

### **The complaint**

Mr M complains that The Royal London Mutual Insurance Society Limited trading as Royal London refused to transfer his pension to a Qualifying Recognised Overseas Pension Scheme ('QROPS').

### **What happened**

In April 2024 Royal London received a request from Secure Mortgages and Protection ('SMP') for Mr M's pension information and relevant transfer forms for a potential transfer to a QROPS. A letter of authority dated 21 March 2024 from Mr M was attached. The letter of authority stated that SMP wasn't authorised for pension and investment advice and that they would forward any information to deVere Group who would advise the client.

In June 2024 Mr M received advice from deVere Italia to transfer his Royal London pension worth just under £50,000 to a QROPS based in Malta. Mr M lived in France at the time. The recommendation report referred to a conversation Mr M had with the adviser on 13 March 2024.

On 18 July 2024 Royal London received a transfer request from the QROPS administrators. Some forms were missing which were requested on 7 August 2024. Complete documents were received in early September and the transfer request was referred to Royal London's due diligence team. On 5 September 2024 they sent a letter to Mr M acknowledging his transfer request and providing warnings about scams. They informed him that they were required to review his transfer and whether it satisfied all requirements of the transfer regulations. Royal London asked Mr M to complete a due diligence checklist answering a variety of questions about the transfer which was received back on 17 September 2024.

On 4 October 2024 Royal London spoke to Mr M and asked him further questions about the transfer and the receiving QROPS and investments within it. He told them he had been advised by deVere who he had found online when searching for an adviser a couple of years prior. He said he established the QROPS in 2022 and had already transferred some of his other UK pensions. When asked about SMP's involvement, he first didn't know who they were but then referred back to his documents and confirmed that he had signed a letter of authority for them. He said deVere had asked him to sign this. All of his contact had been with deVere.

In the following months, SMP kept chasing Royal London for an update on the transfer.

In December 2024 Royal London wrote to Mr M to tell him that his transfer request had been declined. They had reviewed his transfer request in line with the Occupational and Personal Pension Scheme (Conditions for Transfers) Regulations 2021 ('Transfer Regulations') and The Pensions Scams Industry Group's ('PSIG') Code of Good Practice.

SMP had been involved in the transfer process and did not have any pension and investment regulatory permissions. They considered this fell under Red Flag 3 in the Transfer Regulations which says: 'Someone has carried out a regulated activity without the right regulatory status'.

They also referred to the Pension Regulator's ('TPR') guidance on the application of the Transfer Regulations ('Dealing with Transfer requests') which mentioned this example:

*'In some circumstances, a member has been in contact with an unregulated introducer. If that introducer has been involved in the transfer process and has influenced or been instrumental in the member's decision to transfer or buy investments, depending on the particular circumstances, the introducer may have been carrying out regulated activities without the appropriate regulatory permissions.'*

Royal London considered SMP had been instrumental in facilitating and arranging Mr M's pension transfer by gathering information about his policy, providing this to deVere and acting as a liaison between Royal London and deVere. They considered these actions constituted a regulated activity which SMP didn't have the right regulatory status for.

Once a red flag is applied, the right to a statutory transfer is removed and must be refused.

Mr M disagreed that the red flag was applied correctly. He submitted that SMP was a strategic partner to deVere and was an FCA regulated firm with mortgage and insurance permissions. They were able to collect his information for him and pass it back to deVere. SMP didn't give any advice on the pension. He also reiterated that he and his wife had transferred multiple pensions to the QROPS and had access to the pensions and that they only ever dealt with deVere who they trusted as advisers.

SMP also continued to ask for an update and explanation why the transfer was declined.

Royal London didn't change their mind, so Mr M complained. He also pointed out that if he had to apply again for the transfer after April 2025 he would be subject to a 25% overseas tax charge.

Royal London rejected his complaint about their decision not to transfer, however they did recognise that it took them too long to tell him about their decision. They offered him £200 for this delay which Mr M accepted. He remained unhappy with Royal London's decision not to transfer and brought his complaint to our service.

One of our investigators upheld the complaint. He thought Royal London had possibly overlooked the involvement of an overseas regulated adviser. He acknowledged that concerns about SMP's involvement weren't unreasonable given they had a duty to protect Mr M's pension and the guidance warned about involvement of introducers and firms without the right regulatory permissions. However, he didn't think there was sufficient rational provided by Royal London why SMP's actions had been instrumental to Mr M's transfer and so he didn't think it was fair to apply the red flag and refuse the transfer. He recommended that Royal London should reassess the transfer if Mr M decided to reapply and take into account the investigator's comments.

He recommended that Royal London should pay an additional £250 for the distress the delay to the transfer caused Mr M. He also found that if the transfer was to proceed and Mr M did incur an overseas tax charge that this should be reimbursed by Royal London.

Royal London disagreed their decision had been incorrect, so they asked for an ombudsman's decision.

### **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.

#### Provisional decision

I previously issued a provisional decision in which I said the following:

Royal London is required to follow the Transfer Regulations and is expected to consider accompanying guidance issued by TPR. The regulations and guidance were introduced to further protect customers from putting their pensions at risk. Royal London carried out due diligence and checks as required and identified the existence of a possible red flag (Red Flag 3 as quoted above).

TPR guidance explains that the red flag should be applied where the firm has reason to believe that someone has carried out any of the following regulated activities without the appropriate regulatory permissions:

- providing pension transfer advice
- providing advice about where to invest their pension
- making arrangements for the member to buy or sell investments or making arrangements with a view to the member buying or selling investments

It's not disputed that SMP didn't have any permissions relating to pensions and investments, so if they carried out any of the above activities, the flag would apply.

From what Mr M told Royal London SMP didn't advise on the pension transfer or the investments within it and I can't see that Royal London has tried to make this argument. However, arranging a transfer or making arrangements with the view of someone transferring their pension are also regulated activities and Royal London considered SMP carried out arrangement activities.

There has been dispute whether SMP's involvement was "instrumental" to the transfer or not. It's possible Royal London has referred to this term as it's mentioned in the example in the TPR guidance of an unregulated introducer being instrumental in a consumer's decision to transfer.

I'm not deciding whether SMP carried out a regulated activity or not. I need to decide whether Royal London made a reasonable decision to apply the red flag. TPR guidance sets out that a decision on whether to refuse should be based on the balance of probabilities of a red flag being present and it's not necessary to prove something conclusively. Royal London could apply the flag *if they had reason to believe* a regulated activity was likely taking place.

The regulated activity of arranging deals in investments is set out in Article 25 of the Regulated Activities Order ('RAO'). Article 25 (1) covers making arrangements for another person to buy or sell a particular investment. This includes making arrangements in relation to a pension.

In their Perimeter Guidance Manual ('PERG') the FCA sets out in 8.32.2 G that 25 (1) RAO only applies where the arrangements bring about or would bring about the particular transaction. And that in the FCA's view *a person would only bring about the transaction if their involvement in the chain of events leading to the transaction is of enough importance that without this involvement it would not take place*.

I acknowledge that this could be otherwise described as "being instrumental".

Royal London considers SMP's involvement was instrumental to the transaction as it initiated the whole transfer process by asking for Mr M's pension information and they were liaising between Royal London and deVere as well as chasing the transfer for Mr M. SMP also informed Royal London in October 2024 that Mr M had attended a MoneyHelper appointment even though this had not been requested by Royal London.

I can see that deVere explained that, following Brexit, UK pension schemes refused to communicate with non-UK pension advisers. As an EU company they used one of their UK affiliates (SMP) to gather the information. And SMP says they were allowed to just collate the information and pass it on to deVere without permissions.

I appreciate that the parties here have different views how significant SMP's involvement was. However, I don't think Royal London's view that SMP's involvement did bring about the transaction was a wholly unreasonable position to take. I would also note that 25(2) RAO also covers the activity of making arrangements with the view to a person buying or selling investment. This is much wider in scope and doesn't require the arrangements to be instrumental. PERG 2.7.7 B describes it as arrangements whose purpose is to facilitate the entering into of transactions of other parties. It also acknowledges the activity has a potentially broad scope and applies typically in two scenarios:

- (1) to enable or assist investors to deal with or through a particular firm (such as the arrangements made by introducers); or
- (2) to facilitate the entering into of transactions directly by the parties (...)

SMP clearly were involved in the transfer process and carried out certain activities. I don't think it was unreasonable for Royal London to make a decision that they were likely carrying out a regulated arrangement activity without the relevant pension and investment permissions and apply the red flag. And once a red flag is applied a statutory transfer must be refused.

I want to point out that a statutory transfer is not the only way a transfer might proceed. There can be contractual rights under the terms and conditions of the ceding scheme, or its trustees may be entitled to exercise discretion as to whether or not a transfer may proceed.

The TPR guidance makes it clear that firms should not use non-statutory transfers to avoid carrying out due diligence. So it was appropriate for Royal London to do their due diligence and apply the red flag.

The terms and conditions Royal London has provided for Mr M's personal pension state:

#### *10. Termination of the policy*

*Upon receipt by the provider of written intimation from the Trustees acting on the instructions of the Member that the Policy is to be surrendered and the value is to be transferred to another scheme or arrangement .....the value of the Policy will be paid direct to the trustees and administrators of such other scheme or arrangement.*

I think the terms indicate that the policy allows for a non-statutory transfer. However, the fact that the member can't give direct instructions suggests in my view that there is discretion from the trustees who need to provide the instruction to go ahead with a transfer.

So Royal London could still allow a transfer even if a flag was applied. However, this would have been a discretionary decision and they would be reasonably expected to take into account the information they obtained during their due diligence process. If they considered

the transfer didn't pose a risk and was in the member's interest TPR guidance said a flag wouldn't prevent a transfer. But ultimately it was their decision and Royal London seemed to have concerns here.

The Regulations were introduced to protect transferring members from being scammed, the repercussions of which are potentially devastating when it comes to pensions. Those Regulations can result in a red flag being applied and someone losing, for their own protection, their rights under legislation that ordinarily would have guaranteed their ability to transfer their pension. I think it's reasonable for all this to inform whether a transferring scheme grants a transfer under the terms and condition of a policy and for it to take a cautious approach as a result as Royal London has done. It also wouldn't be appropriate to replace the scheme's discretionary decision with my own.

In summary, I don't think Royal London treated Mr M unfairly here and they were allowed to refuse the transfer, so I don't think they are responsible for any further losses Mr M might have incurred by not transferring or being delayed in transferring.

Royal London already acknowledged it took them too long to inform Mr M of their decision not to transfer and paid him £200 for this which he accepted and I believe has been paid already. I won't be asking them to pay anything further.

#### Responses to my provisional decision

Royal London didn't have any further comments. Mr M was unhappy with the decision and in summary made the following points:

- He didn't understand how the decision could be so different from the investigator's view.
- SMP were only authorised to gather scheme information because Royal London refuse to deal with non-UK advisers. No other UK pension scheme has raised an issue regarding SMP.
- He firmly believes SMP didn't carry out a regulated activity.
- Royal London delayed informing him of their decision to refuse the transfer. If they had informed him earlier he would have had the chance to rectify the red flag and reapply for the transfer before additional overseas tax charges applied. If he transfers now he will incur a 25% tax charge that could have been avoided.

#### My findings

I fully understand that it would have been disappointing to receive a decision that was different to the previous outcome reached by the investigator which was in Mr M's favour. As an ombudsman I must review the case independently and for the reasons set out in my provisional decision I considered Royal's London's decision that an unauthorised regulated activity likely was taking place was reasonable. This is quite a nuanced matter and I also appreciate that there might be other providers who could have come to a different decision and allowed the transfer. However, this doesn't mean that Royal London's decision was one they weren't entitled to make.

I appreciate that Mr M will incur additional tax charges if he transfers to his Maltese QROPS now following new legislation. Mr M has referred to changes in tax regulations in April 2025. However, the changes to the Overseas Transfer Charge (OTC) were announced in the

autumn budget on 30 October 2024 and came into effect immediately that same day. Before this date, one of the exclusions for the OTC was where the QROPS receiving the transfer was established in Gibraltar or a country within the EEA and the member was a UK resident or resident in a country within the EEA. This particular exclusion applied to Mr M. However, this exclusion was removed with effect of 30 October 2024, so any transfer on or after that date to a QROPS not based in France (where he lives) attracts such a charge.

I have considered whether Mr M would have likely transferred his pension before the tax rules changed on 30 October 2024 if Royal London had told him earlier that they weren't allowing the transfer. However, I'm not persuaded this is the case. Royal London received the transfer request on 18 July 2024, however certain forms were missing or needed updating. They didn't receive all the required forms until 4 September. I think they could have requested the missing information from the QROPS administrators earlier than they did (it took them over two weeks to do this), so without these delays they likely could have had all the information back and started their due diligence in the second half of August. Royal London admitted they ought to have completed their due diligence within 30 working days, So they should have reasonably told Mr M about their decision around early October 2024 at the very latest which is before the OTC changes came in. However, I have no reason to think that Mr M wouldn't have challenged the decision -rather than reapply- just like he did when he was informed about the refusal in December 2024. I particularly say this as he wouldn't have been aware of an upcoming announcement about changes to the OTC rules. So even if Royal London had informed him earlier, I don't think Mr M would have reapplied for a transfer, have this approved and transferred his pension before 30 October 2024. So I don't think Royal London's delays when informing him about their decision has caused him missing out on a OTC free transfer.

For the reasons above, my decision remains unchanged that Royal London was allowed to refuse the transfer. The delays in informing Mr M about their decision have not caused Mr M any further financial losses and the compensation of £200 offered for any inconvenience and stress this caused was offered and accepted already before the complaint came to us. I won't be asking Royal London to do anything further.

### **My final decision**

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 December 2025.

Nina Walter  
**Ombudsman**