DRN-4495873

## The complaint

Mrs O complains about Scottish Widows Limited's handling of her request to transfer her personal pension to a small self-administered scheme (SSAS).

Mrs O's husband, Mr O, largely dealt with Scottish Widows in connection with her transfer request (as he made a similar request of his own around the same time). He also represents Mrs O in bringing this complaint. For ease of reading, I'll largely refer to the actions as being Mrs O's.

## What happened

Mrs O held a personal pension with Scottish Widows.

On 27 October 2022, she signed a trust deed relating to a SSAS set up jointly with Mr O. The scheme was registered with HMRC in late December 2022.

Mrs O asked Scottish Widows to send her some paperwork to complete – a transfer 'pack'.

It's not completely clear when, but it appears Mrs O asked Scottish Widows to sell her funds to cash in anticipation that, once her transfer request was submitted, it would progress fairly quickly. According to what Mrs O's representative told us, they also had some concern about the uncertainty of the financial markets.

Scottish Widows said it received some paperwork to facilitate the transfer on 1 March 2023. On 22 March 2023, the claims team wrote to Mrs O for further information, which she provided the following day.

Mrs O initially complained to the Financial Ombudsman Service in May 2023 about Scottish Widows delays in dealing with the transfer. We contacted Scottish Widows on her behalf.

It wasn't until June 2023 that Scottish Widows realised it didn't have everything it needed from Mrs O to review the transfer request. It then requested further information from her.

Mrs O provided:

- a promotional leaflet relating to the scheme administrator, which she'd downloaded as part of her enquiries;
- confirmation that the scheme itself didn't have investments within it. The purpose was for scheme members to self-invest. She said she hadn't yet decided how to invest her funds;
- confirmation that as soon as funds were deposited, the scheme would be registered with the Pensions Regulator (TPR);
- another copy of the trust deeds;
- confirmation that she'd been continuously employed by the sponsoring employer (as a director of the company) with effect from 12 May 2013;
- confirmation that the employer wasn't making pension contributions on her behalf, and neither was she taking a wage from the company;

- proof of earnings from rental properties owned jointly with Mr O (as shown on bank statements) for the previous three months;
- confirmation she'd carried out her own due diligence into SSAS'. That led her to set up her own SSAS.
- she hadn't taken regulated financial advice in connection with the pension transfer.

Around 17 July 2023, Scottish Widows sent the additional information from Mrs O to its review team to consider.

Scottish Widows responded to the complaint on 10 August 2023. It recognised that it had taken an excessive amount of time to review the documents that Mrs O submitted in support of her transfer request. And it accepted that it didn't notice until June 2023 that it hadn't received everything it needed. On top of that, it said it received a number of calls from Mr O (as Mrs O's representative) between 27 March 2023 and 26 May 2023 to chase progress on her transfer. During one particular call on 23 May 2023, it gave Mr O the impression that the transfer was in the final stages of being checked and would likely complete by the end of that week. That wasn't correct, so it accepted that Mrs O's expectations were unnecessarily raised. In fact, it said it had decided to refuse the transfer and would be writing to Mrs O about this under separate cover. Scottish Widows paid Mrs O £250 compensation to recognise the impact of its poor service.

Scottish Widows wrote to Mrs O on 17 August 2023. It said:

"*WE WON'T BE TRANSFERRING YOUR PENSION"*

*You asked us to transfer your pension to [name of scheme] administered by [name of administrator].*

*We will not transfer your pension to that pension scheme.*

*We'll consider a new transfer request to a different scheme in future".*

It told Mrs O that she didn't have a legal right to transfer and that it had decided not to exercise its discretionary powers to allow the transfer to go ahead. It asked if she wished to reinvest her funds (which were still held in cash) in light of its decision. If so, she needed to get in touch.

Mrs O wasn't happy with Scottish Widows' response. One of our Investigators looked into the complaint. He explained the background to Scottish Widows and other pension providers being required to carry out additional checks in relation to pension transfers. He said that Scottish Widows didn't need to prove conclusively that Mrs O's pension was at risk of a scam. But if it identified information that gave cause for concern, it needed to take reasonable action to protect Mrs O's pension. In this case, having refused the transfer completely, the Investigator was satisfied that Scottish Widows had adhered to its regulatory responsibilities and other guidance. However, he wasn't satisfied that it had communicated with Mrs O in a clear way regarding its decision, which was another requirement of the guidance. He recommended that Scottish Widows pay Mrs O an additional £250 compensation (on top of £250 it had already paid) to recognise the impact of its unclear communication.

Mrs O had also suggested she may have lost out on investment growth whilst she was waiting for Scottish Widows to complete the transfer and her funds were held in cash. But the Investigator said he wouldn't be asking Scottish Widows to calculate a loss assessment to reflect the period the funds weren't invested as she'd failed to mitigate her loss. In any event, the Investigator said there was no guarantee Mrs O had lost out by leaving the funds disinvested for a period.

Scottish Widows questioned the rationale for the Investigator recommending an additional £250 in compensation, particularly as it was Mr O who had mostly been chasing progress on Mrs O's transfer request.

Mrs O didn't accept the Investigator's opinion either. At the very least, she felt that Scottish Widows should cover the fees she incurred in relation to the SSAS.

The Investigator wasn't persuaded to change his opinion, so the complaint 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.

Mrs O's complaint to this Service centres on what she sees as Scottish Widows' unreasonable delays and actions in refusing her pension transfer. Added to that, she feels she's incurred SSAS fees unnecessarily and may have lost out on some investment growth whilst her funds were held in cash.

I can understand why Mrs O feels strongly about all of this.

I should make it clear upfront though that it's not for me to tell a business like Scottish Widows that it should approve a pension transfer (in any event, I understand that Mrs O has since transferred her pension to another provider).

My role here is to say whether Scottish Widows acted fairly and reasonably overall, in the context of its regulatory responsibilities and what would otherwise be seen as good practice.

*The regulations and guidance in place at the time of Mrs O's transfer request*

Over time, there have been renewed expectations placed on pension providers like Scottish Widows to carefully consider any transfer requests they receive in the wake of increasing pension scams. Indeed, if a provider is found not to have exercised due care and attention when approving a transfer, they could well be held responsible for any losses the member suffered.

The Pensions Regulator (TPR) and other bodies have developed guidance, the purpose of which is to highlight factors that might indicate a member's pension is at risk of a scam.

Those include the Code of Good Practice "Combating Pension Scams" produced by the Pensions Scams Industry Group (PSIG). The Code is voluntary and is intended for use by providers and others by suggesting the type of due diligence to follow when considering a transfer request.

More recently The Pensions Schemes Act 2021 was introduced along with The Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021. Those gave providers additional responsibilities to ensure that certain conditions were met in order for a transfer to go ahead. Where a statutory right to transfer exists, businesses are generally expected to complete the process within six months where possible.

In practical terms providers like Scottish Widows were expected to respond if they thought there were risk factors present when considering a transfer request. Any additional steps taken were expected to be reasonable and proportionate and were intended to act as an important safeguard to the member.

In addition to the above, Scottish Widows had other obligations in line with the FCA Principles (PRIN) and the Conduct of Business Sourcebook (COBS). Those include, but are not limited to, Principle 2, which says "*a firm must conduct its business with due skill; care and diligence".*

It's against that backdrop that I've considered Scottish Widows' actions.

*The refusal to transfer*

TPR's guidance says that there are some receiving schemes to which a statutory transfer can proceed with no further checks. Those include public service schemes; authorised master trusts and collective defined contribution schemes. The scheme Mrs O wanted to transfer to wasn't one of those, so, according to the guidance, Scottish Widows had to carry out further checks. I'm satisfied, from the evidence I've seen, that Scottish Widows did look into things further.

As Mrs O's transfer request didn't satisfy condition one (as described above) the types of things Scottish Widows needed to consider were whether there was an employment link between Mrs O and the employer sponsoring the scheme; an overseas residency and factors that would otherwise constitute red or amber flags (examples of which are set out in the guidance). The next steps to be taken largely depended on which amber or red flags may have been triggered.

For instance, a lack of employment link or an overseas residency might constitute an amber flag. In those circumstances, a provider might refer the member to Moneyhelper (a free and impartial guidance service) before completing the transfer. A red flag might be triggered where a member has been persuaded to transfer their pension following unsolicited contact or has otherwise been pressured to make the transfer (there are other examples of red flags within the guidance). If a provider doesn't feel able to reach a decision, they can make a formal request for further information from the member. After making this formal request, the guidance says that they must then decide if red flags are present. If they decide there are, they must refuse the transfer.

The guidance talks about the provider needing to reach a decision on the balance of probabilities. That is, it needed to have a reasonable foundation, on all the evidence and information available, that there is a red flag present. It doesn't need to prove this conclusively. I think that's an important distinction.

I've thought about whether Scottish Widows' actions and subsequent decision complied with the guidance and regulations.

It wasn't immediately clear, given some of the information that Mrs O supplied (such as the employer not making pension contributions on her behalf and the proposed investments being unclear), why Scottish Widows didn't refer her to Moneyhelper. I say that because according to the TPR guidance, these would almost certainly constitute amber flags that might prompt a referral to Moneyhelper.

It seems likely that this step wasn't taken due to the presence of other factors that Scottish Widows thought were likely to constitute red flags. In its decision letter to Mrs O, Scottish Widows alluded to the fact that it had concerns about the receiving scheme/the administrator (or both). This is one of the things that the PSIG guidance specifically asks providers and others to look out for in order to satisfy themselves that the receiving scheme or administrator weren't involved in pension scams.

Scottish Widows then talked about Mrs O's statutory right to transfer having been removed. And whilst it hasn't specifically said there was a red flag present, given what it said in its decision letter, I'm satisfied that's the likely conclusion it drew. Therefore, on balance, it seems likely that Scottish Widows decided not to transfer Mrs O's pension on the basis that it thought red flags were present. As I've mentioned, it's permitted to do that within the guidance, even if it hasn't been able to say conclusively that's the case. I have to keep in mind too that it's equally possible Scottish Widows concerns went further than what is set out in the TPR guidance or PSIG Code of Good Practice.

Overall, based on what I've seen, I'm not persuaded that Scottish Widows acted unreasonably when refusing the transfer. I say that in particular because the purpose in doing so was to protect Mrs O's pension from being put at risk. Indeed, had Scottish Widows allowed the transfer to go ahead, it might have been deemed responsible for any losses Mrs O's pension may have suffered.

However, I'm inclined to agree with our Investigator in saying that I don't think Scottish Widows communicated with Mrs O in as clear a way as it might have done, or as the guidance expects it to. In my opinion, that led to unnecessary confusion and frustration.

The guidance says:

*It's important that you clearly communicate with the member that their transfer has been refused because there are circumstances present that remove the statutory right to transfer and that the member is at risk of being scammed".*

When communicating the decision, Scottish Widows told Mrs O about the extra checks it needed to perform and the additional precautions it was required to take to protect members' pensions. It also apologised to her for any inconvenience caused by its decision and hoped she could appreciate the need for it to be vigilant in order to protect her pension. I think it was reasonable for Scottish Widows to 'set the scene' here about the additional checks it was required to perform and recognise the likely disappointment Mrs O would suffer because of its decision to refuse the transfer.

However, I'm not persuaded those steps went far enough in helping Mrs O to understand *how* it arrived at its decision.

In saying that, I'm not suggesting that Scottish Widows needed to go into precise detail about all of the red flags or other factors it was concerned about. But I think it needed to communicate with Mrs O in such a way that she had a reasonable understanding why it made the decision it had.  I touched on some of the key information contained within Scottish Widows decision earlier on.

At the very least, and as the guidance suggests, I think Scottish Widows should have told Mrs O that there were factors associated with her transfer that meant her statutory right to a transfer had been removed. And, at the same time I think it should have said, in clear terms, that it felt her pension might have been at risk of a scam. Had Scottish Widows explained things in such a way, I think Mrs O would have had a better understanding about the decision. Indeed, she may even have felt comforted by the action it had taken to safeguard her pension. I'll set out later on what Scottish Widows needs to do about that now.

*Did Scottish Widows cause delays?*

Scottish Widows itself accepts that it caused delays. For instance, it recognises that having received more information from Mrs O in mid-March 2023, it didn't realise until early June 2023 that it still didn't have everything it needed to review the transfer request. It then had to request further information from her, which it received around early July 2023. Having then sent that information to the review team over a week later, it then took a further month before the decision was made to refuse the transfer. Given this timeline and Scottish Widows own acceptance, I agree that it didn't always act in a timely way. And it's already paid £250 compensation to recognise the impact of those delays. I'll return to this later when deciding whether Scottish Widows needs to do anything more to put things right.

*Is Scottish Widows responsible for a loss in investment growth?*

Mrs O says she expects Scottish Widows to put right the loss her investment suffered whilst it was 'frozen'. I've taken that to mean any loss the fund potentially suffered whilst it was disinvested and was held in a cash account.

I've thought very carefully about this point. But I'm not persuaded by Mrs O's position here.

The evidence suggests she asked Scottish Widows to sell her funds into cash early on in anticipation of the transfer going ahead quickly. Mrs O's representative, Mr O, also explained to our Service that they were concerned about market uncertainty at the time.

And whilst Scottish Widows could perhaps have explained to Mrs O that its checks might take some time (it's not clear if it did that), given her apparent concerns about market uncertainty in particular, I'm not persuaded it would necessarily have made a difference here. Ultimately selling down the funds into cash appears to have been Mrs O's decision. A decision that she's entitled to take.

I don't necessarily think Scottish Widows was required to remind Mrs O that her fund remained in cash whilst the transfer request was being considered. But I can see that it did so at least at the point that it communicated its decision to refuse the transfer. It also seems likely that Mrs O had an earlier reminder, as I've seen evidence that Scottish Widows mentioned the potential for reinvestment to Mrs O's husband (who was also her representative) around March 2023. I've seen no persuasive evidence to suggest that Mrs O opted to reinvest the funds around that time - or later when mentioned by Scottish Widows.

Taking all of this together, I'm not persuaded that Scottish Widows is responsible for any loss in fund value that might have occurred - if indeed there is a loss - whilst the funds remained in cash. So, I won't be directing it to do anything more here.

*Should Scottish Widows reimburse Mrs O's SSAS fees?*

Mrs O thinks at the very least, Scottish Widows should reimburse her SSAS fees. Whilst I've given careful thought to her position, I don't agree. So, I won't be directing Scottish Widows to reimburse the fees Mrs O has referred to.

The SSAS wasn't something that was set up on Scottish Widows say so. And whilst there is evidence to show that in May 2023, Scottish Widows gave the (incorrect) impression that the pension transfer was imminent, it wasn't the case that Mrs O opened the SSAS on the strength of that update. The evidence shows that she signed the trust deeds in October 2022 and the SSAS was registered in December 2022. In other words, it was set up some months before Mrs O completed pension transfer forms. Again, it would seem that she did this in anticipation of the transfer being approved - and quickly. Therefore, in these circumstances, Scottish Widows isn't responsible for any fees Mrs O incurred in relation to the SSAS, so it wouldn't be fair to say it should pay an amount equivalent to those fees now.

*Has Scottish Widows done enough to put things right?*

As I touched on earlier, Scottish Widows recognised that it had taken an excessive amount of time to review the documents that Mrs O submitted in support of her transfer request. And it accepted that it didn't notice until June 2023 that it hadn't received everything it needed from her. On top of that, it acknowledged that it had mismanaged her expectations when telling her representative, Mr O, that the transfer would be completed imminently when that wasn't the case and it was subsequently refused. I've thought about whether the £250 compensation Scottish Widows has already paid fairly reflects the impact of its handling of things overall.

And, on balance, I'm not persuaded it does.

I note the point that Scottish Widows made, which is that it was Mr O, not Mrs O, who was chasing it for updates. But my focus here is not on the time it took to chase updates from Scottish Widows, but on the impact all of this had on Mrs O. In addition to the delays; there was the piecemeal nature of Scottish Widows requests for information and; the miscommunication about whether the transfer was to be approved or not. In addition, I don't think Scottish Widows has been as clear as it could have been about the reasons for its refusal to transfer decision. As I said earlier, I'm not suggesting it needed to outline everything that it was concerned about. But I think it needed to say enough so that Mrs O could understand the basis for the decision. I don't think its communication did that. And I think it's likely that Mrs O would have been left feeling confused and even more frustrated as a result. To recognise this, I'm going to award an additional £250 compensation on top of the £250 that Scottish Widows has already paid. I'm satisfied that a compensation payment of £500 in total (including the £250 already paid) fairly recognises the impact of Scottish Widows shortcomings here.

**My final decision**

I uphold this complaint in part.

Scottish Widows Limited should pay Mrs O £250 in compensation to recognise the impact of the service issues I've outlined in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 27 September 2024.

Amanda Scott
**Ombudsman**