DRN-5441317

The complaint

Mr G has complained about the actions of The Royal London Mutual Insurance Society Limited ("Royal London") when it transferred his personal pension to a Qualifying Recognised Overseas Pension Scheme ("QROPS") in 2016. Mr G's QROPS was used to invest in The Resort Group ("TRG"). Investors in TRG have suffered significant losses.

Mr G says Royal London failed in its responsibilities when dealing with his transfer request. He says Royal London 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 in place at the time. Mr G says he wouldn't have suffered the losses he did if Royal London had acted as it should have done.

What happened

I have already issued a provisional decision in which I set out, in detail, the background to this complaint and my preliminary findings. Both parties have been sent that provisional decision so I won't repeat what I said here. My provisional decision is, however, attached and forms part of this final decision.

In my provisional decision, I concluded Mr G's complaint shouldn't be upheld. Royal London had nothing further to add. Mr G, through his representatives, made a number of comments which I address 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.

Rather than repeat everything I said in my provisional decision, I will focus on what Mr G's representatives have said, where relevant, in response to my provisional findings (Royal London having had nothing further to add). For the avoidance of doubt, I have considered everything that has been sent to me.

In my provisional decision, I found Mr G had appointed Strategic Wealth Limited as his adviser and Royal London would have discovered this had it conducted more thorough due diligence on his transfer. I explained that Strategic Wealth Limited, which was based in Gibraltar, would have been on the FCA register at the time of the transfer and, because of this, I concluded Royal London wouldn't have had reason to think Mr G was likely falling victim to a scam. I said:

"Not only was Mr G transferring to a legitimate scheme – one that hadn't done anything over the preceding 16 months to attract the attention of HMRC – but there was also the involvement of advisers on the FCA register. There would have been no grounds for blocking the transfer and no reason to provide Mr G with any warnings about the transfer beyond the Scorpion insert which I discussed previously. In that light, I don't think Mr G would have been given any reason to question what he was doing."

In response, Mr G's representatives have pointed to the paucity of evidence showing the involvement of Strategic Wealth Limited. They fall short of saying it *wasn't* involved. Nevertheless, for completeness, I refer once again to the screenshot the administrators of the Optimus Scheme sent to them as part of a Subject Access Request which recorded Strategic Wealth Limited as being Mr G's IFA. I think it's reasonable to conclude from this that Strategic Wealth Limited was Mr G's adviser. Furthermore, I'm aware the trustees of the Optimus Scheme appointed Strategic Wealth Limited to act for transferring members. And the link between Strategic Wealth Limited and the Optimus Scheme has also been established by the Maltese Arbiter for Financial Services. So the evidence pointing to its involvement is, to my mind, persuasive. My view therefore remains as it was – Strategic Wealth Limited had been appointed as Mr G's adviser ahead of his transfer to the Optimus Scheme.

I was also open to the possibility that the UK arm of the business – Strategic Wealth UK Limited – was involved. But I didn't make a finding of fact on this in my provisional decision. I don't feel the need to do so now given my conclusions doesn't turn on whether it was involved or not. The involvement of Strategic Wealth Limited is significant enough in itself for the reasons I've already explained.

Mr G's representatives have said I overlooked the role played by Capital Facts Limited which, they say, is the business that "primarily" advised Mr G. They say this would have been concerning to Royal London (had it done more detailed due diligence) because Capital Facts wasn't authorised to advise Mr G. In their view, the role played by Strategic Wealth Limited was peripheral at best and came after Mr G had already decided to transfer and invest in TRG. To support their argument, they point to the date Strategic Wealth Limited was appointed – 3 June 2015 – and the timings of Mr G's interactions with Capital Facts, which started before then. In their words:

"How could Strategic Wealth have been advising [Mr G] at his home and advising him before they were appointed?"

I disagree with their analysis for three reasons.

First, I'm satisfied Strategic Wealth Limited's involvement was more substantive than Mr G's representatives have argued. I'm satisfied it was involved so it follows that its involvement likely followed a similar pattern to what I (and Mr G's representatives) have seen in other cases, which is for Strategic Wealth Limited to have (at the very least) sent a relatively detailed written report to Mr G for which it was paid a percentage of the transfer value (typically 3%). So I'm satisfied its role wasn't as peripheral as Mr G's representatives are suggesting.

Second, it misreads what Royal London's role was here. It wasn't to examine the precise role played by Strategic Wealth Limited or review the work it produced. Royal London's role was to establish the scam threat facing Mr G and to do so in a way that balanced consumer protection with the need to also execute a transfer promptly and in line with his rights. Given Mr G had been referred to a regulated adviser ahead of transferring, it would have been reasonable, and proportionate, for Royal London to have thought he had engaged the services of a relevant professional acting in his best interests.

Third, it wouldn't have seemed unusual for an unregulated party to introduce someone to a regulated party for advice. And that's how it would have looked to Royal London had Mr G referred to Capital Facts in addition to Strategic Wealth Limited. Royal London would have considered Capital Facts as having introduced Mr G to Strategic Wealth Limited and that it was the latter that was Mr G's adviser. That isn't to deny Mr G met someone from Capital Facts at his home or to deny those meetings took place before Strategic Wealth Limited got

involved or to deny Royal London would have discovered all of this. My point is that Royal London could, reasonably, have considered Mr G had *ultimately* engaged the services of a regulated adviser and to note the comfort it could derive from that.

On a similar theme, Mr G's representatives have pointed to other elements of the transfer which would have been concerning enough to outweigh any comfort derived from Strategic Wealth Limited's involvement. They have compiled a list of "scam factors" which includes the fact that Mr G's transfer followed a cold call and he was transferring his pension overseas despite not intending to live outside the UK.

However, this overlooks the purpose of the due diligence process. The purpose of the due diligence process wasn't to compile a list of potential scam threats and then decide whether a scam was likely based on the length of that list. The due diligence process was a means to an end: to establish the likely risk of a scam. If that risk could, reasonably, be discounted at any point, for any reason, then how contact was first made with the transferring member, say, or the reasons why they wanted to transfer, reduce in significance. And that applies here. Mr G had engaged the services of a relevant, regulated, professional meaning Royal London could, reasonably, have taken the view that his interests were being looked after.

In my provisional decision, I concluded Mr G was likely aware at the time of the transfer that he was transferring overseas and TRG was an overseas investment. I made this finding because when Mr G spoke to our investigator, he said he *wasn't* aware it was an overseas investment. In response, Mr G's representatives have said my finding, in effect, means Mr G misled both them and the Financial Ombudsman Service.

That wasn't my finding. My finding was that Mr G would likely have been aware *at the time of the transfer* that TRG was an overseas investment, and he was transferring his pension overseas. The fact that Mr G's more recent recollections are contrary to that doesn't mean I think he has misled anyone. Rather my view was – and remains – that Mr G's recollections were honest but have, understandably, reduced in reliability over time.

In my provisional decision, I set out the reasons why I thought that. In brief, I pointed to the various forms Mr G was sent, and signed, which indicated he was transferring his pension overseas. He was also sent a letter by Royal London in August 2015 which warned him of the potential tax implications of an overseas transfer:

"OVERSEAS TRANSFER REQUEST…

…I would also recommend that you seek further financial advice regarding this matter as if you are still resident in the UK and transferring monies overseas there are tax implications that you should be made aware of."

Of course, Mr G may have been aware that he was transferring his pension overseas but been under the impression the investment – TRG – was based in the UK. But I also considered it unlikely – and still do – that discussions about TRG would have omitted the fact that it was an overseas development. It wasn't something that was hidden in the marketing brochures or discussions. I'd also add that Mr G was aware it was a hotel development, so it seems unlikely to me that the location of that development wasn't discussed. To support Mr G's position, therefore, I would have to believe he was lied to and told it was a UK development rather than it being something that was just left unmentioned. Whilst possible of course, that would rely on the deception being maintained by all parties involved in the transfer and those parties hoping Mr G didn't spot anything in the paperwork that prompted him to question anything. I don't consider this likely, so my view remains as it was: Mr G was likely aware that he was transferring his pension overseas and that TRG was an overseas development.

Ultimately, my decision doesn't turn on this point. As mentioned in my provisional decision, the PSIG Code and Scorpion guidance highlights overseas property as being a potential area of concern. And Mr G's representatives include Cape Verde hotel investments in the list of "scam factors" I mentioned above. But given what his representatives have also said, Mr G may not have even told Royal London his investment was an overseas property development. That would seem to weaken, rather than strengthen, their argument about the number of concerns Royal London ought to have unearthed.

As I say, I don't think this would have been a likely scenario. Even so, if Royal London had found out Mr G was investing in an overseas property development, I don't think it would have had cause to think he was falling victim to a scam. It would have been reasonable for it to have taken the view that Mr G had engaged the services of a relevant, regulated, professional acting in his best interests and therefore not someone likely to allow, or be involved with, a scam.

Finally, Mr G's representatives say the issue of causation hasn't been considered properly. They consider the findings of our investigator (who upheld the complaint) as being a more "reasoned and detailed analysis" of causation and say there is no basis for me coming to a different conclusion.

However, Mr G's representatives have overlooked the context within which the investigator made his findings. For instance, the investigator took the view that the Scorpion insert hadn't been sent. I concluded otherwise and explained why I thought that in my provisional decision. Mr G's representatives didn't respond on this point. But it's an important one because once the Scorpion insert is factored in, it follows that Mr G ignored the warnings it contained, many of which were relevant to his situation (including cold calls, free pension reviews, overseas transfers of funds and returns of over 8%). The issue of causation – what Mr G would likely have done had Royal London acted as it should have – therefore looks very different once one takes on board Mr G's actions at the time of the transfer. Similarly, I took a different view to the investigator on whether Strategic Wealth Limited was involved. The role played by that firm has been addressed by Mr G's representatives. But the broader point remains in so far as the context within which I've considered causation is significantly different to the one assumed by our investigator.

Having reviewed the case once again, including responses to my provisional findings, my decision is unchanged. I'm not upholding this complaint.

COPY OF PROVISIONAL DECISION

What happened

In March 2015, Capital Facts Limited wrote to Royal London requesting information on Mr G's policies and discharge forms to allow him to transfer to another scheme. Mr G had two Royal London policies (and policies elsewhere). Mr G had previously signed a letter of authority allowing Capital Facts to do this. Mr G says this followed a cold call.

Mr G says someone from Capital Facts then visited him at home on several occasions and advised him to transfer to a QROPS and invest in a "chain of hotels".

On 11 June 2015, Optimus Pension Administrators Limited ("OPAL") wrote to Royal London requesting it transfer one of Mr G's Royal London policies to the Optimus Retirement Benefit Scheme No.1 ("the Optimus Scheme"), a Maltese QROPS. OPAL was providing certain administrative

functions on behalf of Integrated Capabilities (Malta) Limited, the administrators of the Optimus Scheme. Various transfer forms were attached, including a letter from HMRC to Integrated Capabilities dated 4 August 2014 confirming that the Optimus Scheme was going on its QROPS list.

On 18 June, Royal London wrote to OPAL saying it couldn't transfer the pension whilst Mr G was still contributing to it. The transfer didn't proceed.

On 3 December, OPAL wrote to Royal London to request the transfer of Mr G's other Royal London policy to the Optimus Scheme. It enclosed similar paperwork to its previous request.

Royal London responded on 8 December, asking OPAL whether Mr G was aware that he would lose his enhanced tax-free cash entitlement if he transferred. OPAL confirmed Mr G was aware of this, and had taken advice about it, in a letter dated 21 December. It enclosed a letter signed by Mr G to evidence that.

On 24 December, Royal London asked OPAL to complete a QROPS checklist. On the same day, it wrote to Mr G to say he should seek financial advice if he hadn't already done so, and how to go about finding an adviser.

OPAL completed the checklist on 6 January 2016. On 12 January, Royal London wrote to Mr G to say a transfer value (of approximately £17,000) was going to be paid to the Optimus Scheme. Shortly beforehand, Mr G had transferred approximately £2,500 from a different pension provider ("Firm B") to the same QROPS. Mr G says a "majority" of the combined transfer value was used to invest in TRG, an asset that is now illiquid and essentially worthless.

In 2019, Mr G (with the help of a claims management company) 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 transfer started with a cold call; he was offered a free pension review; his adviser was unregulated; the QROPS was recently registered; and he was transferring in order to invest in high risk, unregulated, assets.

Royal London didn't think it had done anything wrong. It said, in brief, that Mr G's transfer paperwork was all in order, it had highlighted to Mr G that he would lose enhanced tax-free cash – to which Mr G responded saying he had taken advice on the matter – and that there was evidence that Mr G had taken advice from a firm called Strategic Wealth Limited which was regulated.

Our investigator looked into the complaint. As both parties disagreed with his findings, the matter has come to decide.

What I've provisionally decided – and why

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

The relevant rules and guidance

Personal pension providers are regulated by the Financial Conduct Authority (FCA). Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority (FSA). As such Royal London was subject to the FSA/FCA Handbook, and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA/FCA rules governing 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 also 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 PSIG Code of Good Practice. The intention of the 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

When the Scorpion guidance was launched in 2013, it included two standard documents that scheme administrators could use to warn their members about some of the potential dangers of transferring: a short "insert", intended to be sent to members when requesting a transfer, and a longer booklet intended to be used where appropriate (for instance, when members requested more information on the subject).

The March 2015 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 and the longer version (which had also been refreshed) made available where appropriate.

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 PSIG 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.

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

Mr G says he was cold called by Capital Facts which offered him a free pension review. He says someone from Capital Facts then visited him at home on a number of occasions and advised him that his Royal London pension was "frozen" and that he would be better off transferring to a QROPS in order to invest in a "chain of hotels". This turned out to be TRG. Mr G told our investigator he was unaware that this was an overseas investment. He says he thinks he was told his adviser was regulated. He doesn't recall being told about any cash incentives or about accessing his pension early.

The above is corroborated by the documentary evidence in so far as I can see Mr G signed a letter of authority in March 2015 allowing Capital Facts to seek information on his various pensions (not just his Royal London pensions). However, there's a screenshot that Integrated Capabilities, the administrator of the Optimus Scheme, provided for Mr G's representatives as part of a Subject Access Request that shows the personal information it had on file for Mr G. Included in this screenshot is a field for "IFA", which is recorded as being Strategic Wealth Limited, and the date of that IFA's appointment: 3 June 2015.

The screenshot contains a significant amount Mr G's personal information (date of birth, address, national insurance number, occupation, transfer values and so on). Of the items that I can corroborate, all of them are accurate. I see no reason, therefore, to suspect the record of Mr G's IFA was erroneous.

It's also my experience from other complaints that the trustees of the Optimus Scheme appointed Strategic Wealth Limited to act for transferring members. The link between Strategic Wealth Limited and the Optimus Scheme has also been established by the Maltese Arbiter for Financial Services.

I therefore consider it likely that Strategic Wealth Limited was appointed as Mr G's IFA.

Strategic Wealth Limited was incorporated in Gibraltar and licensed by the Gibraltar Financial Services Commission. It had passported into the UK financial services regime on a 'services only' basis. Because it had passported into the UK, Strategic Wealth Limited appeared on the FCA register. Strategic Wealth had a sister firm based in the UK, Strategic Wealth UK Limited, which was regulated by the FCA and so it too appeared on the FCA register. In this regard, Mr G may well have been correct when he recalls being told his adviser was regulated. Whilst he may have been told Capital Facts was regulated – which wasn't true – I consider it more likely that this was instead a reference to Strategic Wealth given the benefit that could have been derived from pointing to Strategic Wealth (both parts of it) as being on the FCA register.

Strategic Wealth Limited issued reports to clients looking to transfer to the Optimus scheme. It charged a fee for doing so. Having been appointed as Mr G's IFA, I see no plausible reason why the same wouldn't have happened here. Mr G's representatives also refer to "*documents appearing to be advice but actually providing "information" only*". As far as I'm aware Mr G's representatives haven't attached a document along those lines for us to review, but it sounds like the report produced by Strategic Wealth Limited – another reason why I'm satisfied such a report was produced for Mr G.

I'm aware of cases where an adviser from Strategic Wealth UK Limited visited clients in the UK before passing them over to the Gibraltarian arm to produce its report. I'm open to the possibility that Mr G likewise met someone from the UK firm but I haven't made a firm finding on this because, ultimately, my decision doesn't turn on this for reasons that I will come on to.

I also note that Royal London wrote to OPAL (which carried out certain activities for the administrators of the Optimus Scheme) to ask whether Mr G was aware that he would be giving up enhanced tax-free cash if he transferred. OPAL replied to say that issue had been part of the advice Mr G had been given. It enclosed a signed letter from Mr G which confirmed that was the case:

"I am writing to confirm that I understand the enhanced tax free cash element of my pension will be lost upon transfer. I have been informed of the 61.48% I am entitled to and after discussing the options with my Financial Adviser I am still happy to proceed with the transfer.

Should you require any further confirmation then please get in touch otherwise I trust you will make the transfer promptly."

Whilst that letter doesn't mention who the adviser was, the most credible candidate is Strategic Wealth Limited given its appointment in June 2015.

Mr G told our investigator that he wasn't aware that the TRG investment was an overseas investment. This doesn't seem credible. Based on what I've seen in other similar cases, complainants were aware that they were investing in an overseas resort. It wasn't something that was hidden in the marketing brochures or discussions. Indeed, the fact that it was a new, overseas, resort was very much a selling point. And even putting this to one side, I consider it likely that Mr G was aware that he was transferring his pension overseas. The forms he signed indicated as much, as did an August 2015 warning to Mr G from Royal London about the potential tax implications of an overseas transfer:

"OVERSEAS TRANSFER REQUEST…

…I would also recommend that you seek further financial advice regarding this matter as if you are still resident in the UK and transferring monies overseas there are tax implications that you should be made aware of."

Therefore, whilst I recognise that Mr G has come to think he wasn't told about investing overseas, I think at the time it was more likely that he was told about, and was aware of, this fact and he has since forgotten this – understandably so given the number of years between the transfer and when our investigator spoke to him. In making this finding, I am giving Mr G the benefit of the doubt because if he had genuinely been oblivious to something as fundamental as investing overseas, it would seem very unlikely that he would have been receptive to, or even paid attention to, the warnings he is now saying Royal London should have given him.

Mr G was 53 at the time of the transfer. He was resident in the UK and didn't intend to live overseas.

With the above in mind, I make the following findings of fact:

- Mr G was cold called by Capital Facts which introduced the TRG investment to Mr G. Strategic Wealth Limited was then appointed as Mr G's IFA ahead of the transfer at the behest of the trustees of the Optimus Scheme.

- Strategic Wealth Limited sent Mr G a report about his options and advised him about the enhanced tax-free cash he would be giving up as a result of the transfer.

- Mr G's motives for transferring appear to have been to generate higher returns for his pension rather than to receive unauthorised payments from it.

- Mr G was aware that the investment was an overseas resort and that he was transferring his pension overseas.

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. I've seen nothing to suggest Royal London did send Mr G the Scorpion insert so, on this front, it fell short of what I'd expect.

However, I don't consider its failure to be material here. I say this because I'm satisfied Mr G's other personal pension provider – Firm B – did send the Scorpion insert. In coming to that conclusion, I reviewed the casefile on that other transfer which Mr G also complained about and asked us to look into. During our investigation, Firm B gave us a copy of its June 2015 manual for combating pension scams, which included the following section:

"Pension Scam Awareness – Information for Members

The Pension Advisory Service 2 page leaflet (Pension scams. Don't get stung-Scorpion leaflet) must be included in all Pension Transfer packs. Wherever possible, these will be issued directly to members. Where the pack is issued via an intermediary, the Scorpion material should be sent separately, direct to the member. The leaflet can be found by following the link below."

As Mr G was sent a transfer pack by Firm B on 3 August 2015, I consider it likely that Mr G was sent the Scorpion insert ahead of his Royal London transfer. Given the description Firm B gave the insert, I'm satisfied it would have been the March 2015 version that was sent, which was the relevant one at that time.

Due diligence:

Royal London said it conducted due diligence on Mr G's transfer because it had evidence that the Optimus Scheme was a QROPS and listed as such by HMRC.

Whilst these steps were a necessary part of the due diligence process, Royal London has misread the extent of its obligations here. The Scorpion guidance and PSIG Code meant there was more that it should have done.

As explained above, I consider the PSIG Code to have been a reasonable starting point for most ceding schemes dealing with transfer requests. 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.

Although Royal London's due diligence was brief, it *hasn't* argued that it fast-tracked Mr G's transfer request in line with the "Initial analysis" section (section 6.2.1) of the Code. Nevertheless, for completeness, it's worth noting the transfer request didn't come from an accepted club such as the Public Sector Transfer Club and Royal London hadn't already identified the receiving scheme/administrator as being free from scam risk.

So the initial triage process under the Code should (if deployed) have led to Royal London 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 two of them would have been answered "yes":

- Did receiving scheme/adviser or sales agents/representatives for the receiving scheme make the

first contact (e.g. a cold call)?

- Have you been informed of an overseas investment opportunity?

Under the Code, further investigation should follow a "yes" to any question. 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). 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. With that in mind, I think in this case Royal London should have considered all four areas of concern and contacted Mr G in order to help with this.

Royal London did establish the legitimacy of the QROPS and did recognise, and highlight, that Mr G was giving up enhanced tax-free cash. But that was the extent of its due diligence. It didn't address Mr G's rationale for transferring. If it had asked Mr G about this – which it should have done, using the framework outlined above – it would have found out Mr G was transferring his pension following an unsolicited approach and that he was transferring to an arrangement that was designed for people living overseas even though he wasn't intending to do that. It would also have found out that the reason for transferring overseas was to invest, in part, in TRG – an overseas property scheme of the type that was highlighted as an area of concern in the PSIG Code.

I appreciate that if Royal London had contacted Mr G then the due diligence process wouldn't have necessarily followed a neat, linear, path. But I think it is fair to say that Royal London wouldn't have needed to progress too far through the Code, or asked too many questions of Mr G, for various parallels between Mr G's transfer and what the PSIG Code was warning about to have become apparent. And if Royal London had followed the Scorpion action pack, similar findings would have followed. Indeed, the action pack also included a case study, in which the victim – like Mr G – transferred in order to invest in an overseas hotel development. Mr G says he didn't realise it was an *overseas* development but, for the reasons given previously, that doesn't seem credible to me. I think at the time he would have known what he was investing in and that was something Royal London would have found out from him had it done further due diligence.

However, Royal London should also have asked Mr G about who was advising him. Had Royal London asked Mr G that, I'm satisfied he would have said Strategic Wealth. That's because by the point Royal London would have been asking about this, Strategic Wealth Limited had been appointed as his IFA and it's likely he would have received a report from that firm. It's possible that Mr G may also have mentioned the UK firm – Strategic Wealth UK Limited – because I'm aware representatives of that firm met potential transferring members in the UK ahead of the report being issued by the Gibraltarian side of the business.

With that in mind, Royal London would have established that the two entities Mr G would have mentioned, Strategic Wealth UK Limited or Strategic Wealth Limited, were on the FCA register. Although the latter was regulated by the Gibraltarian equivalent of the FCA and had passported into the UK under a services passport, the PSIG Code and the checklist didn't contain any warnings about using overseas advisers that were on the FCA register.

Therefore, if Royal London had conducted further due diligence, I'm satisfied it would have ultimately concluded that the threat posed by the transfer was minimal. Not only was Mr G transferring to a legitimate scheme – one that hadn't done anything over the preceding 16 months to attract the attention of HMRC – but there was also the involvement of advisers on the FCA register. There would have been no grounds for blocking the transfer and no reason to provide Mr G with any warnings about the transfer beyond the Scorpion insert which I discussed previously. In that light, I don't think Mr G would have been given any reason to question what he was doing.

I recognise it's possible Mr G would have mentioned Capital Facts in addition to Strategic Wealth. But I can't fairly say Royal London should have become concerned about this because, more likely than not, it would have appeared that the extent of Capital Facts' involvement was to refer Mr G on to a regulated adviser from Strategic Wealth. Once it had confirmed a regulated adviser was involved, and the legitimacy of the receiving scheme, I don't think Royal London needed to look any further. It would have substantively met the requirements of the Scorpion guidance, the PSIG Code and its wider obligations under the Principles and COBS 2.1.1R

I've considered whether asking Mr G questions about how he came to hear about the Optimus Scheme, and his motivations for wanting to transfer, would have caused him to have second thoughts. Those questions would, for instance, have reminded Mr G of the fact that a significant financial decision had been set in train by a cold call and that he was moving his pension outside of his country of residence – both of which may have seemed less judicious on questioning and therefore potential prompts, in themselves, for further thought.

But I consider it unlikely that a due diligence process would have prompted Mr G to have acted differently given he'd overlooked some pertinent warnings in the Scorpion insert sent by his other pension provider – Firm B – in August 2015. Specifically, that insert warned about cold calls, free pension reviews, overseas transfers of funds and returns of over 8%. Although Mr G hasn't said what returns he was promised, it's fair to say he was told to expect significant growth. Mr G transferred his Royal London pension (and, indeed, his Firm B personal pension) despite being made aware of these relevant warnings.

Mr G also transferred despite being warned by Royal London about the enhanced tax-free cash he would be giving up. I've referred to this previously, but it bears repeating here. On 8 December 2015, Royal London wrote to the Optimus Scheme to say the following:

"Can you confirm that the client is aware his plan has enhanced tax free cash? If he was to transfer he would lose this entitlement."

Mr G replied to Royal London saying the following:

"I am writing to confirm that I understand the enhanced tax free cash element of my pension will be lost upon transfer. I have been informed of the 61.48% I am entitled to and after discussing the options with my Financial Adviser I am still happy to proceed with the transfer.

Should you require any further confirmation then please get in touch otherwise I trust you will make the transfer promptly."

On reading this, it's difficult to avoid the conclusion that Mr G was, demonstrably, aware he was taking a significant risk with his pension to the extent that it seems unlikely he would have taken alternative action had Royal London asked him more due diligence questions.

It therefore follows that I don't intend to uphold Mr G's complaint.

END OF PROVISIONAL DECISION EXTRACT

My final decision

For the reasons given above, my final decision is to not 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 28 April 2025.

Christian Wood
Ombudsman