Ombudsman's Determination

Applicant	Mr N
Scheme	Scottish Widows Personal Pension Plan (**the Plan**)
Respondent	Scottish Widows

Outcome

1. I do not uphold Mr N's complaint and no further action is required by Scottish Widows.

Complaint summary

2. Mr N has complained that Scottish Widows wrongly permitted a transfer into the Capita Oak Pension Scheme (**the Scheme**), a well known 'pension scam'. Scottish Widows failed to carry out adequate due diligence on the Scheme and failed in its duty to protect Mr N.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.

4. Mr N's representative says that in 2013 Mr N was contacted by a representative of Capita Oak whose name he does not recall. Mr N received a high volume of calls from Capita Oak and felt pressurised into transferring his Scottish Widows' pension to the Scheme.

5. Mr N's representative says on 27 March 2013 Capita Oak submitted a transfer request and on 5 April 2013, £29,471.22 was transferred from Scottish Widows to Capita Oak. Mr N understood his pension fund would be invested with Store First, but he is unsure if the investment was made as he has not received any further correspondence from Capita Oak or Store First.

6. Mr N's representative says Scottish Widows used standardised transfer forms and should have collected information about the receiving scheme including:

   a. type and legal status of the scheme;

b. date scheme was established;
c. location of the scheme and any administrators;
d. details of any employment link between the receiving scheme and Mr N
e. marketing methods used;
f. details of any cash payment being offered;
g. investment choice;
h. provenance of the receiving scheme; and
i. details of who provided advice to transfer.

7. The representative says if these enquiries had been undertaken it would have revealed the material risk of a scam or pension liberation scheme and enabled Scottish Widows to then properly consider the risks associated with either blocking or allowing the transfer.

8. The representative also says that if these enquiries had been completed it would have thrown up a number of red flags including the Scheme was only newly registered and the sponsoring employer was geographically distant from the employer. Mr N is seeking compensation to put him in the position he would have been if Scottish Widows had not permitted the transfer.

9. Scottish Widows says that on 9 August 2012 it received a signed letter of authority from Mr N granting permission for The Pensions Office to receive information on his pension plan. This was duly sent to them on 15 August 2012.

10. On 13 March 2013, Scottish Widows received transfer paperwork on behalf of the administrators, Imperial Trustee Services Limited, and as part of its set procedures at that time, it checked to see if the destination scheme, the Capita Oak Pension Scheme was a registered pension scheme with Her Majesty's Revenue & Customs and had a Pension Scheme Tax Reference (**PSTR**). The Scheme was registered and had a PSTR.

11. It was Scottish Widows' view in March 2013 that if a member requested a transfer to another registered pension scheme and they had a statutory right to transfer then this could not be blocked. This was in line with Section 169 of the Finance Act 2004, which details what constitutes a recognised transfer.

12. Scottish Widows says that coincidently, in February 2013 companies were charged with conducting more detailed due diligence and to provide warnings where necessary. Because this entailed tailoring its transfer process and training colleagues accordingly, The Pension Regulator (**TPR**) agreed that implementing this from May 2013 was acceptable and within a reasonable timeframe[1]. The industry standard up

[1] Scottish Widows says TPR did not institute a regime to approve decisions or authorise Individual administrators' implementation plans, so it is unable to provide something that does not exist. TPR said it would name and shame any organisation which did not comply with the guidance but gave no deadlines and refused requests for anything over and above the guidance of what it expected. Scottish Widows has never been contacted by TPR in this regard, so it took that to mean its implementation date was acceptable.

until then was to do little more than check that the pension scheme was registered for tax purposes to show that the transfer would be an authorised transaction for tax purposes. Prior to this there were a few pension administrators that The Pension Advisory Service had advised were suspect, and that the industry was not to allow transfers to them. These were circulated within the business and this specific transfer database short list was added to, as and when it was notified of changes.

13. Scottish Widows says it would not have been possible to stop processing hundreds if not thousands of transfers during the two-month period before it introduced the new procedures and it could have given rise to additional problems such as complaints for undue delay in sending legitimate funds and the resultant backlog of cases. Scottish Widows did not believe it was out of step with the industry at that point although its collective size clearly played a part here. Scottish Widows did not issue a Scorpion leaflet to Mr N.

14. To clarify, in February 2013, the Capita Oak Pension Scheme was not on the Pensions Advisory Service list so Scottish Widows acted as The Pensions Ombudsman would have expected it to do at that time. As a consequence, the transfer was completed in accordance with the instructions received and, as all that was received was the transfer request, no quotes were issued prior to this.

15. Scottish Widows also says that it was not informed that Mr N was cold called or that aggressive tactics were involved here; what he intended to get out of the transfer or what he may or may not have been promised. Had he done so, this would have been flagged and the transfer may have taken a different route.

Adjudicator's Opinion

16. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by Scottish Widows. The Adjudicator's findings are summarised below.

17. The complaint is principally concerned with the level of due diligence carried out by Scottish Widows prior to allowing a transfer to the Scheme in April 2013. The transfer occurred around the same time as TPR issued new guidance to providers in mid-February 2013 which included a check list for trustees and administrators to help identify pension liberation fraud. The action pack also set out that trustees and administrators had a duty to carry out a member's transfer request in accordance with the legislative requirements.

18. Scottish Widows says that it did not implement the changes brought about by TPR's new guidance until May 2013, as it needed to set up new processes and train its staff accordingly. Thus, the transfer was completed under the previous process that applied and Scottish Widows only carried out some basic checks to see if the Scheme was registered with HMRC and whether it appeared on any warning list. As

the Scheme was registered with HMRC and it did not appear on any warning list the transfer was processed.

19. The question of when providers should adopt the new TPR guidance has previously been considered by me and in the Determination for CAS-12928-V0F3 I said:

> "I am not bound by previous Determinations I have made, and each case is assessed on its individual facts. I have taken the opportunity to review the facts, further evaluate the evolving regulatory position and the cases I have previously Determined. Having done so, I consider that a period of approximately one month would generally be sufficient for a provider to put in place any procedures necessary as a result of the Regulator's new guidance. This view is supported by previous Determinations I have issued, such as PO-6375, along with others. Should this timeframe not be met by any provider, I would expect it to consider temporarily suspending transfers while it makes the necessary arrangements or contacting The Regulator to request an extension on the stipulated transfer deadlines."

20. As can be seen from the Determination extract in paragraph 19 above, I had previously allowed a period of approximately one month for providers to introduce the new transfer procedures. Scottish Widows says it took over two months to introduce the new transfer procedures and this was acceptable to TPR.

21. Scottish Widows also says it did not issue the Scorpion leaflet. The Adjudicator therefore needed to consider whether Mr N would have acted differently if he had received the Scorpion leaflet.

22. Mr N says at the time of the transfer he was on sick leave, but his wife was working and although their finances were not brilliant, they were getting by without any significant issues. Mr N also says that the main reason for transferring was that the expected investment return would help him to retire at age 55. Mr N says he did carry out some background checks on Store First by visiting its website. The website said the investment in Store First was being backed by Tiff Needell and this reassured him and there was not anything to make him wary.

23. The Adjudicator considered Mr N's comments carefully and, on the balance of probabilities, was of the view that it is unlikely that Mr N would have changed his position even if he had received the Scorpion leaflet so the outcome would have been the same.

24. Mr N's representative has set out the checks that she believes Scottish Widows should have made at the time that the transfer request was received, these are taken from TPR's guidance issued in February 2013, see paragraph 6 above. However, Scottish Widows had a statutory and contractual duty to transfer Mr N's funds which it was required to act upon when it received his transfer paperwork, unless there were any indications of why the transfer should not go ahead, such as those concerning pension liberation fraud. The page preceding the Checklist in the Scorpion Guide

provided an outline of potential warning signs which could suggest pension liberation fraud activity was taking place.

25. Scottish Widows says that it did check the list provided by the Pension Advisory Service of administrators (see paragraph 12 above), and the Scheme was not on the list.

26. The Adjudicator took the view that he needed to decide if the checks carried out by Scottish Widows were reasonable and whether the time taken to introduce the new procedures was also reasonable.

27. On the first of these points, the Adjudicator was of the view that the checks carried out by Scottish Widows were reasonable and in line with the position before TPR issued its new guidance in February 2013.

28. The Adjudicator also looked into HMRC's registration of the Capita Oak Scheme which was registered as a Qualifying Recognised Overseas Pension Scheme (**QROPS**) at the time of the transfer. The process for registering QROPS was initially simple with a straightforward online registration process. It was not until October 2013 that HMRC changed its process for registering QROPS. The Adjudicator was of the view, on the balance of probabilities, that even if Scottish Widows had carried out any further checks it is unlikely that any warning signs would have been identified.

29. On the second point regarding the length of time Scottish Widows took to introduce the new procedures. Scottish Widows says, in May 2013, it would not have been possible to stop processing hundreds, if not thousands, of transfers during this period and it could have given rise to additional problems such as complaints for undue delay in sending legitimate funds and the resultant backlog of cases. The Adjudicator understood Scottish Widows' viewpoint and agreed that it would have been unreasonable for it to delay all transfers during this period.

30. Mr N's transfer was completed within one month and 22 days of the issue of TPR's guidance which the Adjudicator said was broadly in line with my previous guidance that a period of approximately one month's leeway be given to allow the new procedures to be introduced.

31. Overall, the Adjudicator was of the opinion that the checks carried out by Scottish Widows were reasonable at the time and it is only with the benefit of hindsight that any concerns could be raised.

32. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr N.

33. Mr N disagrees with the Adjudicator's Opinion and his representative says that the case is different to PO-6375 as the transfer request was received by Scottish Widows in March 2013, after TPR had issued its guidance. Scottish Widows should have temporarily suspended transfer requests to allow it to comply with TPR's guidance.

34. Mr N's representative also says that it disagrees that a period of one month and 22 days is in line with the Pensions Ombudsman's guidance. Indeed, one month and 22 days is more than three weeks in excess of the one-month time frame previously permitted within the Pensions Ombudsman's guidance and with respect, it contends that the line must be drawn somewhere. Allowing this much leeway also fails to account for the fact that Scottish Widows was a large and reputable company and therefore, it should have had the infrastructure in place to make the necessary arrangements to comply with TPR's guidance. Moreover, pension professionals and firms had been made aware of TPR's concerns over pension scams and liberation fraud prior to February 2013 and its guidance was long awaited.

35. It was, in fact, anticipated that urgency would be required and expected of those in the industry, as is remarked in paragraph 44 of PO- 24554. To distinguish Mr N's case from that of PO-24554 and PO-6375, it wishes to highlight that Mr N's transfer request was issued after TPR's guidance on 27 March 2013, whereas in the cases of PO-24554 and PO-6375, the transfer applications were made before TPR had issued its guidance. Given that Mr N's application to transfer was not received until after the guidance was issued, it would not have been unreasonable for Scottish Widows to have put on hold all transfer requests made after the publication of the TPR's campaign, until it had had an opportunity to take necessary steps to address the guidance.

36. Mr N's representative also noted that the Adjudicator had concluded at paragraph 23 that, on the balance of probabilities, it is unlikely that Mr N would have changed his position even if he had received the Scorpion leaflet. Mr N has said that he was not actively seeking to transfer his Scottish Widows pension. He was cold called by a representative of Capita Oak and following this initial telephone call, Mr N received a high volume of calls from Capita Oak. As a result of the aggressive sales tactics used, Mr N felt pressured into transferring his pension into the Scheme.

37. Mr N says that had he been forewarned of even the slightest risk of a pension scam or fraud, he would not have transferred. Mr N's sole concern was to ensure his wife was cared for given that he was suffering with a spinal injury. If Mr N had even the slightest concern that his pension was at risk, he would not have transferred the funds. Therefore, had Mr N received adequate engagement and warning from Scottish Widows, he would not have transferred his pension.

38. Mr N says that he recalls speaking to a representative at Scottish Widows prior to the transfer and recalls informing the representative that he had not received any financial advice and that he had been online for a mere 15 minutes in search of advice on what best to do with his pension. Scottish Widows were also informed during this telephone conversation about Mr N's health issues, how his injury had affected his mental state and the medication he was on at the time. Scottish Widows were therefore aware of Mr N's vulnerability and the pressures he was under to ensure his wife was cared for, in the event he was unable to work again or worse still, in the event that he passed away. Despite this, Scottish Widows failed to engage with

Mr N to highlight the risks of the transfer or recommend that he receive advice from a regulated financial adviser.

Ombudsman's decision

39. I have reviewed the documents relating to this complaint and see that Mr N initially signed a Scottish Widows' Transfer Declaration form requesting a transfer on 5 February 2013. This was then countersigned by Imperial Trustee Services Limited, as the administrators, on 11 March 2013 and forwarded to Scottish Widows who received it on 13 March 2013. Some two weeks later on 27 March 2013 the Scheme sent Scottish Widows the same information but with a new Scottish Widows Transfer Declaration Form, signed by Mr N and dated 22 March 2013. It is uncertain why Mr N signed two forms, but I find that the transfer request was submitted on 11 March 2013 and is the date on which I will base my findings.

40. TPR issued its Scorpion guidance on how to manage transfer requests on 13 February 2013 and I have previously given providers approximately one month's leeway to introduce new procedures to comply with this guidance. Therefore, I have taken the date of 14 March 2013 as the time from which providers should have been able to introduce the new procedures. I find that Mr N's transfer request falls within the period I have allowed to introduce the new procedures and that the checks carried out by Scottish Widows were reasonable.

41. Mr N says that had he been forewarned of even the slightest risk of a pension scam or fraud, he would not have transferred and that he outlined his health issues and concerns to a Scottish Widows representative. But Scottish Widows were not able or authorised to provide Mr N with financial advice, and although Mr N may have mentioned his concerns it was for Mr N to seek suitable professional advice.

42. I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
16 February 2022