

The complaint

Mr F, through a claims management company, (CMC) has complained that Scottish Widows Limited (SW) didn't warn him of the risks involved in transferring his pension which consequently led to him being a victim of a pension liberation scheme.

What happened

Mr F has said he was approached in December 2012 by a firm of unregulated advisers via a cold call. He says he was told he could get more growth if he transferred his pension away from SW. He was also told that he could take a lump sum from his pension, interest and tax free (this was described to him as a loan which he wouldn't have to pay back) and invest the rest. He was assured the investments were low to medium risk but they would perform better than his existing pension.

The transfer was completed on 15 February 2013 and the pension was transferred to the 5G Futures Pension Scheme (the scheme).

In May 2013 The Pension Regulator (TPR) appointed a firm as independent trustees of the scheme giving it control of trustee powers and duties in relation to the scheme to the exclusion of the previous trustees. And a few years later TPR confirmed the scheme was being used as a vehicle for pension liberation.

Mr F's CMC has complained that as a regulated business SW ought to have identified that Mr F's pension transfer request carried a number of serious warning signs:

- There was the involvement of unregulated introducers and advisers.
- Mr F was cold called.
- Mr F didn't receive any regulated advice.
- Scheme was registered in 2008 and then re-registered on 24 January 2013 shortly before Mr F signed the transfer form.
- The scheme was purported to be an occupational scheme so SW should have found out details of the sponsoring employer.
- Mr F was told he could access a lump sum but he was under 55.

It stated that SW should have followed the scorpion action pack that was released on 14 February 2013. Although this was one day before the transfer was completed by SW the CMC feels SW would have had prior sight of this guidance and as it effectively "codified pre-existing duties" SW failed in its duty by not following it.

In response, SW explained it had carried out all the checks that it was required to do at that point in time and that due to the action pack being released one day before the transfer was processed it hadn't had enough time to implement any of its recommendations. It also confirmed that while issues with the scheme subsequently came to light, at the time of the transfer it had no knowledge of these issues and had no reason to question transfer request.

The complaint was assessed by one of our investigators who didn't uphold it. He was of the view that due to the transfer taking place one day after the action pack came into force it isn't unreasonable that SW didn't utilise it.

On behalf of Mr F the CMC disagreed with the assessment.

As no agreement could be reached the complaint has been passed to me to decide.

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.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this case. Having done so, I don't think the complaint should be upheld.

Before I explain my reasoning, it will be useful to set out the environment SW was operating in at the time with regards to transfer requests and pension liberation as well as any rules and guidance that were in place. Specifically, it's worth noting the following:

- The Pension Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme.
- Personal pension providers, like SW, are regulated by the Financial Conduct Authority (the FCA). Prior to April 2013, they were regulated by the FCA's predecessor, the Financial Services Authority (FSA). There has never been any FSA/FCA rules that specify the checks providers need to do before someone can transfer from a personal pension.
- Prior to February 2013, and the launch of the scorpion campaign, personal pension providers often just checked that the receiving scheme was registered with HMRC and would only investigate further if it was apparent that the transfer was, in some way, suspicious. However, ahead of the scorpion campaign, it's evident the FSA, and other regulatory bodies such as TPR, were becoming increasingly concerned about the dangers of pension liberation schemes:
 - On 10 June 2011 and 6 July 2011, the FSA warned consumers about the dangers of "pension unlocking". It referred to cold-calling and websites promoting transfers to schemes that invest money overseas (such as in property) to avoid paying UK tax and/or result in cash being drawn from the pension ahead of retirement, including as a loan. Particular concerns related to the tax implications of these transactions, the fees charged and potential investment losses from scam activity. The FSA said it was working closely with HMRC and TPR to find out more information and encouraged affected consumers to contact FSA, HMRC or TPR helplines.
 - TPR announced in December 2011 that it was working with HMRC and the FSA and had closed some schemes.
 - In February 2012, TPR published a warning, and factsheet, about pension liberation. The FSA supported this campaign. It was designed to raise public awareness about pension liberation rather than introduce new steps for transferring schemes to follow. The warnings highlighted in the campaign related to websites and cold-callers that encouraged people to transfer in order to receive cash or access a loan.

TPR guidance

TPR launched its scorpion campaign on 14 February 2013. The aim of the campaign was to raise awareness of pension liberation activity and to provide guidance on dealing with transfer requests in order to prevent liberation activity happening. Several bodies including the FSA supported this initiative, so I'm satisfied it was relevant to personal pension providers such as SW.

The campaign involved an 'action pack' that highlighted the warning signs present in a number of transfer examples, specifically: being cold-called, money being transferred overseas, incentives to transfer, inadequate information about investments and pressure to complete a transfer quickly.

It suggested transferring schemes should "look out for" these issues, as well as receiving occupational schemes that were newly registered or were suddenly involved in multiple transfer requests. If any of the warning signs applied, the action pack provided a checklist schemes could use. This checklist suggested asking the member for copies of promotional materials, emails or letters about the scheme and asking for any further details about how they became aware of the receiving scheme and how it had been described to them. If those enquiries established the member had been advised, it went on to suggest checking whether the adviser had been registered with the FSA. Where transferring schemes had concerns, they were encouraged to consider delaying the transfer and to seek legal advice.

The scorpion campaign also included:

- A Pensions Advisory Service insert to issue to members when a transfer pack was requested. The insert warns about offers to cash-in pensions early, cash incentives, cold calling, being put under pressure to transfer and the potential tax consequences of accessing pensions early.
- A Pensions Advisory Service leaflet which gives more information, including 'real life' examples, about pension liberation.

FCA/FSA's Principles for Businesses (PRIN)

The FCA Handbook set out Principles and Rules that firms must adhere to when carrying out business; and firms must always apply the principles, even when specific rules and guidance from the FSA/FCA in a particular area are absent or evolving – as was the case with pension liberation/scams/fraud.

The 'PRIN' section of the FCA Handbook contains 11 principles and I consider the most relevant principles in relation to transfer requests and pension liberation to be the following:

- 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.

Did SW follow the guidance outlined above?

TPR's February 2013 scorpion campaign

Mr F initiated his pension transfer before the launch of the scorpion campaign:

- SW first received a transfer value request on behalf of Mr F in September 2012.
- It received a second request from a different firm on 21 December 2012.
- Mr F signed the pension transfer application 25 January 2013.
- The information SW needed for it to allow the transfer was received by SW on 14 February 2013.
- The transfer was completed on 15 February 2013 one day after the launch of the guidance

So given the dates involved in this process I don't think it's unreasonable that SW didn't send the scorpion leaflet or take any other action referred to in the guidance. It would have been almost impossible for SW to have implemented the recommendations of the guidance within one day.

I know the CMC has said providers received advance notice of the guidance but from what I know of this issue this wasn't the case. Providers essentially knew that TPR, FSA and a number of other bodies were working to disrupt liberation activity – including by promoting better consumer awareness on their websites. But I know TPR didn't previously formally consult on the guidance or give an indication that significant new guidance was imminent. So I don't think SW would have known it had to consider any different scenarios until it had read and digested the new guidance. So in my view it isn't unreasonable that SW and other providers weren't ready for the changes on the exact day the guidance was released.

I also don't think it's reasonable for the CMC to have expected SW to have delayed the transfer. I appreciate the guidance wasn't issued with a future implementation date, suggesting it was urgent. But there are still practical limits on how quickly any business would be expected to implement it. Putting all transfer cases on hold would have involved SW making a business wide policy decision, and I think it's reasonable that SW would first need to digest what the guidance was saying before deciding whether that was a proportionate step to take. This doesn't in my view indicate SW failed to act in line with its obligations and principles of business the regulator set out.

So for these reasons, I don't think it's reasonable that SW should have considered the scorpion guidance and applied it in this particular instance.

However, having said that, as detailed above there was some emerging knowledge of pension liberation and scams throughout industry when Mr F requested the transfer of his pension, so it's reasonable that SW would have been aware of the threat and been familiar with TPR announcements. I therefore expect SW to have acted accordingly to use its own judgement and discretion when handling pension transfer requests at that time as well as acting in line with the FCA's Principles for Businesses in all it did.

I know SW checked the scheme was registered with HMRC as it has provided a copy of the letter from HMRC confirming this. SW therefore didn't at that point have any reason to think there was anything suspicious with the scheme. And while the CMC has stated that the re-registration of the scheme a month before Mr F authorised the transfer is something that SW should have recognised as a warning sign of a liberation scheme, I don't agree. Due to the lack of any formalised guidance or specific information about this matter, transferring to a scheme that had only just been registered wasn't a widespread concern at the time. So I don't think this, in isolation, would have necessarily caused SW to have been concerned by the transfer request. This conclusion is supported by the activity of the regulators in this period. Clearly, the FSA and TPR were becoming increasingly concerned about liberation

schemes in the years prior to Mr F's transfer. However, their response was primarily aimed at closing liberation schemes and raising consumer awareness about cold calls, accessing pension funds early, overseas investments and scams. Important though this activity was, it doesn't point to transferring to a recently registered scheme as particularly being something transferring schemes needed to be mindful of when dealing with a transfer request.

Had SW known anything about the scheme or received any information about it suggesting there was a problem, such as intelligence being shared within the industry, I would have expected SW to have reacted accordingly to that. But SW has confirmed to me that it didn't become aware of any problems with the scheme at the time of Mr F's transfer request and had no reason to think the scheme was suspicious or a pension liberation. It therefore allowed the transfer to proceed on that basis. So it seems to me SW had no reason to investigate the scheme or Mr F's transfer as a whole any further and given the timeframe of this transfer this doesn't seem unreasonable.

In relation to the other points the CMC has raised as being warning signs when the transfer was requested, again because of the lack of precise guidance in the period running up to Mr F's transfer these issues weren't considered a cause for concern for providers. This was, after all, a rapidly emerging issue. So individual providers, who would only have seen a small proportion of all activity in this area, wouldn't necessarily have had a comprehensive enough view of pension liberation schemes to have appreciated what the potential risk factors were before the scorpion guidance – which did begin to catalogue these risk factors – was issued. Of course, some providers may have had an awareness of specific liberation risks ahead of the scorpion guidance because they may, for example, have received a sudden increase in transfer requests to a previously unknown scheme. But I haven't seen anything that makes me think SW had, or should reasonably have had, this sort of awareness.

The FSA/FCA Principles for Businesses

While the CMC has said SW didn't adhere to the FSA principles when it processed Mr F's transfer I'm satisfied the principles can't be interpreted as meaning SW should have investigated every transfer. Even when the regulators first introduced guidance in this area they didn't require providers to conduct the same level of exhaustive enquiries on every transfer whether warning signs were present or not. So I don't think it would be fair and reasonable to have expected SW to be automatically suspicious of all transfers when the regulators, after considering the issue carefully, evidently didn't think that was necessary later on.

So looking at what SW did do in relation to Mr F's transfer request I am satisfied SW worked in line with the FSA's principals. I don't think SW had, or should reasonably have had, cause for concern about Mr F's transfer request. By extension, this means I'm satisfied the principles didn't confer on SW an obligation to have taken additional steps with regards to his transfer request.

Overall therefore while I can understand the difficult position Mr F is now in, at the time of his pension transfer the issues raised by his CMC weren't considered enough of a cause for concern for providers across the board. And the first of any guidance concerning potential liberation schemes was issued only one day before the transfer was completed so I don't think SW was in the position of taking it into consideration for Mr F.

It follows from the above that I don't uphold Mr F's complaint and I'm satisfied SW acted in line with what was required of it at the time.

My final decision

My final decision is that I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 22 February 2022.

Ayshea Khan
Ombudsman