



Ombudsman's Determination

Applicant	Mr S
Scheme	Lloyds Bank Personal Pension Plan (the Plan)
Respondent	Scottish Widows Limited (Scottish Widows)

Outcome

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

Complaint summary

2. Mr S has complained that Scottish Widows did not carry out effective due diligence when it processed his transfer request. Consequently, he would like Scottish Widows to issue an award to cover his losses.

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 S has said he was approached by an individual or a firm that was not regulated by the Financial Conduct Authority (**FCA**), prior to 15 July 2016, and encouraged to transfer his pension arrangements to the Optimum Retirement Benefit Plan (the **Receiving Scheme**). The Receiving Scheme was administered by Optimum Financial Solutions Limited (**OFSL**), which, at that time, was regulated by the FCA but did not have relevant permissions to carry out pensions-related regulated activities.
5. On 18 July 2016, Scottish Widows received a letter of authority signed by Mr S, from OFSL, asking for details of Mr S' pension arrangement.
6. At the same time, OFSL wrote to two of Mr S' other pension providers, which later resulted in transfer requests.
7. On 19 July 2016, Scottish Widows issued the requested information to OFSL.
8. On 22 July 2016, OFSL telephoned for an update on the requested information. Scottish Widows confirmed that this had been issued on 19 July and so would be with OFSL by 26 July 2016.

9. On 23 August 2016, OFSL telephoned Scottish Widows, asking for transfer forms to be sent by email. Scottish Widows issued a copy of the transfer paperwork the following day. Scottish Widows did not include a copy of The Pension Regulator's (TPR) leaflet at the time, commonly known as the 'Scorpion' leaflet (the **Scorpion leaflet**).
10. On 12 September 2016, Mr S signed and completed one of his other provider's (Legal & General) transfer application paperwork. This recommended that Mr S should consider taking Financial Advice, from an FCA registered Adviser, before making a final decision about transferring, and made reference to the Scorpion leaflet as well as regulatory information on its website about pension liberation, unauthorised payment charges and investment fraud. Irrespective of this, evidence provided to The Pensions Ombudsman indicates that Mr S did not seek financial advice nor did he inform Legal & General that he had been cold called.
11. On 19 September 2016, Scottish Widows received a transfer request from OFSL. Enclosed with this letter was a copy of the following:
 - the Receiving Scheme's bank details;
 - a screenshot of its HMRC current scheme details, confirming its registration date of 30 June 2015; and
 - a completed transfer declaration.
12. On 21 September 2016, Mr S' other provider, Zurich, wrote to Mr S directly with information about protecting his pension and the warning signs of a pension scam. It appears that Zurich had enclosed a copy of the Scorpion leaflet, a form with a number of questions (such as whether Mr S had been cold called) for Mr S to complete, and had provided links to further reading about pension scams within its letter. Mr S completed and signed this form on 24 September 2016, asking Zurich to continue to consider his transfer request.
13. On 23 September 2016, Scottish Widows wrote to Mr S, confirming that it had issued a payment for £13,727.80 to the Receiving Scheme on 19 September 2016.
14. On 29 September 2016, OFSL telephoned for an update on the transfer. Scottish Widows confirmed that authorisation had been given and quoted a service level agreement of two weeks from 23 September 2016.
15. On 13 October 2016, OFSL telephoned again as it had not received the transfer payment. It appears that Scottish Widows agreed to look into this and contact OFSL once it had done so.
16. On 15 October 2016, Mr S wrote to Legal & General to confirm that he had commenced employment, with his employer at the time, on 1 June 2015.

17. On 19 October 2016, Scottish Widows telephoned OFSL and advised that its account showed the payment as completed. OFSL said it would contact its account team to match this up at its end.
18. On 24 October 2016, Mr S' other transfer from Legal & General to OFSL also completed, as Legal & General had not identified any risks after its initial analysis, the Receiving Schemes' Rules were consistent with it being an occupational pension scheme, and Mr S had demonstrated that he was an earner, for the purposes of a statutory transfer.
19. On 7 February 2017, Zurich wrote to Mr S, stating that having reviewed the information provided to it about the Receiving Scheme and the response it had received from HMRC, it was unable to agree to Mr S' transfer request.
20. On 13 February 2018, TPR appointed an independent trustee to the Receiving Scheme, which issued a member announcement stating it was making investigations in order to gain a full understanding of all of the Receiving Scheme's assets, including where and how they were held.
21. On 10 October 2018, Mr S wrote to Scottish Widows, stating that the Receiving Scheme was a scam. He questioned why Scottish Widows' due diligence was not up to the expected standards, considering Zurich had rejected his transfer request. It appears that Mr S' letter was scanned onto Scottish Widows' systems but not immediately actioned.
22. On 16 January 2019, Scottish Widows issued its response to Mr S' complaint. It said, in summary:-
 - It agreed that it did not respond to Mr S' concerns when he raised them in October 2018. So, it offered £150 by way of an apology.
 - It did not uphold the complaint in relation to the transfer of funds in September 2016. At the time, it checked whether the Receiving Scheme was a registered scheme with HMRC and had a Pension Scheme Tax Reference. In addition, it held a list provided by The Pensions Advisory Service of specific administrators/schemes that the industries were not to allow transfers to. The Receiving Scheme and its associated administrators were not on the list.
 - It accepted and completed the transfer as per the instructions received at the time.
 - Another check was whether OFSL, which previously provided a signed letter of authority and requested a transfer on Mr S' behalf, was authorised by the FCA to trade and it was. So, it had no reason to believe anything untoward was being requested.
 - The FCA register later showed that OFSL was in liquidation, noted that it had stopped taking on new business, but was still authorised and had to continue to meet FCA standards in dealing with its customers. This was not its status when Mr S' transfer request was received.

- It would have only sent out potential fraud warnings if its due diligence unearthed something of concern. As it did not, it did not have to invoke that particular element of its transfer process for Mr S' request.
- It could not comment on Zurich's due diligence checks.

Mr S' position

23. He does not believe that Scottish Widows carried out effective due diligence. The Receiving Scheme was a recently registered pension scheme at the time, which ought to have alerted Scottish Widows to possible risk. Scottish Widows ought to have spoken with him to ensure he was aware of the dangers of transferring his pension benefits.
24. He had been a victim of a scam that could have been avoided had Scottish Widows acted with the skill, care and due diligence of a prudent pension provider.
25. Scottish Widows should have:
 - highlighted that not all of the parties involved were authorised by the FCA to provide transfer advice;
 - advised Mr S to seek independent financial advice prior to proceeding with the transfer; and
 - sent Mr S a copy of the Scorpion leaflet.
26. Had his pension remained with Scottish Widows, the value of his pension benefits would be significantly more than it is today.

Scottish Widows' position

27. OFSL was authorised to do business by the FCA, and the Receiving Scheme was a registered pension scheme with HMRC. OFSL had also provided evidence of the Receiving Scheme's Pension Scheme Tax Reference, so it had no valid reason to block the statutory right to transfer.
28. It would only have been if its due diligence had unearthed something suspicious, or it had been told that Mr S had been cold called by an unregulated company that it would have alerted Mr S to the possibility of fraud and enclosed the Scorpion leaflet.
29. As it was not informed about the cold call, it had not been told that the Receiving Scheme was under investigation, and OFSL, "a regulated scheme administrator", was involved, it meant that no transfer warnings were necessary.

Adjudicator's Opinion

30. Mr 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 in paragraphs 31 to 38 below.

31. The Adjudicator reviewed the applicable transfer due diligence guidance at the time of Mr S' transfer, which was TPR's February 2013 guidance and the updated 2015 'Combating Pension Scams: A Code of Good Practice' by the Pension Scams Industry Group (the **2015 Code of Good Practice**).
32. TPR's February 2013 guidance recommended that transferring schemes issue a warning to members about the dangers of pension liberation fraud, or 'scams'. The most common way of doing this was to include the Scorpion leaflet with the transfer pack. Scottish Widows confirmed that it did not issue this leaflet, nor had it evidenced that it warned Mr S about the dangers of pension liberation fraud or 'scams' in another manner.
33. Page 8 of TPR's February 2013 guidance listed criteria that transferring schemes ought to look out for. This included, but was not limited to:
 - Receiving scheme not registered, or only newly registered, with HMRC;
 - Member was attempting to access their pension before age 55;
 - Member had pressured trustees/administrators to carry out transfer quickly;
 - Member was approached unsolicited;
 - Member informed that there is a legal loophole; and
 - Receiving scheme was previously unknown to the transferring provider, but now involved in more than one transfer request.
34. The 2015 Code of Good Practice set out a two-stage due diligence process. The first stage was to check whether there were any factors that would indicate a pension liberation or scam risk. Only if this initial analysis threw up some concerns did the 2015 Code of Good Practice recommend further checks.
35. Scottish Widows' initial analysis consisted of reviewing the Receiving Scheme's HMRC registration, its Pension Scheme Tax Reference, whether OFSL was FCA-registered and whether the Receiving Scheme had already been identified as suspicious. The Adjudicator's opinion was that this was insufficient due diligence and amounted to maladministration. Scottish Widows had not satisfied itself that Mr S' request was a statutory transfer, nor had it highlighted and given Mr S the opportunity to confirm whether he had been incentivised or cold called, for example.
36. Nevertheless, even if Scottish Widows had issued the Scorpion leaflet, and asked for further information to establish whether Mr S was an "earner" for the purposes of a statutory transfer, the Adjudicator was not persuaded that would have needed to have done anything more, nor that Mr S would have acted differently. In the Adjudicator's opinion, the transfer would have proceeded regardless, on the balance of probabilities, for the following reasons:

- The Receiving Scheme, at that time, had been registered with HMRC for over a year. So, it would not have been considered as 'newly registered' and so would not have indicated a risk.
 - Had Scottish Widows issued the Scorpion leaflet, it would have been reasonable for it to have expected Mr S to inform it of any applicable warning signs. It would not have needed to have explicitly asked Mr S whether any of the warning signs applied to his circumstances.
 - In September 2016, Mr S had received correspondence that had referred to the Scorpion leaflet as well as further information about pension liberation from Legal & General. However, he had not informed Legal & General about any of the applicable warning signs. Nor did he contact Scottish Widows or Zurich to let them know. When Zurich later highlighted possible warning signs to Mr S, he completed its form asking Zurich to continue to consider his transfer requests. So, despite having had two opportunities to contact Scottish Widows after receiving information relating to pension 'scams', Mr S did not do so. Consequently, on the balance of probability, it was the Adjudicator's view that Mr S would not have informed Scottish Widows of the applicable warning signs had it issued the Scorpion leaflet.
 - The Adjudicator could not see that a complete initial analysis would have indicated a risk to Scottish Widows, so that further checks would have been considered necessary.
37. OFSL was registered with the FCA, and this would have given Scottish Widows some comfort that OFSL would behave in a professional manner. The Adjudicator did not agree that Scottish Widows had any reason to look more closely at the FCA register over and above a basic check to make sure OFSL was regulated.
38. Mr S' transfer value was below £30,000, so there was no requirement for him to have financial advice. The fact the transfer proceeded without financial advice did not amount to maladministration.
39. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to determine.
40. In summary, Mr S said that:-
- By not checking the registration status of the Receiving Scheme with HMRC, Scottish Widows failed to meet the expected professional standards of pension administrators in respect of their duties under Part 4 of the Finance Act 2004. So, it had failed to safeguard him and themselves. This was important considering as at February 2017, HMRC could not confirm the Receiving Scheme's registration status.
 - Had Scottish Widows contacted HMRC, it would have been alerted to HMRC's inability to confirm the Receiving Scheme's registration status. Following this, it

ought to have concluded that the transfer could not be permitted as HMRC would consider it as an unauthorised payment. Scottish Widows had an obligation to complete the same level of checks as completed by Zurich.

- The fact that the transfer request and registration confirmation came from a FCA-regulated firm, did not exclude Scottish Widows from its duties. Scottish Widows ought to have appreciated that professionals make mistakes and making an assumption on such a key obligation (the Receiving Scheme's registration status) was improper.
- Scottish Widows had a duty to check that the Receiving Scheme was able and willing to accept the transfer and that it was a legitimate arrangement. It also had a duty to carry out checks to assess the level of risk of the member.
- As the Receiving Scheme was a UK, defined contribution occupational pension scheme, Scottish Widows should have checked the employment link. This had been established in a previous case determined by the Pensions Ombudsman. A red flag should have been identified as the Receiving Scheme was sponsored by a geographically distant company, for which he did not work.
- TPR first became aware of concerns regarding the Receiving Scheme on 18 May 2016. This was five months before his transfer completed, so he found it hard to believe that the Receiving Scheme was not placed on a warning list at the time he made his transfer request.
- Taking the above into consideration, Scottish Widows could not have been sure, beyond reasonable doubt, that the Receiving Scheme was registered. It was only in these circumstances that the transfer ought to have proceeded without any further checks.

41. I have considered the additional points raised by Mr S, but I agree with the Adjudicator's Opinion.

Ombudsman's decision

42. When assessing the due diligence carried out by a trustee or a pension provider, the starting point is to look at the industry standard at the time. I understand that Zurich chose not to proceed with Mr S' transfer request, shortly after his transfer from Scottish Widows completed. However, this does not automatically mean that Scottish Widows' due diligence was insufficient, nor that Scottish Widows had an obligation to complete the same level of checks as Zurich. Trustees and providers are entitled to decide upon their own, proportionate due diligence processes.
43. TPR issued its 'Scorpion' guidance on how to manage transfer requests on 13 February 2013 and the Pensions Ombudsman has previously given providers one month's leeway to introduce new procedures to comply with this guidance. Taking this into consideration, I am alarmed to see that for a mid-2016 transfer request,

Scottish Widows appears to have adopted a stance where it would only issue a Scorpion leaflet if its due diligence had revealed “something suspicious”, or if Mr S had independently informed it that he had been cold called, for example. By that time, Scottish Widows ought to have had a process in place, in line with TPR’s guidance, where it either issued the Scorpion leaflet to a member who had asked for transfer paperwork or contacted them directly to ask questions to satisfy the initial analysis outlined in the 2015 Code of Good Practice, upon receipt of a completed transfer application.

44. By doing neither, Scottish Widows’ due diligence cannot be considered as sufficient, as it was reliant on members already being aware of the typical transfer warning signs and being proactive in informing it of those that applied. The problem with this, is that members who are already aware of the warning signs, would be unlikely to submit a transfer request where those warning signs are present. Consequently, unless the initial due diligence indicated a risk, it appears that Scottish Widows has been transferring members’ pension funds who were likely unaware of the potential risks. It follows that by omitting to send the Scorpion leaflet to Mr S, Scottish Widows had not completed the initial analysis recommended by the 2015 Code of Good Practice.
45. Despite this appalling omission, I consider that Mr S had been made aware of the applicable warning signs, prior to his transfer completing. As a result of requesting concurrent transfers from three of his pension providers, Mr S had received information that had made reference to the Scorpion leaflet, as well as information about protecting his pension and the warning signs of a pension scam from his other providers, in September 2016. Although, Mr S had received this information, he did not contact Scottish Widows to inform them that a number of the warning signs applied. On this basis, I consider it unlikely that a further Scorpion leaflet issued by Scottish Widows would have caused Mr S to have acted differently.
46. It should also be noted that while we are aware that Mr S was an earner for the purposes of a statutory transfer, as a result of the due diligence carried out by Legal & General, this is information that Scottish Widows ought to have established prior to completing Mr S’ transfer. Had Scottish Widows: carried out this check (by obtaining the Receiving Scheme’s Trust Deed and Rules and checking Mr S’ employment); the checks outlined in paragraph 35 above; and provided the Scorpion leaflet to Mr S, I would have considered its due diligence sufficient, as it would have satisfied the initial analysis of the two-stage due diligence process, outlined in the applicable 2015 Code of Good Practice.
47. Mr S has argued that without contacting HMRC directly, to check the Receiving Scheme’s registration status, Scottish Widows could not have been satisfied that the transfer payment to the Receiving Scheme was an authorised payment, for the purposes of Part 4 of the Finance Act 2004. So, by omitting to do this, it had failed in its duty to ensure the Receiving Scheme was a legitimate arrangement that was able and willing to accept the transfer. It had also failed its duty to carry out checks to assess the level of risk. I disagree.

48. The 2015 Code of Good Practice, which was welcomed by 14 organisations including the FCA, TPR and HMRC, outlines a two-stage due diligence process where an information request should only be made to HMRC if a risk is indicated within the initial analysis. While I understand that this is not a statutory code, it strongly suggests that trustees and pension providers are entitled, and encouraged, to accept information relating to the receiving scheme's registration status from other entities, provided that no risk had been identified and sufficient due diligence had been carried out. Consequently, relying on information provided by a receiving scheme would not be considered as "making an assumption" or "improper" in those circumstances, nor would the trustees or pension providers be considered as having failed their duties under Part 4 of the Finance Act 2004.
49. I note Mr S has suggested that Scottish Widows ought to have checked Mr S' employment link and has quoted a previous Determination where I concluded this. However, there are a number of factors that need to be considered when determining cases of this type. It is usually a combination of these factors that leads me to come to my conclusion. Mr S' case differs to the one that he has quoted, as that transfer took place prior to the 2015 Code of Good Practice and the case of *Hughes v Royal London*¹. It was following this case, which was heard on 19 February 2016, that it was permissible for a transfer to be made in circumstances where the individual did not receive earnings from the sponsoring employer of the recipient pension scheme. As a result, Scottish Widows did not need to check whether Mr S was employed by the sponsoring employer, nor its geographical location.
50. Further, I acknowledge that TPR was made aware of concerns regarding the Receiving Scheme in May 2016. However, this does not mean that pension providers would have been notified about this. In particular, when it was not until 9 February 2018, that TPR's Case Team asked the Determinations Panel to make an order, under section 7 of the Pensions Act 1995, to appoint an independent trustee to the Receiving Scheme.
51. It is regrettable that the decision to proceed with the transfer has not transpired to be in Mr S' best financial interests. However, I consider that even if Scottish Widows had carried out appropriate due diligence, Mr S would have still transferred to the Receiving Scheme. Indeed, even though Mr S received the letter from Zurich dated 7 February 2017, which confirmed that HMRC was unable to confirm the Receiving Scheme's registration status, he took no steps to try and reverse either of the transfers from Legal & General or Scottish Widows.

¹ *Hughes v Royal London Mutual Insurance Society Ltd* [2016] EWHC 319 (Ch)

52. I do not uphold Mr S' complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
30 August 2023