Don't get stung". The 2014 update also made references throughout to "scammers" and made comments in relation to a member losing their lifetime savings as a result of being scammed, as opposed to being subject to potential tax charges which could occur as a result of liberating a pension.

Other features of the 2014 guidance:

- It said pensions scams in the UK were on the increase. With one-off pension investments, "pension loans" or upfront cash being used to entice savers.

- Trustees, administrators and pension providers had to ensure that members received regular and clear information about the risk of pension scams and how to spot one.

- It asked for the Scorpion insert to be included in the member's annual pension statement or in any other member communications.

- It highlighted some common features of pension scams such as phrases like "one off investment opportunities", "free pension review", "legal loopholes", "cash bonus" and "government endorsement".

- It stated that consumers being approached out of the blue over the phone, via text messages or in person door-to-door was a common feature of a scam.

- Transfers of money or investments overseas were also highlighted as something to watch out for. It explained this was because the money would be harder to recover.

- It said that if any of the warning signs applied, the action pack provided a checklist transferring schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request.

- If transferring schemes still had concerns, they were encouraged to contact the member to establish whether they understood the type of scheme they were planning on transferring to and to send them the pension scams booklet.

- It also encouraged transferring schemes to communicate with the member at risk – over the phone, via email or letter – this could help the transferring provider to establish answers to more of the questions on the checklist; or to direct the member to Action Fraud or TPAS if the provider thought it was a scam; or if the member insisted on proceeding the provider could contact Action Fraud itself.

The 2014 action pack also included two examples of real-life scams where the individuals concerned lost most or all of their pension savings. One of the examples involved an individual under the minimum pension age who wanted to access some of her pension early. And the other concerned an individual (again under the minimum pension age) who had been approached out of the blue with an offer for a free pension review and then offered a "unique investment opportunity" for his pension savings specifically in a property development overseas.

The status of the Scorpion guidance

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 statutory 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. TPR launched the campaign in response to widespread abuses that were causing pension scheme members to suffer significant losses. And its specific purpose was to inform and help ceding firms like Royal London 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 a turning point in terms of what was expected of personal

pension providers dealing with transfer requests as a matter of fulfilling their duties under the regulator's Principles and COBS 2.1.1R.

What did personal pension providers need to do?

TPR said it wanted to see the use of the Scorpion insert in transfer packs become best practice. Sending the insert to customers asking to transfer their pensions was 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 ceding schemes should have sent the Scorpion insert as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the pack had come from a different party.

The contents of the Scorpion insert were directed towards consumers themselves and contained warnings about dishonest intermediaries who might be trying to scam them. It would have defeated the purpose of the insert if, instead of sending it to their customer, pension firms sent the insert to an intermediary in the hope that that intermediary would then share the insert with their client. I therefore consider it fair and reasonable to say the insert had to be sent direct to the member rather than, say, to an unregulated introducer.

Under the 2014 Scorpion action pack, firms were asked to look out for the tell-tale signs of pension scams and undertake further due diligence and other appropriate action where it was apparent their client 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. Therefore, as above, 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.

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?

As well as the written information Mr T's representatives submitted on his behalf, our Investigator also spoke with him. It's clear from the recording of that phone call that Mr T has a poor memory of events, which is – to some extent – to be expected given the passage of time. It is also apparent that he didn't have a clear understanding of exactly what had happened with his Royal London pension.

Mr T's account is that GT had been a friend of his for many years. GT had helped him with things like insurance and mortgages previously.

It seems that GT has at various points been FCA regulated. Although at the time of the events complained about he didn't appear to hold a regulated role with an FCA authorised firm. Mr T told us that he didn't know who GT worked for. But he still considers him a friend and Mr T still has GT's phone number.

Mr T told us that GT asked him if he had any pensions. GT then discovered the Royal London pension and told Mr T that it wasn't making any money and would be costing

him. Mr T asked GT what his options were. However, Mr T's recall of events is somewhat patchy. But he thinks he filled in some forms and left things to GT to sort out. He did recall that GT had said he could start drawing on his funds after five years. Also that the funds were transferred to Malta. GT then dealt with all the paperwork.

I accept Mr T's evidence that GT initiated the pension transfer. And it seems Mr T hadn't previously been aware that he had the Royal London pension. But GT tracked it down and then recommended transferring it. From Mr T's evidence it's clear that at the time Mr T trusted GT when recommending the transfer.

While Mr T only referred to dealing with GT there is unequivocal evidence that Mr T instructed Lawsons Equity to act for him as his financial advisers. I say that as:

- On 25 July 2014 Mr T signed Lawsons Equity's LOA.
- On the same day both Mr T and Mr H (Lawsons Equity's named adviser) signed the MMRT application form. The form said Lawsons Equity was Mr T's professional adviser and Mr H confirmed he'd given Mr T advice.
- Lawsons Equity wrote to Royal London requesting transfer documents. Royal London sent those and Mr T signed them on 10 September 2014.
- On the same day Mr T and Mr H both signed the SEB application which named Lawsons Equity as the intermediary who had given Mr T advice.
- Mr T signed an agreement to pay Lawsons Equity £750 for its service.
- Mr T also signed a note to say that he'd decided to go ahead with the transfer to the QROPS after Lawsons Equity had given him advice.
- On 13 October 2014 Mr H verified Mr T's identity documents.
- Mr T's annual pension statements named Lawsons Equity as his professional and investment advisers.
- In 2019 Lawsons Equity wrote to Mr T with information about Dolphin. In that letter Mr H twice said "as your IFA…". IFA stands for independent financial adviser.
- GT corresponded with Lawsons Equity in 2019 to say that Mr T hadn't heard from it. Lawsons Equity replied advising Mr T to check his spam email inbox and re-sent the annual statements which had been issued to Mr T previously.

So, there is clear written evidence of Mr T signing a number of documents to appoint Lawsons Equity as his financial adviser. There is also clear written evidence, signed by Mr T, of him agreeing to pay Lawsons Equity for its service. Also Lawsons Equity confirmed it had given Mr T advice and it remained named as his financial adviser throughout. It follows that, while I accept that Mr T might not recall his interaction with Lawsons Equity, and GT might have arranged this for him, there is very clear evidence of those things happening. In those circumstances I'm satisfied that Mr T did appoint Lawsons Equity as his financial adviser and that it gave him advice. That's the case even if it was GT that began and assisted with that process.

As I've said above Mr T doesn't appear to have a good understanding of what happened to

his pension funds. However, at some point he spoke with GT about them, presumably to find out what was happening with them. It’s not clear what GT’s response was but he apparently put Mr T in touch with his representatives with a view to Mr T recovering some of his funds. That action started Mr T on the route to complaining about Royal London. However, it’s evident that Mr T: didn't really understand the complaint process; didn't really know who the key players in the complaint were nor what their roles and responsibilities were.

Mr T also didn't have a clear understanding of exactly what he’d invested in. He told us he did recall some information about one of the companies going bust, so he likely would lose some money on that. While I haven't seen the letter Mr T refers to its likely this was a letter from Lawsons Equity or perhaps SEB to advise him that Dolphin had gone into administration or liquidation. Mr T did recall receiving other information concerning Dolphin but he said that one letter was in German and he didn't understand it.

However, from the evidence on file – including the SEB and Momentum statements – its apparent Mr T invested roughly half of his pension funds in Dolphin and the other half in two Marlborough funds. Lawsons Equity also commented in a 2019 communication that it had been agreed to invest 50% of his funds in Dolphin.

The Dolphin investments were high risk and illiquid. They were only suitable for high net worth or sophisticated investors as part of a diversified portfolio. Mr T was not a high net worth or sophisticated investor. So it’s unlikely he would have known about the existence of the Dolphin investments or how to go about investing in those unless someone recommended that action to him. And given his testimony I think it was most likely that the initial suggestion to do so came from GT. But, given the evidence I've referred to above, I'm also satisfied that Lawsons Equity had a role to play. In particular it referred to Mr T agreeing to only put half of his money into Dolphin.

Making a recommendation to transfer a pension fund is an activity that can only be carried out by an FCA authorised adviser. GT was not authorised. However, Lawsons Equity was. And, from the papers I’ve seen Royal London did not know about the involvement of GT at all.

I haven't seen any paperwork showing exactly which loan notes Mr T invested in. But given the reference to him accessing his funds after five years it’s likely that he bought a note that was due to mature after that period. And from other cases I've seen the loan notes generally promised ‘guaranteed’ returns at between 8 to 13.8% a year. So, assuming Mr T invested in a five year loan note, on its maturity, which would have been in December 2019, he could have anticipated receiving a return comprising his initial outlay plus accrued annual interest.

However, Dolphin ran into financial difficulties before then. By 2019 it had begun to tell investors that it would be unlikely to meet its liabilities without delay. It eventually became insolvent. I understand that Dolphin’s former managing director was recently indited on 27 counts of commercial fraud in Germany in connection with his Dolphin activities. As such Mr T is unlikely to receive any return on his Dolphin investments.

I haven't been provided with up-to-date statements of how Mr T’s investments in the Marlborough fund have performed. So I don't know how much of Mr T’s original investment, if any, remains or if that's benefitted from investment growth. Similarly I haven't been provided with any documents to show the terms of these investments. And I've been shown no evidence that his representatives have examined this line of enquiry or the outcome of those if they have. But, my understanding is that the Marlborough funds had a minimum investment term of five years. And, after the investment term expires, any funds remaining should be liquid.

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.

Royal London has confirmed that it didn't ever send the Scorpion insert to Mr T. It said it didn't do so as it had no concerns about the validity of the receiving scheme. However, I don't think that was reasonable in the circumstances, especially where the funds were being transferred to an overseas scheme and where Royal London had no knowledge of their eventual destination. And, for the reasons given above, I think Royal London should have issued the Scorpion insert with all transfer requests. So I think not doing so was a failing.

However, I don't think it would have made a difference to the outcome if Royal London had sent Mr T the Scorpion insert.

Royal London had two opportunities to send the insert to Mr T. The first was in April 2014 and the second in September 2014. But even if Royal London had sent Mr T the inserts on those occasions I don't think that would have raised any concerns with Mr T. I say that as both the February 2013 and July 2014 versions of the insert are weighted towards warning of the risk of pension liberation – that is accessing pension funds in an authorised manner, typically before the age of 55. And Mr T wasn't intending to do that. So I doubt that would have resonated with him.

The July 2014 version of the insert does refer to pension ‘scams’ rather than just to liberation. But it doesn't refer to anything Mr T was intending to do. And given the trust he placed in GT, I don't think Mr T would have appreciated that he could possibly be putting his pension funds at risk of a ‘scam’.

Both versions of the insert warn consumers about advisers or introducers contacting them “out of the blue”. And it might be that this was the manner in which GT first raised the issue with Mr T. But Mr T had known GT for many years and clearly trusted him. So I'd don't think this would have resonated with Mr T.

Due diligence:

In light of the Scorpion guidance, I think firms ought to have been on the look-out for the tell-tale signs of a pension scam and needed to undertake further due diligence and other appropriate action if it was apparent their customer might be at risk.

In this case it would appear that Royal London went ahead with the transfer without conducting further due diligence simply because it had seen the scheme was an HMRC recognised QROPS.

However, in my view, the mere fact HMRC had registered and recognised MMRT as a QROPS wasn’t enough to remove the need for Royal London to make further enquiries.

That’s because, in October 2014 MMRT wrote to Royal London providing all the completed forms required to facilitate the transfer and these documents clearly set out the scheme was a Malta based QROPS. So, it was clear that Mr T was intending to transfer his pension to an overseas scheme, which very likely would have involved overseas investments.

The 2014 Scorpion action pack listed overseas investment as a possible warning sign of a scam. And the update had taken place over two months before MMRT submitted the transfer request. So, I think it was reasonable for Royal London to have been familiar with the changes to the guidance and to have applied it to Mr T's transfer before completing it.

It's worth bearing in mind that the 24 July 2014 update to the Scorpion guidance shifted the focus away from just pension liberation to pension scams in general. This gave more prominence to overseas investments. And given that all QROPS are based overseas, the potential for those to facilitate offshore investments – which was something the Scorpion guidance advised ceding schemes to be on the look-out for – was greater. So in line with its obligations under PRIN and COBS, I think, in order to reasonably exercise its due diligence requirements, Royal London should have followed up on the warning sign. The most reasonable way of going about this would have been to turn to the 2014 action pack checklist to structure its due diligence in regard to Mr T's transfer.

The checklist 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 checklist would have required Royal London to contact Mr T. The checklist is divided into three parts (which I've numbered for ease of reading and not because I think it was designed to be followed in a particular order):

1. The nature/status of the receiving scheme

   Sample questions: Is the receiving scheme newly registered with HMRC? 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 checklist identified actions that should help the transferring scheme establish the facts.

I don't think it would always have been necessary to follow the checklist 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 would therefore typically need to conduct investigations across several parts of the checklist to establish whether a scam was a realistic threat. Given the warning sign that should have been apparent when dealing with Mr T'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 checklist and contacted Mr T as part of its due diligence.

With a few simple enquiries I think Royal London would have established that Mr T's motivation for transferring was because of the greater returns he believed he would achieve by doing so. He hadn't been offered the opportunity to access his pension funds in any unauthorised way, nor had he been enticed by any form of cash incentive to transfer. So I don't think those points would have led Royal London to warn him that he could be putting his funds at risk.

Given Mr T's somewhat patchy recall of events it's difficult to be sure what information he would have given Royal London had it done further due diligence in 2014. That's because, he now appears to have very little understanding of exactly what he was transferring to or the process by which that came about.

However, there would have been two issues which, had Royal London done more thorough due diligence could potentially have caused some concerns:

- Mr T was transferring to a QROPS which involved overseas or offshore investments.
- The instigator for the transfer came from GT who doesn't appear to have been FCA regulated at the time of the events.

I think it's likely that had Royal London asked Mr about how the transfer came about he would have told Royal London that the initial motivation had come from GT. And if Royal London had followed up on this, I think it's likely it would have learned that GT wasn't at that time FCA authorised. But I also think it's likely Mr T would have told Royal London that he'd known GT for many years; that GT had advised him on things like mortgages and insurance and that he trusted GT.

I also think it's probable that Mr T would have told Royal London about the involvement of Lawsons Equity, especially if Royal London had further questioned GT's role. I'm aware that Mr T didn't refer to Lawsons Equity when our Investigator spoke with him but that was over ten years after the events. However, Mr T had signed forms referring to Lawsons Equity in both July 2014 and September 2014. The latter event was only one month before the transfer took place. And in September 2014 he'd agreed to pay a fee to Lawsons Equity as well as signing other forms naming it as his financial adviser. So while he might not have recalled Lawsons Equity's involvement in 2024, I think it's likely he would have done so in 2014, and he would have told Royal London about its role.

As I've said above the issue of monies transferring overseas could also have raised concerns. But, regardless of the apparent warning signs I think if Royal London had asked Mr T about his intended investments it seems unlikely his responses would have caused it to refuse or delay the transfer.

I say that because the initial motivation for a transfer had clearly come from someone Mr T trusted. He told us as much when our Investigator spoke with him. But as I've said above, I think he would have referred to the involvement of a regulated adviser on Lawsons Equity, albeit one that was regulated overseas. So I think it's unlikely Mr T would have given the impression 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. And his evidence is likely to have been that he was following the advice of a regulated adviser in Lawsons Equity.

Where a ceding scheme like Royal London thought a regulated adviser had provided appropriate financial advice it's unlikely it would intervene further even where the chosen investment products might otherwise give rise to a risk warning. That's because Royal London's role was not to give Mr T advice about the suitability of a transfer or his

chosen investments. Its role in doing due diligence would principally have been to ensure Mr T was transferring to an appropriately registered scheme (he was) and to give him the warnings associated with pension liberation or scams and transfer risks in general. So, if it believed Mr T was being advised by an appropriately authorised adviser, it's extremely unlikely that Royal London, which wasn't acting – nor was it authorised to act – in an advisory capacity, would have told Mr T that he might be putting his pension at risk if he followed the advice given by a regulated adviser.

It follows that while I think that Royal London should have done more than it did, I don't think those actions would have made a difference to the outcome. That's the case even if Mr T had not mentioned the involvement of Lawsons Equity and said that only GT had given him advice. I'll first explain that an unauthorised firm or individual giving advice to transfer benefits from personal pension plans would have been a breach of the general prohibition imposed by FSMA. However, even if Royal London had advised Mr T of this I don't think it would have changed the outcome.

As I've already said, GT was at the time – and still is – Mr T's friend. GT had given Mr T advice on other financial products over many years. Mr T has also told us that he trusted GT and if it wasn't for him Mr T wouldn't have known that the Royal London pension existed. In those circumstances, even if Royal London had said that GT could be acting unlawfully by recommending a transfer I don't think that would have caused Mr T to stop it going ahead.

Instead I think Mr T would have taken the matter up with GT. And I have little doubt that GT would have provided a compelling and reassuring explanation for his involvement and why those shouldn't be a concern for Mr T. Indeed, given that GT had most likely referred Mr T to Lawsons Equity in the first place, it seems likely that GT would have simply explained that he wasn't acting as Mr T's adviser, Lawsons Equity was, which was why GT had referred Mr T to it. And given the trust Mr T clearly placed in GT I think he would have preferred any explanation GT gave to him over any information given by Royal London.

It follows that, even if Royal London had learned of the involvement of an (at that time) unregulated individual in the advice process I don't think it would have affected the outcome. Mr T had also agreed to pay for the services of an appropriately regulated advising firm in Lawsons Equity. And I think he would have taken comfort from that and the fact that he was following the guidance of a friend who he clearly trusted. So in those circumstances, I think Mr T would have proceeded with the transfer even if Royal London had done further due diligence.

I'll add that after listening to the recording of Mr T's conversation with our Investigator his representatives made some comments on it. Those included that they felt the call was short and the Investigator hadn't discussed the Scorpion materials or why Mr T was transferring to a QROPS. But I don't think those things would have led to a different outcome.

As I've already said Mr T's recall was patchy at best and he seemed confused about what had happened. But he did know he was transferring to a Malta based scheme. So I don't see what would have been gained by asking him about his understanding for why that was happening. And Mr T clearly said during the call that he trusted GT. So, for the reasons given above, I don't think asking him a hypothetical question about what he would have done with the Scorpion information – had Royal London sent that to him – would be helpful in order to decide, on balance, what he'd likely to have done.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 31 January 2025.

Joe Scott
Ombudsman