

## **The complaint**

Mr S complains that Scottish Widows Limited failed to carry out sufficient due diligence activities when he asked to transfer some pension savings to a Qualifying Recognised Overseas Pension Scheme ("QROPS") in January 2015.

## **What happened**

Mr S has been assisted in making this complaint by a claims management company (CMC). But in this decision, for ease, I will generally refer to all communication as having been with, and from, Mr S himself.

Mr S held pension savings with Scottish Widows. During 2014, advisors acting on behalf of Mr S made a number of approaches to Scottish Widows to be provided with information about his pension savings. In July 2014, at Mr S's request Scottish Widows provided information to a firm registered by the Financial Conduct Authority ("FCA"). In August 2014 Scottish Widows refused to provide information to another firm that didn't appear on the FCA register. But it later reversed that decision when the firm showed it was an appointed representative of another firm registered with an overseas regulator, and so held the rights to act as an advisor in the UK. But Scottish Widows said it would only send information to the registered overseas address of the advisor – and not a UK correspondence address that the firm was using.

On two occasions, when writing to Mr S about not accepting the authority he'd given to the overseas firm, Scottish Widows directed Mr S to some information about pension liberation and unauthorised advisors on the website of The Pensions Regulator ("TPR"). But by October 2014 Scottish Widows had confirmed to Mr S that he could choose to transfer his pension savings to a QROPS, providing that the scheme met UK pensions legislation, and Mr S provided the appropriate paperwork and declaration.

The administrator of Mr S's chosen QROPS, that was based in Hong Kong, wrote to Scottish Widows in December 2014, although the letter wasn't received until early the following year. That letter provided Scottish Widows with Mr S's authority for the transfer and the necessary documentation about the scheme. Scottish Widows transferred Mr S's pension savings to the QROPS on 20 January 2015.

I understand that since the transfer most of Mr S's benefits have been moved to an alternative QROPS based in Gibraltar. But some of his pension benefits have not been transferred. It appears that Mr S had requested a withdrawal from his pension benefits (before the legally allowed age of 55). And although those funds had been released to the trustee, litigation brought by the administrator of the new QROPS meant they remained frozen. And it seems that the investment chosen by Mr S for his pension savings when they were originally transferred is largely illiquid.

Mr S's complaint has been assessed by one of our investigators. He thought that Scottish Widows should have done more in its communication with Mr S before the transfer was completed. But he didn't think that any additional communication from Scottish Widows would have led to Mr S changing his mind about the transfer. So he didn't think that the complaint should be upheld.

Mr S didn't agree with that assessment. Although I am only briefly summarising here what he and his CMC have said, I want to reassure Mr S that I have read, and carefully considered, all the representations that have been made.

Mr S's CMC says it is clear that Scottish Widows failed to do what it needed to in relation to the transfer, both in terms of its internal checks, and its communication with Mr S. It thinks that an appropriate level of due diligence by Scottish Widows would have identified the warning signs on this transfer. And those should have led Scottish Widows to discuss the matter directly with Mr S. Had it done so, the CMC says that, Mr S wouldn't have completed the transfer.

So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process.

### **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 deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr S and by Scottish Widows. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

### **The Pension Regulator's (TPR) scorpion guidance**

The scorpion guidance was issued on 14 February 2013 and updated the following year, in July 2014. Several bodies including the FSA (the Financial Services Authority which was succeeded by the Financial Conduct Authority, the FCA, shortly afterwards) were part of this initiative so it's a relevant consideration for personal pension providers like Scottish Widows which come under FSA/FCA regulation, rather than TPR regulation.

Briefly, the scorpion 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. The 2014 update replaced many of the 2013 warnings about pension liberation, with similar warnings about "scams".

There is no clear evidence that pension liberation was specifically involved in Mr S's case – for instance he has not mentioned being offered (or receiving) an up-front lump sum. It does seem however that the transfer might have later offered him the opportunity to access some of his benefits before the normal minimum age of 55. But it's important to say that the other typical warning signs of pension liberation (such as cold-calling, funds being moved offshore, non-standard investments and an absence of proper advice) are similar to scams. Even so, I think it would be a misunderstanding of the Scorpion guidance to conclude that Scottish Widows' role was to categorically determine whether liberation activity or a scam was actually taking place.

TPR made clear in its guidance that it was the ceding scheme's role to assess whether warning signs of pension liberation or scams were present, and if they were to carry out further investigation and establish if Mr S understood the risks inherent in the type of scheme he was transferring to. That applied whether or not, in the fullness of time, the transfer or investment turned out to be liberation or a scam. It also applied whether or not Mr S changed his mind about transferring. Whilst Scottish Widows did have the option of exploring whether to refuse the transfer in certain circumstances, there is no dispute in this case that Mr S had a statutory and/or contractual right to make it.

In the 'Action Pack' for the Scorpion guidance it published in July 2014 TPR said that ceding schemes could use the checklist it provided if any member asked to transfer. It said that answering 'yes' to any of the checklist questions individually did not necessarily indicate a pension scam, but if several features were present there may be cause for concern.

In my view, where funds are being transferred to a QROPS (in other words the whole pension scheme, rather than just some of the investments, are overseas), this in any event becomes one of the more significant - perhaps the most significant - warning signs. It is a somewhat unusual step for a consumer who remains UK resident to make. I consider it would always have warranted further investigation by the ceding scheme, to establish if the consumer had legitimate reasons for transferring their whole pension overseas which perhaps then made it less likely to be at risk of a scam.

#### *Did Scottish Widows have a basis on which to delay or refuse the transfer?*

Scottish Widows has explained that the rules of its personal pension meant a customer had a right to transfer their pension plan to any scheme capable (and willing) to accept a recognised transfer under Section 169 of the Finance Act 2004. The administrator of the QROPS provided Scottish Widows with the relevant paperwork to show its registration with HMRC that meant it fulfilled those criteria. Although Scottish Widows hasn't been able to show us it validated the registration information with HMRC here, I have no reason to think additional enquiries would have highlighted any problems.

Having considered all of this I think Scottish Widows' prospects were limited, for delaying or blocking Mr S's transfer - and would most likely have ultimately been unsuccessful. In the case of an actual investment scam, it might be expected that engaging further with the member about the potential risks they were taking might lead to the member reconsidering whether they wanted to transfer in any event – and therefore was a more constructive way for Scottish Widows to proceed in the particular circumstances of this case. So I've next considered the possibility that Mr S might have changed his mind about transferring if Scottish Widows had got directly in touch with him to explain its concerns.

### Risk warnings

At a time when the TPR guidance was less prescriptive than it, and other industry codes, now are on the degree of contact a transferring scheme should have with the customer, a key method of passing on these risk warnings was to issue the scorpion leaflet. Since February 2013 TPR had been saying on its website that it would like to see the use of this insert in transfer packs for members becoming best practice.

As I have said earlier, Scottish Widows initially had concerns about the registration status of the firm asking for information on behalf of Mr S. It wrote to him on two occasions to explain that it wouldn't accept the authority he had provided to the firm. And in each letter it directed him to the guidance provided by TPR on its website about pension liberation and unauthorised advisors.

So Scottish Widows argues that it did effectively provide Mr S with the information it needed to under the scorpion guidance. But I think there is a difference in expecting a consumer to actively search for information on a website compared with the direct receipt of a specific leaflet. So in my view Scottish Widows should have sent the leaflet to Mr S, both to provide him with information about the risks he might be facing, and to ensure that it could demonstrate it followed the TPR guidance. But I accept it's possible Mr S wouldn't have read the leaflet had Scottish Widows sent it to him. There isn't a requirement in the guidance for Scottish Widows to check he had read and understood the leaflet.

The Action Pack provided guidance to firms as to the steps they might take should they have concerns about a transfer. It suggested firms could:

- *Contact the member to establish whether they understand the type of scheme they'll be transferring to and send them the pension scams booklet available at [www.pension-scams.com](http://www.pension-scams.com)*
- *Speak to the member at risk – over the phone, via email or letter. It could help you establish answers to more of the questions in the checklist, where you've been unable to answer them with the information you have available*
- *Direct the member to Action Fraud if you think it is a scam, or The Pensions Advisory Service (TPAS) to discuss the potential consequences of the transfer, including tax repercussions, if any part of the arrangement is deemed as unauthorised*
- *If the member insists on proceeding with their transfer request, and your concerns remain, then you should alert Action Fraud yourself. There could still be time to protect this member, or others who follow in their footsteps.'*

Scottish Widows' own investigations don't show it made any other direct contact with Mr S when it provided information about his pension savings or received his formal transfer request. But despite what I've said earlier I don't think I need to formally determine here whether or not that was a reasonable approach. Even if I thought it should have seen the warning signs that were present I'm not persuaded that any further contact from Scottish Widows would have made a difference to Mr S's decision to transfer.

### If Scottish Widows had gone further, would it have made a difference?

The Action Pack does suggest getting in touch with the member but that is the only expectation – it doesn't specify how that contact should be made, and certainly not that the contact should be by telephone. This is left to the discretion of the provider. Although I know some providers have tried engaging over the phone it is not without its difficulties, including the risk of it being wrongly perceived as a self-interested attempt to retain Mr S's business.

Given that the staff involved in processing payments out of the transferring scheme are neither qualified nor authorised to provide financial advice, in reality such a conversation would also need to be heavily scripted – and might not end up being a lot more effective than a letter. So I couldn't fairly fault Scottish Widows had it decided that it was best to engage with Mr S by letter.

And to a degree that is exactly what Scottish Widows did when it first told Mr S that it wasn't able to interact with his chosen advisor. I appreciate that it didn't send the scorpion leaflet at that time or tell him about any warning signs it had specifically identified in respect of the action pack. But it did tell Mr S that it didn't think his advisor was registered with the FCA – and on that basis it wouldn't accept the letter of authority he'd provided. I think the tone of that letter might have been sufficient to warn Mr S that his proposed course of action didn't come without risks.

Mr S had already taken some significant steps here, and by the time of the formal transfer request the process had been ongoing for a number of months. I think it likely there were numerous points where someone less committed to changing their pension arrangements could easily have pulled out. Obviously, Mr S didn't do so which, to my mind, shows he had more than just a passing interest in the transfer.

So in that context, I don't think any further statements from his old pension provider about regulated financial advice being a good idea would have prompted Mr S to take independent advice or to pull out of the transfer. I think he would only have done so if he had doubts about the transfer and was prepared to unwind the steps he had already taken. Taking everything into consideration, I don't think this was likely.

I'm not satisfied that flagging up any of the other messages in the scorpion guidance – for example the availability of TPAS to discuss any concerns – would have fundamentally altered Mr S's decision to proceed in this case. I'm drawn to the regrettable conclusion that Mr S was already satisfied enough with the advice he was getting – whether that was from the QROPS administrator or the other firm that was involved in the discussions – to have been willing to make the decisions he made at the time. I cannot reasonably say he would have been deterred from going ahead in spite of any steps Scottish Widows might have taken to alert him in line with what I've set out above.

### **My final decision**

For the reasons given above, I don't uphold the complaint or make any award against Scottish Widows Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 4 April 2022.

Paul Reilly

**Ombudsman**