DRN-5371350

The complaint

Mr O 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 October 2014. Mr O's QROPS was partially used to invest in an overseas property development company. That investment now appears to have little value. Mr O says he has lost out financially as a result.

At the time of the events Mr O's pensions were branded in the name of Scottish Life, which is a division of Royal London. So I will only refer to it within this decision.

Mr O 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 at the time. Mr O 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

In 2009 Mr O opened a Royal London pension. He transferred £78,341 into it and took a tax free cash (TFC) lump sum of £18,364. He also took an ad hoc taxable sum of almost £3,500 in 2013.

Mr O says that in 2014, a firm called Global Partners Limited (GPL) contacted him by a cold call and offered him a free pension review, which he accepted. In May 2014 GPL sent Royal London a request for Mr O's pension information and documents to allow a transfer to a QROPS. It enclosed Mr O's letter of authority (LOA) allowing it to gather that information. At the time GPL was a registered trading name of Tourbillion Limited – an advisory firm regulated in Gibraltar. It was an EEA (European Economic Area) based firm, which had been passported into the UK. It would have shown on the Financial Conduct Authority's (FCA) register as authorised in the UK by virtue of passporting rights.

In June 2014 a firm called Servatus Ltd (Servatus) provided Mr O with a pension report[1]. The report's covering letter said that Servatus was writing to provide a recommendation concerning his retirement plans. The enclosed report discussed Mr O's options of transferring to a QROPS and investing with Dolphin Capital[2] loan notes and in managed portfolios. Servatus was an advisory firm regulated by the Central Bank of Ireland and an approved introducer to the Harbour QROPS.

The Dolphin loan notes were a form of investment in a 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.

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[1] The final pages of the report appears to have been omitted from the copy provided to me. However it is otherwise similar to other reports from Servatus we have seen in other cases.
[2] Dolphin Capital also operated under the name Dolphin Trust. It later changed its name to the German Property Group, but for ease I'll only refer to Dolphin in this decision.

On 30 June 2014 Mr O signed an application to join the Harbour Retirement Scheme. This is a QROPS offered by Harbour Pensions (Harbour); a pension provider regulated by the Maltese Financial Services Authority. Subsequently, on 6 October 2014 Harbour sent a request together with the appropriate forms for Royal London to transfer Mr O's pension funds to the Harbour QROPS. Mr O's application form said that Servatus had provided financial advice.

On 13 October 2014 Royal London wrote to Mr O to confirm it had transferred his pension fund of £62,521.66 to his Harbour QROPS. He was 58 years old at the time.

On Servatus' advice, using an SEB Asset Management Bond[3], Mr O invested over £22,000 in Dolphin Capital loan notes. He invested a similar sum into a managed investment portfolio.

Soon after the transfer Mr O took a pension commencement lump sum payment from his QROPS of around £15,600.

Dolphin ran into financial difficulties. 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 indicted on 27 counts of commercial fraud in Germany in connection with his Dolphin activities. As such Mr O is unlikely to receive any return on his Dolphin investments.

In January 2020 Mr O complained, via his representatives, 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 process began following a cold call from an unregulated adviser; the transfer of funds overseas; the lack of regulated advice; a proposed investment was unregulated, high risk and non diversified; he had been promised unrealistic returns.

Royal London didn't uphold the complaint. It noted that it had received a request for papers from GPL and that GPL was FCA authorised 'to some degree'. It assumed that GPL would have provided advice in Mr O's best interests. It also noted the involvement of another EEA regulated firm in Servatus in the transfer. It didn't think it was responsible for Mr O's losses and said he could complain to Servatus and Harbour.

Mr O brought his complaint to the Financial Ombudsman Service. One of our Investigators looked into it. She didn't think Royal London had done all that it should have done and recommended the complaint be upheld. She set out how she thought Royal London should put things right. The original Investigator left the Financial Ombudsman Service. Other Investigators have since reviewed the complaint and requested further information. But they have not amended the original Investigator's view.

Royal London didn't agree with our Investigator's complaint assessment. So, as our Investigators were unable to resolve the matter informally the complaint was passed to me to decide.

Provisional decision

On 11 February 2025 I issued a provisional decision setting out why I didn't intend to uphold the complaint. For ease of reference I've copied the relevant extracts below. I said:

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[3] This is an investment platform and tax wrapper. It holds Mr O's pension investments. SEB is the trading name of SEB Life International Assurance Company Limited, a company regulated by the Central Bank of Ireland.

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

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.

The relevant rules and guidance

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 its requirements and not be excluded by it 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.

The Scorpion guidance

The Scorpion campaign was launched on 14 February 2013, and was initially focused just on pension liberation – namely, the access to pension funds in an unauthorised manner (such as before normal minimum pension age). However, it's the update to that guidance 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 a pension scam.*
- *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?

Mr O said in his initial complaint that at the time of events he was not working but was planning on setting up his own business. He was cold called by GPL and offered a free pension review. Mr O said that an adviser then called on him and provided further follow up in writing. He said the adviser would have explained their regulatory status. Mr O said he believed it was Servatus that visited him. But, as Servatus is based in Ireland, I think it's more likely to be an agent acting for it that actually spoke with Mr O. However, I note that, as is understandable given the passage of time since the events complained about, Mr O didn't have a clear memory of exactly how things transpired.

It's clear that Servatus provided Mr O with written advice to transfer. Mr O told us that the adviser produced forecasts for how his pension could grow, which he found attractive. He told us that he thought it was all handled professionally.

Mr O told us that he hadn't realised that the transfer would result in investments being made overseas. However, the cover letter to Servatus's pension report is clear that Mr O was considering transferring to a pension based in "another EU jurisdiction" and investing in a "German property investment". And the report is clear that Dolphin involved developing properties in Germany.

Further Servatus' report goes to some lengths to explain some risks involved with overseas investments including things like currency risks. In addition, Mr O signed the appropriate HMRC forms confirming he was transferring to a QROPS and which said he understood the receiving scheme might not be covered by UK law. So Mr O should have been aware of the overseas nature of his intended transfer and investments. I can only assume that the significance of this has faded from Mr O's memory over time.

However, the Dolphin investments were generally considered to be high risk and illiquid and unlikely to be suitable for the majority of inexperienced retail investors like Mr O. 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. Making a recommendation to transfer a pension fund is an activity that can only be carried out by an FCA authorised adviser.

It's clear that it was Servatus which gave Mr O advice to transfer. I say that as not only has it provided Mr O with a pension report recommending the transfer; it's named on the Harbour Pension application form as the professional adviser. So I'm satisfied that it was Servatus rather than another firm, which made the recommendation for Mr O to transfer his pension and invest as he did.

As I've said above Mr O's investment in Dolphin is unlikely to produce any significant returns. It would appear that Mr O withdrew the majority of the other funds he transferred in 2016, with only a relatively modest sum, not associated with Dolphin, remaining in the SEB platform.

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 didn't ever send the Scorpion insert to Mr O. 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 O the Scorpion insert.

Royal London had two opportunities that I'm aware of to send the insert to Mr O. Those were when GPL requested transfer documents and information in May 2014 and also in October 2014 when Harbour submitted the transfer request.

But even if Royal London had sent Mr O the inserts on those occasions I don't think that would have raised significant concerns with him. I say that as while both inserts warned about cold calls and offers of a pension review, they focus on the risks of pension liberation, and accessing pension funds before age 55 in particular. But Mr O was already 58 years old. So, he could legitimately access his pension funds and was not trying to do so in any other unauthorised way. In those circumstances, I think it's unlikely he would have thought the Scorpion insert would have applied to his situation.

We asked Mr O what he thought he would have done if he'd seen the insert. He told us that he probably would have sought advice and that he's not really a risk taker. But while I don't doubt that is what Mr O believes he would do now, I think his answer has been influenced by hindsight. That is, he now believes he would have acted in a certain way, because he knows the outcome would have been better for him if that's what he'd done at the time.

For example Mr O told us that he is not a risk taker. However, Servatus did an assessment of Mr O's attitude to risk at the time. And on his Harbour application form he agreed that he was a medium risk taker. It's also notable that Servatus' pension report refers to the risks involved in the Dolphin investment in some detail. And it says that investors must be

satisfied that they are willing to accept those risks. So, given that Mr O went ahead with the investments, it seems he was prepared to take some risks in the hope of better pension returns.

Also Mr O told us he thought the process was conducted professionally and he clearly found the investments attractive. And the two firms involved GPL and Servatus were both regulated, albeit on a passported basis from another country. It's notable that regulated financial advisers don't often give their advice for free. And, if Mr O believed he'd already taken advice from an appropriately registered and authorised individual I think it's unlikely he would have then paid a separate fee to another adviser.

So, on its own, I don't think the Scorpion insert would have prompted Mr O to change his mind about transferring.

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 other appropriate action if it was apparent their customer might be at risk.

- *When it sent its transfer request Harbour Pensions provided Royal London with:*
- *transfer discharge forms;*
- *HMRC forms APSS263 and CA18904[4];*
- *confirmation that HMRC recognised the QROPS in April 2013; and*
- *Mr O's identification documents certified by Servatus.*

Royal London also checked that the receiving QROPS was on HMRC's published list. This step ensured that the transfer qualified as an authorised payment for tax purposes and also satisfied Mr O's statutory right, and potentially other legal rights, to transfer. So, on the face of it, it had all the paperwork required to make the transfer lawfully. However, in my view, the mere fact HMRC had registered and recognised the QROPS wasn't enough to remove the need for Royal London to make further enquiries. That's because, it was clear Mr O 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 Harbour 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 O'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 scheme 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 this 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 O's transfer.

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[4]These are forms which Harbour and Mr O needed to complete to allow Royal London to transfer Mr O's pension funds to the QROPS.

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 O. 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?

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 O'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 O as part of its due diligence.

<u>What should Royal London have found out – and would it have made a difference?</u>

With a few simple enquiries, Royal London would have discovered a number of facts about the transfer. It's likely it would have found out that the prompt for Mr O to consider a pension transfer was a cold call. I also think it would have identified that Mr O was already of an age where he could legitimately access his pension and so wasn't intending to access those early.

Royal London would also probably have learned that the transferred funds would be invested overseas. Also, given that Servatus had provided Mr O with a written report setting out its advice and recommendations, I think Royal London would have discovered that it had advised Mr O to transfer.

The Scorpion checklist recommends that, in order to establish whether a non-regulated adviser has in fact advised the consumer, the transferring scheme should consult the FCA's online register of authorised firms. Royal London should have taken that step, which is not difficult. Had it done so it would have discovered that Servatus appeared on the FCA register as a firm that was passported from Ireland to the United Kingdom. This means that for UK

purposes throughout the period of this transfer Servatus was an authorised person under s.31(1)(b) of the Financial Services and Markets Act (FSMA) 2000 and Schedule 3 to that Act.

So, I think it is reasonable to assume that, if Royal London had made these enquiries, Servatus role as an authorised advising firm would have indicated that the transfer was unlikely to be a scam and that Mr O would enjoy some regulatory protections in the unlikely event it turned out to be one.

Those regulatory protections would not come via the UK's complaints and investor protection institutions: the Financial Ombudsman Service or the Financial Services Compensation Scheme (FSCS). But instead through Servatus' own regulator. The Republic of Ireland also has a complaints system, financial services and pensions ombudsman and a statutory investor compensation scheme, which EU countries are required to have under the EU's Investor Compensation Directive.

Furthermore, as a regulated firm (albeit by a regulator in another EU jurisdiction) the regulatory protections included the fact that Servatus would have been held to a high standard, mandated throughout the EU, by its own regulator. And as an authorised firm, Servatus would have had to follow the applicable European regulatory standards and conduct its practice in accordance with those standards.

Its operations would have been under some oversight by its regulator to ensure it was acting in the best interest of its client. So, it would've had to meet certain required standards in all of its dealings and be subject to regulation and to investor recourse under the Irish system. In light of this, I don't think it's unreasonable that Royal London could (and would if it had checked up on Servatus' regulatory standing) have been reassured that Servatus was regulated to EU standards that were accepted for the purpose of authorisation under UK law.

<u>What should Royal London have done with this information?</u>

Royal London needed to check for the risk of pension liberation and scams in a way that was proportionate to the warning signs. But a ceding scheme is not expected to act as a general pension adviser to a member who tells it they want to leave their scheme. The Scorpion guidance is aimed at spotting and averting potential pension transfer scams, rather than delivering general advice about the merits of different regulatory systems or high-risk investments.

So, for it to be reasonable to expect a ceding scheme to have concerns and raise these with its member, there must, viewed overall, appear to be a real risk their member is falling victim to a scam. For Mr O's transfer, viewed overall in that way and if Royal London had taken the steps it should, I don't consider that would have been the case.

Where a ceding scheme like Royal London thought a regulated adviser (even one operating on a passported basis) had provided appropriate financial advice it's unlikely it would intervene further. That's the case where there were other warning signs, such as a cold call or an overseas investment. That's because Royal London's role was not to give Mr O advice about the suitability of a transfer or his chosen provider or investments. Its role in doing due diligence would principally have been to ensure Mr O 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 O 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 O that he might be putting his pension at risk if he followed the advice given by a regulated adviser. And it would reasonably have assumed that, as his regulated adviser, Servatus was likely acting in his best interests and would have made him aware of the relevant risks and issues. It wasn't Royal London's responsibility to question or scrutinise that advice.

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

I think it's worth repeating that Mr O was taking advice from a regulated firm. That firm was expected to act in his best interests. And it was that regulated adviser which had made the recommendation to transfer and invest as he did. So, if he'd discussed those warning signs with Servatus, on balance I think it's more likely than not that it would have assuaged his fear. It most likely would have explained the due diligence it had done on his potential investments. It's also likely it would have told him of the regulatory protections he would enjoy as a result of its regulated status.

Also Mr O told us that he found the advisers and the investments professional. And, as I've already said, he clearly found the recommended transfer and subsequent investments an attractive proposition.

In those circumstances I don't think that even if Royal London had done everything it should have the outcome would have been any different. That is, on balance, I think Mr O would have transferred his pension. It follows that he would be in the same position he is in now. So I don't think Royal London has caused the investment losses he has suffered.'

Royal London accepted my provisional decision. Mr O, via his representatives did not. I've considered everything he said and summarised what I see as being the key matters and the reasons for my final decision below.

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 response to my provisional decision Mr O, through his representatives, has focused on the fact that, on transferring his pension, he again took a TFC sum. However, Mr O had crystallised his pension in 2009 and taken the maximum TFC sum at that time. That meant that – unless he had other uncrystallised funds – he shouldn't have been able to take TFC again in 2014 when he transferred. Mr O has said that being able to take TFC was a major incentive to transferring and if he'd realised he couldn't take it then he wouldn't have transferred. In effect he's implied that it was the promise of a further TFC sum, which would be a product of the transfer process and which he couldn't have had by remaining with Royal London, that persuaded him to transfer.

It appears that Mr O's complaint has taken something of a change of direction since I issued my provisional decision. I say that as when he made his complaint to Royal London he did say that the option of taking TFC was 'of interest to him'. However, he didn't at any point refer to not being entitled to a further TFC sum or of the potential tax consequences of

having withdrawn TFC on a second occasion. And, given that he was being assisted in bringing his complaint by professional representatives, who must have known that he wasn't entitled to this second TFC sum, this is something I would have expected him to raise at the point of complaint if it was a key factor in his decision to transfer.

Further, when he complained to the Financial Ombudsman Service and spoke with our Investigators Mr O's comments on taking TFC were markedly different to how he has responded to my provisional decision. I'll repeat that many years passed between the transfer and Mr O raising his complaint so his memory will naturally have faded. But I think that if taking TFC had been a key point for him it's one that would have played more prominence during those conversations.

When our first Investigator spoke with Mr O she asked him for his recollections of how the transfer came about. He could remember very little of the conversation he had with Servatus's agent. Although he did have a copy of the report setting out its recommendations. However, he said that what had interested him was the returns Servatus told him he could achieve by transferring and investing in line with its strategy. Our Investigator asked Mr O directly if he'd been offered any form of cash incentive or options to release money when the pension was set up. Mr O's reply was that he had no such offer when the pension was set up and he said that he believed he'd only withdrawn funds from the pension some years later. The facts don't support that position as he received a TFC lump sum of over £15,000 only weeks after the transfer completed.

Similarly, when Mr O spoke with another of our Investigators he could not remember having taken the TFC lump sum in 2014. And if taking TFC had been a principal driver for transferring and making the investments I would have expected Mr O to have said so. That is he would have told our Investigators that the TFC was an incentive for transferring. And in those circumstances I also think it's likely he'd have remembered receiving the money and – more likely than not – what he'd done with it. But he didn't recall receiving TFC at all. So I'm not persuaded that this was the major incentive for transferring that he's indicated in response to my provisional decision.

I'll add that I was aware that Mr O had taken two lots of TFC (in 2009 and again in 2014) when I drafted my provisional decision. However, having listened to the calls and considered the other evidence on file I concluded that TFC was *not* a key factor at play in Mr O's decision to transfer, which is why I did not refer to it in the provisional decision. However, as I've said above, it appears that Mr O's position on that has now changed.

Also, Mr O has taken issue with my comment that, as he was already over 55 "*he could legitimately access his pension funds and was not trying to do so in any other unauthorised way*." As, in taking a second TFC sum he was in fact taking an unauthorised payment. While I understand that stance, my point was that Mr O was of an age that he could legitimately access his pension. So he could have withdrawn funds from it, albeit any withdrawal should have been taxed at his marginal rate, without fear that he was doing so in an unauthorised manner.

Further, while I agree that Mr O shouldn't have been able to take TFC a second time, as I've already said, I don't think access to a lump sum was the key motivation for him to transfer. I'll add that Servatus clearly made a mistake when it told Mr O that he could take TFC. That's because the information that Royal London had given GPL showed that Mr O had crystallised his pension. So Servatus should have identified that Mr O couldn't take TFC again and it should have pointed this out to him, but didn't. And I don't think Mr O had any understanding that, as he'd taken the TFC in 2009, he couldn't take it again in 2014.

In addition, in the Servatus report I've seen, it only refers to TFC once. And that is in the context of an illustration showing how Mr O's pension could be invested and its anticipated returns, which includes a sum for TFC. But the report doesn't at any point advocate that taking TFC was a primary benefit of transferring. Nor does it indicate that the ability to take TFC is something that Mr O could only do by transferring to a QROPS. So I don't agree, as Mr O has said in his response to my provisional decision, that taking TFC was a 'major rationale' for Servatus's recommendation to transfer, as it provided no analysis in its report to support that position.

As can be seen from the above paragraphs, I've concluded that Servatus made as mistake when it referenced the TFC, rather than making a deliberate attempt to mislead Mr O in order to entice him to transfer. I say that as Servatus was a properly authorised and regulated firm which should have been well aware of the UK tax position. And, from the many other cases we've seen involving Servatus, its advice and recommendations tended to follow a predictable fashion. And recommending unauthorised payments was not part of that pattern.

Additionally, had it come to light that Servatus was advising its clients to take unauthorised pension withdrawals, it could have been expected to be hauled over the coals by its regulator. And, as I've already said, the evidence is that taking TFC wasn't Mr O's key motivating factor for transferring. So I don't think that securing the transfer was dependent on TFC. In those circumstances Servatus would have been gaining very little for a significant risk. So, while it did have enough evidence to know that Mr O had already taken his TFC, I'm satisfied that on this occasion it overlooked that when drafting its advice.

Mr O has also argued that the Scorpion inserts contain clear warnings about cash incentive to transfer. So he believes that if Royal London had provided him with those warnings would have resonated with him. But I'm not persuaded by that argument.

Both the February 2013 and July 2014 versions of the insert focus on the risks of taking benefits before age 55. That clearly didn't apply to Mr O. Also, Servatus' report didn't give the prospect of TFC as a key reason for transferring and Mr O didn't even remember taking it. And in those circumstances I don't think Mr O would have identified the possibly of taking TFC as being a *cash incentive* to transfer. Instead it appears that this was something he believed he was entitled to. So while I don't doubt that the seeming ability to take TFC would be welcome, as I've already said, I don't think that was motivating him to transfer. It follows that sending him the Scorpion insert was unlikely to have changed his thinking on the transfer.

Mr O has also argued that, had Royal London done further due diligence, it was 'inevitable' that he would have told it that a QROPS transfer was recommended in order to take another TFC lump sum. But I disagree. As I've already said, there's little evidence that the key purpose of the transfer was in order to access TFC. So, if Royal London had asked him what was motivating him to transfer, I have no doubt his answer would be that the key reason for doing so was because he expected better returns. It follows that I think it's anything but 'inevitable' that Mr O would have told Royal London that his reason for transferring was in order to take TFC.

However, even if Mr O had told Royal London that he was transferring in order to take TFC I don't think that would necessarily have put a stop to matters. Had that occurred I would have expected Royal London to tell Mr O that, as he'd already taken TFC he was not entitled to take it again (from the same funds). But, as I said in my provisional decision, I would also

have expected the due diligence process to reveal that Servatus, an appropriately authorised advisory firm, was advising Mr O.

In those circumstances I'd have expected Royal London to direct Mr O to take appropriate advice on his TFC entitlement. And I think it's more likely than not that he'd have raised the matter with Servatus. At that point I believe it would have identified its error and explained that any deduction Mr O wanted to take from his pension would be taxable. And given that Mr O's main motivation for transferring was not TFC but returns, I don't think that this would have changed his decision to transfer.

Mr O's also said that Royal London learning that he was intending to take an unauthorised TFC payment, together with the other warnings would have pointed to a clear sign of a scam. However, for the reasons I gave in my provisional decision, I think that even if Royal London had been concerned about potential scam activity the involvement of Servatus would have most likely assuaged those concerns. Nothing Mr O's said in response to my provisional decision has caused me to change my position on that.

I'll add that Mr O said that, given he'd taken TFC in 2009 he knew that any further payments from his Royal London pension would be taxed. It was probably the case that Mr O understood that the amounts that he could take from his Royal London pension were limited. I say that as I note that, at the time, the amounts he could take from his Royal London pension was capped at Government Actuary Department (GAD)[5] levels. That means that he couldn't simply withdraw any amounts he chose to from the Royal London arrangement. But I'm not convinced that Mr O had a clear understanding that he'd already taken the maximum TFC allowed and so wouldn't ever have entitlement to another TFC payment again.

I say that as it's notable that on his Harbour application form he ticked a box to say that he wanted to take maximum TFC immediately. But the application also said that Harbour was required to report all payments to HMRC. So he could have expected HMRC to learn of the payment. And there was nothing within the Servatus report I've seen that indicated that different TFC rules applied for a UK based consumer's pension held in a QROPS as to a pension provided in the UK. It follows that, if Mr O understood that he wasn't entitled to another TFC withdrawal I think he'd have realised that could be putting himself into a difficult tax position by applying to take it a second time. But, I don't think Mr O understood that.

The evidence from Mr O's complaint is that he was unaware of the significance of the second TFC payment until our Investigators explained that this wasn't something he was entitled to. I'm not persuaded that Mr O did understand that he wasn't entitled to the second TFC sum. I'll repeat the evidence also indicates that TFC was not a prime motivator for transferring. It follows that if the TFC error had been pointed out to him, as I've already said, I don't think he would have amended his decision to transfer.

My final decision

For the reasons given above I do not uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 1 April 2025.

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[5] Prior to April 2015 and the introduction of flexi-access drawdown pensions, some pensions offered what was know as *capped drawdown*. In those schemes the maximum amount a consumer could withdraw from their pension each year was set by the GAD. Mr O's Royal London pension withdrawals were limited in this way.

Joe Scott
Ombudsman