CAS-31274-Q0V0

Ombudsman's Determination

Applicant	Ms I
Scheme	Scottish Widows Personal Pension Plan (**the Plan**)
Respondent	Scottish Widows

Outcome

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

Complaint summary

2. Ms I has complained that Scottish Widows transferred her pension benefits from the Plan into the Bodmin Sticher Retirement Scheme (**the Scheme**) without carrying out sufficient due diligence. As a result, her pension funds have been lost.

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. In June 2006, Ms I applied for two personal pension policies with Scottish Widows; Policy 3202504, which commenced on 20 June 2006 and Policy 3216166 which commenced on 1 July 2006. Both policies were held under the Plan.

5. On 15 August 2012, Scottish Widows received a Letter of Authority (**LOA**) from Pension Matters (**PM**), the financial advisor for Ms I. PM also requested a valuation of all Ms I's policies alongside transfer documents.

6. On the same day, the requested policy information was issued to PM. Scottish Widows said that it was unable to provide a projection of estimated benefits as the policies did not receive regular premiums.

7. On 6 November 2012, Ms I signed a Transfer Payment Authority and Declaration (**the Transfer Paperwork**).

8. On 19 November 2012**,** the Scheme administrator, Marley Administration Services Ltd (**Marley**), sent the Transfer Paperwork to Scottish Widows.

9. On 20 November 2012, Scottish Widows received the Transfer Paperwork from Marley which requested that it transfer the benefits held within the Plan into the Scheme. The Transfer Paperwork consisted of confirmation that the receiving Scheme was an occupational benefits scheme registered with HM Revenue & Customs (**HMRC**) and a copy of the HMRC registration certificate for the Scheme. The HMRC reference number was 00787653RE.

10. On the same day, Scottish Widows sent a letter to Ms I as she had not signed Section D of the Declaration of Claims Discharge Form (**the Discharge Form**).

11. On 7 December 2012, Scottish Widows received the signed Discharge Form for both policies in the Plan.

12. On 10 December 2012, Scottish Widows processed the transfer of both policies under the Plan to the Scheme. The total transferred was £27,740.99.

13. On 14 February 2013, the Pensions Regulator (**TPR**) launched an awareness campaign regarding pension liberation scams. TPR said that members who were thinking of transferring should be provided with an information leaflet (**the Scorpion Leaflet**), which contained a number of warnings about potential scams.

14. The Scorpion Leaflet included examples of previous cases involving pension scams and highlighted several warning signs of a potential scam, including that the:

- receiving scheme was not registered, or was only newly registered, with HMRC;
- member was attempting to access their pension before age 55;
- member put pressure on the trustees/administrators to carry out the transfer quickly;
- member was approached unsolicited;
- member had been informed that there was a legal loophole; and
- receiving scheme was previously unknown to the transferring scheme but had become involved in more than one transfer request.

15. On 13 June 2013, TPR appointed Dalriada Trustees Limited (**Dalriada**) as the sole Independent Trustee of the Scheme .

16. On 1 August 2018, Scottish Widows received a Subject Access Request (**SAR**) along with an LOA from The Financial Repayment Service (**the FRS**). The FRS were acting as Ms I’s representative and continued to do so during the complaint. Scottish Widows sent the FRS the information that it requested, which included information regarding:

- the transfer value paid to the Scheme;

- confirmation of whether any in house Additional Voluntary Contributions (**AVCs**) or other pension benefits were included in the transfer amount;
- confirmation of any penalties applied to the transfer;
- the notional current transfer value of the Plan; and
- details of any guaranteed annuity rates applicable to the Plan.

17. On 6 September 2018, the Financial Services Compensation Scheme (**FSCS**) asked Scottish Widows to provide it with information relevant to Ms I's claim for compensation. Scottish Widows provided all the information requested which mirrored that which had already been provided to the FRS.

18. On 25 March 2019, the FRS submitted a formal complaint to Scottish Widows on behalf of Ms I. The following points were raised in the complaint:

- The transfer was through an unregulated advisor which was a fact unknown to Ms I.
- The Plan, as the ceding scheme, should have carried out the necessary due diligence checks to protect the interests of its members.
- The Pensions Ombudsman's Determination in PO-12763 sets out that regulated bodies have a duty of care to protect their members and Scottish Widows had exposed Ms I to significant risk.
- Scottish Widows acted negligently by failing to engage with Ms I about the risks associated with pension transfers.
- The Pensions Ombudsman's Determination in PO-3809 stated that the principal concern in situations regarding a client wishing to transfer their pension was compliance with the regulatory requirements in the Financial Conduct Authority (**FCA**) handbook.
- Principle 6 of the FCA handbook stated that a firm must pay due regard to the interests of its customers and treat them fairly. Principle 10 also stated that a firm must arrange adequate protection for clients' assets when it was responsible for them to do so.

19. On 12 April 2019, Scottish Widows issued its formal response to the complaint. Scottish Widows did not uphold Ms I's complaint on the basis that:

- the administrator of the Scheme, Marley, was not required to be regulated;
- when it received the Transfer Paperwork it checked the status of the Scheme to ascertain whether it was a registered pensions scheme with HMRC;

- if a member, with a statutory right to transfer, requested a transfer to another registered pension scheme, the transfer could not be blocked;
- it was not until February 2013 that providers had to conduct detailed due diligence checks and provide warnings, where necessary;
- industry standard up until February 2013 had been to do little more than to check the pension scheme was registered for tax purposes and show that the transaction was authorised.
- Marley was not included on the list of Pension Advisory Service problematic transfers; and
- The Pensions Ombudsman (**TPO**) has already ruled that the enhanced requirements from February 2013 could not be applied retrospectively.

Caseworker's Opinion

20. Ms I's complaint was considered by one of our Caseworkers who concluded that no further action was required by Scottish Widows. The Caseworker's findings are summarised below:-

- At the time of the transfer, there were no signs that the Scheme was a pension liberation vehicle.
- The transfer was paid prior to the introduction of TPR's revised pension liberation guidance and the Scorpion Leaflet. It was the Caseworker's Opinion that it would be inappropriate to judge a transfer that took place in December 2012 by reference to the standards that applied from February 2013.
- TPR guidance at the time of the transfer only required additional checks to be carried out if the initial checks raised concerns. Although Ms I's representative has pointed out some areas of concern in respect of the Scheme, it was not standard practice at the time of the transfer to carry out the level of due diligence envisaged by subsequent Regulator industry guidance, which included the Scorpion Leaflet to be handed to those wishing to transfer.
- Hughes v Royal London ([2016] EWHC 319 (Ch)) held that the statutory right to transfer outweighed any significant concerns about pension liberation. In such situations, a transferring provider could not withhold the transfer. The best it could do would be to warn the member of the risks. Scottish Widows could not have legitimately refused Ms I's transfer request, given the regulatory position at the time and certainly not in circumstances where Ms I had a statutory right to a transfer.

- Ms I signed a declaration and provided this to Scottish Widows. This confirmed that she understood the benefits in the Scheme may be in a different form and amount to those payable from Scottish Widows and it was her responsibility to ensure the benefits were suitable. The Scheme administrator signed a similar declaration which confirmed the transfer value would be applied to provided relevant pension benefits compliant with HMRC's conditions of approval.

21. Ms I did not accept the Caseworker's opinion but did not provide any reasoning as to why. She requested until the middle of January 2024, to provide her comments, however she failed to provide any. Subsequently, her complaint was passed to me to consider. I agree with the Caseworker's Opinion.

Ombudsman's decision

22. Ms I has complained that Scottish Widows transferred her pension benefits from the Plan into the Scheme without carrying out sufficient due diligence checks. This resulted in her pension funds being lost.

23. As Ms I had a statutory right to transfer, Scottish Widows could not withhold the transfer into the Scheme. It was therefore limited in only being able to warn her of the risks involved with carrying out the transfer of her pension benefits. It is to be noted that at the time of the transfer there were no overt signs that indicated the Scheme was a pension liberation arrangement.

24. As the Scheme was registered with HMRC and did not appear on any warning lists, I am satisfied that Scottish Widows carried out a sufficient level of due diligence checks required under the regulatory requirements in place at the time of the transfer. No additional checks were required to be undertaken as the initial checks had not highlighted any concerns.

25. At the time of the transfer, the level of due diligence required was much less than the Pensions Regulator's guidance, which included the introduction of the Scorpion Leaflet. The transfer from the Plan to the Scheme can only be judged by the industry practices and guidance at the time. TPO has previously determined that the enhanced requirements which applied from 14 February 2013, could not be applied retrospectively.

26. Ms I also provided Scottish Widows with a signed declaration which indicated she understood the potential impact on her pension benefits as a result of a transfer out of the Plan. This declaration also stated that she understood Scottish Widows would not be responsible for ensuring the benefits in the Scheme were suitable for her requirements.

27. I find that Scottish Widows did not cause Ms I to suffer a financial loss by allowing the transfer of her pension benefits from the Plan to the Scheme.

28. I do not uphold Ms I’s complaint.

Anthony Arter CBE
Deputy Pensions Ombudsman
5 March 2024