DRN-3602793

The complaint

Mr S complained about a transfer of a Scottish Widows Limited ("SWL") personal pension to an occupational scheme known as the Carrick Harbours Retirement Benefits Scheme ("Carrick Harbours RBS"). The transfer took place in February 2013.

Mr S says SWL 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 he says was required of transferring schemes at the time. Mr S says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if SWL had acted as it should have done.

What happened

On 21 September 2012 Carrick Harbours Limited ("CHL") was incorporated as a limited company. And Carrick Harbours RBS was registered by HM Revenue & Customs (HMRC) on 27 September 2012. CHL became the sponsoring employer for Carrick Harbours RBS and was administered by Marley Administration Services Limited ("Marley").

Mr S had only recently come out of a trust deed, a type of alternative to bankruptcy. It seems his insolvency practitioner at the time recommended that Mr S should speak with someone to help better organise his personal finances. Mr S did this and says his interest in investing his existing SWL pension differently followed a meeting with an unregulated introducer who presented him with the idea of transferring his pension. Mr S believed his pension would be invested into hotel rooms in Scotland and would receive a return of 8% per year which would then fund his pension pot going forward. He was told he'd need to move his pension from SWL to a new scheme to facilitate this.

In December 2012, Mr S signed a letter of authority from himself to obtain details and transfer documents in relation to his existing pension with SWL. SWL confirms it received the request from Mr S who provided a 'care-of' address. SWL says the request wasn't on any company headed paper and it carried Mr S's verified personal details, including his home address, national insurance number and pension policy number. It was signed and dated by Mr S and so on that basis SWL deemed it reasonable to accept the information request as a valid instruction from the policyholder. The relevant information was duly sent to the 'care-of' address provided for Mr S's attention, on 10 January 2013.

Marley, the administrator of Carrick Harbours RBS, then wrote to SWL requesting it to transfer Mr S's SWL pension. This letter wasn't dated, but it appears as date stamped by SWL on 15 February 2013. In its covering letter it provided (amongst other things) Carrick Harbours RBS's Pension Scheme Tax Reference ("PSTR") number and details of the bank account the transfer payment was to be paid into. Included in the transfer papers were the scheme's HMRC registration certificate and further information on the scheme. Mr S's signed transfer discharge forms were also included.

Mr S's pension was transferred on 18 February 2013, his transfer value was £2,200.31. He was 41 years old at the time.

In April 2013, The Pensions Regulator ("TPR") announced that it had appointed independent trustees to the Carrick Harbours RBS because of concerns that it had been used as a vehicle for pension liberation, or was simply just a scam where members were at risk of losing all of their pension fund. 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. Further statements from the independent trustee followed.

In August 2020, Mr S complained to SWL. Briefly, his argument is that SWL ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including (but not limited to) the following: the scheme was newly registered, he didn't work for the sponsoring employer and he had been advised by an unregulated business.

SWL didn't uphold Mr S's complaint. It said Mr S 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.

One of our investigators looked into the complaint and said it shouldn't be upheld. Mr S still disagreed, 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.

Having done this, I'm not upholding this complaint.

The relevant rules and guidance

Before I explain my reasoning, it will be useful to set out the environment SWL 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 about the dangers of "pension unlocking" which 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 S's transfer, SWL 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). For reasons that I will come on to, the campaign came too late to impact on Mr S'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 S's transfer and that, realistically, it wasn't until after this transfer that scheme administrators had specific anti-liberation guidance I'd expect to be followed.

What did SWL do and was it enough?

With the above in mind, at the time of Mr S's transfer, personal pension providers had to make sure the receiving scheme was validly registered with HMRC. SWL had the scheme's HMRC registration certificate, and PSTR, so it could tell Carrick Harbours RBS was a type of occupational pension scheme and 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 SWL at the time of the transfer process. And given the guidance in place at the time, there was no expectation for SWL to contact Mr S to see how his transfer had come about. I also haven't seen anything that SWL 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 February 2013 hadn't yet been published by the regulator when almost all of the activities in relation to Mr S's transfer were taking place. So, 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 SWL to have considered the fact that the scheme was registered relatively recently, around five months before. And it means I don't expect SWL 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.

I'm also satisfied SWL didn't have to be alarmed at every contact it received from third parties that weren't authorised by the FSA. In this case, most contacts were in late 2012 or January 2013. The FSA didn't regulate occupational pension schemes, so SWL 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 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. So sending information to Marley ahead of the transfer, which SWL did, wasn't problematic in itself and it wasn't something it needed to be mindful of when it came to processing the transfer. And when SWL received the transfer request itself, it came directly from the occupational scheme (or those administering it), which again did not require FSA authorisation.

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.

Additional arguments

An unusual feature of this case is that, as I've described above, the formal request to transfer Mr S's funds to the new scheme was probably made on 14 February 2013 and received the next day by SWL (as stamped in SWL's post room). We know that this, by coincidence, was the same day that the regulator launched its Scorpion campaign. However, the transfer pack request was made before the Scorpion guidance was even launched, meaning the Scorpion insert couldn't have been sent.

Mr S's representative in bringing this complaint asks me to consider that the Scorpion campaign did not come "out of the blue" and the matters of pension liberation and scams which had been of concern for some time should have been known to SWL. I do understand the point being made.

But I don't think it was SWL's role to anticipate what action the regulator may or may not take in relation to various industry-wide concerns about scamming or liberation matters. In effect, I think the launch of the Scorpion campaign on 14 February 2013 marked a significant inflection point in the financial services sector as far as pension transferring was concerned. And after that date I'd have expected firms to first digest the new guidance and then start changing their processes if required.

Of course, I've considered in this case that although the process of transferring began long before the Scorpion campaign, the actual transfer request was received at SWL offices and date stamped as 15 February. But given all the other factors, I don't think it's a fair expectation to have stopped a process that was already underway and had been for several months. This would have given SWL just the one full working day to have changed course and ceased a transfer already underway. As I say, the relevant actions here commenced substantially before this date, with the setting up of the sponsoring employer, the establishment of the new pension scheme and the request for information all happening well before the regulator's launch date. By the time the formal request was made, the campaign launch was only just being launched – on that same day. The transfer was immediately put in place and the monies were transferred on the next working day, after the request was received by SWL. So I don't think in this particular case that SWL would have been expected to have substantially changed its approach to a request which was already being processed.

Conclusion

At the time of Mr S's transfer, SWL would have been expected to know what type of scheme it was transferring to and that it was correctly registered with HMRC. SWL had this information. Beyond that, there was no requirement or expectation for it to have undertaken more specific, detailed, anti-scam due diligence in this particular case. The FSA's Principles and COBS 2.1.1R meant SWL 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 SWL should, reasonably, have spotted and responded to.

I'm very sorry to disappoint Mr S.

My final decision

For the reasons given above, I don't uphold this complaint.

Scottish Widows Limited doesn't need to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 12 June 2024.

Michael Campbell
Ombudsman