

The complaint

Mr B's complaint is about his Scottish Widows Limited personal pension. Mr B originally complained because he hadn't received a clear explanation from Scottish Widows as to why it hadn't taken a pension payment from his bank account since 2019. It has subsequently transpired that Scottish Widows should've ceased taking pension payments from Mr B in 2009 and it has offered to put things right. Mr B remains unhappy because Scottish Widows has failed to provide him with the information he requested before accepting the offer.

What happened

Because the facts and circumstances leading up to this complaint are known by both parties and are not disputed, I don't think it is necessary to set everything out in detail here. So briefly:

In August 2021 Mr B discovered that Scottish Widows hadn't taken a pension payment from his bank account since 2019. Scottish Widows told Mr B that it was due to a system error. Because Mr B wasn't happy with this explanation, and because he'd lost out on two years' worth of profits on the premiums and Scottish Widows didn't tell him how it could rectify this, he complained to Scottish Widows and shortly after he brought his complaint to us.

Further investigation from Scottish Widows over the following weeks discovered that the real reason it stopped collecting Mr B's payments was because his pension plan had a retirement date of age 60, so no premiums were collected after July 2019. And the reason Mr B wasn't told about this in 2019 was because Scottish Widows didn't have an up-to-date address for him – it had received returned mail from his old address in 2014 and Mr B hadn't notified it of his new address.

Scottish Widows also acknowledged the inconvenience and poor service Mr B had received in bringing the matter to its attention (including the length of time he'd been on the phone) and it paid him an initial amount of £160, which was later increased by another £100. In addition to the above, Scottish Widows identified that there was a possibility Mr B shouldn't have been making pension contributions to his pension because it appeared he'd been living outside of the UK for more than five years.

Despite this Scottish Widows allowed Mr B to set up a new direct debit mandate and his contributions commenced again in February 2022. Scottish Widows then cancelled the mandate in May 2022.

Scottish Widows subsequently clarified the position with regards to Mr B's ability to continue making pension contributions. It said that Mr B notified it he was moving abroad in 2003. It said there are UK tax rules surrounding the circumstances in which an overseas resident paying into a UK pension can continue to do so and attract tax relief. It said that, following a phone call with Mr B, it was satisfied that he did not meet any of the specific criteria laid out in the rules, which would allow him to continue making contributions. As a result it said Mr B's relievable pension contributions should've ceased after five years – his last contribution should've been for the 2008/2009 tax year. It said that in the circumstances the right thing to do would be to refund all of the premiums paid after this point – it would also

have to return the overpaid tax relief to HMRC – and because it deemed it was partly at fault for allowing Mr B's contributions to continue, it would pay 8% (per annum) compensatory interest on each month's net premium paid.

Scottish Widows also added that it was willing to pay Mr B an additional £500 in recognition of the distress and inconvenience the matter had caused.

One of our investigators looked at all of this and they said Scottish Widows' offer was fair. They said the return of Mr B's premiums was necessary and that the payment of 8% compensatory interest was in line with what the Financial Ombudsman Service would typically award in the circumstances. They also said that £500 to recognise the distress and inconvenience the matter has caused Mr B was fair given the repeated mistakes Scottish Widows made and lack of clarity with the information it provided.

Before accepting the offer, Mr B asked Scottish Widows to calculate the compensation so he could see a figure and not just a methodology. He also asked for a valuation of his pension – both a backdated value and a current value after the premiums had been refunded.

In November 2022 Scottish Widows carried out the calculation and provided the figures – a total amount of £6,287.27. But despite assurances that the valuations would be forthcoming, Scottish Widows has not provided them.

In December 2022 Mr B told us that he'd received two payments into his bank account from Scottish Widows - £128.64 and then £3,9521.02 – and then a withdrawal of £353.76. Because Scottish Widows did not reply to our request for an explanation about these payments, and with the valuations still outstanding, Mr B asked for the matter to be passed to an ombudsman.

The complaint was therefore passed to me for a final decision.

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.

It's clear that in trying to understand from Scottish Widows why it had not taken any pension payments from Mr B since 2019, he encountered a poor level of service and was initially given the wrong information. It seems to me that Mr B spent more time trying to get to the bottom of things than he should reasonably have done. Scottish Widows acknowledged its failings and it offered Mr B £260 in total, which he accepted. And as far as this initial aspect of Mr B's complaint is concerned, I think this is fair.

What was initially a matter about missed pension contributions, has now changed into something more. It's clear here that Mr B no longer resides in the UK and he hasn't been living here since 2003. And he told Scottish Widows this. Nevertheless Mr B continued to make contributions to his personal pension until 2019, when they ceased because he'd reached the target retirement age of the plan. It seems Mr B wasn't notified of this because Scottish Widows did not have an up-to-date address for him.

Scottish Widows says that because of Mr B's non-UK resident status, which is not disputed, he was only allowed to contribute to his personal pension and claim tax relief for the five tax years after the tax year of his departure from the UK. So it says Mr B's last contribution should've been in the 2008/2009 tax year ending 5 April 2009. And it has referred to the relevant rules setting this out that were in place at the time.

The rules in question are set out in IR76 – Personal Pension Scheme Guidance Notes – produced by the Inland Revenue. Looking at this I can see there is a section for personal pension members living abroad with no net relevant earnings – as in Mr B’s case – which says that:

“A member who is resident outside the UK and has no actual net relevant earnings in a tax year is still eligible to contribute to an arrangement in that tax year if one of the following applies:...”

And the relevant point here is: *“at some time in the five tax years preceding the tax year in question he has been resident and ordinarily resident in the UK and was resident and ordinarily resident in the UK when he set up the arrangement.”*

So this means that, as Scottish Widows says, Mr B could continue to contribute to his UK personal pension for the five tax years following the tax year of his departure from the UK – i.e. up to 5 April 2009. But as Mr B does not meet any of the criteria which would allow him to continue making contributions beyond this point – for example he is not a Crown employee – his contributions should’ve ceased after 5 April 2009. Because Mr B’s contributions continued until 2019, and they attracted tax-relief, I’m satisfied it is necessary, and fair and reasonable in the circumstances, to return the excess premiums he paid to comply with the rules.

I can see that Scottish Widows has also offered to pay compensatory interest of 8% per year on each excess premium Mr B paid. And in the circumstances I think this is also fair. On the one hand it could be argued that it was Mr B’s responsibility to have checked what impact his move in 2003 might have on his ability to continue making pension contributions to a UK pension, including seeking professional advice if necessary. But on the other hand, because Mr B told Scottish Widows about his move in 2003, I think it was reasonable for it to have contacted him telling him to check the appropriate rules about continuing to make contributions given his move overseas. So I think there were failings here.

Taking everything into account, I think it is fair for Scottish Widows to add compensatory interest to reflect the loss of investment opportunity on the monies refunded.

It’s clear to me here that Mr B has suffered distress and inconvenience in this matter, not least as a result from the confusing situation created by Scottish Widows when it allowed Mr B to resume his pension contributions despite telling him at the same time that it wasn’t sure he was allowed to. Scottish Widows has offered to pay Mr B £500 in recognition of this, and taking everything into account, I think this is fair.

It is disappointing that, despite Scottish Widows providing Mr B with the figures of the likely overall compensation, it has not provided him with the valuation figures it said it would provide. And it also hasn’t told us if the payments Mr B says he received into his bank account from Scottish Widows are in connection with the compensation offered. It seems to me that if it had provided this information, this matter could’ve likely been resolved informally.

I can see that because Scottish Widows hasn’t provided the valuation statements, Mr B says that to resolve things, he wants Scottish Widows to honour the pension value as per his last pension statement, which showed a figure of around £55,000.

I understand Mr W is frustrated by this matter and he wants Scottish Widows to account for its poor performance in dealing with this whole matter when it arrives at a valuation figure.

But I can't produce a valuation of Mr B's pension for him or tell Scottish Widows what value it should use. Only Scottish Widows can produce this information for Mr B, which I will instruct it to do below. And as far as adding something to account for the way Scottish Widows has handled things, I'm satisfied that both the interest element of the compensation - designed to reflect the loss of investment opportunity - and the £500 in recognition of Scottish Widows' failings, fairly compensate Mr B. So I won't be instructing Scottish Widows to do anything more in this regard.

As I said above, it is disappointing that Scottish Widows hasn't clarified whether the payments Mr B says he received into his bank account in December 2022 as I referred to above, relate to the offer of compensation or not. This does mean I have no way of knowing. So in the circumstances, I think the fair and reasonable way to deal with this is to address it below in setting out what Scottish Widows needs to do to put things right.

Putting things right

To put things right, Scottish Widows should do the following:

- Refund Mr B all of the pension premiums he has paid from 6 April 2009 onwards.
- Add simple interest at a rate 8% a year to each premium from when it was paid to the date of payment.
- If Scottish Widows can clearly show Mr B that the payments he received into his bank account, as I referred to above, relate directly to the compensation amount he is owed, it can deduct this from the total amount it owes him. Otherwise Scottish Widows should pay Mr B the full amount of compensation it calculates.
- Provide Mr B with a breakdown of the compensation showing him the premium refund, the interest element as well as the total compensation figure.
- Pay Mr B £500, as it offered to do, in recognition of the distress and inconvenience this matter has caused Mr B.
- Provide Mr B with two pension valuation statements showing the historic value as at 5 April 2009 and the current value once it has removed the refunded premiums and repaid the over-paid tax-relief to HMRC.

My final decision

For the reasons above, I've decided to uphold this complaint and I direct Scottish Widows Limited to put things right as I have set out in the section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 7 April 2023.

Paul Featherstone

Ombudsman