

The complaint

Mr A is unhappy with the service he received from Scottish Widows Limited when discussing his options for taking his pension at his selected retirement date.

What happened

Mr A had a personal pension policy with Scottish Widows, the value of which was split between with-profits and unit-linked funds. The with-profits part of Mr A's pension had a Guaranteed Annuity Rate (GAR) which could only be taken on Mr A's selected retirement date of 28 July 2019. The unit-linked part of the policy did not have a GAR.

Mr A had a call with Scottish Widows on 25 July 2019, during which he says he was told he could take the GAR on the with-profits part of his pension and deal with the unit-linked part later. Mr A later found out this wasn't possible, and he would have to take the whole pension as an annuity or lose the GAR, which was a valuable benefit. He decided to take the whole of his pension as an annuity and this was confirmed by Scottish Widows on 29 October.

Mr A complained that Scottish Widows should have made him aware of the option to transfer the unit-linked part of his pension to another provider before his retirement date. He said if he'd done that, he could have kept the GAR and been free to find a better option for the rest of his pension. Instead, he had to take a lower annuity rate on the unit-linked part of the policy, as it wasn't possible to transfer part of his pension after the normal retirement date. He says Scottish Widows should have given the option to transfer out his unit-linked part of the pension after his normal retirement date, as it didn't make him aware of this option before the deadline. He also says correspondence was sent to the wrong address. And he says it's unfair that Scottish Widows agreed a three-month extension to take the GAR but wouldn't extend the deadline for the unit-linked part of the pension.

Scottish Widows accepted there had been some poor service and miscommunication around the time of the retirement date and paid compensation of £250 for this, but didn't agree it had caused any loss or that any further action was required.

Mr A remained unhappy. He said he also lost valuable life cover which he couldn't replace and has incurred further expenses as he had to employ an independent financial adviser to make sense of the situation.

Our investigator agreed there had been some poor service and compensation should be paid for that. Looking at all the circumstances he didn't think the sum of £250 was enough and asked Scottish Widows to increase the compensation to £500.

Scottish Widows didn't think the compensation should be increased. It raised a number of further points, including:

- Mr A was sent letters on many occasions telling him his selected retirement date was 28 July 2019 (and had replied to an earlier request for information in 2017) so he had plenty of notice of this but didn't contact Scottish Widows until 25 July, just three days before the retirement date;
- Mr A was given a 90 day extension to deal with the GAR;

- one letter in August 2019 was sent to the wrong address but this was due to the timing of receiving Mr A's letter about a change of address;
- some of the delays were due to waiting to hear from Mr A;
- the compensation of £500 seems high in the circumstances.

Mr A also disagreed with the investigator's view and raised a number of points. I won't set them all out in full but the key points include:

- He has provided comments from an independent financial adviser who confirms he has been materially disadvantaged, including being denied the chance to use the 'open market option'.
- Actions (or lack of actions) should be construed against the party who failed to take action, or failed to do it correctly.
- He wasn't in an equal bargaining position with the Scottish Widows adviser, who didn't make it clear to him that the unit-linked part of the pension had to be transferred out before his retirement date. He still had 1.5 days to transfer it to another provider. He would then have been able to take the GAR on the with-profits part of his pension and there would still be a unit-linked policy with life cover included, which would have been cheaper than the life cover he had to take out separately.
- In addition to his financial loss, the huge stress he was placed under over a period of several months warrants a payment of £1,000.
- He was given to understand he could take the with-profits part of his pension with the GAR and then transfer the unit-linked part, with the help of a financial adviser; if that wasn't correct it's not clear why he was referred to an independent financial adviser.
- He relied on the information given to him and Scottish Widows should be estopped from maintaining an unreasonable position by not back-dating the unit-linked part to the original maturity date, enabling their own appointed investment adviser to deal with the unit-linked policy.
- The investigator said Scottish Widows' decision to allow a 90 day grace period was a commercial decision – it wasn't bound to this as it isn't in the terms and conditions. But this effectively means it can behave badly and then use the term "commercial decision" as an excuse.
- What he wanted to do was partially transfer the pension and continue contributions beyond 60 with the unit-linked element. Scottish Widows gave him a financial adviser for that purpose but did not tell him or the adviser that the unit-linked element had to be transferred to a new provider. He has other pensions and would have been quite happy to transfer the unit-linked policy to any one of those.

The investigator considered the points raised by both Mr A and Scottish Widows but didn't change his view. Scottish Widows then said it would accept his recommendation and increase the compensation to £500. But Mr A still disagrees, so the complaint has been 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.

Options at retirement date

The starting point for considering the complaint is the terms and conditions for Mr A's pension. The pension is designed to provide an annuity at the selected retirement date, but there is also the option to transfer the funds to another provider to obtain an annuity elsewhere. The guide to the GAR says that if the pension is taken at any date other than the

selected retirement date, or in a different way (for example by transferring to a different provider) the GAR will be lost. Scottish Widows does however, allow a 90 day extension beyond the retirement date to complete the process for arranging the annuity.

Scottish Widows has explained that the only way the policy can be split, is if the unit-linked part of the pension is transferred to another provider before the selected retirement date. But this isn't written within the policy conditions, so it doesn't form part of the pension contract. Scottish Widows doesn't present this to customers – it's only offered as a concession, if a customer asks for it.

I don't think it would be fair to require Scottish Widows to do this. There's no term in the contract which requires Scottish Widows to offer this option and no rules that require it to draw customers' attention to it. Scottish Widows did have to make Mr A aware of his option to transfer to another provider and purchase an annuity elsewhere, and has shown it did that on several occasions. Mr A didn't express a desire to transfer his pension to another provider before his selected retirement date. So this point simply never came up for discussion.

Mr A also says he was misled during the phone call on 25 July 2019. I've listened to the recording of that call. The adviser explained to Mr A the extension to the GAR deadline, as he had expressed an interest in taking an annuity in order to benefit from the GAR. The adviser also made clear to Mr A that the two parts of his pension had to be claimed at the same time. He said although the paperwork would quote the with-profits and unit-linked parts of his fund separately, they had to be claimed together and couldn't be separated.

Mr A says he was led to believe he could take the with-profits part of his pension – taking advantage of the GAR – and deal with the unit-linked part later, but I don't think he was. And the paperwork issued after the call set out the options available to Mr A. This didn't at any point offer the option of splitting the with profits and unit-linked parts of his policy. Mr A wasn't told during the call or in the correspondence afterwards that he could take the GAR and deal with the unit-linked part of his pension later.

Mr A has said the referral to a financial adviser during the phone call led him to believe he could deal with the unit-linked part of his policy separately after his selected retirement date. I don't think that was a reasonable assumption, when he was specifically told both parts of his pension had to be taken together. The referral to a financial adviser was for Mr A to seek advice about whether to take the annuity during the deadline extension. He hadn't agreed to buy the annuity during the call and, if he decided not to take the GAR, he would have needed advice on that.

Mr A claims the lack of response from Scottish Widows to a letter he sent in January 2017 meant he didn't have enough information about his pension to make an informed decision about his retirement. He asked whether he could continue his waiver of contribution cover if he was to defer his pension beyond his selected retirement date. He also asked about the significance of the dates 21 June and 28 July 2019. Scottish Widows has provided information indicating it did reply at that time. And Scottish Widows told Mr A about his retirement date on numerous occasions during 2019. Mr A was aware of the significance of his retirement date – that's why he made the call on 25 July 2019 and triggered the 90-day extension for taking his GAR benefit.

Mr A didn't follow up on his 2017 query until a few weeks before his retirement date and never explored the possibility of transferring away from Scottish Widows before then. I can't see any evidence Scottish Widows told Mr A before his selected retirement date he couldn't partially transfer his pension to another provider. Mr A was given the information he needed in the lead up to his selected retirement date. And he was ultimately able to benefit from the GAR after taking advantage of the 90-day grace period.

If Mr A had contacted Scottish Widows earlier than July 2019 and enquired about splitting his pension or transferring the unit-linked part to another provider, and Scottish Widows had failed to give him enough information about that, I might conclude there was a failing. But that isn't what happened; he only contacted Scottish Widows a few days before his selected retirement date and didn't ask about transferring the unit-linked part of his pension. So I don't think Scottish Widows was at fault or caused any loss in relation to this.

Life cover

The life insurance attached to Mr A's pension was written to expire at his 60th birthday and this is confirmed in the original documents given to Mr A at the point of sale of the pension. Mr A bought these products through a financial adviser. So it would have been for the adviser to explain how the products worked and the benefits they provided.

Scottish Widows wrote to Mr A on 23 May 2019 informing him the life cover on his pension would end on 27 July, the day before his 60th birthday. However, in the call on 25 July the adviser led him to believe his life cover was still in force and would continue, providing he didn't cash in the whole plan or transfer it away. It wasn't until 17 September that Scottish Widows clarified this.

This was frustrating for Mr A. And it would be difficult for him to find a similar policy, but he was never entitled to life cover beyond his 60th birthday. The fact he was given incorrect information didn't change that. So it wouldn't be fair to direct Scottish Widows to compensate Mr A for a loss of life cover that he wasn't entitled to.

Communication and customer service

Following the phone call on 25 July 2019, Mr A was referred to a Scottish Widows financial adviser to help him make a decision about his pension. I don't have any evidence from Scottish Widows about what was discussed, so I've had to rely on the email submitted by Mr A dated 8 August 2019 to determine this.

The Scottish Widows adviser emailed Mr A with information about his options. The adviser said Mr A would need to transfer the unit-linked part of his policy before he took the GAR, in order to take advantage of the GAR. While this isn't incorrect, that option was no longer available to him. But the email led him to believe it was.

Clearly, Mr A should have been given accurate information. But where incorrect information is provided, that doesn't necessarily mean I would ask Scottish Widows to honour it. The option to transfer part of his pension was not available to Mr A after his selected retirement date. So although this information wasn't accurate, Mr A hasn't lost out on this option as a result of this. When something goes wrong, I would aim to put the consumer in the position they would have been in, if the error hadn't occurred. In this instance, if the error hadn't happened, Mr A would have been told it was too late to transfer part of his pension. So he's in the position he would have been in in any event.

After receiving this email from the Scottish Widows adviser, Mr A contacted Scottish Widows for further information on 13, 18 and 23 August 2019 without reply. He made a complaint on 2 September 2019, as he was worried about the deadline for buying an annuity. Scottish Widows issued a response to his letter of 13 August 2019, but this was sent to his former address in error. It then issued quotes to Mr A's correct address on 27 August, 2 September and 4 September 2019 which gave Mr A information but didn't answer all of his questions.

After speaking to an independent financial adviser, Mr A requested quotes from Scottish Widows for buying an annuity with the part of his pension which attracted a GAR only. Scottish Widows replied the next day explaining to Mr A his pension could not be split and, if he wished to take advantage of the GAR, he would need to take his whole pension as an annuity. Mr A requested confirmation of this. He also asked Scottish Widows to reconsider the position but it refused. Scottish Widows answered Mr A's questions on 13 September 2019, acknowledged the incorrect information given previously, explained how the policy worked and said it couldn't give any more concessions.

There was further correspondence up to 8 October 2019 when Mr A received answers to all the questions he'd asked. Scottish Widows also made clear it wouldn't give any further extension to the 90-day grace period, so the process of taking his GAR would need to be started by 25 October.

Mr A requested updated quotes on 9 October 2019 and Scottish Widows explained the following day that the quotes he had were backdated to 28 July and wouldn't change. He then arranged a retirement call which took place on 16 October. Scottish Widows agreed to issue annuity paperwork and comparative quotations, but these were never issued.

The retirement call happened only nine days before Mr A was required to submit his annuity paperwork. I appreciate this was a very stressful time for him. Mr A chased the paperwork on several occasions but found it difficult to get a reply from Scottish Widows. He did speak to Scottish Widows on 23 October 2019, and was sent an electronic copy of the papers, which he completed and returned before the deadline. The paperwork sent to Mr A on 29 October 2019 shows the annuity was bought on the terms requested by Mr A, in line with the pension contract, and he didn't lose the GAR.

Mr A hadn't yet received comparison quotes and had to follow up on several occasions. Scottish Widows issued an annuity quote on 4 November 2019 as part of a complaint response. This document notes the Scottish Widows quote is the highest available and no comparison quotes were provided as there was no higher option on the market.

Mr A was given some misleading information. But from the evidence I've seen, between 10 September and 16 October 2019 he received accurate answers to all his queries. The Scottish Widows adviser clarified Mr A's options for him and corrected the incorrect information he'd been given earlier. Scottish Widows made clear to Mr A what he could and couldn't do with his pension and explained why it wouldn't provide any further concessions.

Having said that, Scottish Widows failed to send the annuity application documents to Mr A after his retirement call on 16 October 2019. Mr A's decision making process had already been slowed down by misleading information which meant he didn't have all the necessary facts until October 2019. The deadline was fast approaching to take advantage of the GAR and the delays was distressing for him.

Mr A has also said Scottish Widows should pay for the financial advice he obtained, as he was told he had to obtain advice in order to take his benefits. He says he wouldn't have paid for advice if it wasn't needed. During the call on 25 July 2019, Mr A was advised he needed to demonstrate he had taken financial advice if he was not taking the GAR.

The adviser did provide Mr A with information that led him to believe he would need financial advice in order to proceed at all. But towards the end of the call, the adviser told Mr A he would provide all the information he needed about the advice requirements in an email. The email sent by the adviser after the call said, "*you must take financial advice before we can action your request, if you are choosing an option other than taking a guaranteed income*". It is a regulatory requirement due to the valuable GAR benefit, so this email is correct. And

nothing in the email suggested Mr A had to get advice if he wished to go ahead and buy a guaranteed income.

Some of the information given to Mr A in the phone call wasn't correct. So I can see how he might have been confused about whether he needed to obtain advice to proceed. But the follow up email clarified matters and explained the circumstances in which he would need to take financial advice. So while there was some poor service here, it was corrected by the email. If Mr A chose to take financial advice after that, I don't think Scottish Widows should have to reimburse him for this cost.

Summary

For the reasons set out above I don't think Mr A has suffered a financial loss as a result of what happened.

I do agree there was poor service during the period following July 2019. The lack of clarity led to him having to send emails seeking clarification and there were some delays. After the retirement call on 16 October 2019, Scottish Widows then failed to send the annuity application documents which meant Mr A had to chase to obtain duplicate copies just two days before the deadline to take his GAR. He would have been upset by this and concerned that he might miss the deadline as a result of Scottish Widows' poor service.

In these circumstances I think it is fair to increase the compensation to £500. So a further payment of £250 is needed.

My final decision

I uphold the complaint in part and direct Scottish Widows Limited to make a further payment of £250, to bring the total compensation for the distress and inconvenience caused to Mr A to £500.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 15 March 2022.

Peter Whiteley
Ombudsman