

## The complaint

Mr M has complained about a transfer of his Scottish Widows Limited personal pension to a Qualifying Recognised Overseas Pension Scheme ('QROPS') in 2009. Mr M's transferred pension money was largely invested in schemes that have since reduced in value dramatically as they were liquidated or suspended.

Mr M says Scottish Widows 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 M says as a consequence of Scottish Widows' failures he wasn't in a fully informed position when he decided to transfer.

## What happened

Mr M, who was 61 years old and living abroad, held four UK based pensions. Only one of those, which – at the time – he held with Scottish Widows is the subject of this decision.

In 2009 Mr M spoke with a financial adviser ('the adviser') abroad. The adviser recommended Mr M transfer his pensions, including his Scottish Widows' pension to a QROPS I'll refer to as 'H' administered by a company I'll call 'G'. G is not UK based but is and was regulated by the relevant regulatory authority in the domain were it continues to operate.

The adviser said, amongst other things, that, by transferring to the QROPS held with G, Mr M could benefit from more favourable taxation, higher tax-free cash and more advantageous death benefits. Mr M has told us that he was a very willing investor, excited about the prospects of the transfer.

On 30 March 2009 Mr M signed a letter of authority allowing G to obtain details, and transfer documents, in relation to his pension. G wrote to Scottish Widows, enclosing Mr M's letter of authority and information request the same day. Scottish Widows sent the requested information the next day, 31 March 2009.

On 19 June 2009 Mr M signed the necessary forms to authorise the transfer of his Scottish Widows pension to H. G forwarded those forms to Scottish Widows. G also provided the relevant HMRC letter (dated 5 February 2007) to show H was a registered QROPS and a letter from the appropriate tax authority to show that H met the rules of that authority.

The following month, on 13 July 2009, Scottish Widows sent a cheque for the transfer value of Mr M's pension of £26,875 to G to complete the transfer.

I understand that Mr M also transferred funds from his three other UK based pensions to H. In total across all four pensions he transferred around £233,500.

In September 2020 Mr M contacted Scottish Widows. He said that following a transfer of his pension and owing to "*suspensions, fraud investigations and 'liquidating'*" his retirement was

ruined. He added that he understood that Scottish Widows was obliged to send him a leaflet to warn him of the risks before transferring but hadn't done so. He asked Scottish Widows to explain.

Scottish Widows replied. While acknowledging its delay in doing so and offering Mr M £100 redress for the impact of that delay, it didn't otherwise uphold Mr M's complaint. It said that, at the time of the transfer, in 2009, it completed the appropriate checks and there was no requirement for it to send Mr M a warning leaflet, as the guidance to take that action wasn't recommended until 2013.

In May 2021 Mr M brought his complaint to the Financial Ombudsman Service. He said he believed that Scottish Widows should have given him more information, including warning leaflets, advising him of the risks inherent in such a transfer. But it didn't do so. At the time Mr M complained to us his QROPS personal pension had a value of around £165.

One of our Investigators looked into the complaint. He didn't think Scottish Widows had done anything wrong. Mr M didn't agree. As our investigator was unable to resolve the dispute informally, 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.

As I've said above, Mr M transferred the funds from four different pensions to the QROPS with G. And the matter has also included the involvement of the adviser and G. However, in this decision I am only considering the issue of the transfer of a single Scottish Widows pension. Scottish Widows is not responsible for the actions of the other parties. So unless those actions should have influenced Scottish Widows decisions, I will not consider the activities carried out by the other parties in this decision.

### The relevant rules and guidance

Before I explain my reasoning, it will be useful to set out the environment Scottish Widows 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, including a QROPS, if certain conditions are satisfied (and indeed they may also have a right to transfer under the terms of the contract). The possibility that this might be exploited for fraudulent purposes was not new even at the time of this transfer. However, the obligation on the ceding scheme – in this case Scottish Widows – was limited to finding out the type of scheme the transfer was being paid to and that it was a tax-approved scheme.
- At the time of Mr M's transfer, Scottish Widows was regulated by the FSA. As such, it was subject to the rules set out in its 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.

For context, it's also worth noting that on 14 February 2013, The Pensions Regulator ('TPR') launched its "Scorpion" campaign. The aim of the campaign was to raise awareness of pension liberation activity and to provide guidance to scheme administrators on dealing with transfer requests in order to help prevent liberation activity happening. The Scorpion campaign was endorsed by the FSA (and others). The campaign came after Mr M's transfer, but I highlight it here to illustrate the point that the industry's response to the threat posed by certain pension transfers was still in its infancy at the time Mr M transferred. So it wasn't until *after* his transfer that Scottish Widows had specific relevant guidance to follow.

#### What did Scottish Widows do and was it enough?

With the above in mind, at the time of Mr M's transfer, personal pension providers had to make sure the receiving scheme was validly registered with HMRC. G had sent Scottish Widows the appropriate information to show that H was a registered QROPS with HMRC. It had also sent confirmation that H was appropriately registered with its local tax authority. So Scottish Widows didn't need any more information concerning the validity of the receiving pension scheme.

However, in line with the regulator's Principles, Scottish Widows would have been required to remain vigilant for any obvious signs of a pension scam or other types of fraud. But from the evidence available to Scottish Widows at the time I'm satisfied nothing along these lines would have been apparent to it at the time of the transfer.

Mr M's commented that the adviser purported to be FSA registered but he says that wasn't the case. But the paperwork that G sent to Scottish Widows doesn't at any point refer to the adviser or give any indication that an adviser was involved. And there was no requirement for Mr M to receive regulated advice before a transfer could go ahead. So Scottish Widows simply didn't have any information with which to question the actions of the adviser, as it had no reason to know or suspect that an adviser was involved. So, I don't think the fact that Scottish Widows didn't identify the involvement of the adviser or didn't investigate further the regulatory permissions of the adviser is an indication of any failing by Scottish Widows or its processes at the time.

Similarly, Mr M's transfer papers wouldn't have given Scottish Widows any indication of what was motivating him to transfer. And, given the guidance in place at the time, there was no expectation for Scottish Widows to contact Mr M to see how his transfer had come about. And I haven't seen anything that Scottish Widows would, reasonably, have been aware of about the parties involved that would have caused it concern about the safety of the transfer.

Also, as I've said above, Scottish Widows didn't carry any responsibility for the actions of the adviser. Nor do I think it would be fair to expect it to anticipate that such an adviser was involved in the transfer when there was simply no evidence available for it to make that deduction.

Mr M's said that Scottish Widows was required to issue him with a warning about the possibility of various pension scams. However, the guidance he's referred to was issued in

2002 by The Occupational Pensions Regulatory Authority ('OPRA'). But, as its title implies at that time OPRA only regulated occupational pension schemes. Mr M's Scottish Widows pension was not an occupational pension which fell under OPRA's regulation. Instead it was a personal pension regulated by the FSA and not OPRA. So any guidance or rules OPRA issued in relation to an occupational pension simply wouldn't apply to a personal pension. And, at the time of the transfer, there was no guidance or rules which meant that Scottish Widows was required to issue Mr M with a warning about transferring.

It's important to recognise that the more extensive list of warning signs TPR issued in 2013 hadn't yet been published. So I don't think it would be reasonable to use hindsight to expect pension providers like Scottish Widows to act with the benefit of that guidance. Also H was an appropriately registered QROPS. So there was nothing about the detail of the pension Mr M was transferring his pension to, nor the chosen pension plan itself, that should have caused Scottish Widows to call the transfer into question.

Also, Mr M had given his valid authority to both provide information to G and also to transfer his personal pension to it. So I think it was reasonable for Scottish Widows to give G the information Mr M had personally authorised it to produce.

Further, it seems to me that Mr M's losses have arisen not because of any failure of H or G but because the funds Mr M invested in have failed. Scottish Widows wasn't then, nor would it be now, under any obligation to carry out any form of due diligence or give warnings about Mr M's chosen investment schemes held within the QROPS. So I don't think Scottish Widows bears any responsibility for the devastating losses that Mr M has suffered.

For completeness Mr M's said our Investigator's view doesn't suggest any improvements for Scottish Widows. But even where we uphold complaints that is not our function. We are not the regulator so it's not our role to police the pensions industry. Our role is to look at individual complaints in order to decide whether regulated businesses have behaved reasonably and fairly in each case. It's not our job to recommend systemic improvements or amendments to regulations or business practices. And, in any event, in this case, given the regulatory framework that existed at the time, I think Scottish Widows did act fairly and reasonably.

### Conclusion

I have immense sympathy for the position Mr M now finds himself in, where a significant part of the money he'd saved for his retirement has been lost. However, I don't think that loss happened because of any errors or omissions on Scottish Widows behalf.

At the time of Mr M's transfer, from the information available to Scottish Widows it had no reasons to call Mr M's desire to transfer into question. And it was not under any regulatory obligation to issue Mr M with any form of warning. Similarly, there was no requirement or expectation for it to have undertaken more specific, detailed due diligence. The FSA's Principles and COBS 2.1.1R meant Scottish Widows still had to be alive to the threat of scams, and act accordingly when that threat was apparent. But I'm satisfied there weren't any warning signs that Scottish Widows should, reasonably, have spotted and responded to.

### **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 M to accept or reject my decision before 11 April 2024.

Joe Scott  
**Ombudsman**