

## The complaint

Mr T complains that Scottish Widows Limited provided him with badly timed and misleading information about taking his pension benefits as he approached the age of 75.

## What happened

I have issued two provisional decisions on this complaint, in June and November 2022. In both of those decisions I explained why I thought that Mr T's complaint should be upheld, and what Scottish Widows needed to do in order to put things right. Both parties have received copies of the provisional decisions but, for completeness and so those findings form part of this decision, I include some extracts from them below.

In my first provisional decision I said;

*Mr T held pension savings with Scottish Widows. Those savings had arisen as a result of contributions he had made over the previous 25 years to a free standing additional voluntary contribution ("FSAVC") policy.*

*When Mr T had originally taken the FSAVC plan he had set an expected retirement age of 60 years. But he subsequently altered that retirement age on a number of occasions. In 2010 Scottish Widows told Mr T that he would need to ensure he had taken his pension benefits by age 75.*

*However, over the years, pension legislation changed. When Mr T originally took the FSAVC plan consumers were generally required to use their pension savings to purchase an annuity by age 75. And my understanding is that requirement remained part of the terms of Mr T's plan despite the subsequent changes to the regulations. But, as I will go on to explain in this decision, that situation wasn't always adequately reflected in the information that Scottish Widows provided to Mr T.*

*In April 2018 and April 2019 Scottish Widows wrote to Mr T to warn him that he was approaching 75 years of age. And it reminded him that his FSAVC plan required him to take his pension benefits before he reached that age. It told him that, if it didn't hear from him beforehand, it would use his pension savings at age 75 to purchase an annuity on his behalf. It warned him that might mean he would lose any entitlement to a pension commencement lump sum ("PCLS" - otherwise known as tax free cash) and the ability to choose his annuity provider.*

*But Scottish Widows sent some further information to Mr T in October 2019. I understand that this accompanied an annual statement, and so was more generic in nature. So it didn't adequately apply to Mr T's circumstances – that he would turn 75 in a few months' time. A leaflet that was included with the statement set out information about the retirement options that might be available to Mr T. One of those options was headed "Do Nothing Now" and explained that choice as being "Leave it for now. If you don't need to take your pension savings yet, you can leave it for now, keep it invested and make a decision when you're ready to retire, but make sure if you do this, you won't lose any valuable guarantees."*

*Mr T says that he relied on that later information. So he was distressed to learn, in the weeks leading up to his 75th birthday that he needed to take a decision on the use of his pension benefits. So he discussed his options with Scottish Widows by telephone.*

*As a result of those discussions Mr T decided to use his pension savings to purchase an annuity that provided an income for him, and for his wife should he predecease her. He also decided to use some of his pension savings to take a PCLS. But the time at which Mr T needed to make that decision, and so the point at which he crystallised the value of his pension investments, was near the start of the coronavirus pandemic – a time of significant market volatility. Mr T says that the value of his pension investments had fallen by around £25,000 in the weeks leading up to his 75th birthday.*

*Mr T's complaint is twofold. Firstly that, had he been given correct information in October 2019, he would have taken steps to protect the value of his pension savings in the lead up to his retirement and so he wouldn't have experienced the large fall in their value. And he has questioned why he wasn't allowed to retain his pension savings in their invested form, rather than being required to take an annuity.*

*When Mr T complained to Scottish Widows it agreed that it had provided some misleading information when he was considering the annuity he wished to take. It paid him £75 for the inconvenience he'd been caused. And later Scottish Widows also agreed that it hadn't put Mr T's pension into payment as quickly as it should. So it paid him some interest for the delays to the payment of the PCLS, and a further £150 for his inconvenience. Mr T didn't think Scottish Widows had done enough to put things right so brought his complaint to this Service.*

*Mr T has been very clear with us that the pension savings he built up in his FSAVC plan were not intended to support his day to day living costs during his retirement. Instead his intention with those funds was to provide additional income for his wife should he predecease her. At that time, although she would be entitled to dependents pensions from his other pension income, Mr T's wife's income would fall.*

*And what I have described above is supported by the discussions Mr T had with Scottish Widows by telephone in the lead up to his 75th birthday. I have carefully listened to three telephone calls between Mr T and Scottish Widows where he discussed how he wished to use his pension savings, and Scottish Widows provided information about the options open to him.*

*That leads me onto a very important point here. Scottish Widows was not authorised to, nor did it, provide Mr T with any advice during those discussions. So Scottish Widows didn't need to make sure the decisions Mr T took were suitable for his needs – that was essentially something he needed to ensure himself. But Scottish Widows was responsible for ensuring that it gave Mr T clear, fair, and not misleading information on which he could base his decision.*

*I think the starting point for my consideration of the information Scottish Widows provided to Mr T should be the written documentation it has sent over the years. As I said earlier, during the time that Mr T has held the FSAVC plan, pensions legislation has changed the way in which consumers are able to use their pension savings. An important change is that consumers are no longer required to use their pension savings to purchase an annuity before the age of 75 (or indeed at any time in their life). And so that change in particular would have helped Mr T in meeting his*

*objective of providing additional income for his wife after his death – and as he correctly points out, the later an annuity is purchased, the higher its value typically is.*

*The letters that Scottish Widows sent to Mr T in 2010 and 2011 correctly reflected the law at that time, telling him that he was required to use his pension fund to provide a retirement income by age 75. By 2015, the legislative changes had been implemented. So the more recent general communications from Scottish Widows reflected the other options that were now available such as continuing to save in the pension plan, taking an annuity, taking a flexible income from the pension savings, or taking all, or some, of the pension pot as one or more lump sums.*

*But those new flexible options didn't apply to Mr T's FSAVC plan – that plan still required him to use his pension savings by age 75 to purchase an annuity. So in April 2018 and April 2019 Scottish Widows wrote to Mr T to warn him that, unless he made a decision about his pension savings, it would use his monies to purchase an annuity on his behalf.*

*I think those letters were relatively clear in preparing Mr T that he might need to take some action before he reached 75. But those messages were then diluted by the general information that Mr T was sent later in the year that once more explained the whole range of options (including doing nothing) that were open to him. I think Mr T is right to question whether Scottish Widows should have tailored some of that information more closely to his circumstances.*

*So it isn't entirely surprising that Mr T faced a degree of confusion when considering how to use his pension savings in the lead up to his 75th birthday. His preferred option would be to leave his pension savings untouched and simply allow them to continue to grow within the pension wrapper until such a time as he, or more likely his wife, needed the additional income. And the most recent information Scottish Widows had sent to him suggested that would be possible.*

*Later in this decision I will go on to discuss the options that were actually available to Mr T and whether Scottish Widows provided him with clear, fair, and not misleading information about them. But for the purposes of this part of the decision I must consider what Mr T later understood Scottish Widows had told him about what he needed to do – that he must take an annuity. Mr T says that had he been aware that he would need to take an annuity before he reached age 75 at an earlier stage he would have moved his pension savings to less volatile investments (or even cash) to protect their value as he approached retirement.*

*The strategy that Mr T suggests here could be seen to be influenced by a degree of hindsight. Unfortunately his 75th birthday coincided with the start of the coronavirus pandemic and significant market volatility. So in the lead up to taking his pension benefits his savings were reduced by a large amount. But the strategy Mr T has suggested he would follow is not uncommon in preparing for retirement. So I cannot say what he has said is implausible or unlikely to have been the case.*

*But, as I will now go on to explain, I don't think it is necessary for me to determine whether the information Scottish Widows gave to Mr T in 2018 and 2019 was misleading. Or whether he was prevented from taking steps to protect his retirement income. My conclusion, having listened to recordings of the calls Mr T had with Scottish Widows in March 2020 is that it failed to provide him with sufficient information on his options, and had it provided better information I think Mr T would have made a different decision – and one that would have mitigated any losses he faced by having to take his benefit benefits in April 2020.*

*As I said earlier, Mr T had no desire to access his pension savings in 2020. He wanted to simply leave them invested. And that was a course of action he explained to Scottish Widows on more than one occasion. Recently Scottish Widows has told me that it would have been possible for Mr T to transfer his benefits into a flexible retirement product and so not take an annuity. It says that information was given to him on the call.*

*But I can't agree that was the case. Although there was some limited discussion about taking a flexible retirement income, each mention was preceded by the incorrect suggestion that Mr T would need to take 25% of his pension savings as tax free cash. That was something that he explicitly did not want to do at that time.*

*It seems to me that Scottish Widows' advisors correctly understood that under the pension legislation, Mr T reaching age 75 would trigger a benefit crystallisation event ("BCE"). At that time his pension savings would need to be tested against the published lifetime allowance. And that test (and a BCE) also usually occurs when a PCLS is taken. So it appears that the advisors may have confused and conflated the two situations.*

*The information that Scottish Widows should have provided to Mr T was simple. Although the FSAVC plan required him to take an annuity from his pension savings, he could instead transfer the value of those pension savings to another product – a flexible retirement product. That product would have allowed Mr T to continue to invest his savings within a pension wrapper, but wouldn't have necessitated him taking either an annuity, or tax-free cash until, or unless, he required it. And given that was the objective that he stated on a number of occasions I think that is the option that Mr T would have chosen. I have no doubts that he only took an annuity (and tax-free cash) because that was the only approach he reasonably believed was open to him following his discussions with Scottish Widows.*

*So that is the reason why I don't think I need to consider the information given to Mr T in 2018 and 2019. I think that Scottish Widows should have made him aware that his understanding of the options available was something that could be achieved. So Mr T wouldn't have needed to reduce the risk of his pension investments as they would have continued indefinitely.*

*I think that Mr T would have taken a different decision about the use of his pension savings in March 2020 had he received better information from Scottish Widows. So I currently think his complaint should be upheld, and that Scottish Widows needs to put things right.*

I invited both Mr T and Scottish Widows to comment on those provisional findings and I summarised their responses as follows;

*Mr T generally agrees with my provisional findings. He has confirmed that, had he been aware that he would need to use his pension savings to purchase an annuity, he would have taken steps to reduce the risk in his pension investments, and most likely moved them into a cash investment around October 2019.*

*Mr T says it would be feasible for him to repay the annuity income he has received from Scottish Widows. But he is concerned about the practicality of that approach, and in particular the impact on his income tax situation. He says the economic environment is also markedly different from that time both in terms of annuity rates and investment performance. He says that "winding back the clock" would*

*undoubtedly cause him and his wife great stress. So he is minded to accept the forced purchase of the annuity, and simply ask that I consider compensation for the fall in value of his pension savings between October 2019 and April 2020. He estimates that fall to be in the order of 20%.*

*Scottish Widows doesn't agree with my provisional findings. It says that its communications to Mr T had been clear about the options open to him when he reached 75 years of age. Scottish Widows says that it is only possible for consumers to transfer their pension savings to its flexible drawdown product before they reach 74 years. It accepts that Mr T could have technically transferred his pension savings to another provider, but it says by the time he got in touch in March 2020 there was very little time for him to make those arrangements. But it says that it wouldn't have discussed that option with Mr T as its team was only for customers wanting to access their retirement benefits with Scottish Widows. It says Mr T would have needed to engage an independent financial advisor to receive that sort of advice.*

So I issued some further findings in a second provisional decision. In that decision I said;

*Scottish Widows has said that Mr T wasn't able to transfer his pension savings to its flexible drawdown product once he had reached 74 years of age. That modifies some information it had previously provided, but I have no reason to doubt that restriction was in place when Mr T was considering his options. So I accept it would be unreasonable to expect Scottish Widows to have suggested that option to Mr T when he was deciding how to take his benefits shortly before he turned 75.*

*But the option to transfer his pension savings to another provider, and so avoid the need to take an annuity from Scottish Widows, was vital information that I think should have been provided to Mr T in the lead up to his retirement decision. Instead he was sent specific information in March 2018 and March 2019 about the annuity that he would be required to take before he turned 75. And, in October 2019, he was sent the generic information that I have concluded caused the confusion that has led to this complaint.*

*So I'm still minded that Scottish Widows failed to communicate effectively with Mr T in the lead up to his retirement decision. I think it is clear that Mr T didn't want to make use of his retirement savings at that time, and leave them available for use at a later date. That option was available to him, either by transferring his pension savings to a flexible drawdown product with Scottish Widows before his 74th birthday, or by transferring them to another provider after that time. I think that choice should have been clearly signposted to Mr T in the lead up to his retirement, when Scottish Widows sent him information about his options.*

*I think that, had Scottish Widows communicated more effectively with Mr T, he would not have chosen to purchase an annuity in March 2020. But that is what happened, and I accept Mr T's preference to not wind that decision back. More than two years have now passed, and I am sure that Mr T has adapted his finances to accommodate the new annuity he is receiving. He has told us that he, and his wife, would experience great stress should I decide to wind back the annuity that he took in March 2020. And so on that basis I have decided it would be reasonable to consider the compensation Scottish Widows should pay on the basis that Mr T would have chosen an annuity after all.*

*For the avoidance of doubt, I don't think that was something that Mr T intended, or even thought he would need to do. As I've explained earlier, I think it was reasonable given the conflicting information Scottish Widows had sent him, for Mr T to expect his*

*pension investments to continue indefinitely. But I must now consider what I think Mr T would have done if he had been considering taking his pension benefits at a set date – his 75th birthday.*

*It is generally accepted to be good practice for consumers to reduce the risk in their pension investments in the lead up to a retirement event. Where the date of that event is fixed, as it was here on Mr T's 75th birthday, consumers are not able to easily withstand sudden market downturns that might have a lifelong impact on the annuity they purchase. Mr T has explained that he was well aware of that approach from regular reading of consumer finance advice articles in the national press. And so I am persuaded that, had Mr T been aware that he was going to purchase an annuity at age 75, he would have taken steps to mitigate the chances of his pension investments falling in value in the immediate vicinity of his retirement.*

*It is impossible for me to say with any certainty when Mr T might have started to reduce the risk in his pension investments in the lead up to his retirement. But what is very clear, as I explained in my provisional decision, is that the value of his pension investments reduced sharply in the lead up to his 75th birthday. I think that at least some of that fall in value might have been mitigated if Mr T had taken the steps I've set out above to de-risk his pension investments.*

*So, given all that I have said above, and in my provisional decision, I am now minded that the most appropriate way to compensate Mr T for the confusing and deficient information he was given by Scottish Widows is to require the firm to provide him with an uplift in his pension annuity income. I appreciate that a higher level of pension savings would also have resulted in Mr T receiving a larger PCLS payment. But, with the agreement of Mr T, I am not currently intending to make any direction in that regard.*

*Generally the de-risking of pension investments starts a number of years before the selected retirement age. It is clear that, even when the information about taking his pension benefits was less contradictory, Mr T hadn't started to alter how his pension savings were invested. So I cannot agree with Mr T that it is likely he would have simply moved all his pension investments into cash in the months leading up to his 75th birthday. At most, I think there would have been a proportion of his pension investments that were de-risked in this way. And so that is that approach that I will take in my redress proposals that follow.*

I again invited both parties to provide us with any further comments or evidence in response to my second provisional decision. I have received further responses from both Scottish Widows and Mr T. Although in this decision I am again only summarising the comments they have made, I want to reassure both Mr T and Scottish Widows that I have read, and carefully considered, their entire responses.

Mr T said that he accepted my second provisional decision and was happy with the resolution that had been proposed. Scottish Widows said that it still didn't agree that it had treated Mr T unfairly and provided some further documentation and commentary about the way it had handled Mr T's retirement journey.

Scottish Widows says that it is clear, from the information he was sent and the testimony he provided, that Mr T understood that his pension policy would be converted into an annuity at age 75 if he took no action. It accepted that Mr T had made it clear that wasn't something he wanted to happen.

It says that the document it sent to Mr T in the lead up to his retirement made it clear that not all of the different pension options would be available on all policy types. It says that any reference to taking not pension benefits “now” were accurate, and Mr T could have waited right up to the day before he turned 75 in order to take his benefits. It says that information was repeated in the phone calls Mr T had with Scottish Widows in the lead up to his birthday.

Scottish Widows says that Mr T referred in one of the phone calls he had with the firm to receiving some pension information in February 2020. Although it hasn't been able to provide any records about what was actually sent, it says that it would have included a standard letter normally issued six weeks before retirement. It said that letter would have explained to Mr T that he could delay taking his pension benefits past the age of 75 by transferring his pension savings to another provider.

Scottish Widows says that the booklet that Mr T was sent in October 2019 provided him with additional information about the “leave it for now option”. It says that additional information clearly explained that, with the exception of a different product to that held by Mr T, his pension savings would in any case need to be used to purchase an annuity at age 75. But it says that information also explained to Mr T that he might be able to transfer his pension savings to another provider, and so avoid the need to purchase an annuity.

So Scottish Widows thinks that it took reasonable steps to make Mr T aware of the consequences of failing to take action on his pension savings before he reached age 75. It says that although Mr T might have been unhappy that he needed to buy an annuity by his 75<sup>th</sup> birthday, the evidence clearly confirms that this was something that had been explained to him.

### **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 before, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr T and by Scottish Widows. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

And I further repeat my reflections on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

This has been a complex case to decide. And as I will explain further later in this decision, that process hasn't been helped by the introduction of new evidence by Scottish Widows at various times. But even after considering the new evidence that has been provided by Scottish Widows I remain of the opinion that the firm failed to communicate effectively with Mr T in the lead up to his retirement decision.

Effectively Mr T had three choices as he approached his 75<sup>th</sup> birthday. Scottish Widows has explained that up until a year before that time he could have moved his pension savings into a drawdown arrangement with the firm that would have meant an annuity didn't need to be purchased. After his 74<sup>th</sup> birthday Mr T could have achieved a similar result by transferring his pension savings to another provider. And of course, the option remained for Mr T to use his pension savings to purchase an annuity on or before his 75<sup>th</sup> birthday.

But I don't think those three options were communicated clearly enough to Mr T by Scottish Widows. Instead he appears to have received generalised information about the possibility of entering a drawdown arrangement, and very specific information about being required to take an annuity. I think that better communication would have made it clear to Mr T the steps he needed to take in order to avoid an annuity purchase – something that Scottish Widows accepts he clearly explained was his objective in the correspondence he sent over the years.

It is concerning that, for the first time in response to my second provisional decision, Scottish Widows has told us about the content of a letter that it thinks would have been sent to Mr T around six weeks before his 75<sup>th</sup> birthday. I have previously asked the firm quite specifically for details of what might have been sent to Mr T around that time, and not received any evidence of information being sent. And even now Scottish Widows has said that it holds no records to show that this letter was actually sent to Mr T. It simply relies on a description of its normal processes. I don't think that is enough for me to reasonably conclude that this information was issued to Mr T.

Mr T has told us that he cannot recall receiving this information from Scottish Widows in the lead up to his retirement. And I have noted that the content of the letter Scottish Widows says was sent to Mr T wasn't something that he referred to on the call he had with Scottish Widows in March 2020 when he made passing mention of receiving the retirement booklet. Nor was the content of the letter, and most specifically the option for a transfer of his pension savings to another provider, raised with Mr T as a possibility by the advisor he spoke to, or in the follow up email he was sent around an hour later.

I've also considered the additional text that Scottish Widows has now provided us with from the retirement booklet that was issued to Mr T, and as I explained, underpins some of the confusion he has been caused. I accept the additional information does warn consumers that it might not be possible to retain the benefits in a flexible form unless a Retirement Account is held. But it goes on to explain that an annuity would only be automatically purchased if a consumer had failed to get in touch before their 75<sup>th</sup> birthday. I think it would have been reasonable, given the letters he had sent, for Mr T to consider he had met the requirement to get in touch, and so might be able to avoid an annuity purchase.

On balance, and in the very specific circumstances of this complaint, I am not satisfied that the information Scottish Widows sent to Mr T in the lead up to his 75<sup>th</sup> birthday (and starting from more than a year before that time) was sufficient to make him aware of the options that were available to him for the use of his pension savings. So my conclusion remains that this complaint should be upheld and Scottish Widows should put things right as I set out in my second provisional decision, and repeated below for clarity.

### **Putting things right**

Scottish Widows wrote to Mr T in October 2019. I think that is the point at which the shortfall in the information he was given was likely to have caused him to act differently. So I think that by that time, had he received clearer information, Mr T would have started to reduce the risk in his pension investments.

As I explained in my provisional decision, I cannot be sure how, or to what extent, any de-risking would have taken place. So the redress I am directing here can only be a reflection of there being some de-risking activity. So, I think it reasonable to consider that half of Mr T's pension investments, at the time of the October 2019 update, would have been transferred into a cash investment.

So I direct Scottish Widows to calculate the shortfall in the value of Mr T's pension savings that were used to purchase an annuity, compared to what their value would have been if half had been placed into a cash investment fund by the end of October 2019. I think that difference is a fair representation of the loss that Mr T has suffered.

Scottish Widows should then calculate the additional annuity income that would have been available to Mr T in April 2020 with that additional amount. It should provide Mr T with an additional annuity on the same terms as the annuity he purchased.

Mr T has also missed out on annuity income from the additional annuity for the period of time since his annuity started. So Scottish Widows should pay Mr T a lump sum to reflect that additional income. But that income would have been taxable, so it is reasonable that the lump sum be reduced to reflect the notional tax that Mr T would have paid. I think it reasonable to conclude that Mr T is a basic rate taxpayer. So the deduction Scottish Widows makes should equal 20%. But to be clear, that tax deduction is only notional and will not result in any tax deducted being paid to HMRC. So, Mr T would be unable to reclaim any of that deducted tax should he consider it appropriate.

### **My final decision**

My final decision is that I uphold Mr T's complaint and direct Scottish Widows Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 26 April 2023.

Paul Reilly  
**Ombudsman**