

Ombudsman's Determination

Applicant	Mr T
Scheme	Royal London Pension Plan
Respondents	Royal London

Outcome

1. I do not uphold Mr T's complaint and no further action is required by Royal London
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr T has complained that, following his application, Royal London transferred his pension to the Capita Oak Pension Scheme without sufficient checks on the receiving scheme and he is now unable to locate his pension fund.

Background information, including submissions from the parties

4. The transfer, for £112,541.90, was made on 14 November 2012 at Mr T's request.
5. Much later, The Insolvency Service, on behalf of the Secretary of State for Business, Innovation and Skills, subsequently took action against the trustees and administrators of the Capita Oak Scheme, which led to their liquidation in June 2015.
6. According to his complaint form, Mr T realised after contacting his representatives in January 2015, that Royal London could be at fault for the loss of his pension monies on the basis that they had failed to perform due diligence and/or make adequate checks to ensure Capita Oak was a genuine pension scheme before transferring his pension funds.

Adjudicator's Opinion

7. Mr T's complaint was considered by one of our Adjudicators who concluded that no further action was required by Royal London. The Adjudicator's findings are summarised briefly below:

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- This case is similar to a number of others we have determined from the same period, some including transfers to the Capita Oak Scheme (such as Mr Hughes v Aviva (PO-6375)). These determinations set out the legislation and regulatory guidance, together with timelines, and the scope of enquiries we would expect the provider to make at the relevant point in time.
 - Mr T's transfer took place before the Pensions Regulator issued detailed guidance to providers about pension liberation and the danger of pension scams in February 2013 (which led to the 'Scorpion' leaflets warning members about the risks to their pensions). This could be regarded as a point of change in good industry practice – in terms of the due diligence expected.
 - There was no evidence before the Adjudicator that Royal London had any specific concerns at that time in relation to the Capita Oak Scheme - which might have warranted a refusal of Mr T's statutory transfer right.
 - It was not maladministration to make the transfer.
8. Mr T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr T's representative for completeness.

Ombudsman's decision

9. The recent High Court judgment in *Hughes v Royal London* indicates that Royal London could not have legitimately refused Mr T's transfer request, had they wished to do so. Mr T did not need to have earnings from a scheme employer. The Capita Oak Scheme rules did not require members to be current employees. Mr T applied to join the Scheme, which styled itself as an occupational pension scheme, and had been registered and accepted as such by HMRC.
10. The Regulatory guidance in February 2013, provided advice on areas for potential concern, flags and appropriate warnings. The fact that Royal London – and the industry generally – may have already been discussing similar points (e.g. the possibility of a generic warning paragraph), does not impose a duty on them to go further than the law or the regulator required at the relevant time.
11. For the sake of completeness, even if I had held there was a duty in November 2012 for Royal London to give Mr T a specific warning, it is with the benefit of hindsight that he can say he would not have proceeded with the transfer. I assume there were benefits to him which may have meant that he would have proceeded anyway. However, I make no finding on this point.

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12. I sympathise with Mr T's position but, for the reasons above, do not uphold his complaint.

Anthony Arter

Pensions Ombudsman
5 July 2016