

The complaint

Mr C has complained about the transfer of his Scottish Widows Limited ('SW') personal pension to the Focusplay Retirement Benefits Scheme ('FRBS') – an occupational pension scheme ('OPS') in June 2014. Mr C says the investments subsequently made now appear to have little value and he has lost out financially as a result.

Mr C says SW 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 C says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if SW had acted as it should have done.

What happened

On 22 January 2013, a business called Pension Matters Associates Limited ('PMAL') wrote to SW requesting a valuation and transfer papers for Mr C's pension. Enclosed was a letter of authority Mr C had signed a few days earlier. PMAL was not authorised or regulated by the Financial Services Authority ('FSA') – the regulator at the time. Nor was it authorised at a later time by the FSA's successor, the Financial Conduct Authority ('FCA').

SW says it replied directly to PMAL on 29 January 2013, providing the requested information and documents.

I'm unaware of any immediate further action on the matter until 14 May 2014 when Gleeson Bessent Trustee Services Limited ('GBTSL') wrote to SW enclosing another letter of authority from Mr C and discharge documentation. It said Mr C was requesting that SW transfer his benefits to the FRBS, which it explained was a *"contracted-in defined contribution occupational pension scheme"*. And it said the scheme was willing and able to accept the transfer. GBTSL was also not regulated or authorised by the FSA / FCA.

Enclosed with the application to transfer was the transfer declaration form, signed by Mr C. SW has said that this is the form that it had sent to PMAL. The trust deed and scheme rules for the FRBS was also provided. This recorded that the deed was made in April 2013, when the scheme was established, and noted that GBTSL was the first trustee of the scheme and also that it had administrative responsibility for it. Also provided was a letter and screenshots showing that the scheme was registered with HMRC on 2 May 2013 and details of the scheme that were recorded with the Pensions Regulator ('TPR').

On 11 June 2014, SW wrote to Mr C to confirm it had received a request to transfer his pension benefits. The letter said to contact it if he hadn't requested this. Otherwise, the letter was for information only.

On 17 June 2014, SW wrote to Mr C again confirming it had transferred his pension benefits as requested, had sent a payment of £11,569.44 to the new provider and had cancelled his existing policy. Mr C was 47 years old at the time.

In May 2017, owing to concerns over the management of the FRBS, TPR appointed Dalriada Trustees Limited ('Dalriada') as its independent trustees. Announcements from Dalriada have explained that investments through the FRBS were largely unregulated and that there was little prospect of any further recovery of members' funds. Dalriada also said it was exploring whether claims could be made through the Fraud Compensation Fund ('FCF').

Mr C complained to SW in February 2022. Briefly he said SW had failed to carry out appropriate due diligence, which would've resulted in it becoming aware of warning signs TPR talked about in its Scorpion campaign (which I cover in more detail below) being present in Mr C's transfer. But it failed to warn him about these and the risks involved with the transfer.

SW didn't uphold the complaint. It said it had checked that the receiving scheme was appropriately registered with HMRC and that it did not hold any internal information warning about the receiving scheme and administrator. SW said it also carried out further checks around the information in the transfer paperwork but these gave it no cause for concern. So, as Mr C had a right to transfer, it thought it had acted appropriately by proceeding.

The complaint was referred to the Financial Ombudsman Service. Our Investigator didn't think the complaint should be upheld. Mr C asked for an Ombudsman to review his complaint, 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.

The relevant rules and guidance

Personal pension providers are regulated by the FCA. Prior to that they were regulated by the FSA. As such SW was subject to the FSA/FCA 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/FCA rules governing pension transfer requests, but the following have particular relevance here:

- 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.

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 they may also have a right to transfer under the terms of the contract). This right came to be exploited, with people encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren't entitled to – for instance, because they were below minimum retirement age. At various points, regulators issued bulletins warning of the dangers of taking such action. But it was only from 14 February 2013 that transferring schemes had guidance to follow that was aimed at tackling pension liberation – the “Scorpion” guidance, so called because of the imagery it contained.

The Scorpion guidance was launched by TPR. It was described as a cross-government initiative by Action Fraud, The City of London Police, HMRC, the Pensions Advisory Service ('TPAS'), TPR, the SFO, and the FSA/FCA, all of which endorsed the guidance, allowing their names and logos to appear in Scorpion materials. The guidance comprised the following:

- An insert to be included in transfer packs (the 'Scorpion insert'). The insert warns readers about the dangers of agreeing to cash in a pension early and identifies a number of warning signs to look out for.
- A longer leaflet issued by TPAS which gives more information, including example scenarios, about pension liberation. Guidance provided by TPR on its website at the time said this longer leaflet was intended to be sent to members who had queries about pension liberation fraud.
- An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should “look out for” various warning signs of liberation. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where transferring schemes still had concerns, they were encouraged to write to members to warn them of the potential tax consequences of their actions; to consider delaying the transfer; to seek legal advice; and to direct the member to TPAS, TPR or Action Fraud.

TPR issued the guidance under the powers at s.12 of the Pension Act 2004. Thus, for the bodies regulated by TPR, the status of the guidance was that it provided them with information, education and/or assistance, as opposed to creating any new binding rule or legal duty. Correspondingly, the communications about the launch of the guidance were predominantly expressed in terms that made its non-obligatory status clear. So, the tenor of the guidance is essentially a set of prompts and suggestions, not requirements.

The FSA's endorsement of the Scorpion guidance was relatively informal: it didn't take the form of Handbook Guidance, because it was not issued under s.139A of the Financial Services and Markets Act ('FSMA'), which enabled the FSA to issue guidance provided it underwent a consultation process first. Nor did it constitute “confirmed industry guidance”, as can be seen by consulting the list of all such FSA/FCA guidance on its website.

I take from the above that the contents of the Scorpion guidance was essentially informational and advisory in nature and that deviating from it doesn't necessarily mean a firm has broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's statutory rights.

That said, the launch of the Scorpion guidance was an important moment in so far as it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing those requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance's specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

In those circumstances, I consider firms which received pension transfer requests needed to pay regard to the contents of the Scorpion guidance as a matter of good industry practice. It means February 2013 marks an inflection point in terms of what was expected of personal pension providers dealing with transfer requests as a matter of fulfilling their duties under the regulator's Principles and COBS 2.1.1R.

What did personal pension providers need to do?

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. And where the recommendations in the guidance applied, absent a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations. With that in mind, I take the view that personal pension providers dealing with transfer requests needed to heed the following:

1. As a first step, a ceding scheme needed to check whether the receiving scheme was validly registered.
2. When TPR launched the Scorpion guidance in February 2013, its press release said the Scorpion insert should be provided in the information sent to members requesting a transfer. It said on its website that it wanted the inclusion of the Scorpion insert in transfer packs to "become best practice". The Scorpion insert provided an important safeguard for transferring members, allowing them to consider *for themselves* the liberation threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. So, all things considered, I think the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party.
3. I also think it would be fair and reasonable for personal pension providers – operating with the regulator's Principles and COBS 2.1.1R in mind – to ensure the warnings contained in the Scorpion insert were provided in some form to a member before a transfer even if the transfer process *didn't* involve the sending of transfer packs.
4. The Scorpion guidance asked firms to look out for the tell-tale signs of pension liberation scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The action pack points to the warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. Therefore, whilst using the action pack wasn't an inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.

5. The considerations of regulated firms didn't start and end with the Scorpion guidance. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn't involve anything specifically referred to in the Scorpion guidance – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's principles and COBS 2.1.1R.

The circumstances surrounding the transfer – what does the evidence suggest happened?

Mr C says he was approached unsolicited by someone who came to his door and offered him a free pension review. He can't recall the name of the person he spoke to or which business they said they worked for. But he says that they told him they were backed by the government several times during the discussions, which reassured him. Mr C says he was told he could achieve greater returns by transferring his pension away from SW. He was given a week to think about things, with the same person returning a week later to complete relevant paperwork with him. Mr C says although he hadn't thought about transferring his pension previously, he had felt his SW pension hadn't been performing brilliantly. So, the prospect of greater returns was what drew him to transfer.

Mr C says he wasn't given guarantees and wasn't offered access to his pension or cash incentives to go ahead with the transfer. He says he wasn't given any details of how his pension funds were to be invested after the transfer. And he doesn't recall there being any direct contact between him and SW.

I think Mr C's recollection of events is plausible. For instance, I haven't seen any evidence of SW contacting Mr C about the transfer or to ask questions, beyond its letters confirming the request had been received and then that it had gone through. And I haven't seen anything that leads me to doubt he was contacted unsolicited.

Mr C was self-employed at the time and didn't work for the sponsoring employer of the FRBS. And I haven't seen anything to indicate any other connection with the receiving scheme or sponsoring employer, past or present. I've also not seen anything that suggests he had any significant experience in relation to pensions and investments. And in the circumstances, I think it is unlikely he'd have sought to transfer his benefits to the FRBS had this not been suggested to him.

As I mentioned, there were two letters of authority completed here. The first was for PMAL in 2013, when information about Mr C's pension was requested. The second was for GBTSL, the scheme administrator and trustee, when the application to transfer was made. None of the documentation suggests that any other business was involved.

Based on the timeline of events and what Mr C has said, I think it was likely PMAL that approached him about a pension review. And, given he's said this happened face to face I think it was the person that approached him, representing PMAL, that suggested transferring. I also think it is likely PMAL recommended the transfer. What it told Mr C, that he'd receive better returns by transferring than those the SW pension provided seems to have represented comparing the prospective benefits of the two schemes and suggesting the new scheme was more beneficial. I think this represented advice to transfer. And I think this advice was the catalyst for the transfer. Advice to transfer should only be provided by an appropriately regulated and authorised firm. But PMAL was unregulated and not authorised to provide advice to Mr C.

Lastly, I think Mr C has likely suffered a loss as a result of the transfer. The announcements from Dalriada are clear that the FRBS has lost money through unregulated investments and that recovering any further funds from creditors is unlikely. And as a member of the FRBS, I think Mr C has therefore incurred a loss.

What did SW do and was it enough?

The Scorpion insert:

For the reasons given above, my view is that personal pension providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information.

PMAL requested transfer information, on behalf of Mr C, before the Scorpion guidance was published and came into effect. So, SW couldn't have provided the Scorpion insert to Mr C at that time.

The next contact that SW seems to have received about a potential transfer was the application from GBTSL in May 2014. This wasn't a request for transfer information – which is when I think it would usually be reasonable for a business to provide a consumer with the Scorpion information. However, given that SW wrote to Mr C to acknowledge the transfer request, I think it would have been appropriate for it to have provided him with the Scorpion information at that time. SW acknowledges however that it didn't send Mr C the Scorpion insert.

SW has referred to a declaration it received as part of the transfer application that was signed by GBTSL. This said that GBTSL had written confirmation from Mr C that he hadn't been offered any cash or other incentive to transfer, he'd read and understood the Scorpion leaflet and he understood the consequences of attempting to access pension benefits in an unauthorised way. But we haven't seen a copy of the written confirmation, signed by Mr C, that this declaration refers to. And in any event, given GBTSL was an unregulated party that stood to gain from the transfer, I don't think it was reasonable for SW to rely on it having shared the Scorpion leaflet.

That being said, the focus of the Scorpion leaflet at the time was pension liberation, that is unauthorised access of pension benefits and particularly about methods to access pension benefits before age 55 through incentives or loans. Mr C has been clear he wasn't offered any such incentives. And so, I don't think here the Scorpion leaflet would have resonated with him at the time of the transfer as being relevant to his situation. And so, although SW failed to provide this to him, I don't think that information would have resulted in him taking a different course of action.

Due diligence:

In light of the Scorpion guidance, I think firms ought to have been on the look-out for the tell-tale signs of pension liberation and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk. And I think the reasonable way of doing so – and what would represent good practice – was for SW to refer to the Scorpion action pack for businesses.

The action pack contained example scenarios illustrating how consumers could fall victim to pension liberation and had a section about looking out for pension liberation. This included a list of six warning signs that a business might identify when it received a transfer request. And the action pack suggested, if any of those warning signs were present, the business could use a more detailed check list, which was then provided in the action pack.

Businesses though needed to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's statutory rights. I don't think delaying all transfer requests, such as Mr C's, in order to carry out extensive due diligence in every case would've been proportionate. Rather I think it was fair that SW made a judgement call based on the information available to it. And the guidance at that point didn't suggest it was necessary to turn to the longer check list in every transfer request.

Mr C has confirmed he was self-employed at the time, so was earning and therefore I understand did have a statutory right to transfer his pension.

SW said it established that the receiving scheme had been registered with HMRC for over a year prior to the request to transfer being received – so wasn't a newly registered scheme (which was one of the warning signs the Scorpion action pack said to be wary of). And this is confirmed by the information it has provided. It also established that the sponsoring employer was a long tenured company that had been trading for approximately 15 years at the time of the transfer. While not regulated by the FCA, the trustee / administrator was linked to a registered accountancy practice. And SW had been given the declaration from GBTS� referred to earlier, stating GBTS� had written confirmation from Mr C that he was aware of the risks of pension liberation and that wasn't what was occurring.

Again, I haven't seen a copy of this written confirmation. But Mr C has said he wasn't offered any incentives to transfer or access to his pension before age 55. So, it seems likely that he would have agreed to such a declaration if asked. And that these potential signs of pension liberation would not have been present here.

In addition, there was nothing else in the information that SW received as part of the transfer application to make it aware of the presence of any of the other six potential warning signs the Scorpion guidance highlighted. Nor was there anything the presented obvious parallels to the example scenarios in the action pack.

That's not to say there were not elements of the transfer that the Scorpion guidance suggested might have been warnings signs of potential pension liberation. For example, Mr C has said that he was approached unsolicited, which was listed as a warning sign. Rather SW had nothing at the time to indicate this was the case, or that any of the other highlighted warnings signs in the Scorpion guidance were present.

As a result, I don't think there was anything in the information it received that ought to have prompted SW, in the particular circumstances of this transfer, to turn to the check list in the action pack for businesses.

SW did note that unregulated businesses were involved in the correspondence with it. PMAL, that first requested information in 2013, wasn't authorised or regulated by the FSA / FCA. But the transfer request came over a year after that contact had taken place. It isn't clear if PMAL was still involved by that time. And the application didn't refer to PMAL at all – which may have indicated to SW that it was no longer involved. GBTS� also wasn't regulated by the FCA. But as a trustee / administrator of the receiving pension scheme, it wasn't required to be. And there was nothing to suggest its actions went beyond processing the application on Mr C's behalf. I'd also note that the involvement of unregulated businesses wasn't referenced as a potential cause for concern outside of the longer, detailed checklist.

Taking everything into account, and bearing in mind SW needing to take a proportionate approach to transfer requests, given the information it had I think it was reasonable for SW to conclude, in Mr C's specific transfer, that the risk of pension liberation – which is what the Scorpion guidance warned of at the time – was limited. And so, I think it was reasonable for it to exercise its judgement and discretion regarding due diligence here and to process the transfer, in line with the valid request Mr C made. It follows that I think it dealt with the matter fairly in the circumstances. So, I don't require it to take any action here.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 January 2025.

Ben Stoker
Ombudsman