DRN-5262160

The complaint

Mr H has complained about a transfer of his personal pension with The Royal London Mutual to a Qualifying Recognised Overseas Pension Scheme (QROPS) in Gibraltar in March 2014. Mr H's QROPS was subsequently used to invest in The Trafalgar Multi-Asset Fund. The investment now appears to have little value. Mr H says he has lost out financially as a result.

Mr H 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 H says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Royal London had acted as it should have done.

What happened

Around July 2013, Mr H signed a letter of authority allowing 'We Find Any Pensions' to obtain details, and transfer documents, in relation to his pension. 'We Find Any Pensions' wrote to Royal London, enclosing Mr H's letter of authority and information request.
Royal London sent 'We Find Any Pensions' the requested information in July 2013. 'We Find Any Pensions' wasn't authorised by the Financial Conduct Authority (FCA).

Mr H says his interest in the transfer followed an unsolicited approach. He says he was attracted by the prospect of improved investment returns. He was not told that he would receive any cash incentive to transfer or that he could access his pension before age 55.

Mr H was subsequently put in touch with Global Partners Limited (GPL) who were an overseas financial adviser. It was regulated in its EEA member state. And had passporting rights to the UK, which was reflected on the FCA register. It provided Mr H with a financial planning report dated 2 January 2014. This report recommended the transfer of Mr H's pensions to a QROPS. Mr H signed this report on 15 January 2014. GPL made contact with Royal London on 28 February 2014.

Mr H applied to start a QROPS with Calpe Lite Retirement Benefits Scheme. The QROPS application documents also recorded that it was to be used to invest in The Trafalgar Multi Asset Fund and that Mr H's financial adviser was GPL. However, Royal London wouldn't have seen those documents at the time.

On 5 February 2014 Mr H's transfer papers were sent to Royal London. These were sent in by QROPS trustees – Sovereign Trust International. Included in the transfer papers were: completed transfer documentation; HMRC QROPS recognition letter dated 6 November 2012, HMRC forms CA1890 and APSS263; identification documents certified by GPL.

Mr H's pension was transferred on 11 March 2014. His transfer value was around £3,350. He was 51 years old at the time of the transfer. On 14 March 2014 Royal London wrote to both Mr H and Sovereign Trust International to confirm completion of the transfer.

The application form for the QROPS indicated that Mr H intended to transfer a second pension with a cash equivalent transfer value around £46,000. This appears likely to have been an occupational pension scheme.

The transferred funds appear to have been invested with the Trafalgar Multi Asset Fund, which was a Cayman Island Based investment fund. The fund went into liquidation causing investors to suffer a loss.

In November 2020, Mr H complained to Royal London. Briefly, his argument is that Royal London ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including (but not limited to) the following: the QROPS was overseas and was a complex pension product for a retail customer; the proposed investment was unregulated and high risk and promised unrealistically high returns; the catalyst for the transfer was an unsolicited call; and the involvement of unregulated introducers and advisers.

Royal London didn't uphold the complaint. It said Mr H had a legal right to transfer and that none of the information it had about the transfer at the time gave it cause for concern. It explained that it had been contacted by GPL who were a regulated firm and it was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

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

I previously issued a provisional decision not upholding Mr H's complaint. Mr H's representative disagreed with my decision and provided further comments and a copy of a court judgement relating to the Trafalgar Multi Asset Trading Company Limited. Having considered these things I still remain of the view that it isn't fair or reasonable to hold Royal London responsible for the losses Mr H suffered in this case.

What I've decided – and why

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

As stated above, my decision is that I am not upholding Mr H's complaint. I will set out again my provisional decision and then address Mr H's representative's further comments.

What I said in my provisional decision

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

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

- Principle 2 – A firm must conduct its business with due skill, care and diligence;
- Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;
- Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and

- COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

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

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

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

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

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

The Scorpion guidance was launched by The Pensions Regulator (TPR). It 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 guidance comprised the following:

- 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 a number of warning signs to look out for.

- A longer booklet issued by TPAS which gives more information, including example scenarios, about pension liberation. Guidance provided by TPR on its website at the time said this longer leaflet was intended to be sent to members who had queries about pension liberation fraud.

- An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "look out for" various warning signs of liberation. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where transferring schemes still had concerns, they were encouraged to write to members to warn them of the potential tax consequences of their actions; to consider delaying the transfer; to seek legal advice; and to direct the member to TPAS, TPR or Action Fraud.

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

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

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

That said, the launch of the Scorpion guidance was an important moment in so far 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.

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

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. And where the recommendations in the guidance applied, absent a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations. With that in mind, I take the view that personal pension providers dealing with transfer requests needed to heed the following:

1. When TPR launched the Scorpion guidance in February 2013, its press release said the Scorpion insert should be provided in the information sent to members requesting a transfer. It said on its website that it wanted the inclusion of the Scorpion insert in transfer packs to "become best practice". The Scorpion insert provided an important safeguard for transferring members, allowing them to consider *for themselves* the liberation threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. So, all things considered, I think the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party.

2. I also think it would be fair and reasonable for personal pension providers – operating with the regulator's Principles and COBS 2.1.1R in mind – to ensure the warnings contained in the Scorpion insert were provided in some form to a member before a

transfer even if the transfer process *didn't* involve the sending of transfer packs.

3. The Scorpion guidance asked firms to look out for the tell-tale signs of pension liberation scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The action pack points to the warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. Therefore, whilst using the action pack wasn't an inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.

4. These were additional requirements over and above what a ceding scheme would always have needed to do when processing a QROPS transfer. Those requirements included checking whether the QROPS was on HMRC's published list, and ensuring the necessary HMRC forms were completed.

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

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

Mr H explained to our investigator that he was approached by a person that he already had an existing relationship with. This person introduced him to the idea of transferring his pensions in order to get better returns. He confirms that he wasn't offered any cash incentive to transfer and was not led to expect that he could access any of his pension funds before age 55.

There is documentary evidence that indicates that Mr H gave permission to 'We Find Any Pensions' to obtain information about his pension. But the evidence then suggests that Mr H was passed to GPL who then provided him with the recommendation to transfer his pensions to the QROPS in question. We have been provided with a copy of the written recommendation that GPL provided. It was addressed to Mr H so I am persuaded that he received it. That report set out the recommendation, but additionally explained that the pension was accessible from age 55.

Overall, I think that Mr H may well have been approached by an unregulated introducer, but that the advice was provided by GPL. And GPL were a company that were regulated in its EEA member state. They were listed on the FCA register as having passporting rights to provide financial services in the UK at the time of the advice. I think that Mr H's decision to transfer was most likely based on that recommendation and was done in order to improve the returns on his pension. I don't think that he was given any indication that he could make any unauthorised access of his pension funds. And, following the transfer, did not do so.

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 have provided no evidence that it corresponded directly with Mr H until the transfer had completed. So I don't think that it sent Mr H the Scorpion insert that the guidance suggested that it should have. The opportunity to have done so was in response to the request for transfer information that it received from 'We Find Any Pensions'. Which would have been the version of the Scorpion insert published in February 2013. That would have warned Mr H of the risk of companies telling consumers that they could access cash from their pensions before age 55. Which wasn't what Mr H was being told and wasn't his reason for transferring. In short, the type of risk being warned about at that time wasn't something that was relevant to Mr H's circumstances. He had not been offered any cash incentives.

For the above reasons, even though I think Royal London should have sent the Scorpion insert to Mr H, I don't think that it would have made any difference to what he went on to do. It simply wasn't warning about the type of harm that Mr H was at risk of. And the content would not, reasonably, have caused him to be concerned about the advice he'd received from GPL.

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 pension liberation and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk.

Royal London received the following information from the QROPS trustees – Sovereign Trust International: completed transfer documentation; HMRC QROPS recognition letter dated 6 November 2012, HMRC forms CA1890 and APSS263; identification documents certified by GPL. Royal London also checked that the receiving QROPS was on HMRC's published list. This step ensured that the transfer payment both qualified as an authorised payment for tax purposes and also satisfied Mr H's statutory right, and potentially other legal rights, to transfer.

I'm aware that one of the case study examples used in the Scorpion action pack mentioned 'transfers overseas' as a possible warning sign in that instance. But this wasn't included in the bulleted list on page eight under the heading *'looking out for pension liberation fraud'*, each represented by an exclamation mark graphic. Nonetheless I agree that Royal London should have considered things in the round (including, for example, the case studies in the action pack) to decide if there was a material risk of liberation presenting itself in a transfer request. The action pack used the same exclamation mark graphic (denoting a 'warning sign') in the example of an individual who transferred to a pension scheme which, after paying her a cash incentive, invested the rest of the funds overseas. The warning sign was shown as:

> ***"****Transfers overseas*
>
> *One technique that pension fraudsters use is to send a large portion of the pension transfer overseas. This makes the funds harder to trace and retrieve when the arrangement is closed down."*

Clearly where a UK occupational scheme transfers funds overseas, that was being highlighted by TPR as a potential warning sign of pension liberation activity. Many such schemes that I'm aware of have employed that strategy. However it doesn't seem to me that TPR was referring here to the type of transfer Mr H was making, to a QROPS.

The reference to a 'portion' of the funds being transferred overseas makes clear, in my view, that it's referring to a UK pension scheme – *i.e.* the entire transfer from the ceding scheme isn't directly to an overseas arrangement. The case study goes on to indicate beyond doubt that it was a UK occupational scheme, as it says the scheme was subsequently closed down after both HMRC and TPR took action. Also, the case study follows someone who transferred in order to take cash from her pension, not someone who transferred with the intention of investing in a specific way.

So, in my view, QROPS weren't evidently the focus of TPR's concerns at the time the 2013 action pack was issued. And the purpose of the action pack at that time was to direct efforts on preventing early release pension liberation, rather than anything else.

In Mr H's case the QROPS had been showing on HMRC's published list without issue for around 15 months. So, in my view Calpe Lite Retirement Benefits Scheme was even less likely to have been a vehicle for early release pension liberation – otherwise it would most probably have already been removed from the QROPS list.

That also meant that one of the key things prompting a ceding scheme to do further due diligence under the Scorpion guidance (a recently registered, or in this case recognised scheme) also wasn't present in this case. For the reasons I've already given above, the fact that the transfer went overseas wouldn't have been a cause for concern in this particular case. And no other features of the transfer stood out as being warning signs of early release pension liberation.

It wasn't until 24 July 2014 update to the Scorpion guidance that the focus shifted away from just pension liberation to pension scams in general. This gave more prominence to overseas investments. And the potential for a QROPS to facilitate investments which were at risk of a scam in that wider sense, rather than liberating funds back to the member, was greater. Mr H seems to be saying that Royal London should have spotted these issues in his transfer. But these weren't the issue Royal London was being asked to look out for at that time, so it wouldn't be fair or reasonable to expect a ceding scheme to go further than TPR's guidance was asking it to at the time.

I appreciate that a technical definition of liberation could include a high-risk investment being used to re-route a consumer's pension funds into the hands of a fraudster, without the consumer benefiting directly in any way. However, for the reasons given previously, that activity wasn't the focus of TPR's Scorpion campaign at the time of Mr H's transfer. And that's what I think it's important for me to recognise here.

The main message given both in the action pack and insert at that time was of consumers receiving upfront offers of cash, so I don't think it would be fair and reasonable for me to expect a ceding scheme to have been on the lookout for something else.

There was always a possibility that some consumers might suffer losses from making inappropriate investments as a result of transferring to a QROPS. That might also happen where they transferred to some UK schemes, such as SIPPs. So it doesn't to my mind mean it would have been a proportionate response to place *all* QROPS transfers under suspicion as soon as the February 2013 Scorpion campaign gave ceding schemes a new role to carry out due diligence.

As I mentioned, Royal London's role was to balance out the risk of enabling pension liberation with the risk of unfairly holding up legitimate pension transfers that were not for the purposes of liberation. I think it was appropriate for Royal London to concentrate on which transfers (including some of those to QROPS) were at greater risk of liberation. It was clear that TPR thought that the greatest risk lay with schemes that had only recently been registered/recognised by HMRC, and/or the member was given an unsolicited offer of early access to cash. That's for good reason, because a scheme which had remained on HMRC's QROPS list for a longer time without issue was less likely to be involved in this sort of activity.

That was consistent in my view with the approach TPR had taken to transfers to SIPPs in the 2013 action pack checklist. Not all SIPPs were under suspicion – only those claiming to be a SIPP but which were not authorised by the Financial Conduct Authority. They would rightly be seen as at greater risk of liberation. A QROPS in another EU country will generally be authorised by the equivalent regulator to the FCA in its country of establishment, in order to qualify for that definition.

I'm also satisfied Mr H wouldn't have stopped the transfer even if Royal London had sent the Scorpion insert. As the insert was focussed on the threat posed by liberation – and the consequences of taking cash from a pension before the age of 55 in particular – I don't think it would have dissuaded Mr H from transferring given he was transferring for different reasons.

<u>Other arguments</u>

Mr H argues that some of the circumstances behind the transfer were unusual enough in themselves that Royal London should have done more to warn him about what he was intending to do, even if the liberation threat would have appeared minimal.

Mr H argues that Royal London should have warned that it was unusual for him to be transferring a pension overseas – and checked whether the reason for doing that was because he was moving or planned to move overseas.

At the time (unlike today) there wasn't a prospect of a tax charge that had to be levied by the ceding scheme in certain circumstances where someone transferred their pension overseas whilst remaining resident in the UK. I think whether it was appropriate for Mr H to be transferring his pension to Gibraltar was a financial planning matter that it wasn't Royal London's role to intervene in.

Without a reason to suspect that the transfer was in some way connected to pension liberation – the threat Royal London was tasked with identifying at the time of Mr H's transfer – I don't think it had sufficient reason to question what his reasons were for establishing the QROPS.

Mr H argues that overseas advisers or introducers were involved. But as he was transferring to a QROPS, it wouldn't be unusual that overseas parties would be involved. Royal London didn't know enough about their role to be in a position to conclude that they were breaching regulations or weren't acting in Mr H's best interests.

I don't think there would have been a purpose to Royal London attempting to piece together the very limited information it had about who might have advised Mr H. The action pack set out a framework under which it would have got to the bottom of that matter by asking Mr H directly, but only if the circumstances warranted it (because the transfer had been deemed at heightened risk of liberation activity). And in this case, the circumstances didn't warrant such enquiries of Mr H.

I think these arguments misread what should, reasonably, have been expected of transferring schemes at that time. Investigations into the receiving scheme were a means to an end: to establish the risk of liberation. Once that threat was discounted then I think it reasonable for ceding schemes to consider the scam threat as being minimal and process the transfer as normal.

Response to my provisional decision:

Royal London responded to explain that it accepted my provisional decision and offered no further comments.

Mr H's representative explained that it disagreed with my provisional outcome and offered further comments that I will summarise as follows:

- It highlighted what my provisional decision said in point 5 under the sub-heading "*What did personal pension providers need to do?*" (set out above). It argued that applied in this case because it considered that Royal London had warning signs that Mr H was being scammed. It argued that these were: knowledge of an unregulated introducer; knowledge that Mr H had been passed to an adviser based in Gibraltar; awareness that Mr H would have a lower level of consumer protection because the adviser was not directly authorised by the FCA; knowledge that Mr H didn't live abroad and that he did not intend to.

- It explained that it was not arguing that every transfer to a QROPS ought to have been treated as suspicious. But that Mr H's transfer should have because of what it considered to be the cumulative factors it listed above.

- It provided a copy of a court judgement from 2023 in support of its argument that Mr H had been the victim of a scam.

I've considered all of Mr H's representative's arguments, however they don't alter my decision.

I don't think that a request for information from an unregulated introducer was a warning sign that the Scorpion guidance alluded to at that time. And I don't think it was a cause to consider that Mr H may have been about to fall victim of a scam.

When this transfer happened the UK's regulatory system allowed EU passported firms, if duly regulated with the FCA on its register, to operate in the UK as authorised firms under the FSMA 2000. GPL was, at the time, such a firm. So I don't think that Royal London ought to have considered advice from such a firm to be an indicator of some form of dishonesty or of a potential scam. And nothing in the Scorpion guidance indicated that firms should treat such advice in that way.

As I explained in my provisional decision, QROPS are legitimate pension schemes. Whilst they aren't regulated by the FCA in the UK and therefore may not offer UK based protection, that does not mean that they are not regulated. Where they are based in EEA member states, as was the case here, they are regulated by those states. Nothing in the Scorpion guidance of the time causes me to think it's fair or reasonable to suggest that Royal London ought to have considered the lack of access to UK regulatory protections, because of this, to be a risk sign of a potential scam.

For the reasons I gave in my provisional decision and have reiterated above, I don't agree that Royal London would have been faced with cumulative 'scam warnings' as Mr H's representative suggests. I don't think that the things it would have found, had it done more thorough due diligence, would reasonably have caused it to determine that there was a likely scam threat.

<u>Summary</u>

Overall, I think Royal London should have done more here. However, I don't think sending the leaflet and/or asking Mr H further questions about the transfer would have led Mr H to abort the transfer.

I understand that Mr H is in a difficult position and, even without the court judgement that has been provided, I accepted that Mr H suffered a significant loss from his pension. I have great sympathy for his situation and I understand that my decision will be very disappointing. However, I need to consider what it is fair and reasonable of Royal London to have done given the guidance and rules at the time. And bearing in mind the information that it would have had. I don't think that Royal London had cause to look into the transfer further than it did. So it didn't cause Mr H's losses.

My final decision

For the above reasons I am noy upholding Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 February 2025.

Gary Lane
Ombudsman