DRN-4495984

The complaint

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

What happened

Mr O held a personal pension with Scottish Widows.

On 27 October 2022, he signed a trust deed relating to a SSAS set up jointly with his wife, Mrs O. The SSAS was registered with HMRC in late December 2022.

Mr O asked Scottish Widows for a transfer value on his pension and a transfer 'pack' in relation to a proposed transfer.

According to Mr O's account, he 'froze' his pension around January 2023, as he believed a pension transfer would be dealt with quite quickly. He also told us that he had some concerns about uncertain market conditions around that time, which appears to have been a factor in Mr O opting to sell his fund into cash.

Scottish Widows received some information from Mr O around 1 March 2023. It included the name of the SSAS he wanted to transfer his pension to along with the scheme administrator's details.

Scottish Widows wrote to Mr O on 8 March 2023. Its letter was headed "*We need you to think carefully about your request to transfer your pension".* It enclosed a leaflet about pension scams and explained that if Mr O decided to go ahead, it would likely need more information from him. It said that, depending on his response, it may direct him to seek further information from HMRC or guidance from MoneyHelper (a free and impartial guidance service). It also told Mr O that it may not be able to transfer his pension at all. It explained, amongst other things, that the transfer needed to meet certain statutory conditions. And if those weren't met, then Mr O may lose the right to transfer. In the meantime, as Mr O's funds were held in a control account, inflation could effectively reduce their value if they remained there. Scottish Widows suggested that if Mr O preferred to reinvest these amounts until its checks were complete, he should get in touch.

Mr O completed further documentation on 14 March 2023 (Scottish Widows received his information a few days later). Amongst other things, he said:

- he wanted to have more control over his pension with a view to investing in a wide range of products;
- he fully understood the risks involved in the proposed transfer, as he'd carried out his own research into the administrator of the scheme he wanted to transfer to. He'd also received a key features document relating to the scheme;
- he wasn't approached about transferring his pension;
- he hadn't been told about incentives for making the transfer, nor had he been promised a "time limited" offer or guaranteed rates of return on his investment;

- he hadn't taken financial advice before setting up the SSAS, but he'd carried out his own research into it. He thought transferring to a SSAS would give him more flexibility;
- he hadn't made other transfer requests (concerning other pensions) which had since been refused;
- he was self-investing, so he'd decide, following the transfer, which investments to make. He indicated he wasn't looking to invest overseas;
- he didn't think the investments sounded like the kind of scams he'd been warned about in an FCA warning list;
- his pension would initially be held in a cash account;
- although he was looking to make UK based investments, he indicated that none would be regulated by the Financial Conduct Authority (FCA);
- he indicated he knew the costs associated with his new pension arrangement;
- the sponsoring employer of the SSAS (a company that Mr O was a director of) was still actively trading but wasn't at that point intending to make pension contributions to the SSAS;
- he'd provided a copy of the trust deed for the SSAS dated 27 October 2022.

Scottish Widows told Mr O around 20 March 2023 that it needed a new HMRC certificate, as it had to be dated within the last 30 days. Mr O provided this the following day.

Mr O initially approached the Financial Ombudsman Service in May 2023, as he wasn't happy about Scottish Widows delays when dealing with his transfer request. He said he wanted his pension to be transferred; to be compensated for the time spent trying to resolve the situation, and for any losses incurred whilst his pension was 'frozen'. We contacted Scottish Widows on his behalf.

In early June 2023, Scottish Widows told Mr O that it didn't have all of the information it needed to consider the transfer request. For instance, it wanted to know what information he'd been given about the scheme administrator and the investments available within the receiving scheme. And, in order to have a statutory right to transfer, it said he'd need to be an earner in some form. It asked for evidence of earnings Mr O had received from any other source in the last three months.

In addition to the information referred to above, Mr O provided:

- a promotional leaflet relating to the scheme administrator, which he'd downloaded as part of his enquiries;
- confirmation that as soon as funds were deposited, the scheme would be registered with the Pensions Regulator (TPR);
- another copy of the trust deeds;
- bank statements showing proof of earnings from rental properties for the previous three months.

Scottish Widows responded to the complaint on 10 August 2023. Whilst pointing out that it had a responsibility to make sure its customers' funds were safe, it accepted it took too long to review the documentation Mr O provided. It also acknowledged that it hadn't otherwise provided a good customer service – particularly between the period 27 March 2023 and 26 May 2023. It referred to Mr O's repeated requests to speak to a manager, which were denied; promised call backs didn't materialise; calls were dropped in mid-progress; Mr O was kept on hold for an inappropriate amount of time and a particular call was ended without warning. In addition, during a call on 23 May 2023, Scottish Widows told Mr O that the transfer was in the final stages of processing, and it hoped it would be completed by the end of the week. That wasn't correct, so it accepted it had unnecessarily raised Mr O's expectations. In fact, it had made the decision not to proceed with the transfer and said it would be writing to Mr O separately about that. It paid him £250 compensation in respect of the service issues it had identified.

Scottish Widows wrote to Mr O on 16 August 2023. Its letter was entitled:

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 also referred to the additional checks and extra precautions it was required to take in light of the increase in pension scams. Following its checks, it said Mr O didn't have a legal right to a transfer. It had also considered whether to use its discretionary powers to allow the transfer. But it had decided not to exercise its discretion in Mr O's particular case. It again asked Mr O if he wished to reinvest his funds (which were still held in cash) in light of its decision.

I understand Mr O has subsequently transferred his Scottish Widows pension to another provider.

Mr O wasn't happy with Scottish Widows response. One of our Investigators looked into the complaint. Whilst he was satisfied that, overall, Scottish Widows had complied with the regulations and guidance concerning pension transfers, he didn't think the £250 compensation it offered fairly recognised the unacceptable delays, or the lack of clear communication, concerning the transfer. The Investigator recommended that Scottish Widows pay Mr O an additional £250 compensation, making £500 in total.

Scottish Widows questioned the amount of compensation recommended – especially as it had already recognised the impact of its delays. And it didn't think the Investigator had fully explained why an additional amount was recommended.

Mr O disagreed with the Investigator's assessment. He said he was upset and disappointed and had received no evidence or facts about why Scottish Widows had been unable to transfer his pension. He added that the compensation awarded didn't cover the stress and aggravation he'd endured. He also said he'd been left out of pocket for around £5,000 (plus other expenditure on top) as he still had to pay the SSAS administrator for the setting up and closure of the SSAS. He said as a minimum he expected to be compensated for that amount.

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.

Mr O's complaint to this Service centres on what he sees as Scottish Widows unreasonable delays and actions in refusing his pension transfer. Added to that, he expects to be compensated for the SSAS fees he incurred unnecessarily and thinks he may have lost out on some investment growth whilst his funds were held in cash.

I've listened to calls between Mr O and this Service. As far as Mr O's concerned, Scottish Widows continually stalled the pension transfer, even though it was his money to do what he wants with. I can understand Mr O's strength of feeling about what happened.

I should make it clear upfront though that it's not for me to tell a business like Scottish Widows it should definitely approve a pension transfer. That's because, increasingly, there have been renewed expectations placed on pension providers to carefully consider any transfer requests in the wake of pension scams, which have been evolving in nature. In any event, it appears that Mr O has already transferred his pension to a different scheme than the one originally intended.

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 Mr 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.

One such piece of guidance is the Code of Good Practice "Combating Pension Scams" produced by the Pensions Scams Industry Group (PSIG), which is endorsed by TPR and other bodies, including the FCA. 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. Over time, it's been updated to ensure businesses stay abreast of emerging pension scams.

More recently The Pensions Schemes Act 2021 was introduced along with The Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021. Those gave pension 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 businesses 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 Mr 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 Mr 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 Mr 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 present.

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 for guidance 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 needs 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 not to allow the transfer complied with the guidance and regulations.

It wasn't immediately clear, given some of the information that Mr O supplied (such as the employer not making pension contributions on his behalf and the proposed investments being unclear), why Scottish Widows didn't refer him to Moneyhelper. I say that because according to the TPR guidance, these would almost certainly constitute amber flags. And Scottish Widows had already indicated to Mr O that he might need to seek Moneyhelper guidance in those circumstances.

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 Mr 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 mentioned Mr 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 Mr 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 Mr O's pension from being put at risk. Indeed, had Scottish Widows allowed the transfer to go ahead, it might then have been deemed responsible for any losses Mr O's pension may have suffered.

However, I'm inclined to agree with our Investigator here in saying that I don't think Scottish Widows communicated with Mr 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 Mr 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 him for any inconvenience caused by its decision and hoped he appreciated the need for it to be vigilant in order to protect his pension. I think it was reasonable for Scottish Widows to 'set the scene' here about the checks it was required to perform and recognise the likely disappointment arising from its decision to refuse the transfer.

However, I'm not persuaded those steps went far enough in helping Mr 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 Mr O in such a way that he 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 Mr O that there were factors associated with his transfer that meant his 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 his pension might have been at risk of as scam. Had Scottish Widows explained things in this way, I think Mr O would have had a better understanding about the decision. Indeed, he may even have felt comforted by the action it had taken to safeguard his pension. I'll set out later on what I think it needs to do to address the shortcomings I've identified.

Did Scottish Widows cause delays?

Scottish Widows itself accepts that it caused delays. For instance, it recognises that having received more information from Mr 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 Mr O, which it received in early July 2023. But it then took at least 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 in this decision.

Is Scottish Widows responsible for a loss in investment growth?

Mr O says he expects Scottish Widows to put right the loss his 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 Mr O's position here. Mr O's evidence suggests he asked Scottish Widows to sell his funds into cash as early as January 2023 – before Scottish Widows apparently had any information relating to the proposed transfer. That seems to have happened in anticipation of the transfer going ahead quickly. Mr O also explained to our Service that he was concerned about market conditions at the time.

And whilst Scottish Widows could perhaps have explained to Mr O that its checks might take some time (it's not clear if it did that), given his 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 Mr O's decision. A decision that he's entitled to take.

I don't necessarily think Scottish Widows was required to remind Mr O that his fund remained in cash whilst the transfer request was being considered. But I can see it did so on at least two occasions – March and August 2023. I've seen no persuasive evidence to suggest that Mr O opted to reinvest the funds around that time.

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 Mr O's SSAS fees?

Mr O thinks at the very least, Scottish Widows should reimburse his SSAS fees amounting to about £5,000. Whilst I've given careful thought to his position, I don't agree. So, I won't be directing Scottish Widows to reimburse the fees Mr 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 Mr O opened the SSAS on the strength of that update. The evidence shows that he signed the trust deeds in October 2022 and the SSAS was registered in December 2022. So, clearly, it was set up some months before Mr O completed pension transfer forms. Again, it would seem that he did this in anticipation of the transfer being approved. Therefore, in these circumstances, Scottish Widows isn't responsible for any fees Mr 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 recognises that it caused delays; mismanaged expectations about whether the transfer was going to be approved or not and didn't always offer the best customer service. It's mentioned several examples to illustrate that point.

When thinking about whether Scottish Widows has done enough to put things right, my focus isn't about the time it took Mr O to chase updates from Scottish Widows. It's about the impact that Scottish Widows actions had on him (I've addressed the impact on his wife, Mrs O, in a separate decision), including any frustration caused in having to chase updates if Scottish Widows didn't manage his expectations properly.

I recognise that the £250 compensation paid has already gone some way to recognise the impact of Scottish Widows' actions on Mr O. But, on balance, I don't think it goes far enough. In particular, I don't think Scottish Widows has recognised the impact of its refusal to transfer decision not being as clear as it could have been.

In his communication to this Service, Mr O described his upset and disappointment at Scottish Widows decision, in particular, because he'd received no evidence or facts to explain why the transfer couldn't be approved. I can understand his position. And, as I said earlier, I'm not suggesting Scottish Widows needed to outline everything that it was concerned about. But I think it needed to say enough so that Mr O could understand the basis for the decision. I don't think its communication did that.

The upshot was that I think Mr O would have been left feeling confused and even more frustrated as a result of the communication. 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 Mr O a further £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 Mr O to accept or reject my decision before 27 September 2024.

Amanda Scott
Ombudsman