DRN-3517438

The complaint

Mr L has complained about a transfer of his stakeholder pension scheme by Scottish Widows Limited (Scottish Widows) to an occupational scheme in 2013. Mr L's occupational scheme was subsequently found to be a vehicle for pension liberation, the process by which pensions are accessed in an unauthorised way (before minimum retirement age, for instance). This can leave victims paying punitive tax charges to HMRC and having to deal with the consequences of having their pension invested in an inappropriate way, both of which apply in this case.

Mr L says Scottish Widows failed in its responsibilities when dealing with the transfer request. He says that it should have done more to warn him of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance, which he says was required of transferring schemes at the time. Mr L says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Scottish Widows had acted as it should have done.

What happened

Mr L held a pension plan with Scottish Widows and in early 2013 he decided to transfer to the Capita Oak Pension Scheme, (the Scheme). No information has been provided about how Mr L came to find out about the Scheme and no information has been provided about any introducer firms or other financial advisers being involved.

On 11 February 2013 the Scheme's administrator wrote to Scottish Widows to request the transfer of Mr L's pension to the Scheme. In its covering letter the administrator provided (amongst other things) the Scheme's Pension Scheme Tax Reference ("PSTR") number and details of the bank account the transfer payment was to be paid into as well as the Scheme's HMRC registration certificate. The Scheme was an occupational scheme which was registered by HMRC on 23 July 2012. Mr L's signed transfer discharge forms were also included.

Mr L's pension was transferred on 12 February 2013. His transfer value was around £12,000. He was 41 years old at the time of the transfer.

The Pension Regulator (TPR) appointed Dalriada Trustees as independent trustees and administrators of the scheme on 12 January 2017. There has been an investigation into the scheme by the Serious Fraud Office (SFO) and the scheme is now thought to have been a scam because of concerns that it had been used as a vehicle for pension liberation. The statement also said scheme funds had been invested inappropriately. Around the same time, the independent trustee wrote to members, and issued a statement on its website, with further information.

In May 2021, Mr L complained to Scottish Widows. Broadly, his argument is that Scottish Widows didn't gather sufficient information about the transfer before proceeding, such as, whether he had received any advice to transfer, whether he was offered any incentive to transfer and what investments were held in the scheme.

Scottish Widows didn't uphold Mr L's complaint. It said he had a right to transfer and that none of the information it had about the Scheme at the time gave it cause for concern. It was satisfied it had conducted an appropriate level of due diligence given the requirements of the time.

It also explained that while at the time there were a few pension schemes/administrators that The Pension Advisory Service had advised there were problems with and that the industry was not to accept transfer to but the Scheme was not on its list so it had no reason to question the transfer.

Our investigator was unable to resolve the dispute informally, so the matter was 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. I've taken into account relevant: law and regulations; regulatory rules; guidance and standards; codes of practice; and (where appropriate) what I consider to have been good industry practice at the relevant time.

Where the evidence is incomplete or inconclusive (as some of it is here) I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened given the available evidence and wider circumstances.

<u>The relevant rules and guidance</u>

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

- The Pensions 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 if certain conditions are satisfied (and indeed they may also have a right to transfer under the terms of the contract). The possibility that this might be exploited for fraudulent purposes was not new even at the time of this transfer. However, the obligation on the ceding scheme was limited to ascertaining the type of scheme the transfer was being paid to and that it was a tax-approved scheme.

- On 10 June 2011 the Financial Services Authority (FSA) issued a warning was about the dangers of "pension unlocking" and this specifically referred to consumers transferring to access cash from their pension before age 55. (As background to this, the normal minimum pension age had increased to 55 in April 2010.) The FSA said that receiving occupational pension schemes were facilitating this. It encouraged consumers to take independent advice. The announcement acknowledges that some advisers promoting these schemes were FSA authorised.

- At around the same time, TPR published information on its website about pension liberation, designed to raise public awareness and remind scheme operators to be vigilant of transfer requests. The warnings highlighted that websites and cold callers were encouraging people to transfer in order to receive cash or access a loan.

- At the time of Mr L's transfer, Scottish Widows was regulated by the FSA. As such, it was subject to the Handbook, and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA rules governing pension transfer requests, but the following have particular relevance:

– 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; and

– COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

For context, it's also worth noting that on 14 February 2013, TPR launched its "Scorpion" campaign. The aim of the campaign was to raise awareness of pension liberation activity and to provide guidance to scheme administrators on dealing with transfer requests in order to help prevent liberation activity happening. The Scorpion campaign was endorsed by the FSA (and others). The campaign came after Mr L's transfer, but I highlight it here to illustrate the point that the industry's response to the threat posed by pension liberation was still in its infancy at the time of Mr L's transfer and that it wasn't until *after* his transfer that scheme administrators had specific anti-liberation guidance to follow.

<u>What did Scottish Widows do and was it enough?</u>

With the above in mind, at the time of Mr L's transfer, personal pension providers had to make sure the receiving scheme was validly registered with HMRC. Scottish Widows had the Scheme's HMRC registration certificate, and PSTR, so it didn't need to do anything further in this respect.

There was also a need to remain vigilant for obvious signs of pension liberation or other types of fraud. Even though some of the regulators' warnings about the threat of pension liberation and wider scams were directed at consumers, I think it's reasonable to conclude that the sources of intelligence informing those warnings included the industry itself. Personal pension providers were therefore unlikely to be oblivious to these threats. And, even if they were, a well-run provider with the Principles in mind should have been aware of what was happening in the industry. So, in adhering to the FSA's Principles and rules, I think a personal pension provider should have been mindful of announcements the FSA and TPR had made about pension liberation, even those directed to consumers. It means if a ceding scheme came across anything to suggest the request originated from a cold call or internet promotion offering early access to pension funds – which had both been mentioned by regulators as features of liberation up to that point – that would have been a cause for concern.

I'm satisfied nothing along these lines would have been apparent to Scottish Widows at the time of the transfer. Mr L's transfer papers wouldn't have given an indication that his interest in transferring followed a cold call (if indeed it had) or internet promotion offering early access to pension funds. And, given the guidance in place at the time, there was no expectation Scottish Widows to contact Mr L to see how his transfer had come about. And I haven't seen anything that Scottish Widows would, reasonably, have been aware of about the parties involved in the transfer that would have caused it concern.

It's important to recognise that the more extensive list of warning signs issued in 2013 hadn't yet been published, and it wouldn't therefore be reasonable to use hindsight to expect ceding schemes to act with the benefit of that guidance. This means that I can't fairly expect Scottish Widows to have considered the fact that the Scheme was recently registered (which it would have known from the HMRC registration certificate it was sent) as being suspicious. And it means I don't expect Scottish Widows to have investigated, as a matter of course, the sponsoring employer's trading status, geographical location or connections to unregulated investment companies or the various parties connected to the transfer.

Whilst not evident in this case, I'm also satisfied Scottish Widows didn't have to be alarmed at every contact it received from third parties that weren't authorised by the FSA. The FSA didn't regulate occupational pension schemes, so Mr L wouldn't have expected to find the parties running those schemes or helping to administer them (which may include liaising with a member about a transfer-in) to be authorised by the FSA. In any event, as mentioned previously, the FSA announcement about pension liberation mentioned that some advisers it regulated were involved in this very activity. So that doesn't suggest to me that, at that time, it considered the adviser's regulatory status as being a clear determining factor of whether liberation was taking place.

Where they were accompanied by the consumer's valid authority, a personal pension provider might also receive requests for information from other parties that might be engaged in some legitimate aspect of a consumer's financial affairs (accountants, tax or legal advisers, credit brokers, debt charities, introducers to authorised financial advisers and so on). But none of these other activities were required to be authorised by the FSA at the time either.

I would expect an FSA-regulated personal pension provider at that time to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer request promptly (and in line with a member's legal rights). Taking all of this into account, and particularly where transfers to occupational schemes were concerned, my view is that it wouldn't have been practicable for a personal pension provider at that time, to have queried the regulatory status of every contact it had from third parties – or presume that there was a risk of harm from a third party involved in an occupational pension transfer purely because it was not FSA authorised.

<u>Conclusion</u>

At the time of Mr L's transfer, Scottish Widows would have been expected to know the receiving scheme had a PSTR and was correctly registered with HMRC. Scottish Widows had this information. Beyond that, there was no requirement or expectation for it to have undertaken more specific, detailed, anti-scam due diligence. The FSA's Principles and COBS 2.1.1R meant Scottish Widows still had to be alive to the threat of pension liberation, and other types of scam, and act accordingly when that threat was apparent. But I'm satisfied there weren't any warning signs that Scottish Widows should, reasonably, have spotted and responded to.

My final decision

My final decision is 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 L to accept or reject my decision before 23 April 2024.

Ayshea Khan

Ombudsman