complaint

Mr B complains about Scottish Widows Limited. He's unhappy that the proposed transfer of his pension plan to a Qualifying Recognised Overseas Pensions Scheme (QROPS) is subject to the overseas transfer charge even though he made the request to them before the charge came in to effect on 9 March 2017.

background

On 16 February 2017 Scottish Widows received a request for the transfer of Mr B's pension plan to a QROPS. They wrote to Mr B on 2 March 2017 to explain that they required additional documents completed to process the transfer.

New legislation came in to effect on 9 March 2017 that meant transfers to QROPS requested on or after this date would be taxed at a rate of 25% - subject to various exclusions. This is known as the overseas transfer charge.

Scottish Widows received documents from the receiving scheme on 5 April 2017. These were signed and dated 12 and 29 March 2017.

Scottish Widows emailed the receiving scheme on 7 and 26 April 2017 explaining HMRC's APSSS263 document had been revised as of 9 March 2017. They said they needed this new document to be completed to allow them to proceed with the transfer.

Mr B's adviser subsequently contacted Scottish Widows about the transfer. He was unhappy that they were requesting the completion of HMRC's new form as this could result in potentially higher charges – the overseas transfer charge – for Mr B. A complaint was registered at this point.

Scottish Widows didn't uphold the complaint. They said, after receiving the transfer request on 16 February 2017, there wasn't enough time for them to carry out their due diligence checks and receive the correct paperwork before the deadline of 9 March 2017. And so, as they hadn't received all the required paperwork by this point, they had to adhere to the legislation in place when all of their requirements would be met.

The complaint was referred to our service. One of our investigators looked in to the matter but he didn't think the overseas transfer charge should be applied. He said the request was made before 9 March 2017 and that the guidance published by HMRC, in respect of transfers to QROPS, made it clear that these weren't subject to the charge. And that the guidance doesn't suggest it should be applied as a result of Scottish Widows' requirements not being met by 9 March 2017.

Mr B's pension plan wasn't transferred and he told us that this was as a result of the dispute about the 25% charge. Our investigator thought that had it not been for him being wrongly told that the charge would be applied, the transfer would've gone ahead. So he recommended that Scottish Widows cover the cost of the overseas transfer charge (if it applied). He also thought £100 should be paid to Mr B for the inconvenience this matter had caused him.

Scottish Widows disagreed with the investigator and so the matter has been passed to me to review.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The HMRC guidance explains that transfers requested before 9 March 2017 are not liable to the overseas transfer charge. I understand Scottish Widows don't dispute Mr B made his request before this date. But rather they don't consider Mr B's request was one that required them to take action, in such that they didn't have all of the documentation required to allow them to process a payment (transfer) under the terms of the plan. And so because of this, they don't think the proposed transfer is excluded from the overseas transfer charge as it wasn't binding on them before 9 March 2017.

I've carefully considered what Scottish Widows has said but I don't think the overseas transfer charge was applicable to Mr B's transfer request. I'll explain why.

The HMRC guidance, on whether the transfer is taxable, directs scheme administrators to see 2.22 for the meaning of 'date of transfer request'. It says:

> *A transfer request is when a member has made a substantive request to the scheme administrator of their pension scheme on which the scheme administrator is required to take action in relation to the transfer. This means an instruction from the member to transfer £X or X% of their pension funds to a named overseas pension scheme. A casual enquiry is not a transfer request.*

I've considered the transfer request made by Mr B's QROPS provider on his behalf and I'm satisfied it's more than a casual enquiry. I say this because it specifically asks for Mr B's pension plan to be transferred to the new scheme. And it refers to documentation attached including HMRC forms, which it appears were required for the transfer to take place. It also goes on to say:

> *We hope all is in order to proceed with the transfer. If you require any further information about this client please do not hesitate to contact us via email or telephone….*

So it appears to me that it met the definition of a transfer request set out in section 2.22 of the guidance as it specifically asked Scottish Widows to take action in relation to the transfer. Taking all of this into account I think it's fair and reasonable in the specific circumstances of this case to interpret this as a transfer request.

I've also taken in to account that the HMRC guidance, under section 3.1 to 3.8, divides the process of transferring from a registered pension scheme or a QROPS into eight stages. The first is:

> 1. *Member requests transfer.*

Further stages include:

> 2. *The scheme administrator/manager tells the member what information they need before they can make the transfer.*
> 4. *Due diligence checks should be completed by the scheme administrator/manager before making the transfer.*

5. *The scheme administrator/manager establishes if the transfer is liable to the overseas transfer charge.*

I consider the above makes a clear distinction between a member requesting a transfer and the actions of a scheme administrator. Because of this, I don't consider it would be fair to interpret *'take action in relation to the transfer'* as the point at which a transfer could be completed. I think it's reasonable to conclude that actions required of a scheme administrator include those to facilitate the transfer, such as due diligence checks and the request for documentation, as outlined in the eight stages of HMRC's guidance.

I'm therefore satisfied Mr B made his transfer request before 9 March 2017. The HMRC guidance, under section 2.21 and 3.17, says that transfers requested before this date aren't liable to the overseas transfer charge. And so, while the transfer may not have been able to proceed at that point, it wasn't subject to the overseas transfer charge.

Mr B has confirmed that he still intends to transfer his pension plan to his QROPS. I therefore consider Scottish Widows should pay any overseas transfer charge, if now applicable; to ensure Mr B isn't disadvantaged by what has happened. I also think the £100 recommended by the investigator for the trouble this caused Mr B is fair, so this should also be paid to Mr B.

my final decision

My final decision is that I uphold this complaint.

Scottish Widows Limited should pay any overseas transfer charge, if applicable, to the transfer of Mr B's pension plan to his Qualifying Recognised Overseas Pensions Scheme. They should also pay him £100 for the trouble this matter has caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 3 August 2019.

Daniel O'Dell
ombudsman