DRN-3461099

The complaint

Mr W has complained about a transfer of his Scottish Widows Limited ("SWL") personal pension to an occupational scheme in 2013. Mr W's occupational scheme was subsequently found to be a vehicle for pension liberation, the process by which pensions are accessed in an unauthorised way (before minimum retirement age, for instance). This can leave victims paying punitive tax charges to HMRC and having to deal with the consequences of having their pension assets misappropriated.

Mr W says SWL failed in its responsibilities when dealing with his 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 required of transferring schemes at the time. Mr W says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if SWL had acted as it should have done.

What happened

On 20 December 2012, Mr W signed a letter of authority allowing Portland Wealth Associates ("Portland") to obtain details in relation to his pension. On 3 January 2013, Portland wrote to SWL requesting information on Mr W's policy and transfer discharge forms. It enclosed Mr W's letter of authority. SWL sent Portland the requested information on 14 January. Portland wasn't authorised to give financial advice.

On 15 February, Conder Administration Limited ("Conder") wrote to SWL requesting it transfer Mr W's policy to the Ironstream Ltd Retirement Benefits Scheme ("the Scheme"). Conder was the Scheme's administrator. Conder provided (amongst other things) the Scheme's Pension Scheme Tax Reference ("PSTR") number and details of the bank account the transfer payment was to be paid into. Included in the transfer papers were the Scheme's HMRC registration certificate and further information on the Scheme. The Scheme was an occupational scheme which was registered by HMRC on 10 December 2012. Mr W's signed transfer discharge forms were also included.

Mr W's pension was transferred on 21 February. The transfer value was just over £14,000. Mr W was 33 years old.

In May 2013, The Pensions Regulator ("TPR") appointed independent trustees to the Scheme because of concerns that it had been used as a vehicle for pension liberation. TPR was also concerned that scheme funds had been invested inappropriately.

In November 2019, Mr W complained to SWL. Briefly, his argument is that SWL ought to have spotted, and told him about, a number of warning signs in relation to the transfer, including (but not limited to) the following: he had been told he could access some of his pension before the age of 55, the Scheme was newly registered, he didn't work for the sponsoring employer, the catalyst for the transfer was an unsolicited call and he had been advised by an unregulated business. He also said he wasn't employed at the time of the transfer and therefore didn't have a statutory right to transfer.

SWL didn't uphold Mr W's complaint. It said Mr W had a statutory right to transfer and that none of the information it had about the Scheme at the time gave it cause for concern. It was satisfied it had done an appropriate level of due diligence given the requirements of the time.

Our investigator was unable to resolve the dispute informally, 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.

<u>The relevant rules and guidance</u>

Before I explain my reasoning, it will be useful to set out the environment SWL was operating in at the time with regards to pension transfer requests, as well as any rules and guidance that were in place. Specifically, it's worth noting the following:

- 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 a member may also have a right to transfer under the terms of their pension policy). This 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. However, the obligation on the ceding scheme was limited to ascertaining the type of scheme the transfer was being paid to and that it was a tax-approved scheme.

- On 10 June 2011, the Financial Services Authority (FSA) issued a warning about the dangers of "pension unlocking" and specifically referred to consumers transferring to access cash from their pension before age 55. (As background to this, the normal minimum pension age had increased to 55 in April 2010.) The FSA said that receiving occupational pension schemes were facilitating this. It encouraged consumers to take independent advice. The announcement acknowledges that some advisers promoting these schemes were FSA authorised.

- At around the same time, TPR published information on its website about pension liberation, designed to raise public awareness and remind scheme operators to be vigilant of transfer requests. The warnings highlighted that websites and cold callers were encouraging people to transfer in order to receive cash or access a loan.

- At the time of Mr W's transfer, SWL was regulated by the FSA. As such, it was subject to the 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 rules governing pension transfer requests, but the following have particular relevance:

  – 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.

It's worth noting at this point that TPR launched its "Scorpion" campaign on 14 February 2013. It was an important moment in so far it provided, for the first time, guidance for personal pension providers dealing with transfer requests. The guidance prompted providers to take a more active role in assessing transfer requests in order to establish, and respond to, liberation threats transferring members may have been falling victim to. 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.

Mr W initiated the transfer process before the Scorpion guidance was launched. But the transfer request wasn't made until 15 February 2013 – the day after the guidance was launched. And the transfer didn't reach fruition until 21 February when the transfer was paid. SWL says it didn't follow the Scorpion guidance because the transfer was too soon after its launch for it to have been implemented. I find this to be reasonable in this case.

I say this because the guidance was published on 14 February 2013 without prior consultation, so SWL could only have been able start absorbing the implications of the guidance from that point on. I don't think SWL would, reasonably, have completed that process by the time Mr W's transfer request was made, or by the time the transfer was ready to be paid – which was on the fifth working day after the guidance was launched. As such, the transfer request was made too soon after the launch of the Scorpion guidance for SWL to, reasonably, have taken that guidance into consideration here.

<u>What did SWL do and was it enough?</u>

With the above in mind, at the time of Mr W's transfer, personal pension providers had to make sure the receiving scheme was validly registered with HMRC. SWL had the Scheme's HMRC registration certificate, and PSTR, so it didn't need to do anything further in this respect.

There was also a need to remain vigilant for obvious signs of pension liberation or other types of fraud. Even though some of the regulators' warnings about the threat of pension liberation and wider scams were directed at consumers, I think it's reasonable to conclude that the sources of intelligence informing those warnings included the industry itself. Personal pension providers were therefore unlikely to be oblivious to these threats. And, even if they were, a well-run provider with the Principles in mind should have been aware of what was happening in the industry. So, in adhering to the FSA's Principles and rules, I think a provider should have been mindful of announcements the FSA and TPR had made about pension liberation, even those directed to consumers. It means if a ceding scheme came across anything to suggest the request originated from a cold call or internet promotion offering early access to pension funds – which had both been mentioned by regulators as features of liberation up to that point – that would have been a cause for concern.

I'm satisfied nothing along these lines would have been apparent to SWL at the time of the transfer. Mr W's transfer papers wouldn't have given an indication that his interest in transferring followed a cold call or internet promotion offering early access to pension funds. And given the guidance in place at the time, there was no expectation for SWL to contact Mr W to see how his transfer had come about. I also haven't seen anything that SWL would, reasonably, have been aware of about the parties involved in the transfer that would have caused it concern.

In coming to this conclusion, I have taken on board what Mr W says about his employment status at the time. His argument is that he didn't have any earnings and therefore didn't have a statutory right to transfer. But SWL wouldn't have been aware of this at the time. And, for the reasons given above, it wasn't something that it should, reasonably, have checked. At the time of the transfer request, and by the expected standards of industry due diligence at that time, it was reasonable for SWL to conclude that Mr W had an employment link to the scheme requesting the transfer. It was in possession of no other information to suggest he had no earnings. Unless it was in possession of such information, there is no basis on which I could reasonably expect SWL to have explored refusing to make this transfer – whether that was because Mr W had no statutory right to make it, or otherwise.

As I said before, I don't think SWL could, reasonably, have applied the Scorpion guidance here. This means that I can't fairly expect it to have considered the fact that the Scheme was recently registered (which it would have known from the HMRC registration certificate it was sent) as being suspicious. And it means I don't expect SWL to have investigated, as a matter of course, the sponsoring employer's trading status, geographical location or connections to unregulated investment companies or the various parties connected to the transfer.

I'm also satisfied SWL didn't have to be alarmed at every contact it received from third parties that weren't authorised by the FSA. The FSA didn't regulate occupational pension schemes, so SWL wouldn't have expected to find the parties running those schemes or helping to administer them (which may include liaising with a member about a transfer-in) to be authorised by the FSA. In any event, as mentioned previously, the FSA announcement about pension liberation mentioned that some advisers it regulated were involved in this very activity. So that doesn't suggest to me that, at that time, it considered the adviser's regulatory status as being a clear determining factor of whether liberation was taking place.

Where they were accompanied by the consumer's valid authority, a personal pension provider might also receive requests for information from other parties that might be engaged in some legitimate aspect of a person's financial affairs (accountants, tax or legal advisers, credit brokers, debt charities, introducers to authorised financial advisers and so on). But none of these other activities were required to be authorised by the FSA at the time either. So sending information to Portland ahead of the transfer, which SWL did, wasn't problematic in itself. And when SWL received the transfer request itself, it came directly from the occupational scheme (or those administering it), which again did not require FSA authorisation.

I would expect a FSA-regulated personal pension provider at that time 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 legal rights. Taking all of this into account, and particularly where transfers to occupational schemes were concerned, my view is that it wouldn't have been practicable for a personal pension provider at that time to have queried the regulatory status of every contact it had from third parties – or presume that there was a risk of harm from a third party involved in an occupational pension transfer purely because it was not FSA authorised.

It follows from the above that I don't uphold Mr W's complaint.

My final decision

For the reasons given above, I don't uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 27 March 2024.

Christian Wood

Ombudsman