

The complaint

Mr C complains that Scottish Widows Limited failed to carry out sufficient checks when transferring his pension to an occupational pension scheme ("Scheme A") that was subsequently suspected of being involved in pension liberation.

What happened

Scottish Widows says it has a record of Mr C phoning it in August 2012 noting his imminent intention to draw his pension benefits. Scottish Widows replied with a projection of benefits to age 55 noting that he wasn't able to draw a pension until that age. He was aged 53, earning £25,000pa as a supervisor and did not own his own home or have any other pensions or investments.

Mr C then says that he was cold-called by an unregulated firm, who arranged a face-to-face meeting and recommended he transferred his existing Group Personal Pension to Scheme A. No details of what Scheme A was or how it would be invested were given, but he was offered an upfront cash sum of £1,000 to make the transfer.

On 12 November 2012, he transferred about £14,600 from Scottish Widows to Scheme A. The Pensions Regulator (TPR) later acted on reports of suspected pension liberation and in September 2013 the High Court appointed new trustees to operate Scheme A.

The new trustees identified that most of Scheme A's assets were invested within an offshore wrapper in high-risk assets overseas, which were determined to have little or no value. They are continuing to pursue other parties involved in arranging the investments and have not been able to value Mr C's pension benefits as a result. They are also seeking to obtain assistance from the Fraud Compensation Fund on the basis that losses have been suffered by the scheme from an act of dishonesty. They indicate that such a claim may take a number of years to resolve.

Mr C's representative says that Scottish Widows ought to have identified that warning signs were present in this transfer that put Mr C at significant risk of financial loss and the associated tax liabilities of making unauthorised payments. It failed to communicate with him clearly and act in his best interests in accordance with the Financial Services Authority (FSA)'s Principles and Rules – or check whether the transfer met statutory requirements.

The representative claims that even though Scottish Widows received a number of near-identical transfer requests from different intermediaries within a short space of time, and incomplete paperwork, it proceeded with the transfer very quickly and gave no warnings whatsoever. Had Scottish Widows complied with its obligations, Mr C says he would have ensured he took independent financial advice and, as a result, not made the transfer. Alternatively, Scottish Widows would have established that the scheme was not legitimate and Mr C did not, as a result, have a statutory right to transfer to it.

Scottish Widows didn't uphold Mr C's complaint. It says that the main check that was expected at that time was to see that Scheme A was correctly registered with HMRC. It wasn't required to make contact with Mr C to ask him about his transfer. However it believed

that if one of the following things had been immediately apparent from the transfer request, it would have flagged it at the time:

- If the scheme administrator indicated they were *advising* Mr C on the transfer, which would have been a conflict of interest as they were not regulated by the FSA. (Noting that if they were *only* acting as a scheme administrator, they did not need to be regulated by the FSA.)
- If Mr C had informed Scottish Widows he was cold-called, offered an incentive or that his reasons for transferring were to gain early access to his pension.

Scottish Widows considered Mr C's representative was attempting to apply subsequent industry standards to the time of this transfer with hindsight. It added:

'At the time of receiving the request to transfer this pension in October 2012, we held a list provided by The Pension Advisory Service (TPAS) of specific schemes that the industry were not to allow transfers to. These were circulated within our business and this specific transfer database was added to as and when we were notified of them. To provide clarity on this request, [scheme administrator] and the associated [Scheme A] were not on our list.'

Scottish Widows sent Mr C's representative a cheque for £150 to apologise for its delay in responding to the complaint. As the representative considered Scottish Widows should do more, it referred the complaint to the Financial Ombudsman Service.

Our investigator noted that industry awareness of pension liberation had been increasing since February 2012 as a result of press releases from TPR at that time. But she said that Mr C's representative couldn't expect Scottish Widows to apply the specific industry guidance that existed from February 2013 to a transfer that took place in October 2012. Mr C's representative didn't agree. In summary, they said:

- The speed at which Scottish Widows transferred Mr C's pension meant it couldn't confirm it was compliant with statutory transfer rules or its obligations to Mr C under the FSA Principles and Conduct of Business (COBS) rules.
- As a substantial FSA regulated business, Scottish Widows was well placed to identify the risks involved in the transfer and ought to have raised these concerns with him.
- Alternatively, Scottish Widows should have refused the transfer because *'...there were very significant concerns as to what type of scheme [Scheme A] was purported to be and whether it was a valid scheme at all.'*
- *'It ought to have been clear to Scottish Widows, given Mr C's circumstances and his dependence on his existing pension scheme, that it was against his best interests to transfer a secure and mainstream pension into an alternative pension scheme of any sort.'*

My provisional decision of 17 November 2021

As agreement couldn't be reached, I first issued a provisional decision on 17 November 2021 to explain my findings. That decision follows in full below.

What rules or guidance was Scottish Widows expected to follow at the time of the transfer?

As Mr C's policy was a personal pension, Scottish Widows was regulated by the Financial Services Authority (FSA, subsequently FCA) in its operation. There have never been any specific FSA/FCA rules on the checks transferring providers need to make before someone can transfer from a personal pension.

The FSA Handbook set out Principles and Rules that firms must adhere to. 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. The most relevant principles (in the PRIN section of the rulebook) to this case were:

- Principle 2 – A firm must conduct its business with due skill, care and diligence.
- Principle 3 – A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems
- Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly.

As Mr C's representative has mentioned, a firm must also act honestly, fairly and professionally in accordance with the best interests of its client, which is known as the client's best interests rule at COBS 2.1.1R in the handbook.

The FSA had issued a number of warnings on its website in June and July 2011 about the dangers of what it referred to as 'pension unlocking'. This included that consumers might be cold-called by unregulated advisers and encouraged to release cash from their pensions ahead of retirement. At the time, the FSA said it was working closely with HMRC and TPR (which regulated occupational pension schemes) to address this.

In turn, TPR confirmed on its website in December 2011 that it was working with HMRC and FSA on pension liberation – and that they'd identified £200m of customers' funds had been affected by up to that point. Both FSA and TPR mentioned on their websites in March 2012 that they were warning consumers to be vigilant and were working to prevent and disrupt liberation. As Scottish Widows has mentioned, TPAS also appears to have begun sharing lists of schemes suspected to be involved in this.

I think it's clear from this that Scottish Widows would have been aware that liberation was a problem affecting the industry. And it hasn't disputed this – it says that at the time, if it had reason to believe Mr C was being advised by an unregulated party, had been approached out of the blue or was attempting to gain unauthorised access to his pension, it would have acted. I think taking such action, if these issues were already apparent to Scottish Widows, would have been consistent with the principles and rules I've mentioned above.

But it's important to note that the awareness promoted by both FSA and TPR, internal industry 'watchlists', and potentially its own experience of transfers that had turned out poorly, were the only real sources of information Scottish Widows had as to the extent of this problem. As no formal guidance had been circulated it was a matter for its own judgement how to interpret this information in a way that adhered to the FSA's principles and rules.

TPR's own guidance (the 'Scorpion' campaign) wasn't rolled out until February 2013 – in other words, after Mr C transferred. That wasn't guidance issued by FSA/FCA itself - so it wasn't set out specifically by reference to firms' PRIN or COBS obligations either. This represented a step-change in how all businesses were expected to approach pension transfers after that point. It was also endorsed by the FSA, so it would clearly have been relevant had Mr C's transfer taken place later on.

Whilst the representative's original complaint to Scottish Widows makes a point of saying it *isn't* applying the 'Scorpion' due diligence requirements to this case, it's notable that the particular warning signs it considers Scottish Widows should have identified *are* largely drawn from that campaign. For example: from investigating addresses at Companies house, gathering further information from the consumer directly to assess the risk of liberation, checking how recently the receiving scheme was registered (rather than *whether* it was

registered) and investigating the geographical location of the employer/scheme and its relationship with the member.

The representative ties this back to PRIN and COBS. Whether I can fairly say these rules should have led Scottish Widows to carry out a specific investigation on the transfer, to protect Mr C from possible liberation, largely depends on how likely it was viewed at the time that any particular transfer was at risk of this activity. I say this because there was always the risk of legitimate transfers being caught up in indiscriminate enquiries. And I note that at this stage, the regulators and HMRC's own position was that they were still taking steps to find out more about the problem.

So on balance, I don't agree it's reasonable to give the FSA principles and rules the context of industry intelligence that was subsequently compiled and circulated *after* Mr C transferred. TPR seems to have eventually decided that regulators and other agencies couldn't tackle the issue alone – and further intervention by pension providers was necessary. But that wasn't the position at the time of Mr C's transfer. I don't think Scottish Widows acted unfairly or unreasonably on this occasion by proceeding with the transfer in the absence of any obvious signs of liberation in Mr C's request, or from industry intelligence it received.

Mr C's representative has also mentioned COBS 4.5.2R as requiring Scottish Widows to give '*...a fair and prominent indication of any relevant risks...presented in a way that is likely to be understood by, the average member of the group to whom it is directed...*'. It has compared the expectations of due diligence required in this situation with that of self-invested personal pension (SIPP) operators on the investments to be held within a SIPP. I don't consider this is a correct reading of Scottish Widows' obligations here.

COBS 4.5.2R is a general rule about the quality of information regulated firms provide when providing information in relation to their designated investment business. I can't fairly say it requires Scottish Widows to assess or explain the risks of another pension scheme it isn't operating. I can see its relevance to a SIPP operator which knows the specific investments that are about to be made in that SIPP, but here Scottish Widows wasn't involved in any investments Scheme A might go on to make.

Was how Scottish Widows processed the transfer consistent with the rules and guidance?

Although this wouldn't have been paperwork Scottish Widows saw (or would ordinarily need to request), Mr C's representative has shown us that when he completed the transfer forms in front of an agent at his home on 18 October 2012, both he and the agent signed a statement confirming '*...have not been given any legal or financial advice by the Agent...*'

The scheme administrator, who stated that it acted for Scheme A, then wrote to Scottish Widows requesting Mr C's benefits be transferred on 23 October 2012. It enclosed a copy of Mr C's letter of authority, Scheme A's HMRC registration letter dated 30 September 2012, and provided Scheme A's bank account information. However as Scottish Widows' discharge form wasn't enclosed, Scottish Widows wrote to Mr C directly on 24 October to request the same.

On 29 October Mr C signed and returned that form after phoning Scottish Widows to check its requirements. Although the receiving scheme's sections of that form hadn't been completed, it appears that Scottish Widows accepted this (in combination with the scheme's previous request) as a sufficient basis to transfer.

I've considered the representative's point about the earlier contact Scottish Widows had from a different intermediary. That intermediary was (or purported to be) a different scheme administrator and in addition to a request for a transfer quote it noted, '*The client has also*

given permission for all monies to be transferred to [administrator].' Two largely identical requests were sent from that same administrator on 10 and 24 September 2012 – and Scottish Widows then replied with a quotation on 28 September 2012.

In its final response to the complaint Scottish Widows said *'...we had no reason to look at previous correspondence held on record as we hadn't previously received any pertinent correspondence about transferring the pension away; just a request for paperwork and information to be sent.'* Whilst that isn't entirely right – because the first administrator appeared to request both information *and* to transfer – Scottish Widows would have been entitled to not (yet) regard these as valid transfer requests and hence I can see why they were not logged as such on its system.

I say this because the paperwork only appears to provide Mr C's authority to request information and not to transfer. It would have seemed that the administrator was taking the usual preliminary step of requesting the transfer value and discharge paperwork needed for Mr C to give that instruction later on.

The difference with the subsequent scheme administrator's request is that the attached authority from Mr C did request a transfer, and it enclosed sufficient evidence of HMRC registration for the request to be genuine. Whilst Scottish Widows didn't yet have its own requirements (the discharge form), it treated this as an actual transfer request and supplied a further copy of the discharge form directly to Mr C. I think this was reasonable in the circumstances, as it was entitled to proceed on the basis that the discharge form may have been overlooked rather than insisting the whole transfer was re-started.

Mr C's representative argues that the repeat requests from different parties provided intelligence that Mr C might be a potential victim of a scam, which should then have fed through to subsequent requests. I can see why it considers this, but I think this is also argued from a position of hindsight – given that there was no specific guidance at the time on how to mitigate against the risk of scams. There were also material differences between the requests and I don't think Scottish Widows would reasonably have thought that they were related at the time.

I can't fairly say that Scottish Widows would have known that Mr C had been cold-called, was receiving unregulated advice or was at heightened risk of liberating sums from his pension. The nature of the request to transfer coming from the receiving scheme wasn't out of place. As the third party appeared to be carrying out administration for the receiving scheme, it wouldn't have appeared that it was giving Mr C advice. Scottish Widows also made contact with Mr C directly (rather than any third party) to provide the discharge forms, so it was clear he was aware his benefits were being transferred.

Overall, I'm satisfied that the overarching requirements under the FCA Principles and COBS 2.1.1R were adequately met by the steps Scottish Widows says it took: to check Scheme A was HMRC registered, didn't appear on any watch lists circulated within the industry, and there was nothing in the requests as made to suggest they were suspicious. I think the steps Scottish Widows took would also have been consistent with good industry practice at the relevant time.

I have no reason to doubt that the scheme didn't appear on a watch list so soon after it had been registered – noting also that before the Scorpion campaign, the shortness of the time between registering the scheme and transferring hadn't been specifically highlighted as a concern. In fact, the concerns about Scheme A which the representative suggests were obvious could only have been identified by detailed investigation: an investigation which TPR undertook and didn't act on until September 2013 by removing Scheme A's trustees. There wasn't an evident need for Scottish Widows to undertake that level of investigation itself, if it

was satisfied that Scheme A met the requirements for a transfer to another registered pension scheme.

Partially completed paperwork

The representative mentions that some of Mr C's paperwork was insufficiently completed. I haven't seen a fully completed copy of the discharge form, and Scottish Widows confirms that none exists. In effect, Mr C's sections of the form were completed but it wasn't passed to Scheme A for it to complete its sections. That seems to be because Scheme A's request to transfer was originally made without this form. I've carefully considered whether Scottish Widows acted wrongly in accepting the form on that basis.

Section B provided space to enter a date for Mr C's final contribution to the scheme, where contributions were still being paid at the time of transfer. However Scottish Widows' records show that Mr C's plan had been 'paid up' since September 2011, so it wasn't necessary for this part to be completed.

Section C requested the name, address and bank account details of the receiving scheme. However all of these details had already been provided in the administrator's covering letter which stated it was acting for Scheme A, and supplied Mr C's letter of authority. So I don't consider it was necessary for Scottish Widows to insist this information was duplicated on the discharge form. However section C went on to ask for the following confirmation:

- That the transfer was going to a scheme registered according to Part 4 of the Finance Act 2004;
- The HMRC Pension Scheme Tax Reference (PSTR);
- The scheme's normal retirement age;
- The signature and title/designation of a person representing the trustees or administrators, confirming that the scheme agreed to accept the transfer.

In my view the first two items were satisfied by Scheme A providing its actual HMRC letter of registration (it's possible the format dates from before it became commonplace to insist on seeing the letter of registration). Scottish Widows informs me that the normal retirement age would have been relevant if Mr C had a protected early pension age, which he did not. This leaves the absence of a specific agreement from the receiving scheme on the discharge form itself that it would accept the transfer.

Looking at the earlier letter Scottish Widows received from the scheme administrators, I think this largely serves that requirement too. Although it was signed 'pp', it carried the authority of a named member of staff representing the scheme and it was implicit in the fact the scheme was requesting the transfer, that it was agreeing to accept the transfer proceeds.

The main purpose of a discharge form, as the name suggests, is to discharge Scottish Widows' liability to pay a pension to Mr C – but in this case the form also served the dual purpose of providing all the information necessary to make the payment to the receiving scheme. But I consider it would have been overly bureaucratic for Scottish Widows to insist that confirmation it had already received by another means had to be re-entered onto the form. Nor can I see that it would have made a difference to the outcome: it's highly likely Scheme A would simply have completed the form if asked to do so, and Mr C's benefits would still have transferred.

Scottish Widows made the transfer on the basis that Mr C had a contractual and statutory right to it. That being the case, it wasn't able to block it for the reasons Mr C's representative suggests and given the less-advanced state of industry practice on due diligence at the time.

I don't, as a result, find the time taken to make the transfer unreasonably short. The representative's expectation of Scottish Widows to identify that the transfer wasn't appropriate for Mr C would be in keeping with Scottish Widows acting as his adviser – which clearly it was not, and had never given any undertaking to be.

Responses to the provisional decision

Mr C's representative said it had no further comments to make.

We haven't received a response from Scottish Widows to the provisional 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.

Neither party has made any further comments for me to consider. I remain of the view as explained above that Mr C's complaint should not be upheld.

My final decision

I do not uphold Mr C's complaint and make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 20 January 2022.

Gideon Moore
Ombudsman