DRN-5094736

The complaint

Mr G has complained, with the help of a professional third party, about the transfer of his personal pension, which was held with The Royal London Mutual Insurance Society Limited ('Royal London') to a Qualifying Recognised Overseas Pension Scheme ("QROPS") in May 2016.

Mr G 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 G says he wouldn't have transferred to the QROPS, if Royal London had acted as it should have done.

At the same time as the transfer of pension benefits from Royal London, Mr G has said he also applied to transfer pension benefits from two other providers to the QROPS. But he ultimately didn't go ahead with these transfers. We asked those providers for some information. Only one of those providers, which I'll call 'Firm E', was able to provide any information. As the circumstances of that transfer and the information obtained has relevance to this complaint, I've referred to them below.

What happened

On 29 July 2015, Mr G signed a letter of authority giving Royal London permission to provide information about his pension to a business called Life Compare Ltd ('LCL'). LCL forwarded this to Royal London with a request for information about the pension and a copy of all discharge forms, including those relating to QROPS. LCL was not authorised or regulated by the Financial Conduct Authority ('FCA'). And I understand Royal London subsequently provided the requested information to LCL.

Mr G also signed a similar letter of authority, on the same day, authorising Firm E to provide information to LCL. On 19 August 2015, Firm E wrote to Mr G directly. It acknowledged the request from LCL for a cash equivalent transfer value ('CETV') for Mr G's pension with it, which was an occupational scheme, and said it had provided this as asked. The letter said Firm E recommended that Mr G seek independent advice and gave him information on where he could obtain details of local advisers. And it said, if he was transferring to a defined contribution pension scheme, he must take advice from an adviser authorised by the FCA and would need to provide evidence of this. The letter went on to say that the Pensions Regulator ('TPR') had recognised that pension scams were a growing problem. So, Firm E said it had enclosed a copy of TPR's 'pension scams' leaflet (the 'Scorpion' leaflet).

In January 2016, Optimus Pension Administrators Limited ('OPAL') wrote to Royal London requesting the transfer of Mr G's pension benefits to the Optimus Retirement Benefits Scheme No.1 – a QROPS based in Malta. Enclosed was Royal London's overseas transfer discharge form and an HMRC QROPS member information form, both signed by Mr G in December 2015. There was also scheme information about the QROPS which, amongst other things, confirmed the scheme was established in June 2014 and the scheme manager and administrator was Integrated Capabilities (Malta) Ltd ('ICML'). A registration certificate showing the scheme was registered with the Malta Financial Services Authority was provided, as well as confirmation it was recognised by HMRC as a QROPS. A statement of benefits from ICML was included which said benefits could not be accessed prior to age 55 except for on the grounds of ill health. And a letter of authority, signed by Mr G, authorising Royal London to share information with OPAL and ICML was also enclosed. This letter said Mr G was *"happy for the transfer to proceed and would appreciate if this could go ahead with no further delays."*

A similar request was sent to Firm E at the same time.

On 25 January 2016, Firm E wrote to Mr G acknowledging his request to transfer. It said unfortunately it could not proceed without a completed form (which it attached) and evidence that he had received appropriate advice in connection with a transfer of defined benefits totalling more than £30,000.

Royal London replied to OPAL on 1 February 2016. It said, in order to validate the receiving scheme, it needed the scheme manager to complete and stamp a form which it attached. The form was completed by ICML on 10 February 2016 and the declarations said it confirmed the receiving scheme continued to meet QROPS requirement conditions, HMRC hadn't indicated it was to be excluded from QROPS status, ICML would notify Royal London immediately if HMRC did indicate it would lose its status and that the scheme did not allow access to benefits before age 55.

Royal London has provided a copy of a "Call Handler Q&A sheet for Overseas Transfers" which it says records notes of a call it then had with Mr G on 26 February 2016. The notes say that Royal London asked Mr G eight questions and recorded his answers. Amongst those answers Royal London recorded that Mr G said he hadn't been cold called or approached about a transfer, he wasn't planning to move overseas, he'd received scheme documents but didn't know if the new scheme was covered by an appropriate compensation scheme. On the subject of why he was transferring it recorded that Mr G said the benefits were better and that he'd chosen the scheme based on an *"advert for First Review"*.

Royal London then wrote to Mr G on 6 March 2016, thanking him for taking the time to answer questions recently. It said it was required by the FCA to carry out checks on receipt of a transfer request and that the purpose was to ensure the receiving scheme was appropriate and that Mr G reached the best outcome for himself. It said, prior to making a final decision on transferring Royal London wanted to stress that to be released from UK taxation obligations Mr G would have to be a non-resident for five years. It also said transferring overseas would mean his pension was no longer covered by the UK Financial Services Compensation Scheme ('FSCS'). And as he'd commented that he wasn't sure if the new pension was covered by a compensation scheme, Royal London recommended that he confirm this prior to proceeding. It said, if he still wished to go ahead, Royal London needed Mr G to complete the attached declaration to say he was fully aware of the potential tax charges involved. Mr G signed a returned the declaration on 16 March 2016.

On 2 April 2016, Royal London again wrote to OPAL asking for an additional HMRC form to be completed.

I've seen evidence that OPAL also followed up with Firm E in April 2016 about the potential transfer. In response Firm E repeated that it needed to see evidence of Mr G having received appropriate advice.

The transfer of Mr G's Royal London pension was processed on 19 May 2016. The amount transferred was £4,143.20. Mr G was 48 at the time.

Firm E has provided evidence of a further email exchange in July 2016 between it and OPAL. Firm E said that, as Mr G had signed to say he'd received advice before the expiry of the guarantee in the CETV, all it needed was evidence of that advice. OPAL said that Mr G had in fact had advice from two businesses – neither of which have been mentioned in relation to the Royal London transfer – but there were delays in obtaining copies of this.

Firm E says it did not receive evidence of appropriate advice, so a transfer did not happen at that stage. It received a request to transfer from a different intermediary in May 2017. But it says that business was not FCA regulated so it responded directly to Mr G. Firm E has said that Mr G did transfer his pension benefits to a different provider (not the one to which the Royal London pension transferred). But that did not happen until December 2018.

An annual statement for the QROPS from December 2018 shows that the entirety of Mr G's fund remaining at that point, which I understand derived solely from the Royal London transfer, was invested in the scheme cash account. So, it appears by that stage no investment had been made.

In March 2020, Mr G complained to Royal London. Briefly, his representative said that he'd been cold called and offered a free pension review by LCL. They said Mr G was then referred to First Review Pension Services ('FRPS') – who were also an unregulated business – and that they recommended he transfer his pension savings (held across three separate providers) to the QROPS as they'd accrue better returns. The representative said he reflected on his decision, after receiving advice from another business, and decided to withdraw his applications to transfer his other pensions. But by that point the Royal London transfer had already taken place. They said Royal London should have spotted and told Mr G about a number of warning signs in relation to the transfer, including (but not limited to) the involvement of unregulated introducers and advisers, the transfer to an overseas scheme when there was no suggestion Mr G intended to move abroad, he'd been told he could expect an unrealistic return on his investments and the QROPS was newly registered. But they said Mr G didn't recall Royal London sending him the Scorpion insert or providing any warnings.

Royal London didn't uphold the complaint. It said it appreciated that it had been contacted by unregulated businesses. But as it had received a signed letter of authority, it had no grounds to refuse the requests for information. It said it asked OPAL for information to show that the scheme was recognised by HMRC as a QROPS and having done that, spoke to Mr G to discuss how he'd been approached and to share its concerns. It also noted it had asked him to complete a declaration and having done so, as Mr G had a right to transfer, despite its warnings, it completed the transfer as instructed.

The complaint was referred to our service. We gathered more information from the parties about what happened.

When he spoke to us directly Mr G told us he had three pensions and wanted to bring them together and he wasn't sure if he'd been cold called or if he'd initiated contact to discuss this. Mr G says he was told by FRPS, during a meeting at his home in which the adviser seemed genuine, that he could bring the pensions together in the QROPS with good returns. Mr G said he couldn't remember which investments were discussed. Mr G said he didn't recall speaking to Royal London or being sent any leaflets about pension scams. He said after the Royal London transfer had completed, the providers of his other two pensions suggested that the transfer was potentially risky, so he did not proceed with those other transfers. Mr G instead sought advice from an independent financial adviser who arranged the transfer of the other two pensions he held to a different receiving scheme.

Mr G's representative says Mr G was cold called and that FRPS had recommended that he invest in an overseas property development via The Resort Group ('TRG'). They also said Mr G asked to withdraw all of his transfer requests after speaking to another adviser, but it was too late at that point to stop his Royal London transfer.

The representative repeated that Royal London had not shared the Scorpion insert with Mr G and he hadn't had sight of this. They said Mr G stated if he had received the Scorpion insert or other correspondence about risks this would have encouraged him to conduct further research. And they said he would have come to realise that a QROPS would not have been suitable as he had no intention of moving abroad, so he wouldn't have transferred.

At the same time though the representative said that Mr G did not initially have any concerns about the QROPS and thought it was a relatively secure scheme. And so, he decided to give the new scheme a period of time to issue a statement before raising any concerns.

Royal London said it had no record of a request to withdraw from the transfer having been received. It also said, it wasn't its standard practice at the time to provide TPR's Scorpion warning leaflet where the request for information indicated the member was contemplating a transfer overseas. It said it believed a copy would however have been provided with its letter to Mr G in March 2016.

I issued a provisional decision earlier this month explaining that I didn't intend to uphold Mr G's complaint. Below are extracts from my provisional findings, explaining why.

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 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 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 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 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.

There was a further update to the Scorpion guidance in March 2015, which is relevant for this complaint. 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 March 2015 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 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.*

- *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, SSASs 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 a member's interest.

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.

<u>The circumstances surrounding the transfer: what does the evidence suggest happened?</u>

Mr G's representative has said he recalls being cold called and offered a free pension review. However, when speaking to us directly, Mr G couldn't remember who initiated contact. Mr G did tell us that he was interested in bringing his three pensions together. And according to Royal London's call note from February 2016 when asked Mr G said he hadn't been cold called and he'd chosen the receiving scheme because of an "advert for First Review".

Mr G says he doesn't recall the conversation he had with Royal London or being contacted by them. But given it has been several years since this all took place; I don't think this is unusual or is enough to say that the evidence Royal London has provided to say there was a call is not genuine.

On balance, given the information he provided Royal London at the time, I think it is likely that Mr G initiated contact, based on an advert he'd seen, having been thinking about combining his pensions.

The first letter of authority Mr G signed was for LCL. LCL was dissolved in April 2016 but its records on Companies House indicate the nature of the business was activities of call centres. Which I think would be consistent with the type of business Mr G likely spoke to after responding to an advert. Mr G says it was FRPS who went on to discuss his pension with him, it was a representative of that business who he met and FRPS advised him to transfer to the QROPS. Again, the call note Royal London holds appears to support that as it referred to an advert for 'First Review', which I believe on balance is likely FRPS. Neither LCL nor FRPS was authorised by the FCA.

OPAL submitted the application to transfer to Royal London. OPAL was registered with the Isle of Man Financial Services Authority but not with the FCA. The QROPS scheme information explains that OPAL's role was to provide administration services to ICML (the scheme administrator and manager). And the rules explain OPAL is authorised to sign documents on ICML's behalf. However, I haven't seen anything to suggest, nor do I think it is likely, that its role went beyond administration and processing. And I don't think it was likely directly selling entry to the QROPS or providing advice – not least because here its involvement appears to have come after a course of action had been chosen.

I can see that, in correspondence with Firm E, OPAL referenced two other adviser businesses, in the context of providing appropriate advice on the transfer of the Firm E occupational pension scheme benefits. But I haven't seen anything to support that the businesses referred to in that letter were involved in the initial discussions with Mr G that led to the application to transfer. And indeed, the correspondence between OPAL and Firm E suggests that evidence of either of those two businesses providing advice was not produced. So, it appears they may not have provided Mr G with any advice.

Taking all of this into account, I don't think the evidence indicates that an FCA authorised adviser was involved in the discussions with Mr G about transferring his Royal London pension. While Mr G hasn't been able to recall all of the details of the transfer, he has been clear and consistent that he remembers speaking to FRPS and remembered the adviser's surname. And on balance, I think it was FRPS that Mr G discussed the transfer with.

Mr G doesn't appear to have had any prior connection with the QROPS or ICML. And he has said that he had no intention of moving overseas – either to Malta, where the QROPS was registered, or anywhere else. I've also not seen anything to suggest Mr G had any more than a very limited experience of pensions and investments. Based on the documents Mr G signed – including an application for a pension scheme based in Malta and Royal London's declaration in March 2016 mentioning transfers overseas – I think Mr G would have been reasonably aware at the time that he was transferring, his pension would move overseas. But in the circumstances, even though Mr G says he was thinking about consolidating his pensions, I think it is unlikely he'd have sought to transfer his benefits to the QROPS on his own. On balance, I think it was the discussion with FRPS that led Mr G to decide to transfer to the QROPS.

And I think FRPS likely advised Mr G to transfer. Mr G has said that he was told he could bring his pensions together and they'd grow significantly by transferring. He said, when he met with FRPS, he was told he'd receive better returns – which is consistent with what he appears to have told Royal London in February 2016 – but can't remember the rates discussed and wasn't given any literature to keep. But he remembered being told he'd make fantastic profits and that this was the motivation for transferring. What he's said he was told about the returns he'd potentially receive seems to have represented comparing the prospective benefits of the two schemes and suggesting the new scheme was more beneficial. I think this represented advice to transfer. I think it was this advice that was the catalyst for the transfer.

Mr G says he can't remember what investments were discussed. His representatives have said that FRPS recommended Mr G invest in property with TRG. While the limited available information doesn't confirm the intended investment, I think Mr G's representative is likely correct that FRPS recommended an investment with TRG. This is consistent with what our service has seen in a large number of other cases. And I think is further supported by what has actually happened with the funds since.

As I've mentioned, the account statement I've seen for the QROPS, as of 31 December 2018, says that Mr G's money has remained invested in the scheme cash account. So, no investment appears to have been made up to that point. And I haven't seen anything to suggest the position has changed since, so the funds are likely to be liquid and accessible. It isn't clear why the funds were not invested – but this is likely due to the amount transferred from Royal London being relatively small and the other two transfers that Mr G has said he was advised to make not taking place. And therefore, the funds that were transferred not being considered sufficient to make an investment with 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 with the Scorpion guidance that this insert should be included in transfer packs and should be sent directly to customers. Mr G says he didn't receive the Scorpion insert from Royal London.

LCL requested transfer information and forms from Royal London in August 2015. And it appears that Royal London responded directly to LCL. Royal London has told us it wasn't its standard practice to include the Scorpion insert with transfer material for transfers overseas at that time. So, it hasn't argued it sent the Scorpion insert at that time with the transfer documentation. And anyway, the transfer pack seems to have been sent directly to LCL and there is no evidence of it writing directly to Mr G at the same time.

Royal London has said the reason it wasn't its standard practice to send the insert in this type of transfer was because it required the completion of its 'Overseas Transfer Discharge Forms'. It has provided a copy of that form, signed by Mr G. But the form that I've been provided doesn't include any warnings about pension scams or what to look out for. Rather it just acknowledges that the Royal London policy will no longer continue and the benefits provided by the new scheme may be in a different format to those the Royal London policy would've provided. So, I don't think this provides the same information as the Scorpion leaflet in a different format.

Royal London has said that the Scorpion insert would have been included with its letter to Mr G in March 2016, which followed its phone call. Notwithstanding that this was around two months after the application to transfer had been submitted – rather than at the point the transfer pack was requested – the letter, which asked Mr G to sign a declaration, made no mention of the Scorpion insert. There was no reference to the letter containing any enclosures. And none of the declarations referred to Mr G acknowledging that information from TPR had been provided or that he'd read it.

It has explained the reason for the Scorpion insert not being referenced in the letter is that it was regularly updated and so referring to its title, which had changed, could become out of date. But I'd still have expected there to have been some comment (updated over time if necessary) to indicate it was enclosed so that this couldn't be questioned at a later date. And so, in the circumstances, I can't reasonably conclude that Royal London did share the Scorpion insert with Mr G. And it certainly didn't do so along with the transfer pack, as the relevant guidance suggested it should. So, it doesn't appear that Royal London has done what I think it should reasonably have done in sending Mr G this insert.

However, I've seen evidence that shows Firm E sent the Scorpion insert directly to Mr G on 19 August 2015. So, although I don't think Royal London has done what it should have, on balance I think Mr G was provided a copy of the Scorpion insert before he applied to transfer his benefits away from Royal London and had the opportunity to consider this.

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 G'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 2015 Scorpion guidance as a benchmark instead.

Royal London has acknowledged that the requests it received were all from unregulated businesses. So, I think this would reasonably have led to it asking Mr G further questions about the transfer as per Section 6.2.2 ("Initial analysis – member questions"). I won't repeat the list of suggested questions in full. Suffice to say, at least one of them would have been answered "yes". Some of the questions include:

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

Under the Code, further investigation should follow a "yes" to any question.

Royal London has said that part of the reason for the call it had with Mr G in February 2016 was to share its concerns about the transfer. Mr G doesn't recall the conversation and a recording of the call is unavailable (which isn't unreasonable given the time that has passed since the transfer). What this means is the only available information is the "Call Handler Q&A sheet" which the representative of Royal London completed and signed on 26 February 2016. The document says the purpose of the call was to make sure Mr G was aware of the dangers of transferring his pension overseas and to assist Royal London to establish if there were any indicators of a potential scam. So, on that basis it was going to ask Mr G some questions. And the initial summary also referred to making sure Mr G was aware of the tax implications.

It isn't clear how that initial information on the document was relayed to Mr G. But a fair assumption in my view, as Royal London hasn't provided any information to the contrary, would be to assume it was read almost as a script. So, at the very least it would have made Mr G aware at the start of the call that Royal London was concerned he might become the victim of a scam that could lead to unexpected tax charges.

In the call Royal London says it asked if he'd been cold called to which he answered no. It doesn't appear that the questions Royal London asked addressed the latter two questions noted above. Given Mr G has been unable to recall what he'd been told about the returns he'd received, it is unclear how he'd have answered that question. But I don't think Royal London had to ask about whether overseas investment had been discussed to assume that the answer to that question was 'yes'. That is because it knew that the transfer was to a QROPS. And it was unlikely that this would've been done, just to then invest domestically. As a result, I think it should have done some further investigation.

The nature of that investigation depends on the type of scheme being transferred to. The QROPS section of the Code (Section 6.4.4) has the following statement:

"The key items to consider are the rationale for moving funds offshore, and the likelihood that the receiving scheme is a bona fide pension scheme, as if HMRC determine retrospectively that it is not, there may be a scheme sanction charge liability regardless of whether the receiving scheme was included on the list or not."

In order to address those two items – the rationale for moving funds offshore and the legitimacy of the QROPS – the Code suggests the transferring scheme should broadly follow the same due diligence process as for a SSAS, which outlined four areas of concern under the following headings: employment link, geographical link, marketing methods and provenance of the receiving scheme. 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). And because Mr G's QROPS wasn't an occupational pension scheme, some of the SSAS questions wouldn't have been relevant in any event. But the Code makes the point that a transferring scheme would typically need to conduct investigations into a "wide range" of issues to establish whether a scam was a realistic threat.

Royal London appears to have gathered information to demonstrate that the QROPS was genuine. It was provided information demonstrating the scheme had been registered in June 2014 and recognised by HMRC as a QROPS from August 2014 – over a year before the transfer was requested. It also had scheme information, including details of the scheme managers. And it requested that relevant HMRC forms be completed. So, in respect of this, I think it had gathered sufficient information about the provenance of the scheme (and I'd note the receiving scheme is still listed on HMRC's approved QROPS list).

On the point of the motivation for transferring, Royal London's notes say it asked Mr G specifically what his motivation was during the call with him. To which it recorded that he'd answered "Benefits were better". He'd also confirmed that he'd chosen the receiving scheme based on an advert for FRPS. Mr G also said though that he didn't intend to move abroad. And the type of arrangement he was transferring to was more commonly used by people living overseas. But I can't see that Royal London thought anymore about this or whether it should be concerned.

There was also a question about what the person transferring hoped to achieve that they couldn't in their existing scheme. And Mr G had arguably answered this when saying he was transferring to improve his pension – that is, he wasn't transferring for a benefit that was already available in his existing scheme or could easily be shown to be false. There was also a question about whether Mr G had received marketing material. And Royal London's notes recorded that he said he had received documentation. The Code suggests asking for copies of these, which I can't see that Royal London did. If it had, or just asked Mr G to explain what he thought he was investing in, it might have learned what investments were being proposed. Which, as I've said I think was likely TRG – an overseas property scheme of the type that was highlighted as an area of concern in the PSIG Code.

There is another question under this section that I think was relevant that Royal London failed to ask. And this was whether Mr G had been advised to transfer and by whom – so that Royal London could have checked the FCA register to confirm if this business was regulated.

As I've already explained, I think Mr G was advised to transfer to the QROPS by FRPS. And again FRPS was not authorised by the FCA (indeed none of the businesses that appear to have been involved in the Royal London transfer were). 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.

My view is that Royal London should therefore have 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 G – and would it have made a difference?

Had it done more thorough due diligence, I think there would have been a number of warnings Royal London could have given to Mr G in relation to a possible scam threat as identified by the PSIG Code (and the Scorpion action pack). One of the most significant being the threat posed by a non-regulated adviser, which Royal London failed to uncover. And I think its failure to do so, and failure to warn Mr G accordingly, meant it didn't meet its obligations under PRIN and COBS 2.1.1R.

With those obligations in mind, it would have been appropriate for Royal London to have informed Mr G that the business he had been advised by was unregulated and could put his pension at risk. Royal London should have said only authorised financial advisers are allowed to give advice on personal pension transfers, so he risked falling victim to illegal activity and losing regulatory protections. And I don't think this would have been a disproportionate response given the scale of the potential harm Mr G was facing and Royal London's responsibilities under PRIN and COBS 2.1.1R. And I don't think any such warnings would reasonably have caused Royal London to think it was running the risk of advising Mr G, that it was replicating the responsibilities of the receiving scheme or that it was putting in place unnecessary barriers to exit.

What I need to consider is whether further warnings would have changed Mr G's mind about the transfer.

Mr G has said that seeing the Scorpion insert would've led him to reconsider the transfer and do further independent research. He said that this would have led him to realise that a QROPS likely wasn't suitable for him as he didn't intend to move abroad. And that as a result he wouldn't have transferred. But Royal London didn't provide this insert. However, as I've said, I'm satisfied that Firm E did provide Mr G the Scorpion insert, several months prior to the transfer from Royal London taking place. So, while he says seeing this would definitely have changed his mind about transferring, it appears that he did see the insert, but still transferred.

The insert provided by Firm E in August 2015 would've been the March 2015 version. This started by explaining "Scammers don't care whether you're an inexperienced investor or have never put your money anywhere other than a bank. They will try to flatter, tempt and pressure you into transferring your pension fund into an investment with guaranteed returns. Once the transfer has gone through, it's too late. Remember, the only people who benefit from scams are the scammers themselves." It then went on to explain how to spot warning signs by setting out some of the most common tactics used by scammers. The things listed were:

- *Being cold called, receiving a text message, a website pop-up or a doorstep caller offering a 'free pension review', 'one-off investment opportunity' or 'legal loophole'.*

- *Convincing marketing materials that offered returns of over 8%.*

- *Pension access before age 55.*

- *Documents being delivered by courier for immediate signing.*

- *The overseas transfer of funds.*

- *The suggestion being to put money into a single investment (noting in most circumstances advisers will suggest diversification).*

Mr G hasn't said a courier delivered documents or that he was offered access to his pension fund early (before age 55). So, it's unlikely he thought these warnings were relevant. But the other four warnings appear to have potentially held some relevance.

As I explained, I'm satisfied that Mr G most likely responded to an advert for FRPS. I understand a lot of FRPS' advertising was done online. So, if he saw the advert online, then this warning would have been relevant to his circumstances.

There is conflicting information over whether Mr G received materials on the investment as Royal London noted when it spoke to him that he said he had received illustrations and scheme booklets. But he has told our service he didn't receive any documentation. Mr G has said, when he met FRPS, he was told about returns he'd receive and that he'd make fantastic profits. And given what we know about how FRPS sales have been described by other customers in the past, I think it is likely he was shown marketing materials for the TRG investment which indicated expected returns. So, I think the warning about convincing materials and the mention of guaranteed returns in the pre-amble of the leaflet are things that Mr G may reasonably have recognised as being similar to the transfer that was being proposed to him.

Mr G now doesn't recall the investments that were discussed. But his representative said TRG had been recommended to him. And as I've said, given FRPS seems to have marketed this to the majority of its customers, I think this was likely correct. I've not seen anything to suggest any other investments were recommended alongside this. So, the warning about single investments and a lack of diversification appears like it ought to have resonated with Mr G.

Lastly, I've already said that Mr G would have been reasonably aware at the time that the proposal involved the overseas transfer of his funds. And so, the warning about this in the Scorpion leaflet should have been one that Mr G recognised as applicable to his situation.

Taking all of that into account, I think the content of the insert would have given Mr G cause to think again about the transfer – as he has now said it would. But I'm bound to take into account that he already had a copy of this insert several months before he made the transfer from Royal London.

Mr G's representative said he didn't transfer his other two pensions because of advice he received from a different adviser, which made him reconsider, as it suggested the transfer was too risky. But by then the Royal London transfer had already gone through. Mr G hasn't been able to provide evidence of that advice or evidence of when it was received.

Firm E required Mr G to take appropriate advice from a regulated adviser before it would transfer his pension benefits. The email exchanges between it and OPAL suggest this advice had been taken prior to July 2016, but not what the advice was. The emails do indicate that, after that advice, Mr G still wanted to proceed with his transfer. Mr G has also said that the alternative advice he received led to him transferring his Firm E pension (and a third pension) to a different arrangement to the QROPS. But his Firm E benefits were not transferred until December 2018. So, the evidence available doesn't support that alternative advice led him to reconsider. And Royal London has said it received no request to cancel the transfer – even though Mr G has said such a request was made but he was told it was too late.

I also note that Mr G's representatives said that he didn't initially have any concerns about the QROPS, that he considered it a secure scheme and elected to wait to see how the pension performed. This again doesn't seem consistent with what he's said about being advised by a different source that the transfer to the QROPS was risky.

I think it is more likely, based on the limited information available, that Mr G was required to take appropriate regulated advice before Firm E would permit the transfer (as transfers of pension benefits totalling more than £30,000 from defined benefit schemes could not be carried out without taking such advice). But despite OPAL's suggestions to Firm E that appropriate advice had been taken, this doesn't seem to have been obtained. And that was what resulted in the transfer from Firm E not going ahead.

So, it appears that Mr G received warnings by way of the Scorpion insert, relevant to his transfer. But this did not deter him from transferring his Royal London pension. He wasn't able to proceed with at least one of his other transfers because he hadn't evidenced he'd sought appropriate advice where this was required by law. But he didn't take any action in terms of transferring back out of the QROPS, because he didn't have concerns about the scheme itself – which is still recognised by HMRC.

I accept that messages from Royal London, explaining that only authorised advisers could give pension transfer advice would have been more specific than those in the Scorpion insert. The context of such messages would have been Royal London raising concerns about the risk of losing pension monies as a result of untrustworthy advice.

But at the same time, the warnings given in the Scorpion insert did not dissuade Mr G, even though he has said that they would have, and I think they reasonably should have. Taking all of this into account, I don't think I can reasonably conclude that more specific warnings from Royal London would more likely than not have led him to abandon the transfer.

Summary

For the reasons I've explained, I don't think Royal London acted as it should have in respect of this transfer request. I think it was wrong not to send Mr G the Scorpion insert and, whilst it carried out a phone call and required him to sign declarations, it didn't undertake all of the appropriate due diligence here. And if it had, this would have led to it identifying several warning signs that the Scorpion guidance and PSIG code referenced, which it should have warned Mr G about.

However, Mr G received the Scorpion insert in respect of his application to transfer another of his pensions, which highlighted a number of the same areas of concern – albeit in more generic terms than Royal London could have explained to him. And this did not dissuade him from proceeding with the transfer, even though Mr G says it would have done if Royal London had sent it. And despite these warnings, Mr G has said he didn't have concerns about the receiving scheme and considered it secure. So, in the specific circumstances of this complaint I don't think further warnings from Royal London would have led to him abandoning the transfer.

Whilst this isn't directly relevant to my reasons for not upholding this complaint, I should also note that the information available doesn't support that Mr G's holdings in the QROPS are largely illiquid. His representative also said he is satisfied with the pension that he later moved his other pensions to, including the one from Firm E. But I haven't seen any evidence that Mr G has attempted to mitigate his loss by transferring the funds held in the QROPS back to a pension of his choosing, which it would be reasonable to expect him to do given that the funds aren't earning any investment-based return.

So, Mr G has not incurred a loss due to unsuitable investment risk being taken as a result of the transfer. Rather it seems that a significant amount of any losses that have been incurred (lack of growth and ongoing charges) were as a result of Mr G's inaction once the transfer of his other pensions to the QROPS was abandoned. So, it's doubtful Royal London could reasonably have been held responsible for this in any event.

Responses to my provisional decision

I gave both parties an opportunity to make further comments or send further information before I reached my final decision.

Royal London said it had nothing further to add and it accepted my provisional findings.

Mr G's representatives said they agreed with my findings that Royal London should have sent the Scorpion insert and done more due diligence. But they said they didn't agree with my conclusion on what would have happened if it had done so and communicated risks to Mr G.

The representatives said it didn't think it was fair to say that Mr G having been sent the Scorpion insert by Firm E meant he'd have disregarded warnings from Royal London. They said the context this was sent in needed to be considered, which might not have highlighted a scam risk, and that this was several months before the Royal London transfer.

They also argued that my comments on possible discrepancies between what Mr G had said about why his other pensions didn't transfer were not relevant to the complaint about Royal London. They thought the assessment by our Investigator about what decision Mr G would likely have made if Royal London had done all that it should have done – not transferred – was fair. And they said that my criticism of Mr G for not mitigating his loss was unfair.

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.

I disagree with the representatives that discussing discrepancies in the arguments and information presented is not relevant. Where 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. Highlighting the discrepancies in information provided illustrates why I haven't taken certain things that have been said as fact – for example the representatives statement that Mr G was cold called. And it explains my reasoning for reaching the conclusions I have. I'm satisfied that the discrepancies I highlighted in my provisional findings remain relevant to the complaint. Further, while I appreciate the representatives would prefer me to find along the same lines as our Investigator, in favour of their client, I'm not persuaded to change my opinion on those findings.

Mr G's representatives have argued that Mr G being sent the Scorpion insert by Firm E in August 2015 shouldn't be given as much weight as I suggested, as this was several months before the application to transfer his Royal London pension was submitted. But again, I don't agree. Transfer packs were requested from Firm E and Royal London at around the same time, in August 2015. If Royal London had acted as it should have done in sending the Scorpion leaflet, that would have been done in August 2015, in response to the transfer pack request – like Firm E did. So, I'm satisfied he received this information around the time he always should have.

The information in the Scorpion insert at that time gave stark warnings about the risks of falling victim to a scam. The document was clearly headed as referring to pension scams. It gave warning signs to look out for and recommended steps consumers should take as well as providing links to resources and organisations that could help, including TPAS and Pension Wise. Seeing these warnings didn't dissuade Mr G from transferring – even though he told our Investigator they would have.

I acknowledge the application to transfer wasn't submitted until several months later. But, as I explained in my provisional findings, I don't agree with the representatives that this means Mr G would have heeded further warnings from Royal London, given those he'd already disregarded.

Finally, on the point about the funds not having been invested, this was not, as the representatives claim, a criticism of Mr G's failure to mitigate loss. Rather it was to highlight, for the benefit of all parties, that the representatives' statements that the investments were illiquid appeared to have been incorrect and that the loss he was claiming for may not be attributable to Royal London anyway, even if I had upheld the complaint. But as my provisional findings again made clear, this wasn't directly relevant to my reasons for not upholding the complaint.

Having considered the complaint and evidence again following the responses of both parties while I think Royal London ought to have done more, for the reasons I've explained, I'm not persuaded that this would have resulted in Mr G being in a different position. So, I don't think Royal London needs to do anything here.

My final decision

For the reasons I've explained, I don't uphold Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 19 November 2024.

Ben Stoker
Ombudsman